

**Manoj Pant Vs. State and Anr.**

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**Court :** Delhi

**Decided On :** Dec-22-2014

**Judge :** V.P.Vaish

**Appellant :** Manoj Pant

**Respondent :** State and Anr.

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

15. h October, 2014 Date of Decision:

22. d December, 2014 % + CRL. M.C. 4178/2012 MANOJ PANT Through:  
.Petitioner Mr. J.P. Sengh, Sr. Advocate with Mr. Abhay Mani Tripathi, Advocate.  
versus STATE & ANR. Through: .Respondents Mr. Yogesh Verma, APP for the  
State. Mr. Sunil K. Mittal, Advocate for R-2. CORAM: HONBLE MR. JUSTICE  
VED PRAKASH VAISH

**JUDGMENT**

1 The petitioner by filing the present petition under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) has assailed the order dated 13.09.2012 passed by learned District Judge & Additional Sessions Judge (East), Incharge, Karkardooma Courts, Delhi, whereby the revision petition filed by the petitioner was dismissed. Vide order dated 06.08.2011 passed by learned Metropolitan Magistrate-06 (East), Karkardooma Courts, Delhi the

petitioner along with other coaccused persons was summoned for the offences under Sections 352/356/379 of Indian Penal Code (IPC, for short). The said order was upheld by the learned Revisional Court.

2. The concise facts leading to the present petition are that on 04.05.2009 a PCR call vide DD No.24B, P.S. Preet Vihar, Delhi was received that workers of Congress Party have blocked the way after putting the tent in front of the office of BJP at Krishna Nagar, Delhi. On receipt of the said call, ASI Rajbir Singh along with constable Subhash reached near Sai Baba Mandir and saw some workers of Congress Party digging at main Chander Nagar Road where an election meeting was to be held and had covered more than 2/3rd of the road. In the meanwhile, the petitioner (the then SHO) reached the spot and directed the removal of poles and chairs. The petitioner also tried to convince the organizer of the said meeting namely Mr. Ramesh Pandit (who is the brother of respondent No.2/ complainant) that such blockage of the road was against the guidelines/ orders issued by the Election Commission of India. Mr. Ramesh Pandit claimed that he had obtained the permission to block the road but on being asked to produce the same he could not do so. Thereafter, the permission granted by the Assistant Commissioner of Police, Preet Vihar for holding the meeting was cancelled. On this Mr. Ramesh Pandit and his brother Jai Prakash Sharma (complainant in the original complaint) got aggressive and started throwing verbal abuses and misbehaving with the police officials. As a result of this Mr. Ramesh Pandit and his brother Mr. Jai Prakash Sharma who also actively participated in raising the tent and obstructing the police authority, were detained under Section 65 of Delhi Police Act and a case bearing FIR No.237/2009 under Sections 186/353 IPC was registered against Mr. Ramesh Pandit on 04.05.2009. However, respondent No.2/ complainant was released soon after he disclosed that he is a cancer patient.

3. On 30.10.2009, respondent No.2/ complainant filed a complaint case under Section 200 of Cr.P.C. against the then SHO (petitioner herein) and other police officials for the offence under Sections 341/342/379/365/506/323/463/469/471/34 IPC on the allegations, inter alia, that on 04.05.2009 brother of complainant was making arrangements for organizing a meeting at Chander Nagar Chowk and at about 11:00 a.m. the petitioner (the then SHO), came there and directed the

brother of the complainant to change the place of arrangement. Suddenly, at about 4:00 p.m. the accused persons along with other police officials came at the Chander Nagar Main Chowk and started lifting tables and chairs and putting them in their vehicle. The brother of the complainant objected to the same and stated that he will make a complaint in this regard to higher officials. On hearing this, the petitioner started beating the brother of the complainant and when the complainant intervened he was beaten by all the accused persons. Thereafter, the complainant was forcibly taken to the police station in a Gypsy along with his brother where they were beaten again and a sum of Rs.20,000/- (Rupees Twenty thousand) was also snatched from the complainant.

4. Along with the complaint, an application under Section 156(3) of Cr.P.C. seeing direction for registration of FIR was also filed. The concerned Metropolitan Magistrate called for a status report and the SHO, Preet Vihar submitted a status report dated 06.02.2010. As per the status report, on 04.05.2009 an election meeting was scheduled to be held from 7:00 p.m. to 9:00 p.m. at Chander Nagar Chowk. According to the guidelines of the Election Commission of India they can use upto 1/3rd of the road and shall ensure smooth flow of traffic and the permission to hold the meeting was granted by the Assistant Commissioner of Police, Preet Vihar subject to terms and conditions but upon checking it was found that complainant and his brother erected polls and violated the guidelines of the Election Commission by covering huge portion of the road. The complainant and his brother misbehaved with the police officials and also used abusive language and accordingly, Assistant Commissioner of Police, Preet Vihar cancelled the permission to hold the meeting and sent a copy to the SHO. When Mr. Ramesh Pandit brother of the complainant was informed about the cancellation of the permission to hold meeting, he became furious and started using abusive and threatening language. The complainant Mr. Jai Prakash Sharma also started shouting. Mr. Ramesh Pandit was detained under Section 65 of the Delhi Police Act. A case bearing FIR No.237/2009 under Sections 186/353 IPC was registered against brother of complainant namely Mr. Ramesh Pandit.

5. After recording pre-summoning evidence adduced by the complainant, the petitioner was summoned along with other police officials for the offence under

Sections 352/356/379 IPC by learned Metropolitan Magistrate vide order dated 06.08.2011.

6. The petitioner challenged the said order by filing Criminal Revision No.5/2012 before learned District Sessions Judge, Delhi. The primary stand taken by the petitioner was that in the absence of sanction as contemplated under Section 197 of Cr.P.C. and the protection under Section 140 of Delhi Police Act, the proceedings could not be continued. Learned District-cumAdditional Sessions Judge, Delhi dismissed the revision petition vide impugned order dated 13.09.2012.

7. Feeling aggrieved by the said order the petitioner has filed the present petition.

8. Learned senior counsel for the petitioner urged that the revisional court failed to consider that on 04.05.2009 the respondent No.2/ complainant along with his brother Mr. Ramesh Pandit had blocked the road in violation of the guidelines issued by the Election Commission of India, the permission granted by the Assistant Commissioner of Police, Preet Vihar for holding the meeting was cancelled and when brother of the complainant Mr. Ramesh Pandit was informed about the cancellation of permission, the complainant and his brother started misbehaving with the police officials and used abusive language. The brother of the complainant Mr. Ramesh Pandit was detained under Section 65 of Delhi Police Act and a case bearing FIR No.237/2009 under Sections 186/353 IPC was registered against the brother of the complainant. The said cases are pending trial. It was also submitted by learned senior counsel for the petitioner that the factual scenario clearly proves the bonafides and in view of the fact that all possible procedures were taken to follow the mandate of law, Section 197 of Cr.P.C. was clearly applicable. It was further submitted that the act of the petitioner was covered by section 140 of Delhi Police Act, 1978 and the complaint filed by respondent No.2 after expiry of more than 5 months was not maintainable. In support of his submission he has relied upon *Tata Motors Pvt. Ltd. Vs. Pharmaceuticals Products India Ltd.*, (2008) 7 SCC619 9. Per contra, learned counsel for respondent No.2/ complainant submitted that act of the petitioner is not covered in the course of discharge of duty and the petitioner is not entitled to the

sanction under Section 197 of Cr.P.C. Since the act was not in discharge of official duty, protection under Section 140 of Delhi Police Act is also not applicable.

10. I have bestowed my thoughtful consideration to the submissions made by learned senior counsel for the petitioner as well as learned counsel for respondent No.2 and also perused the material on record.

11. Before advertng to the facts of the case it would be appropriate to examine the nature of power exercised by the Court under Section 140 of Delhi Police Act and Section 197 of Cr.P.C. and the extent of protection it affords to public servants, who apart from various hazards in discharge of their duties in the absence of provision like the case mentioned, may be exposed to vexatious prosecutions. Section 140 of the Delhi Police Act reads as under:140. Bar to suits and prosecutions. (1) In any case of alleged offence by a police officer or other person or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of: Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence. (2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one month's notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed. (3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof. 12. The first question falling for consideration is whether in the matter of institution of a complaint against a police officer in respect of the acts done by him under the colour of duty or authority or in access of such duty or authority to period

of limitation contained in Section 140 of DP Act would apply or general provisions in Chapter XXVI of the Code will apply?.

13. The Delhi Police Act was enacted to amend and consolidate the law relating to the regulation of police in Union Territory of Delhi. It is axiomatic that it is a special enactment in respect of matters referred to therein and, therefore, the provisions contained in a special law must prevail over the provisions contained in general law like Cr.P.C., which generally applies to all the complaints, challans, etc. Section 140 of DP Act, falling in the miscellaneous Chapter XI imposes certain restrictions and limitations with regard to institution of suits and prosecution against police officers in respect of the alleged offences or wrong acts by them. In my view, the DP Act being a special law, restrictions and limitations enumerated therein should apply to cases falling within the ambit of Section 140 of the Act.

14. In Prof. Sumer Chand vs. UOI, (1994) 1 SCC64 Honble Supreme Court while dealing with the question whether the limitation in filing a suit or malicious prosecution against a member of Delhi Police is governed by provisions of Section 140 of DP Act or by Article 74 of Limitation Act, 1963, held that since the DP Act is a special law, which prescribes a period of Limitation different from the period prescribed in the Schedule to the Limitation Act, if the suit filed falls within the ambit of Section 140 of DP Act then the period of limitation for institution of the suit would be the period prescribed in Section 140 of the DP Act and not the period prescribed in Article 74 of the Limitation Act.

15. Section 197 of Cr.P.C. reads as under:197. Prosecution of Judges and public servants (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government; (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence

employed, in connection with the affairs of a State, of the State Government: Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted. (2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union whole acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government. 16. Chapter XIV of Cr.P.C. contains Section 197 dealing with condition requisite for initiation of proceedings. If the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance no prosecution can be initiated in a court of sessions under Section 193 of Cr.P.C., as it cannot take cognizance as a court of original jurisdiction of any offence, unless the case has been committed to it by a Magistrate or unless the Cr.P.C. expressly provides for it. The jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of Cr.P.C., either on receipt of a complaint, or upon a police report or upon information received from any person other than a police official, or upon his knowledge that such offence has been committed. As regards public servants, the cognizance of any offence, by any court, is barred by section 197 of Cr.P.C., unless sanction is obtained from the appropriate authority, if the offence, is alleged to have been committed was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied.

17. The mandatory character of the protection afforded to public servant is brought out by the expression no court shall take cognizance of such offence except with the previous sanction. The use of the words no and shall make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. It goes to indicate that the complaint cannot be taken note of. Thus, a court is precluded from entertaining a complaint or taking note of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during the discharge of his

official duty.

18. That being so, the question is how should the expression any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, be understood?. The expression official means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity.

19. The Apex Court in *B. Saha vs. Ms. Kochar*, (1979) 4 SCC177 it was observed as under:

17. The words any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, it is no part of an official duty to commit an offence, and never can be. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. As pointed out by Ramaswami, J., in *Baijnath v. State of M.P.* [AIR 1966 SC220 227 : (1966) 1 SCR210:

1966. Cri LJ179 , it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted.

20. The use of expression official duty implies that act or omission must have been done by the public servant in the course of his service and should have been conducted in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope to only those acts or omissions which are done by a public servant in

discharge of his official duty.

21. The Apex Court in *Bakhshish Singh Brar vs. Gurmej Kaur & Anr.*, (1987) 4 SCC663 observed as under: 6. In the instant case, it is alleged that grievous injuries were inflicted upon the complainant and as a result of injuries one of the alleged accused had died. The question is while investigating and performing his duties as a police officer was it necessary for the petitioner to conduct himself in such a manner which would result in such consequences. It is necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, that is the rationale behind Section 196 and Section 197 of the Cr PC. But it is equally important to emphasise that rights of the citizens should be protected and no excesses should be permitted. Encounter death has become too common. In the facts and circumstance of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence.

22. Again in *State of Maharashtra vs. Dr. Budhikota Subbarao*, (1993) 3 SCC339 the Honble Supreme Court of India observed as under: 6. Such being the nature of the provision the question is how should the expression, any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, be understood?. What does it mean?. Official according to dictionary, means pertaining to an office. And official act or official duty means an act or duty done by an officer in his official capacity..... Use of the expression, official duty implies that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation

to only those acts or omissions which are done by a public servant in discharge of official duty. In *P. Arulswami v. State of Madras* [(1967) 1 SCR201 205 : AIR 1967 SC776:

1967. Cri LJ665 this Court after reviewing the authorities right from the days of Federal Court and Privy Council held: It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police

officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar under Section 197 of the Code is not attracted.. 23. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by the Constitution Bench in Matajog Dobey vs. H.C. Bhari, AIR 1956 SC44 wherein it was observed as under: The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner, with the discharge of official duty..... xxx xxx xxx There must be a reasonable connection between the act and the discharge of official duty, the act must bear such relation to the duty that the accused could lay a reasonable claim, but not the pretended or fanciful claim that he did it in the course of the performance of his duty. 24. Further, in State of Orissa & Ors. vs. Ganesh Chandra Jew, AIR 2004 SC2179 the Apex Court observed as under: .....There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor it is possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. 25. In view of the aforesaid pronouncements, it is clear that the protection given under Section 197 Cr.P.C. is to protect public servants against the institution of possible vexatious criminal proceedings for offence alleged to have been committed by them while acting or purporting to act as a public servant. The policy of the legislature is to afford adequate protection to a public servant to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause. Thus, protection provided under the legislature has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duties. If acting in his official duty, a public servant acts in excess of his duty but there lies a reasonable connection between the act and the

performance of the official duty, then such an excess will not be a sufficient ground to deprive the public servant from the protection accorded under the legislature. The question does not pertain to the nature of the offence such as whether the alleged offence contains an element necessarily dependent upon the offender being a public servant but whether it was committed by a public servant acting or purporting to act as such in the discharge of duty in official capacity. Before Section 197 of Cr.P.C. can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in discharge of his official duties. The said act must fall within the scope and range of official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duties. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for discharge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant.

26. It is pertinent to mention here that the scope of protection under Section 197 of Cr.P.C. is widened by extending protection to even those acts or omissions which are done in purported exercise of official duties, that is under the colour of office. Official duty implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. Its operation has to be limited to those duties which are discharged in the course of official duties. Once it is established that an act or omission was done by the public servant while discharging his official duties then the scope of it being official should be construed so as to defend the objection of the sanction in favour of the public servant. Otherwise the entire purpose of affording a protection to the public servant without sanction shall stand frustrated.

27. In the instant case, there is no specific allegation against the petitioner regarding snatching of Rs.20,000/- (Rupees twenty thousand). If the factual position is considered in the background of legal principles enunciated above, the inevitable conclusion is that the protection of Section 197 of Cr.P.C. is applicable to the facts of the present case.

28. Moreover, the events, if any, allegedly took place on 04.05.2009 on the basis of which complaint was filed on 30.10.2009 i.e. after more than 5 months. Requisite sanction required by Section 140 of Delhi Police Act was not obtained.

29. In view of the aforesaid discussion, the petition is allowed and impugned order dated 13.09.2012 passed by learned District Judge & Additional Sessions Judge (East), Incharge, Karkardooma Courts, Delhi is set aside. Consequently, order dated 06.08.2011 passed by learned Metropolitan Magistrate-06 (East), Karkardooma Courts, Delhi whereby cognizance has been taken is also set aside qua the petitioner. Crl. M.A. No.19666/2012 The application is dismissed as infructuous (VED PRAKASH VAISH) JUDGE DECEMBER22 2014 hs

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