2026 LiveLaw (SC) 314

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
J.B. PARDIWALA; J., MANOJ MISRA; J.
CRIMINAL APPEAL NO. 654 OF 2013; April 01, 2026
SAMARENDRA NATH KUNDU & ANR. *versus* **SADHANA DAS & ANR.**

Code of Criminal Procedure, 1973 – Section 197 – Sanction for Prosecution – Applicability of subsequent notification to prior cognizance – Held that the bar under Section 197 of Cr.P.C. applies at the stage of taking cognizance - A notification issued under Section 197(3) extending protection to subordinate police officers does not have a retrospective effect on proceedings where cognizance was already validly taken before the issuance of such notification - A post-cognizance sanction or a subsequent bar cannot nullify a validly passed cognizance order.

Code of Criminal Procedure, 1973 – Section 197(1) – Protection of Public Servants – Protection under Section 197(1) is only available to public servants who are "not removable from his office save by or with the sanction of the Government." - Subordinate rank police officers who can be dismissed by an Inspector General of Police or other departmental heads without State Government sanction do not fall under this category.

Code of Criminal Procedure, 1973 – Section 197(3) – State Government Notification – While the State Government has the power to extend Section 197(2) protection to members of forces charged with maintaining public order via notification, such protection only applies to the act of "taking cognizance." - If no bar existed on the date the court took cognizance, the trial can proceed despite a later notification. *[Relied on Nagraj v. State of Mysore (AIR 1964 SC 269); Fakhruzamma v. State of Jharkhand (2013 15 SCC 552); Paras 10-15]*

For Appellant(s) Mr. Raj Kamal, AOR Ms. Pallavi Malhotra, Adv. Ms. Muskan Sidana, Adv. Mr. Aseem Atwal, Adv. Mr. Anurag Chandra, Adv. Ms. Nupur Kaushik, Adv.

For Respondent(s) Mr. Mangaljit Mukherjee, Adv. Mr. Ranjan Mukherjee, AOR Ms. Astha Sharma, AOR Mr. Sanjeev Kaushik, Adv. Mr. Simranjeet Singh Rekhi, Adv. Ms. Muskan Surana, Adv.

J U D G M E N T

MANOJ MISRA, J.

1. This appeal impugns the judgment and order of the High Court at Calcutta[1] dated 02.05.2012 in Criminal Revision No. 874 of 2008, by which the revision application of the first-respondent Smt. Sadhna Das (hereinafter referred to as the complainant) against the order of Chief Judicial Magistrate, Alipore, South 24-Parganas[2] dated 28.12.2007 in Case No. C-1107 of 2001 was allowed and the learned Magistrate was directed to proceed against the accused (the appellants herein).

FACTS

2. The relevant facts are as under:

(i) The complainant i.e., the wife of the deceased made a complaint against three police officials namely, Sankaran Moitra (an Assistant Commissioner of Police), S.M. Kundu (the first-appellant), Officer-in-Charge of Phoolbagan Police Station, Calcutta and Sudhir

[1] The High Court
[2] The learned Magistrate

Sikdar alias Sudhangshu Kumar Sikdar (the second-appellant), a Police Constable attached to the Phoolbagan Police Station, Calcutta. In the complaint it was, *inter alia*, alleged that at the instance of Sankaran Moitra, the other two accused, namely, the appellants herein, murdered complainant's husband.

(ii) The learned Magistrate took cognizance on the complaint and, after following complaint case procedure as contemplated under the Code of Criminal Procedure, 1973[3], summoned the accused under Sections 302/201/109 read with Section 120-B of the Indian Penal Code, 1860[4].

(iii) Sankaran Moitra filed a petition under Section 482 of Cr.P.C. for quashing the proceedings on the aforesaid complaint, *inter alia*, on the ground that no cognizance could have been taken without a proper sanction as contemplated in Section 197 of Cr.P.C.

(iv) The High Court *vide* order dated 11.07.2003 dismissed the aforesaid petition holding that beating a person to death cannot be regarded as an act in the discharge of official duties.

(v) Aggrieved by High Court's order, Sankaran Moitra filed Criminal Appeal No. 330 of 2006 before this Court, which was allowed *vide* order dated 24.03.2006[5]. While allowing the appeal, this Court noticed/ observed that the incident occurred on the day of elections to the State Assembly; the accused applicant was in uniform; the counter affidavit filed on behalf of the State revealed that on the election day, information was received at the police station regarding violent clashes between supporters of two political parties upon which the applicant had arrived at the spot in his official vehicle and, thereafter, a lathi charge took place; and husband of the complainant may have received injuries in that lathi charge, resulting in his death. After noticing/ observing as above, this Court held that as maintenance of law and order and prevention of breach of public order on the polling day was part of the officers' duty, the act was done in the performance of duty or in purported performance of duty, therefore protection of Section 197(1) would be available. The operative portion of the order reads thus:

"25. … We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned counsel for the complainant that this is an eminently fit case for grant of such sanction.

26. We thus allow this appeal and set aside the order of the High Court quash the complaint only on the ground of want of sanction under Section 197(1) of the Code of Criminal Procedure. The observations herein, however, shall not prejudice the rights of the complainant in any prosecution after the requirements of Section 197(1) of the Code of Criminal Procedure are complied with."

(vi) The learned Magistrate upon receiving the aforesaid order of this Court, *vide* order dated 28.12.2007, extended the benefit of this Court's order to the appellants as well.

(vii) Aggrieved by the order of the learned Magistrate dated 28.12.2007, the complainant (i.e., the first-respondent) filed a criminal revision before the High Court.

(viii) By the impugned order, the criminal revision was allowed, *inter alia,* on the ground that this Court's order in ***Sankaran Moitra*** was *qua* Sankaran Moitra alone, and it did not apply to other accused against whom no sanction was required.

---

[3] 3 Cr.P.C.
[4] IPC
[5] Reported as Sankaran Moitra v. Sadhna Das & Another, (2006) 4 SCC 584

3. We have heard learned counsel for the parties.

SUBMISSIONS ON BEHALF OF APPELLANTS

4. The submission of the learned counsel for the appellant, *inter alia*, is that the Government of West Bengal[6], *vide* notification dated 19.11.2010, under sub-section (3) of Section 197 of Cr.P.C., has extended the benefit of the provisions of sub-section (2) of Section 197 to all subordinate rank police officers enrolled or appointed under the Police Act, 1861 charged with the maintenance of public order. As a result, *vide* letter dated 06.12.2010, the Government sought opinion from the Commissioner of Police, Calcutta[7] *qua* grant of sanction to prosecute the appellants. In response thereof, the Commissioner wrote letter dated 15.12.2010 stating that it is not a fit case for according sanction as police officer(s) had discharged their duties in the capacity of public servant on the day of elections to the State Legislative Assembly. Relying on the said letter, on behalf of the appellants, it was contended that the incident occurred while the appellants were discharging their duties pursuant to direction of their superiors and as, by notification dated 19.11.2010, requirement of sanction is essential even for police officers in the subordinate ranks, there exists no justification to prosecute the appellants in absence of the sanction. Therefore, the appeal be allowed, the order of the High Court be set aside and the order of the learned Magistrate be restored.

SUBMISSIONS ON BEHALF OF COMPLAINANT

5. *Per contra*, on behalf of the complainant (i.e., the firstrespondent) it was submitted that the deceased had received multiple injuries as could be evinced from paragraphs 71, 72 and 73[8] of this Court's judgment in ***Sankaran Moitra (supra)*** which clearly indicate that it was a case of brutal murder. Moreover, the judgment in ***Sankaran Moitra (supra)*** would not apply to the appellants as on the date of cognizance, the appellants were not protected by Section 197 of Cr.P.C. Further, the notification dated 19.11.2010 applies only

---

[6] The Government
[7] The Commissioner
[8] 71. "Dr. Rabindra Basu, who performed post-mortem examination, state that he found the following injuries on the person of Topi Das:
1. One abrasion with a reddish crust 1.4 inches x .3 inch more or less transversely placed across left side of forehead lower part being placed 1 inch above lateral 1/3rd left eye brow.
2. One abrasion .4 inch x .3 inch with reddish crust placed 1 inch above medial end of left eyebrow and ½ inch lateral to midline.
3. One linear abrasion .6 inch x .1 inch with reddish crust over lateral aspect of uppermost part of left forearm.
4. One abrasion = x .1 inch with reddish crust over postern lateral aspect of upper 1/3rd of left forearm.
5. One abrasion ½ x .1 inch over dorsum of left hand.
6. One linear abrasion .4 inch x .1 inch with reddish rust over dorsal aspect of web between index and middle finger."
72. On internal examination, he noticed the following injuries:
1. One haematoma in the scalp tissue 3 ½ inches x 2 inches over right temporal region.
2. One haematoma in the scalp tissue over vault of the skull 4 inches x .4 inch over parieto-occipital region of scalp.
3. One haematoma in the scalp tissue over vault of the skull 4 inches x 3 inches involving left parieto topper (sic) region.
4. One haematoma 2 ½ inches x 1 ½ inches over left frontal region (forehead).
5. Extradural Haemorrhage over vault of the brain involving posterior aspects of both parietal lobes.
6. Thin layscror (sic) sub-aural haemorrhage all over both the cerebral hemisphere inching under surfaced.
73. He then stated:
"All the internal organs were congested. Larynx and trachea were found congested and the lumen was filled up with shaving lathery froth with and sand seen even below bifunction of trachea. Lungs were voluminous, doughy filled and on section and squeezing copious amount of frothy blood mixed fluid came out. Heart showed GradeII atteroma (sic) at the root of aorta.

to those cases where cognizance is taken after 19.11.2010. Thus, the appeal is liable to be dismissed.

DISCUSSION

6. Upon consideration of the rival submissions and perusal of the materials available on record, in our view, following issues fall for our consideration:

(1) Whether the appellants, who are co-accused, are entitled to the benefit of this Court's decision in the matter of co-accused Sankaran` Moitra?

(2) Whether the benefit of notification dated 19.11.2010 would be available to the appellants?

ISSUE No. 1:

On the basis of my findings I have the following opinion:

"Death was due to the effects of head injuries associated with drowning ante-mortem and homicidal in nature.

The injuries which I found are consistent with a trauma caused by blunt weapon such as Lathi."

7. In so far as the first issue is concerned, it is important to note that this Court had quashed the proceedings against Sankaran Moitra not on the ground that no offence has been committed by him or that no offence at all was committed, but for want of sanction. The proceedings were quashed as he was a public servant (i.e., Assistant Commissioner of Police) not removable from his office save by or with the sanction of the Government and the offence alleged was committed by him while acting or purporting to act in the discharge of his official duty. In those circumstances, this Court took the view that he was entitled to the protection of sub-section (1) of Section 197 and, therefore, in absence of sanction, the complaint and the proceedings were liable to be quashed. What is important to note is that in the case of Sankaran Moitra there was no dispute that he was not removable from office save by or with the sanction of the Government. What is also important is that it was left open to proceed against Sankaran Moitra after obtaining the sanction. In such circumstances, the benefit of decision in ***Sankaran Moitra (supra)*** would be available to the appellants only if they were not removable from office save by or with the sanction of the Government.

8. 'Government' is not defined in Cr.P.C. therefore, by virtue of Section 2 (y) of Cr.P.C., we would have to refer to the definition of 'Government' as provided in IPC. Section 17 of IPC defines 'Government' as follows:

"The word Government denotes the Central Government or the Government of a State."

9. In ***Nagraj v. State of Mysore***[9]***,*** this Court held that if the Inspector General of Police can dismiss a Sub-Inspector, no sanction of the State Government would be necessary for such an officer even if he had committed the alleged offence while acting or purporting to act in the discharge of his official duty. Following the above decision, in ***Fakhruzamma v. State of Jharkhand***[10] it was held that previous sanction is required for prosecuting only such public servants who could be removed by sanction of the Government.

10. As there is no dispute that when cognizance of the alleged offence was taken, the appellants were subordinate rank officers not falling in the category of those officers who could be removed from service only with the sanction of the Government, in our view,

[9] AIR 1964 SC 269 : (1964) 3 SCR 671: 1963 SCC OnLine SC 249
[10] (2013) 15 SCC 552, paragraph 6

there was no requirement of sanction as envisaged under Section 197 (1) of Cr.P.C. Hence, the benefit of the decision in ***Sankaran Moitra (supra)*** is not available to the appellants. Issue No.(1) is answered accordingly.

ISSUE No. (2)

11. Sub-sections (1) and (2) of Section 197 of Cr.P.C. provides protection to different categories of persons. We have already held above that protection of sub-section (1) was not available to the appellants. Now, we shall consider whether protection of subsection (2) of Section 197 is available. According to sub-section (2), no court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government. Subsection (3) of Section 197 of Cr.P.C. empowers the State Government to direct, by notification, that the protection envisaged under sub-section (2) shall apply to such class or category of members of the Forces charged with the maintenance of public order as may be specified therein. In light of the provisions of sub-section (3), even though the appellants do not fall in the category of officers not removable from service save by or with the sanction of the Government, they seek protection under sub-section (2) on the basis of the notification dated 19.11.2010 issued by the Government under sub-section (3) of Section 197 of Cr.P.C.

12. In fact, twin notifications dated 19.11.2010 have been placed on record. The first relates to subordinate ranks in police force constituted under the Calcutta Police Act, 1866 and Calcutta SubUrban Police Act, 1866 whereas the second relates to subordinate ranks in police force, enrolled or appointed under the Police Act, 1861. These twin notifications are reproduced below:

Part I
Order by the Governor of West Bengal

2149

GOVERNMENT OF WEST BENGAL
Home (Political) Department
Secret Section
NOTIFICATION
No. 2103-P.S.
Dated Kolkata, the 19th November, 2010

In exercise of the power conferred by sub-section (3) of Section 197 of the Code of Criminal Procedure, 1973 (2 of 1974) (hereinafter referred to as the Code), the Governor is pleased hereby to direct that the provisions of sub-section (2) of Section 197 of the Code shall apply to all sub-ordinate ranks of Police force, appointed constituted and administered under the Calcutta Police Act, 1866 (Ben. Act IV of 1866) and Calcutta Suburban Police Act, 1866 (Ben. Act. II of 1866) charged with the maintenance of public order.

By order of the Governor,

Sd/- A.G. GHOSH

OSD & Ex-officio

Spl. Secy. to the Govt. of West Bengal No. 2103/1(1)-P.S.

Copy forwarded to the Commissioner of Police, Kolkata for information and necessary action.

Sd/-

OSD & Ex-officio

Jt. Secy. to the Govt. of West Bengal

2150

GOVERNMENT OF WEST BENGAL
Home (Political) Department
Secret Section
NOTIFICATION

No. 2104-P.S.
Dated Kolkata, the 19th November, 2010
In exercise of the power conferred by sub-section (3) of Section 197 of the Code of Criminal Procedure, 1973 (2 of 1974) (hereinafter referred to as the Code), the Governor is pleased hereby to direct that the provisions of sub-section (2) of Section 197 of the Code shall apply to all sub-ordinate ranks of Police force, enrolled or appointed under the Police Act, 1861 (5 of 1861) charged with the maintenance of public order.

By order of the Governor,

Sd/- A.G. GHOSH
OSD & Ex-officio
Spl. Secy. to the Govt. of West Bengal

13. Apparently the aforesaid notifications were issued in exercise of the power conferred upon the State Government by sub-section (3) of Section 197. As a result, we will have to examine whether the appellants' case would come under the protective umbrella of subsection (2) of Section 197 in view of the notification issued under sub-section (3). Before we dwell on the applicability of the provisions of sub-section (2), we must understand the stage at which the bar envisaged under Section 197 applies.

14. The bar of sub-sections (1) and (2) of Section 197 is on Court's power to take cognizance of an offence allegedly committed by a public servant or member of a Force while acting or purporting to act in the discharge of official duty save with the previous sanction of the Government. If the bar applies, the Court cannot take cognizance of the offence and therefore, it cannot proceed to try the same. In other words, the court cannot try an offence of which it cannot take cognizance. In ***Baijnath v. State of M.P.***[11] it was held that a post-cognizance sanction will not save the proceedings. Reason is simple, when cognizance was taken the bar applied. Conversely, if there is no bar on the date when cognizance of the offence is taken, the court can proceed to try the offence. This is so, because the bar applies at the stage of cognizance. Therefore, in our view, a subsequent bar on the power of the court to take cognizance of an offence is of no consequence to those proceedings where cognizance was taken when there was no such bar. As a sequitur, the notification(s) would not affect those proceedings where cognizance was not barred when taken. Besides, there is nothing in the notification(s) or Cr.P.C. which may nullify a valid cognizance order.

15. In the instant case, cognizance was taken in the year 2001, that is, much before the notification. Therefore, in our considered view, the benefit of Section 197 is not available to the appellants. As a result, the appeal lacks merit and is, accordingly, dismissed. The interim order, if any, stands discharged. Pending application(s), if any, shall also stand disposed of.

16. We, however, clarify that we have not expressed any opinion on the merits of the allegations made against the appellants.

[11] AIR 1966 SC 220: (1966) 1 SCR 210: 1965 SCC OnLine SC 294