



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 16th OF JUNE, 2026

CRIMINAL REVISION No. 258 of 2026

RAJKUMAR DWIVEDI AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Mukesh Kumawat – Advocate for the petitioners.

Ms. Usha Chouhan – G.A. for the respondent/State.

Reserved on : 24.02.2026

Pronounced on : 16.06.2026

ORDER

This criminal revision under Section 397/401 of the Cr.P.C., 1973 presently under Section 438/442 of the BNSS, 2023 is preferred challenging the legality of order dated 01.12.2025 (Annexure P/1) in ST No.389/2019 arising out of Crime No.2/16 registered at PS CID Headquarter, Bhopal by Special Judge SC/ST (POA), 1989 whereby, application (Annexure P/2) preferred by revision petitioners under Section 197 of the Cr.P.C. presently under Section 218 of BNSS, 2023 has been rejected.

2. The facts of the case are that the charge sheet under section 306, 342 and 193/32 of the IPC is submitted against Shri Rajkumar Dwivedi, Police Constable No.3842 (revision petitioner No.1), Shri Krishna Kumar Patel, Police Constable No.2864 (revision petitioner No.2) and Inspector M.A. Syed posted at the time of incident at police



station M.I.G. Indore after investigation in Crime No.2/16 registered at PS CID Headquarter, Bhopal in connection with the death of Pankaj Vaishnav s/o Late Shri Vishnu Vaishnav, aged about 24 years, r/o Naya Basera Gandhi Nagar, Indore (M.P.) working as Class-IV employee in the court of Special Railway Magistrate, Indore under the establishment of District Court, Indore who died in the night of 19th of December, 2015 in the premises of police station MIG Indore when he was in police custody and regarding which, a Marg No.42/15 was registered at police station MIG Indore.

3. As per the prosecution, deceased Pankaj was brought to the police station MIG Indore at 2:00 PM of 19.12.2014 for interrogation in connection with alleged theft of a scooter vehicle and Pankaj Vaishnav died when he was in the custody of the police station MIG Indore and Marg No.42/15 was registered at police station MIG, Indore. An enquiry was conducted by the Additional Chief Judicial Magistrate, Indore into the cause of death of Pankaj Vaishnav under Section 176 of the Cr.P.C., 1973. Additional Chief Judicial Magistrate, Indore submitted the report by stating that death of Pankaj in MIG, Indore is (culpable) homicide and Investigating Officer submitted the final report under Section 173 of the Cr.P.C., 1973 resulting into ST No.389/2019.

4. Annexure P/2 was dismissed by the trial court recording the reasons that firstly, no entry was recorded in Roznamcha regarding the custody of Pankaj Vaishnav to police station MIG, Indore and the interrogations. Secondly, Pankaj Vaishnav was subjected to physically assault in police station MIG, Indore by revision petitioners and thirdly, the police constables are not competent to conduct enquiry or investigations of a crime, therefore, their acts of causing physical

assault/injury and mental torture does not fall within the purview of discharge of public/official duty.

5. Challenging the impugned order this revision petition has been preferred on the ground that “reasonable nexus test” has been ignored. Even it is found that the alleged wrongful act committed during official duty they cannot be prosecuted without sanction and the same has been ignored. Trial court further ignored that excess or irregularity also does not take away statutory protection. Trial court further ignored the scope of duty that includes acts done under colour of office. The learned trial court further ignored that procedural lapse does not negate official duty. Trial court further ignored that alleged violation of arrest guidelines does not exclude the requirement of sanction. Trial court further ignored the fact that arrest related acts are inseparably connected with official functions. Trial court further ignored that sanction under Section 197 of Cr.P.C. which is a condition precedent to prosecution. There is absence of mens rea or personal motive. Revision petitioners are not involved in the death of Pankaj Vaishnav. Prosecution theory itself rules out culpability of revision petitioners. CID enquiry does not attribute any act of assault or instigation. There is absence of material to constitute abetment of suicide. There is no proximity or live link between conduct of revision petitioners and suicide. Deceased was already an accused in a registered criminal case prior to the incident. The action of the police was bona fide and within the scope of investigations. The requirement of sanction cannot be diluted by allegations in the charge-sheet. The object of protection provided through the police under section 197 of Cr.P.C. presently under section 218 of BNSS, 2023 is that the protection is to ensure that public servants are not subjected to

harassment for acts done in discharge of official duty and the Apex Court has emphasized the sanctity of this protection and if this protection is not provided then the object would be frustrated and the absence of sanction is a jurisdictional bar.

6. Counsel for the revision petitioners relied on the Apex Court decision in the case of *Matajog Dobey vs. H.C. Bhari* reported in (1955) 2 SCC 388, *Amod Kumar Kanth vs. Association of Victim of Uphaar Tragedy and Another* reported in (2023) 16 SCC 239, *G.C. Manjunath and Others vs. Seetaram* reported in 2025 INSC 439 and *D. Devaraja vs. Owais Sabeer Hussain* reported in (2020) 7 SCC 695.

Heard.

7. Counsel for the State opposed the criminal revision and supported the impugned judgment.

Perused the record.

8. The Apex Court in a case tilted *G C Manjunath (supra)*, 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 (supra)*; 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.

9. 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.

10. In the light of above proposition of law, this Court come to the fact of this case and examine whether the test of existence of reasonable nexus which is complained of and the discharge of official functions exists and consequently the revision petitioners are protected under section 197 of the Cr.P.C., 1973 and presently 218 of the BNSS, 2023?

11. Report dated 07.04.2018 submitted by All India Institute of Medical Sciences, Bhopal has recorded opinion on the basis of autopsy of the deceased to the effect that the redness over the scrotal region is clearly evident as antemortem injury.

12. The final report submitted by the Investigating Officer mentions as below:-

“आरक्षक कृष्णकुमार पटेल क्र. 2864 एवं आरक्षक राजकुमार द्विवेदी क्र. 3824 के द्वारा मृतक पंकज वैष्णव को दिनांक 19.12.2015 के दोपहर 02:00 बजे थाना एम.आई.जी में लाया गया। तत्पश्चांत थाना प्रभारी निरीक्षक एम.ए.सैयद, आरक्षक कृष्णकुमार पटेल क्र. 2864 एवं आरक्षक राजकुमार द्विवेदी क. 3824 के द्वारा मृतक पंकज वैष्णव से पूछताछ की गई। पूछताछ में इनके द्वारा मृतक पंकज वैष्णव की न्यायालयीन वर्दी उतरवाने, मारपीट कर प्रताड़ित करने इत्यादि से तथा किसी भी परिजन इत्यादि को सूचना नहीं दे नहीं मिलवाने के कारण से मृतक पंकज वैष्णव द्वारा मौका पाकर आत्महत्या कर ली गई। इसके लिये उपरोक्त तीनों के विरुद्ध धारा 306 भादवि अन्तर्गत आत्महत्या के दुष्प्रेरण का अपराध सिद्ध पाया जाता है। इसके अतिरिक्त, विवेचना में यह सिद्ध पाया गया कि मृतक पंकज वैष्णव को वास्तव में दिनांक 19.12.2015 के दोपहर दो



बजे के लगभग ही थाना एमआईजी पर लाया गया था और तबसे घटना घटित होने तक वह थाने पर ही पुलिस अभिरक्षा में था किन्तु पंकज वैष्णव को लाने संबंधी कोई भी रिपोर्ट नियमानुसार समय पर रोजनामचा में अंकित नहीं की गई और इस संबंध में पंकज वैष्णव के परिजनों अथवा कार्यालय के किसी भी व्यक्ति को इस संबंध में कोई सूचना भी नहीं दी गई। जो कि माननीय उच्च न्यायालय द्वारा डी के बसु प्रकरण में जारी निर्देशों के उल्लंघन के साथ धारा 342 भादवि अन्तर्गत अपराध होता है। इन तथ्यों के आधार पर यह भी स्पष्ट होता है कि थाने के रोजनामचे को समय पर लेख न करते हुये उक्त घटना को छुपाने के लिये सीसीटीएनएस बंद की मिथ्या रिपोर्ट दर्ज कर और इसके पश्चात प्रकरण से सम्बन्धित सभी मिथ्या प्रविष्टियां की गई। जिसके लिए थाना प्रभारी निरीक्षक एम.ए.सैयद, आरक्षक कृष्णकुमार पटेल क्र. 2864 एवं आरक्षक राजकुमार द्विवेदी क्र. 3824 सामूहिक रूप से उत्तरदायी हैं, और यह कृत्य धारा 193 भादवि अन्तर्गत अपराध होना सिद्ध पाया जाता है।’

13. The above incident is not a result where revision petitioners were performing the duty to handle the violent mob and were justified in using the criminal force and exceeded their scope of use of force but it is a case where alleged use of force is when the deceased was in custody of the police in police station and there was no occasion to exercise the use of force or physical assault followed by various acts to cover up the incident.

14. There is no manner of doubt that the allegation levelled in the complaint petition is allegation of custodial death/violence. The Apex Court in several decisions has viewed it as one of the worst crimes in civilized society and violation of basic human rights. The Apex Court in a decision of *Munshi Singh Gautam (D) vs. State of Madhya Pradesh* reported in (2005) 9 SCC 631 has condemned such action of the police in severest words. In paragraph 7 of the judgment it has been observed as follows:—

“The Courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilized society governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment



of detainees/undertrial prisoners or suspects tarnishes the image of any civilized nation and encourages the men in “khakhi” to consider themselves to be above the law and sometimes even to become a law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crop, the foundations of criminal justice delivery system would be shaken and civilization itself would risk the consequence of heading towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The Courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judicial itself, which if it happens, will be a sad day, for anyone to reckon with.”

15. Accordingly, “reasonable nexus” test is not satisfied and it is not a case where protection of section 197 of the Cr.P.C. is available and trial court did not commit any error in passing the impugned order, hence, the impugned order is hereby affirmed and the present criminal revision stands *dismissed*. No order as to costs.

(GAJENDRA SINGH)
JUDGE