



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Criminal Miscellaneous (Petition) No. 6202/2022
CNR: RJHC010633002022 | URN: CRLMP / 14654U / 2022

Vinod Kumar S/o Sh. Shahabram, Aged About 22 Years, R/o Constable No. 1675, Rajasthan Police, At Present Working At P.S. Rajiyasar, Teh. Suratgarh, Dist. Sriganganagar (Raj.).

-----Petitioner

Versus

1. State Of Rajasthan, Through PP
2. Sakhi Mohammed S/o Pune Khan, R/o Manakthedi, Teh. Pilibanga, Dist. Hanumangarh (Raj.).

-----Respondents

For Petitioner(s) : Ms. Vrinda Bhardwaj for
Dr. Harish Purohit
For Respondent(s) : Mr. Vikram Singh Rajpurohit, PP
Mr. Ravinder Singh Bhati, Asst. G.A.
Mr. Davender Singh Thind for
Complainant

HON'BLE MR. JUSTICE RAVI CHIRANIA
Order

1.	Date of conclusion of Arguments	05.08.2026
2.	Date on which the judgment was reserved	05.08.2026
3.	Whether the full judgment or only operative part is pronounced	Full
4.	Date of pronouncement	25.08.2026

1. The petitioner herein has filed the instant criminal misc. petition under Section 482 of Cr.P.C. for quashing of the impugned order dated 21.05.2022 passed by learned Additional Sessions Judge, Suratgarh, District Sri Ganganagar (Raj.), whereby the learned Revisional Court affirmed the order of cognizance dated 01.02.2020 passed by the learned Court below. The petitioner herein is aggrieved by both the orders. The matter arises from the



impugned FIR bearing No.487/2018 dated 05.10.2018 registered against the petitioner herein for the offences punishable under Sections 342, 323, 325, 504 and 166 of IPC, 1860.

2. The brief facts as argued by learned counsel for the petitioner are that a complaint was filed by the respondent No.2, who was resident of Manakthedi and a social worker of the area. The alleged incident took place on 17.07.2018, whereafter, the police forcibly took him to the police station and tortured him. In regard to his illegal detention, a public protest took place. Thereafter, FIR came to be registered against the petitioner with respect to the illegal detention and custodial violence as caused by him in which police filed the negative Final Report before the concerned Court.

3. Learned counsel for the petitioner submitted that the complainant filed the protest petition before the concerned Court and the learned Court, without going through the conclusion as recorded in the negative Final Report and without considering the statement of the police persons, erroneously took cognizance against him for the offences punishable under Sections 342, 323, 325 and 504 of IPC, 1860 by impugned order dated 01.02.2020. Aggrieved by the order of cognizance, the petitioner filed the revision petition bearing No. 29/2021, however, the learned Revisional Court also did not consider the facts in its entirety and affirmed the order of cognizance dated 01.02.2020 by its order dated 21.05.2022.

4. Learned counsel further submitted that the petitioner specifically raised the issue that without prosecution sanction against him learned Court took cognizance in the case and





therefore, according to him, both the orders are erroneous being perverse and thus, prayed for quashing of the same. While referring to Section 197 of Cr.P.C., learned counsel submitted that in terms of the law as settled by the Hon'ble Apex Court and also from a bare reading of Section 197 of Cr.P.C., it is clear that there is a mandate to get the prosecution sanction before initiating any proceedings in respect of the act done in pursuance of official duties by the public Officer. He specifically argued that in the present case, both the learned Courts committed serious error in law and therefore, its a case of non-application of mind by the concerned Courts in passing both the impugned orders. He also submitted that the petitioner was posted at the alleged place of incident at the time of protest, as stated, and was performing his official duties alongwith other police personnels but he is the only person who has been individually targeted and has been made scapegoat in the entire incident and has been falsely implicated and dragged in the false criminal case.

5. ***Per contra***, learned Public Prosecutor strongly opposed the petitioner's submission and submitted that the orders passed by both the Courts below does not suffer from any legal infirmity. He further submitted that the orders were passed strictly as per law as and far as the issue of prosecution sanction is concerned, he specifically referred to the concluding paras of the order dated 21.05.2022 passed by the learned Revisional Court in which the Court specifically recorded that the act of the petitioner herein cannot be treated to be done in performance of his public duties. On the basis of the above, he submitted that there is no error in



both the orders and therefore, the present petition being devoid of merits deserves to be dismissed and orders may be affirmed.

6. Mr. Davender Singh Thind, learned counsel appearing for the respondent-complainant also vehemently opposed the submissions as made by learned counsel for the petitioner. The complainant alongwith other persons made specific statements against the petitioner and this fact was minutely considered by the Add. Chief Judicial Magistrate, Suratgarh, who passed the order of cognizance dated 01.02.2020. He also specifically pointed out that the complainant received serious injuries due to the physical assault inflicted upon him by the petitioner by locking him inside the Court of Sub-Divisional Magistrate and this act by no stretch of imagination can be said to be an act done in performance of his official duties. In view of the above, he prayed that both the orders does not suffer from any illegality or infirmity and therefore, deserves to be affirmed and petition being devoid of merits may be dismissed.

7. Heard learned counsel for the parties.

8. The facts as noted from the pleadings and documents placed on record are not disputed to the extent that the petitioner is a police Constable and complainant was kept in illegal custody and suffered some custodial violence in respect of which, there was a public protest. Though, the protest was against certain police personnels, however, it has been noted from the contents of the FIR and the fact as recorded by the learned Court in the cognizance order dated 01.02.2020, that complainant was locked inside the Court of Sub-Divisional Magistrate and was given severe beatings with a stick by the petitioner. These facts were also



discussed in detail by the learned Court while passing the impugned order dated 01.02.2020. Thereafter, the learned Revisional Court, also examined the facts after considering the entire record and also order of cognizance and noted the said conduct of the petitioner of giving severe beatings to the complainant by locking him inside the Court of Sub-Divisional Magistrate, the same cannot be said to be an act done in discharge of his official duties in the capacity of a police Constable at that time along with other persons.

9. As far as the issue of prosecution sanction under Section 197 of Cr.P.C. is concerned, this Court considered the recent judgment as passed by the Hon'ble Apex Court in the case of **Suneeti Toteja Vs. State of U.P. & Anr. reported in 2025 INSC 267**

The relevant paras of the said judgment reads as under:-

"23. Now coming to the contentious issue of sanction for prosecution arising in the present case, the test to decide whether sanction is necessary in a particular case is, whether, the act is totally unconnected with the official duty or whether, there is a reasonable connection with the official duty. In the present case, the letter requesting sanction for prosecution was sent to FSSAI, Delhi by the Additional Chief Secretary, Department of Home (Police), Government of UP, but the same was not sent to BIS, even though at that time, the appellant had gone back to BIS from her deputation at FSSAI. The letter seeking sanction for prosecution is said to have been received by BIS only on 29.07.2022. By that time, the chargesheet had already been filed and the summoning order was issued by the Magistrate. Thereafter, BIS sought for further documents, including the FIR, and upon furnishing of the FIR and the chargesheet, BIS denied the sanction for prosecution of the appellant vide its letter dated 14.11.2022. This issue of sanction was decided by BIS within the stipulated period of four months....."

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24. The question therefore is whether the sanction was necessary in the present case for the



prosecution of the appellant, or whether the Magistrate was correct in taking cognizance against the appellant without there being any sanction.

25. For the sake of convenience, the provisions of Section 197 CrPC are reproduced hereinunder:

"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 save as otherwise provided in the Lokpal and Lokayuktas Act, 2013-

(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.

Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code (45 of 1860).

(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.





(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 (43 of 1991), receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

26. The object and purpose of the aforesaid provision was recently reiterated by this Court in the case of Gurmeet Kaur vs. Devender Gupta, 2024 SCC OnLine SC 3761, which reads as follows:





"22. ... the object and purpose of the said provision is to protect officers and officials of the State from unjustified criminal prosecution while they discharge their duties within the scope and ambit of their powers entrusted to them. A reading of Section 197 of the CrPC would indicate that there is a bar for a Court to take cognizance of such offences which are mentioned in the said provision except with the previous sanction of the appropriate government when the allegations are made against, inter alia, a public servant. There is no doubt that in the instant case the appellant herein was a public servant but the question is, whether, while discharging her duty as a public servant on the relevant date, there was any excess in the discharge of the said duty which did not require the first respondent herein to take a prior sanction for prosecuting the appellant herein. In this regard, the salient words which are relevant under sub- section (1) of Section 197 are "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". Therefore, for the purpose of application of Section 197, a sine qua non is that the public servant is accused of any offence which had been committed by him in "discharge of his official duty". The said expression would clearly indicate that Section 197 of the CrPC would not apply to a case if a public servant is accused of any offence which is de hors or not connected to the discharge of his or her official duty. However, there are a line of judgments which have considered this expression in two different ways which we shall now advert to."

10. This Court also considered the judgment passed by the Co-ordinate Bench of this Court in the case of **S.B. Criminal Misc. Petition No. 631/2010** titled as **Gulab Singh Vs. State of Rajasthan & Anr.** decided by judgment dated 24.04.2013. The





Co-ordinate Bench also examined the issue of grant of prosecution sanction under Section 197 of Cr.P.C. The relevant paras of the judgment reads as under:-

"The question which this court has to consider is as to whether the petitioner being a Sub Inspector of the Police would be entitled to claim and receive the benefit of Section 197 Cr.P.C. Before such a benefit could be granted to the petitioner, it has to be demonstrated that the act in relation where to the cognizance has been taken against the petitioner was done by him in the course of discharge of his official duty. Whether or not the petitioner had gone to the complainant's house for investigating the FIR No.289/2007 has to be proved by leading evidence to this effect before the trial court so that the court can reasonably arrive at a conclusion that the petitioner went to the complainant's house for investigating the said FIR. For the present, there are allegations of the complainant that the petitioner along with other employees of the Police Station, Suratgarh unauthorizedly used force and broke into the house of the complainant. The incident is said to have taken place in the early morning, much before the sunrise. The petitioner therefore has to demonstrate before the trial court as to whether he was entitled or authorized to enter into the house of the complainant for the purpose of investigating the FIR No.289/2007 and then only, he would be in a position to claim the benefit of Section 197 Cr.P.C.

Whilst giving due regard to the view expressed by the learned Single Bench of this Court in the case of Rameshwar Dayal (supra), even if, it is assumed that all the police officers of the State are entitled to protection under Section 197 Cr.P.C. on the strength of the Circular of 1974, such protection would only be available to the concerned public officers if the court is satisfied that the act complained of was done in the discharge of official duty.

Learned counsel for the petitioner has of course placed on record certain photo stat copies of the 'roznamcha' of the Police Station, Suratgarh for the purpose of demonstrating that the petitioner had been authorized to arrest the





complainant's father and had gone to the house of the complainant for that purpose. No such document was filed by the petitioner before the revisional court and are obviously not available on the record of the trial court. Therefore, at this stage, this court is not satisfied with the contention of the learned counsel for the petitioner that the petitioner went to the house of the complainant in the bonafide discharge of his official duty. The petitioner will have to demonstrate these facts before the trial court by way of filing an appropriate application under Section 197 Cr.P.C. and leading evidence and, thereafter, the learned trial court would be in position to appreciate these facts in the light of the judgments cited by the learned counsel for the petitioner."

11. With regard to the role of the petitioner, i.e., as a police Constable as noted by both the learned Courts, which shows that he gave severe beatings to the respondent No.2 by locking him inside the Court room as noted above and the same cannot be said to be an act done in performance of his official duty, as claimed by him. The discussion as made by both the learned Courts below, more specifically the discussion as made by the learned Revisional Court in the order dated 21.05.2022 reads as under:-

"9. हमने उपरोक्त तर्क-वितर्क के परिप्रेक्ष्य में अभिलेख एवं विधि के सुसंगत प्रावधानों पर मनन किया। प्रस्तुत न्यायिक दृष्टांतों का ससम्मान अवलोकन कर मार्गदर्शन प्राप्त किया गया। हस्तगत प्रकरण में यह स्वीकृत तथ्य है कि पुलिस द्वारा बाद अनुसंधान अदम वकु गलतफहमी में एफ.आर. पेश की गई है। परिवादी ने परिवाद में अभिवचन किया है कि दिनांक 06.09.2018 को एसडीएम कोर्ट परिसर सूरतगढ़ में परिवादी सखी मोहम्मद व अन्य के धरना प्रदर्शन करने के दौरान पुलिस वाले परिवादी व इसके भाइयों को दसीटकर एसडीएम कार्यालय परिसर ले गए थे, जहां आरोपी विनोद कुमार द्वारा सखी मोहम्मद से लाठियों से मारपीट की गई, जिससे पैर में फ्रेक्चर हो गया था। पास खड़ी महिला राधादेवी ने बीचबचाव का प्रयास किया तो इसके साथ बदतमीजी की व भाइयों अजीज, फरीद के भी लाठियों से चोटें मारी। परिवादी ने उक्त अभिवचनों की अपने पुलिस बयानों में भी ताईद की है। उल्लेखनीय है कि परिवादी के चोटें आने की ताईद चोट प्रतिवेदन से भी होती है। परिवादी के भाइयों अजीज खान व फरीद खान ने भी परिवादी के उक्त कथनों की ताईद अपने पुलिस बयानों में करते हुए आरोपी विनोद कुमार द्वारा कोर्टरूम के अंदर सखी के पैर पर लाठी की चोट



मारने के स्पष्ट कथन किए हैं। स्वतंत्र गवाह राधादेवी के पुलिस बयान का अवलोकन करें तो इसने भी पुलिस वालों द्वारा सखी मोहम्मद वगैरा को पकड़कर कोर्ट के अंदर ले जाने, विनोद कुमार नामक सिपाही के हाथ में डंडा होने के कथन किए हैं। आगे इस गवाह ने कथन किया है कि सखी मोहम्मद ने बताया कि विनोद सिपाही ने कोर्ट रूम में पैरों पर लाठी की मारी तथा कोर्टरूम के अंदर से जोर-जोर से चिल्लाने की आवाज आ रही थी। अन्य स्वतंत्र गवाह सुखदेवसिंह, सुरेन्द्र ने पुलिस बयानों में सुखी मोहम्मद को पुलिस वालों द्वारा पकड़कर एसडीएम कोर्ट ले जाने के कथन किए हैं। इस सम्बंध में पुलिसकर्मी साक्षीगण हवासिंह, रूपाराम, रामसिंह, विरेन्द्र, शिमला, सुमन, आत्माराम, राजेन्द्र कुमार, सुरेन्द्र कुमार, विनोद कुमार, रामचन्द्र ने हालांकि घटना की तारीख नहीं की है परंतु वरवक्त घटना आरोपी विनोद कुमार तथा परिवादी के एसडीएम कोर्ट परिसर में उपस्थित होने के स्पष्ट कथन किए हैं तथा सखी मोहम्मद के चोटें धक्कामुक्की व गिरने से आने की सम्भावनायें व्यक्त की हैं। इस सम्बंध परिवादी का चोट प्रतिवेदन पत्रावली पर संलग्न है, जिससे भी परिवादी के उक्त घटना के दौरान चोटें आना जाहिर होता है। इस प्रकार मुख्य रूप से परिवादी व इसके भाइयों, स्वतंत्र गवाह राधादेवी आदि के कथनों से परिवादी सखी मोहम्मद व विनोद कुमार के एसडीएम कोर्ट परिसर में उपस्थित होने तथा विनोद कुमार के डंडा लेकर एसडीएम कोर्ट के अंदर जाने, जहां से चिल्लाने की आवाजें आने एवं इसी घटना के दौरान परिवादी के चोटें कारित होने की प्रथम दृष्टया साक्ष्य आई है। हालांकि पुलिस साक्षीगण ने घटना की पूर्णतः तारीख नहीं की है परंतु उपरोक्त गवाहों ने निश्चित रूप से यह भी कथन नहीं किए हैं कि परिवादी के चोटें गिरने पड़ने या धक्कामुक्की से ही आई हो, बल्कि यह कहा है कि सखी मोहम्मद के गिरने पड़ने से लगी होगी। विधि का यह सुस्थापित सिद्धांत है कि प्रसंज्ञान के स्तर पर साक्ष्य का सूक्ष्मता से विवेचन करना आवश्यक नहीं होता है, बल्कि प्रकरण में प्रथम दृष्टया साक्ष्य व आधार विद्यमान होने पर भी कार्यवाही प्रारम्भ की जा सकती है। परिवादी पक्ष की ओर से अनुसंधान के दौरान प्रस्तुत साक्ष्य से प्रथम दृष्टया आरोपी विनोद कुमार द्वारा परिवादी सखी मोहम्मद के साथ एसडीएम कोर्ट परिसर सूरतगढ़ में घटना के रोज मारपीट कर चोटें कारित करना व गाली गलौच करना प्रमाणित मानते हुए विचारण न्यायालय द्वारा आरोपी के विरुद्ध अपराध का प्रसंज्ञान लिया गया है, जिसमें इस न्यायालय के मतानुसार कोई विधिक त्रुटि या अवैधता होना नहीं पाया जाता है। जहां तक धारा 197 दं.प्र.सं. के तहत लोकसेवक के विरुद्ध अभियोग चलाने से पूर्व अभियोजन स्वीकृति आवश्यक होने का प्रश्न है तो आरोपी का कोर्टरूम में घुसकर सखी मोहम्मद के साथ मारपीट करने का कृत्य किसी भी रूप में पदीय कर्तव्य का निर्वहन नहीं हो सकता है। ऐसी स्थिति में धारा 197 दं.प्र.सं. के तहत अभियोजन स्वीकृति प्राप्त करना मेरे विनम्र मतानुसार आवश्यक नहीं थी। विद्वान अधिवक्ता निगरानीकार की ओर से प्रस्तुत न्यायिक दृष्टांत तथ्य भिन्नता के कारण हस्तगत प्रकरण पर लागू नहीं होते हैं।"

12. In view of the above discussion as made by learned Revisional Court, after considering the findings as recorded by both the learned Courts below while passing the impugned order as well as in the light of the judgment as passed by the Hon'ble Apex Court in **Suneeti Toteja (supra)**, along with the judgment as passed by the Co-ordinate Bench of this Court in the case of



Gulab Singh (supra), this Court finds that there was no necessity of prosecution sanction in the present case as the said act was not done in performance of the official duty rather he acted beyond it as the agitation was against his brother who was also a police personnel. This Court also noted that the complainant levelled the allegation against the petitioner only and not against any other police personnel which makes it amply clear that only petitioner acted beyond his official duty. In view of the above discussion, this Court has reached to the definite conclusion that there is no infirmity in both the impugned orders.

13. In view of the above, the present petition being devoid of merits is hereby dismissed.

14. All pending application(s), if any, stand(s) disposed of.

(RAVI CHIRANIA),J

RINCHU