

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

CRMC No.537/2015

**Reserved on: 30.03.2026**  
**Pronounced on: 08.04.2026**  
**Uploaded on:-08.04.2026.**

*Whether the operative part or  
full judgment is pronounced: Yes*

**Rajeshwar Singh**  
S/O Sh. Dhian Singh  
R/O 313, Sec. 1, Channi Himmat  
Jammu.

.....Petitioner

Through :- Mr. Akash Gupta, Adv.

V/S

1. **State** through Additional PP  
2<sup>nd</sup> Additional Session Judge,  
Jammu.
2. Satish Kumar S/O Hans Raj  
R/O Krishna Nagar Mujralian,  
Miran Sahib, Jammu.
3. Kulbir Singh Bhau, SHO,  
Police Station, Miran Sahib,  
C/O Dy. Inspector General of Police, Range  
Jammu.
4. Harjeet Singh, SHO  
Police Station Miran Sahib, Jammu
5. Mohd. Rafique Manhas, SHO  
Police Station Ranbir Singh Pura,  
Jammu.

.....Respondent(s)

Through :- None for R-1 & 2.  
Mr. G S Thakur, Adv. for R-3 to 5.

**CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE**

**JUDGMENT**

1. Petitioner invoking the inherent jurisdiction of this court under Sections 561-A of J&K CrPC (akin to Section 482 CrPC and 528 BNSS) seeks quashing of order dated 11.05.2015 passed by learned 2<sup>nd</sup> Additional Sessions Judge Jammu (hereinafter call 'trial court'), in Complaint No.92-A/complaint

tilted 'Satish Kumar V/S Kulbir Singh & Ors', whereby the court has held that the petitioner was not entitled to protection under Section 197 CrPC and also seeks the quashing of the complaint.

2. The petitioner pleads that in the month of May 2005, he was posted as SDPO, R S Pura and on 09.05.2005, one Indu Rani W/O Kulwant Singh R/O Krishna Nagar Miran Sahib was found having died under mysterious circumstances in her bedroom, as reported by her brother-in-law Rameshwar Singh Manhas and that on this report, inquest proceedings under Section 174 CrPC were initiated at P/S Miran Sahib; that during inquiry, respondent No.2- Satish Kumar (hereinafter 'complainant') was called in police station on 10.05.2005 for interrogating him regarding the cause of death and was let free after two hours; that the police after making proper inquiry registered a case vide FIR No. 17/2005 under Sections 302 RPC & 4/25 Arms Act at P/S Miran Sahib against Kulwant Singh Manhas and Rameshwar Singh Manhas, sons of Vishwanath Manhas R/O Krishna Nagar Murjalian on 16.07.2005 which concluded into a chargesheet which was produced in the court of law and both the accused were convicted by the trial court, where conviction was upheld by the High Court.

3. The petitioner has alleged that in order to harass him and other police officials connected with the investigation of the case and supervising the same, a petition titled 'Lajwanti Manhas V/S State & Ors,' (HCP No.15/2005) was filed before the High Court and the High Court had appointed Deputy Registrar (Judicial) as a Warrant Officer to visit P/S Miran Sahib to find out actual position whether the person named in the petition including the complainant are under custody of police at P/S Miran Sahib and if so, they be released forthwith and in case someone is not there, the warrant officer was permitted to make enquiry about the whereabouts of the persons and report the matter; that the

warrant officer visited P/S Miran Sahib and in his report submitted that Kulwant Singh Manhas and Vishwanath Manhas were not in custody but they were in two different rooms and were set free and that the complainant was not found in police custody nor any information was given about his whereabouts and ultimately, the petition was withdrawn by petitioner – Lajwanti; that when complainant and his family could not succeed in pressurizing the police in investigation represented to the Human Rights Commission who after considering the reply of the petitioners dropped the proceedings; that the role of the petitioner as Incharge SDPO was of a supervisory nature as the investigation was conducted by concerned SHO.

4. The petitioner, further, pleads that the complainant had filed a criminal complaint all those issues raised earlier by the complainant and his family members before the IGP and State Human Rights Commission who had exonerated the petitioner and respondent nos. 3 to 5; that the trial court had lost sight of the fact and the principles laid down by Hon'ble the Supreme Court wherein it has been held that protection given under section 197 CrPC is available when the alleged act done by the public servant is reasonably connected to the discharge of his official duty and is not merely a cloak; and that if in doing his official duty, the official had acted in excess of his duty and there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection; that in the present case, the petitioner was alleged to have done everything in discharge of his public duties and is entitled to protection under Section 197 CrPC for being prosecuted only after sanction by the competent authority.

5. The respondent No.2/ complainant, in his reply, submits that petitioner cannot seek immunity from criminal proceedings without sanction under Section

197 CrPC; that the complainant was called to the police station and subjected to third-degree torture, kept in custody at various police stations from 10.05.2005 to 01.06.2005 and got tortured at the instance of the petitioner herein, who was SDPO R S Pura and other police officers who have been named in the complaint; that the accused had not only kept him in illegal custody and tortured him but also filed false reports in his bail applications to the courts stating that he was not in their custody; that the petitioner had been directed to pay Rs.20,000/- for keeping Vishwanath Manhas illegally in the custody by the Human Rights Commission vide order dated 20.05.2008 and that actions of the petitioner did not fall within the line of duty as alleged by the complainant in his complaint; that the accused police officers had misled the courts about the whereabouts of the complainant and had the audacity to file incorrect status reports in his bail application, and the gravity of the matter could be understood from the fact that the High Court had to intervene and appoint a warrant officer to visit the police station to report with regard the custody of the complainant and finally, it was pleaded that the trial court had rightly rejected the application moved by the petitioner herein that he was protected under Section 197 CrPC, from being prosecuted without sanction.

6. There is no representation on behalf of the complainant/respondent No.2 before this Court though Mr. Ajay Singh Kotwal appeared on his behalf on earlier occasions.

7. Learned counsel for the respondents 3 to 5 who were also police officers working as SHOs at Police Stations Miran Sahib and R S Pura at the relevant point of time had supported the contentions raised by the petitioner's counsel and submits that the petition be allowed and proceedings against the petitioner be quashed.

8. Heard and considered the rival submissions on both the sides and perused the pleadings/record.

9. As per the complaint filed by the complainant – Satish Kumar against petitioner herein and some other police officers, it had been alleged that on the death of one Indu Rani W/O Kulwant Singh Manhas, as a result of bullet injury at her matrimonial house on 09.05.2005, the complainant and Vishwanath Manhas were taken into custody illegally and unauthorisedly on 10<sup>th</sup> day of May, 2005; that on motion for bail before the learned Judicial Magistrate at R S Pura, a false report was filed, that the complainant and Vishwanath Manhas were not in confinement, as such, their bail plea was dismissed by the Court; that the complainant was kept under illegal detention w.e.f 10.05.2005 to 01.06.2005 in different police stations, from 10.05.2005 to 17.05.2005 at P/S Miran Sahib, from 17.05.2005 to 21.05.2005 at P/S R S Pura, from 21.05.2005 the complainant was taken to PP Baspur and was again shifted to P/S Miran Sahib where he remained held up till 01.06.2005; that he used to be shifted by accused Kulbir Singh Bhau SHO concerned from one police station to other on the instructions of accused- Rajeshwar Singh, petitioner herein; that the complainant and Vishwanath Manhas again moved a fresh bail application in the court of Id. 1<sup>st</sup> Additional Sessions Judge, Jammu, and the SHO concerned again submitted a palpably false report contrary to the facts; it was alleged that all the accused including the petitioner herein and few constables subjected the complainant to third-degree physical torture and in view of the inhuman act of the accused persons the complainant sustained serious injuries on both of his legs, inner thighs, inflicting internal injuries and that the accused had kept the complainant in their illegal confinement, brutally tortured for none of his faults and that too without registering a case against him.

10. As such, the complaint was made to the Chief Judicial Magistrate, Jammu. The learned Judicial Magistrate (Excise Magistrate) Jammu, vide order dated 03.03.2006 took cognizance against four accused including the petitioner herein for the commission of offences punishable under Sections 342/330/34 RPC and issued process against them and in view of the offence punishable under Section 330 RPC being exclusively triable by the Court of Sessions, the complaint was committed for trial to the Sessions Court, Jammu and this is how the complaint landed in the court of 2<sup>nd</sup> Additional Sessions Judge Jammu.

11. During the pendency of the complaint, the petitioner herein moved an application for dropping of proceedings on the ground that the prosecution against him is barred under Section 197 CrPC. The Trial Court, on consideration of the matter after discussing the law laid down by the Apex Court in various cases, came to the conclusion that the accused No.4, the petitioner herein, who happened to be police officer is alleged to have committed the acts, which formed the gravamen of the allegations contained in the complaint lodged by the complainant alleging wrong confinement at various places without any justification and given merciless beating, in such circumstances it cannot be said that act complained of by the complainant against accused no.4, petitioner herein have a reasonable nexus with his official duty. As such, he was held not entitled to immunity from criminal proceedings, without sanction provided under Section 197 CrPC, and as such, the trial court held that none of the accused including the petitioner herein were entitled to protection under Section 197 CrPC and dismissed their application.

12. On a consideration of the matter having regard to the rival submissions made and in the facts and circumstances of the case, it appears that the petitioner allegedly while working as SDPO R S Pura as a supervisory officer, admitted that when inquest proceedings were initiated regarding the

mysterious death of a woman namely Indu Rani regarding which a case FIR was registered later, the complainant was arrested on 10.05.2005 and was let off. The complainant, however, alleged that he was not only taken into custody on 10.05.2005 and continued in custody being rotated from one police station to other up to 01.06.2005 and that during this period, all the police officers arrayed as accused in the complaint including the petitioner herein, had subjected him to third-degree torture, causing serious internal injuries on his person.

13. The petitioner, in his petition, has stated that he as a supervisory officer, had no direct role with the investigation of the case and that he cannot be prosecuted for the commission of any offence relating to his official duty unless a Government sanction is obtained for prosecution and in absence of any such sanction, he cannot be proceeded, in a complaint pending before the Trial Court.

14. The Trial Court has taken a view that no such protection is available to the petitioner herein, from facing of the prosecution in the complaint lodged by the complainant about his illegal custody and the torture to which he was allegedly subjected to. Section 197 CrPC, which was applicable at the time of filing of the complaint provided that when any person who is judge within the meaning of Section 19 of the RPC or when any Magistrate or when any public servant who is not removable from his office save by or with the consent of the State Government or the Government of India is accused of any offence alleged to have committed by him while acting or purporting to act in the discharge of his official duties, no court take cognizance of such offence except with the previous sanction. The question that is required to be determined is as to whether the alleged acts of the petitioner, would fall within the scope of his official duties as to attract the provisions contained in Section 197 of CrPC. What is meant by acts or purported acts in discharge of official duties has been a

subject matter of discussion and debate before the Apex Court in a number of cases.

15. In **(2013) 15 SCC 624**, the Supreme Court in the context of provisions contained in Section 197 CrPC interpreted the expression ‘official duty’ in the following manner.

*“56. The expression "official duty" would in the absence of any statutory definition, therefore, denote a duty that arises by reason of an office or position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his official duty or purporting to act in the discharge of such a duty arises for consideration, the Court will first examine whether the accused was holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence that protection Under Section 197 Code of Criminal Procedure may be available and not otherwise. Just because the accused is a public servant is not enough. A reasonable connection between his duties as a public servant and the acts complained of is what will determine whether he was acting in discharge of his official duties or purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant within the meaning of that expression Under Section 197 of the Code.”*

16. In *Devinder Singh & Ors. V. State of Punjab*, **(2016) 12 SCC 87**, the Supreme Court, after taking note of all its previous decisions on the issue, summarized the principles emerging therefrom in paragraph 39 as under:

*“39. The principles emerging from the aforesaid decisions are summarized hereunder:*

- I. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.*
- II. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 Code of Criminal Procedure has to be construed narrowly and in a restricted manner.*

- III. *Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection Under Section 197 Code of Criminal Procedure There cannot be a universal Rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.*
- IV. *In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary Under Section 197 Code of Criminal Procedure, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 Code of Criminal Procedure would apply.*
- V. *In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.*
- VI. *Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.*
- VII. *Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.*
- VIII. *Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.*
- IX. *In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence.*

*Question of good faith or bad faith may be decided on conclusion of trial.”*

17. The Apex Court in a case titled '*G C Manjunath & Ors. V. Seetaram*' reported as **(2025) 5 SCC 390**, has held that in a case of alleged police excesses prior sanction to prosecute is mandatory when there exists a reasonable nexus between the act complained of and the discharge of official functions. A similar view has been taken by the Apex Court in '*D. Devaraja V. Owais Sabeer Hussain*' reported as **(2020) 7 SCC 695**; and '*Gurmeet Kour V. Davendra Gupta & Anr*'. reported as **(2025) 5 SCC 481**; and '*Anjani Kumar V. State of Bihar*' reported as **(2008) 5 SCC 248**.

18. In view of the enunciation of law on the subject, it is clear that not only the acts which have been done by the public servant in exercise of his official duty but even the acts, which a public servant has done in purported exercise of official duty, would be covered under the protective umbrella of Section 197 CrPC, therefore, the test is whether there is a reasonable nexus between act done by public servant and his official duties. Even if a public servant has exceeded his powers while discharging his official duties, Section 197 CrPC would come into play. Section 197 CrPC, is a shield to the public servants, who cannot be removed from their services, without the sanction of the Govt. from their false and unwarranted prosecution, without a formal sanction to prosecute. The idea is to protect them from any kind of harassment, at the hands of unscrupulous elements.

19. A Co-ordinate Bench of this court, in a case CRM(M) No.33/2021 titled '*Pawan Singh Rathore V. UT of J&K & Ors.*' vide judgment dated 21.11.2024 while dissecting the duty of a police officer and the acts done by him has observed in paragraph 20 of the judgment, which being relevant is reproduced as under:-

*“20. From the foregoing analysis of law on the subject, it is clear that not only the acts which have been done by a public servant in exercise of his official duty, but even the acts which a public servant has done in purported exercise of official duty, would be covered under the protective umbrella of Section 197 of CrPC. The test is whether there is a reasonable nexus between the act done by a public servant and his official duties. Even if, a public servant has exceeded his powers while discharging his official duties, Section 197 of CrPC would come into play. Thus, in a case where Deputy Superintendent of Police while escorting a prisoner to the Court, beats him up, while the prisoner tries to escape from the custody and in the process, uses excessive force, the Deputy Superintendent of Police would be entitled to protective umbrella of Section 197 of CrPC because preventing a prisoner from escaping the custody is connected with his official duties and in the process, if such police officer has exceeded his powers, he would be acting in purported exercise of his official duty. However, if we take another instance of a police officer thrashing a passerby without any rhyme or reason, in such a case, his act would neither be in the discharge of official duties, nor in the purported discharge of official duties. Thus, the police officer would not be entitled to the protective umbrella of Section 197 of CrPC in such a case.”*

20. Having regard to the aforesaid legal position and reverting to the facts of the present case, the petitioner as a gazetted police officer who cannot be removed from his office without a previous sanction of the Government, as a supervisory police officer as SDPO R S Pura is alleged to have misused his authority not only by keeping the complainant in illegal custody but also subjecting him to third-degree torture along with other police officers, particularly, in the face of the fact that when he has taken a stand that the complainant on being called to the police station had been released on the same day on 10.05.2005, whereas the complainant had alleged that he was kept in custody at various police stations to hide his whereabouts right from 10.05.2005 to 01.06.2005 and that he was subjected to third-degree torture by the police officers including the petitioner herein, the alleged illegal custody as well as subjecting him to torture can be stated to be the acts in exercise of and in excess

of his official duty or even in purported exercise of his official duty so as to be covered under the protective umbrella of Section 197 CrPC providing for no prosecution without sanction.

21. The acts complained of in the complaint against the petitioner herein being part of his official duty or its colour, the petitioner as a police officer having protection of Section 197 CrPC cannot be prosecuted by the complainant in his complaint, without a valid sanction for prosecution. Viewed thus, without commenting on the merits of the accusations against the petitioner herein, it is held that he cannot be prosecuted, for want of sanction for prosecution. In such a situation, the taking of cognizance by the learned Magistrate and rejecting the plea of the Trial Court, are held arbitrary, illegal and unsustainable.

22. Having regard to the foregoing reasons and discussion made hereinabove, petition is allowed and the impugned cognizance order passed by the learned Magistrate and impugned order dated 11.05.2015 passed by the Trial Court are hereby set aside and quashed qua petitioner herein. The learned Magistrate, however, shall be at liberty on receiving 'sanction to prosecute' to revisit the cognizance.

23. Petition is disposed of as **allowed**, alongwith application(s).

**(M A Chowdhary)**  
**Judge**

JAMMU  
08.04.2026.  
Raj Kumar

Whether the order is speaking: Yes/ No  
Whether the order is reportable: Yes/ No