

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5293 of 2019**

Arising Out of PS. Case No.-154 Year-2013 Thana- JAMUI District- Jamui

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Jitendra Kumar@ Jitendra Singh Shyam Sundar Singh Resident of Akbarpur,
P.S.- Hilsa, District -Nalanda

... .. Petitioner

Versus

The State Of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner/s	:	Mr. Patanjali Rishi, Adv.
For the State	:	Mr. Uday Chand Prasad, APP
For father of deceased	:	Mr. Ram Binay Prasad Singh, Adv.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 21-10-2019

Heard Mr. Patanjali Rishi, learned advocate for the petitioner, Mr. Uday Chand Prasad, learned Additional Public Prosecutor for the State and Mr. Ram Binay Prasad Singh, learned advocate for the father of the deceased.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioner for quashing the order dated 09.04.2015 passed by the learned Chief Judicial Magistrate, Jamui in Sessions Trial No. 280 of 2016 arising out of Jamui P.S. Case No. 154 of 2013 dated 01.07.2013 registered for the offence punishable under Section 302 read with 34 of the Indian Penal Code. The petitioner has further prayed for quashing the entire subsequent prosecution of the petitioner in connection with the aforestated case pending in



the court of Additional District & Sessions Judge-I, Jamui on the ground of cognizance being barred under Section 197 of the Cr.P.C for want of sanction for prosecution.

3. Earlier, vide order dated 28.03.2019, a Bench of this Court [Coram : Honourable Mr. Justice Aditya Kumar Trivedi] had dismissed the application of the petitioner on merits.

4. Being aggrieved by the aforesaid order dated 28.03.2019, the petitioner filed S.L.P.(Crl.) No. 3502 of 2019 before the Supreme Court of India.

5. After grant of leave, vide judgment dated 10.05.2019 passed in Criminal Appeal No. 3502 of 2019, the Supreme Court set aside the final judgment and order dated 28.03.2019 passed by this Court and remanded the matter for deciding the petition afresh on merits keeping in view of the observations made thereunder.

6. The relevant observations in paras 9 to 13 made by the Supreme Court in its judgment dated 10.05.2019 are set out hereinbelow :-

“9. In the entire impugned order, which consists of 13 paras, we find that the High Court did not assign any reason as to why the petition is liable to be dismissed. In other words, neither there is any discussion and nor the reasoning on the submissions urged by the learned counsel for the parties.



10. In our view, such approach of the High Court while disposing of the petition cannot be countenanced. Time and again, this Court has emphasized the necessity of giving reasons in support of the conclusion because it is the reason, which indicates the application of mind. It is, therefore, obligatory for the Court to assign the reasons as to why the petition is allowed or rejected, as the case may be.

11. As mentioned above, para 12 only records the conclusion. It is for this reason, we feel that the matter must go back to the High Court for deciding the petition afresh on merits in accordance with law.

12. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. The matter is remanded to the High Court for deciding the petition, out of which this appeal arises, afresh on merits in accordance with law keeping in view the observations made above.

13. We, however, make it clear that we have not expressed any opinion on the merits of the issues arising in the case having formed an opinion to remand the case to the High Court for deciding it afresh on the ground mentioned above. The High Court will, therefore, decide the matter on its merits uninfluenced by any of our observations made in this order.”



7. On remand, the matter was placed before brother Aditya Kumar Trivedi, J., who had passed the judgment and order dated 28.03.2019 for deciding the case afresh on merits. However, vide order dated 10.07.2019, he directed for listing of the case as per roster. Thereafter, the case was listed before brother Ashutosh Kumar, J. Vide order dated 08.08.2019, he directed that the case be placed before Hon'ble the Chief Justice for passing any appropriate order for listing of the case before any other Bench realizing that at some point of time he had defended one of the accused persons.

8. Thereafter, under the orders of Hon'ble the Chief Justice, this case has been assigned to this Bench.

9. Mr. Patanjali Rishi, learned advocate appearing for the petitioner submitted that at the relevant time the petitioner was posted as Officer-in-Charge of Jamui Police Station. The act complained of against him was an act in discharge of official duty. Hence, he was protected from any prosecution in absence of sanction from the competent authority. He contended that the records would clearly indicate that the victim was taken on remand in terms of the order of the learned Chief Judicial Magistrate, Jamui for being interrogated in connection with Jamui P.S. Case No. 95 of 2013. Hence, prior to taking cognizance of the offence,



an order of sanction for prosecution from the competent authority was necessarily required. However, learned Chief Judicial Magistrate did not take into consideration the requirement of Section 197 of the Cr.P.C while taking cognizance of the offence and the entire prosecution is proceeding erroneous without the sanction for prosecution. He urged that at the end of the trial, on 19.12.2018, the petitioner filed an application stating therein that since he was a public servant at the time of the alleged occurrence and whatever be the allegations levelled against him, he denies them. Furthermore, they relate to the discharge of his official duty. Therefore, sanction of the competent authority is essential for his prosecution, which has not been accorded by the competent authority as a result of which the whole trial of the case got vitiated. On such pleadings, a prayer was made to drop the criminal prosecution of the petitioner as the entire proceeding held thus far was vitiated.

10. According to Mr. Patanjali Rishi, the trial court did not appreciate the facts and law involved in the case properly and vide order dated 20.12.2018 erroneously dismissed the petition filed by the petitioner. He contended that the order impugned cannot be sustained in view of the judgments rendered by the Supreme Court in *Sankaran Moitra Vs. Sadhna Das & Anr.*,



since reported in *(2006) 4 SCC 584* and *P.K. Pradhan Vs. The State of Sikkim*, since reported in *(2001) 6 SCC 704*.

11. Per contra, Mr. Uday Chand Prasad, learned Additional Public Prosecutor appearing for the State submitted that it is a gross case of culpable homicide amounting to murder. The alleged act against the petitioner is neither directly nor reasonably connected with the official duty to require sanction. He contended that it is no part of official duty to kill an accused after taking him on police remand in the name of interrogation. He has further contended that the father of the victim is an eye-witness to the occurrence of assault upon the victim by the petitioner and another police officer. He has duly supported the allegation of assault against the petitioner in his evidence adduced in course of trial.

12. Mr. Ram Binay Prasad Singh, learned advocate appearing for the father of the deceased has supported the contention advanced by the learned Additional Public Prosecutor appearing for the State. In addition, he has contended that the witnesses on behalf of the prosecution have already been examined. At this stage raising the question of sanction for prosecution by the petitioner is nothing but an effort to cause delay in disposal of the trial. According to him, the petitioner did not raise the point of lack of sanction order at any stage earlier. He



allowed the charges to be framed and trial to be conducted. However, when the evidences on behalf of the prosecution have been adduced and they have supported the prosecution case, the petitioner has taken a lame excuse of lack of order granting sanction for prosecution on frivolous grounds.

13. Replying the contentions advanced by the learned advocates for the State and the father of the deceased, Mr. Patanjali Rishi, learned advocate submitted that the petitioner has cross-examined the father of the deceased on the point of his presence at the time of alleged assault upon the deceased. He has contended that there are many contradictions and embellishment in the evidence of the father of the deceased, which would be argued at an appropriate stage in case the petitioner would not succeed in the present application. According to him, at this stage, it cannot be said that the father of the deceased was present when the alleged occurrence took place. He has further contended that it is not a fact that all the witnesses have supported the prosecution case rather most of the witnesses have turned hostile in course of trial. He has further contended that in **P.K. Pradhan** (Supra), the Supreme Court has ruled that question of requirement of sanction for prosecution can be raised at any time after cognizance of the offence is taken, may be even at the time of conclusion of trial or



after conviction. Hence, the objection taken by the learned counsel for the father of the deceased regarding belated filing of application on behalf of the petitioner raising the issue of requirement of sanction for prosecution is without any merit.

14. Having heard the parties and perused the materials on record, the issues for consideration in the present case are :

- (a) Whether the alleged offence was committed by the petitioner while acting or purporting to act in discharge of his official duty; and
- (b) Whether the petitioner could have raised the question of requirement of sanction for prosecution at the fag end of the trial.

15. In order to resolve the aforesaid issues, first of all, it is necessary to take notice of the factual matrix of the case.

16. Jamui P.S. Case No. 154 of 2013 was registered on 01.07.2013 on the basis of a written report submitted by one Arvind Kumar Mishra, the Superintendent of Jail, Jamui to the Superintendent of Police, Jamui wherein he has alleged that an inmate of Jamui jail in Jamui P.S. Case No. 95 of 2013, namely Munna Singh had died because of being badly assaulted by the petitioner Jitendra Kumar on 23.06.2013, who was then posted as Sub-Inspector of Police in Town Police Station at Jamui and one



Satyabrat Bharti, then posted as Sub-Inspector of Police at Giddhaur Police Station. He also alleged that the deceased had told the fellow inmates regarding the assault upon him by the petitioner and the co-accused Satyabrat Bharti.

17. On the basis of the aforesaid written report, the first information report (for short 'FIR') was registered under Section 302 read with 34 of the Indian Penal Code. On completion of the investigation of the case, charge-sheet no.26 of 2014 dated 31.05.2014 was submitted before the court whereby the petitioner and one Satyabrat Bharti were sent up for trial for the offence under Section 302/34 of the Indian Penal Code.

18. On perusal of the charge-sheet, it would be evident that at the time of its filing, both the sent-up accused persons were absconding.

19. Subsequently, the co-accused Satyabrat Bharti appeared before the court. Since the petitioner was absconding, his trial was split-up.

20. Later on, the petitioner surrendered before the court on 24.10.2016 and was remanded to judicial custody. The charge under Section 302 read with 34 of the Indian Penal Code was explained to him to which he pleaded not guilty.



21. Hence, the trial commenced and in course of trial, altogether 12 witnesses were examined on behalf of the prosecution. After closure of the prosecution evidence, statement of the petitioner was recorded under Section 313 of the Code of Criminal Procedure. Thereafter, two witnesses were examined on behalf of the defence and the case of the defence was also closed.

22. It was at this stage when the petitioner filed an application on 19.12.2018 before the trial court praying therein that in absence of an order of sanction for prosecution the entire trial held thus far including the order taking cognizance is vitiated.

23. After hearing the parties on the application dated 19.12.2018, the trial court rejected the application filed by the petitioner holding therein that from perusal of the evidence of the witnesses, it would be manifest that the act complained of against the petitioner was not an act in the discharge of official duty. Hence, no sanction was required for his prosecution.

24. Being aggrieved by the aforesaid order dated 20.12.2018, the petitioner has filed the instant application before this Court.

25. At this stage, it would be relevant to note that the deceased Munna Singh, an accused in Jamui P.S. Case No. 95 of



2013 had surrendered in the court of Chief Judicial Magistrate, Jamui on 12.06.2013 and was remanded to judicial custody.

26. Thereafter, on 17.06.2013, the investigating officer of the case made a prayer before the court of Chief Judicial Magistrate for police remand of the deceased Munna Singh, which was allowed for two days by the learned Chief Judicial Magistrate, Jamui vide order dated 19.06.2013. Thus, Munna Singh was taken out from jail on police remand on 20.06.2013 and was sent back in jail on 22.06.2013.

27. Since he had sustained multiple injuries on his person, he was immediately shifted to a local hospital on 23.06.2013 from where he was shifted to Patna Medical College and Hospital, Patna for better treatment where he died on 01.07.2013.

28. The post-mortem examination on the body of Munna Singh was conducted by the Board of Doctors constituted by the Principal of the Patna Medical College and Hospital, Patna vide letter no. 2207 dated 02.07.2013 vide requisition by the District Magistrate, Patna no. 6208 dated 02.07.2013 and videography of the same was also conducted. The post-mortem examination report would show the following ante-mortem external and internal injuries :-



- “(i) Both lips bluish in colour with swelling on incision underlying extravasated blood clot found.
- (ii) Swelling with bruising in left inguinal region and upper thigh left in an area 22 cm x 14 cm (anterio lateral) bluish in colour with extra vasated blood underneath an incision.
- (iii) Swelling with bruising black of hip and posterior aspect of both thigh bluish in colour in area 31 cm x 14 cm. Left thigh back and 34 cm x 15 cm right thigh back with extra vasated blood on incision.
- (iv) Swelling with bruising back of lower abdominal wall just above lateral cleft in an area 22 cm x 15 cm and 45 cm below lower border of neck bluish in colour with extra vasated blood on incision.
- (v) Swelling with bruise right inguinal and right upper thigh anteriorly in an area 23 cm x 9 cm and right lower thigh 8 cm above knee joint anterio lateral aspect 15 cm x 10 cm bluish in colour with extra vasated blood underneath and right medial thigh 10 cm above right knee 16 cm x 14 cm size bruise with extra vasated blood underneath incision.
- (vi) Bruising of both soles of feet with extra vasated blood underneath incision. Routine viscera had been preserved for chemical analysis and IO is requested to make immediate arrangement for



transportation of viscera to the FSL as precautionary measure.

Cause of Death – Shock & Haemorrhage from above mentioned injuries caused by hard blunt force impact time lapsed within 24 hours.”

29. A plea has been taken by the petitioner that since the victim was taken on remand in accordance with the order of the learned Chief Judicial Magistrate, Jamui for being interrogated in connection with Jamui P.S. Case No. 95 of 2013 and the allegation is that the petitioner and another police officer assaulted him while being on police remand, the act complained of was certainly in discharge of official duty. Hence, in view of the judgment of the Supreme Court in the case of *Sankaran Moitra* (Supra), the prosecution of the petitioner in absence of valid sanction for prosecution would be vitiated in law.

30. In *Sankaran Moitra* (Supra), the complainant had filed a complaint before the Deputy Commissioner of Police that she had come to know from the members of the public that her husband had been beaten to death by the police. She had made the Assistant Commission of Police and other police personnel as accused and had prayed for action against them. One of the accused persons preferred an application under Section 482 of the Cr.P.C before the High Court for quashing of the complaint on the



ground that the complaint could not have been entertained for want of sanction under Section 197(1) of the Cr.P.C. The High Court dismissed the petition. Before the Supreme Court, it was argued that want of sanction under Section 197 of the Cr.P.C did not affect the jurisdiction of the court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate stage. In that case, the Supreme Court considered *Hori Ram Singh (Dr.) Vs. Emperor*, since reported in *AIR 1939 FC 43*, *Matajog Dobey v. H.C. Bhari*, since reported in *AIR 1956 SC 44* and several other judgments on sanction and rejected the submission. It was held that the prosecution hit by Section 197(1) of the Cr.P.C cannot be launched when the sanction is contemplated. In para 25, the Court observed as under :-

“25. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be



against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. 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.”

31. In *Matajog Dobey* (Supra), the Constitution Bench of the Supreme Court observed that no question of sanction can arise



under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. On the question as to which act falls within the ambit of official duty, the Constitution Bench had held that there must be reasonable connection between the act and the discharge of the official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim that he did it in the course of performance of his duty.

32. The Constitution Bench in *Matajog Dobey* (Supra), while dealing with the question whether the need for sanction has to be considered as soon as the complaint is lodged and on the allegations contained therein, referred to *Hori Ram Singh* (Supra), it was observed by the Constitution Bench that at the first sight, the judgment in *Hori Ram Singh* (supra) seemed to justify that the Federal Court was of the view that the applicability of Section 197 of the Code of Criminal Procedure would be at the initial stage, but on a careful analysis of the Federal Court judgment in *Hori Ram Singh* (Supra), the Constitution Bench found that the question may arise at any stage of the proceedings. The complainant/informant may not disclose that the act was in discharge of official duty but other



facts subsequently coming to light on a police or judicial enquiry or even in the course of the prosecution evidence at the trial, the necessity for sanction may be established.

33. Thus, whether sanction is necessary or not, may have to be determined from stage to stage and the necessity could reveal itself in the course of the progress of the case. If, at the initial stage, the defence establishes that the act alleged of was in execution of the official duty, the complaint will be have to be dismissed in absence of the order of sanction.

34. In *Om Prakash Vs. State of Jharkhand*, since reported in (2012) 12 SCC 72, the Supreme Court, on an analysis of the judgments in *Hori Ram Singh* (Supra) and *Sankaran Moitra* (Supra) held as under :-

“41. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any



documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea. At this point, in order to exclude the possibility of any misunderstanding, we make it clear that the legal discussion on the requirement of sanction at the very threshold is based on the finding in the earlier part of the judgment that the present is not a case where the police may be held guilty for killing Munna Singh in cold blood in a fake encounter. In a case where on facts it may appear to the court that a person was killed by the police in a stage-managed encounter, the position may be completely different.

42. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. **Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognized as legal by our criminal justice administration system. They**



amount to State-sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to do their legal duty of arresting the criminals, they have also to protect themselves. The requirement of sanction to prosecute affords protection to the policemen, who are sometimes required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. The plea regarding sanction can be raised at the inception.”

(emphasis mine)

35. In ***P.K. Pradhan*** (Supra), in order to implement certain rural development Schemes approved by the State Cabinet of Sikkim, the Department of Rural Development invited sealed tenders from enlisted contractors. In response, tenders were received and the same were opened by a Tender Committee. Necessary action for acceptance/rejection of tender then followed



in respective files. It was alleged that at that stage the then Chief Minister of Sikkim and the then Secretary, Rural Development Department, Government of Sikkim, the appellant, along with fifteen contractors entered into a criminal conspiracy with the object of securing contract works in favour of the said contractors by corrupt or illegal means or by otherwise abusing the position of the then Chief Minister and the appellant as public servant and got the works awarded in favour of the contractors thereby causing pecuniary advantage and corresponding loss to the State by various commissions and omissions. Charge-sheet was submitted against the appellant, the then Chief Minister and the said contractor under various provisions of the Prevention of Corruption Act, 1947 corresponding to 1988 Act and Section 120-B of the Indian Penal Code. Before cognizance was taken upon the charge-sheet, the then Chief Minister and the appellant accused ceased to be public servants. The Special Judge took cognizance and summoned all the accused. On behalf of the appellant, a preliminary objection was raised that his prosecution under the Penal Code and the Prevention of Corruption Act was not warranted as he being a public servant at the relevant time, sanction was required under Section 197 of the Code and the same having not been obtained, the prosecution for these offences was



not fit to continue. The Special Judge rejected the preliminary objection. On challenge, the High Court also dismissed the revision petition holding that no sanction under Section 197 of the Code was required.

36. In appeal against the judgment of the High Court, the Supreme Court held that the legislative mandate engrafted in sub-section (1) of Section 197 touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty”. The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to



find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Cr.P.C, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped.

37. The Supreme Court further held that it is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the



conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.

38. Thus, now the controversy is no longer res integra. In a given facts of the case, there could be an applicability of Section 197(1) of the Cr.P.C at the inception of the case. In certain cases, the accused may raise the question of requirement of sanction for prosecution at a later stage if materials are collected to indicate that the offences alleged was committed in discharge of the official duty by the accused.

39. The only issue, which remains to be answered now is whether the alleged offence was committed by the petitioner while acting or purporting to act in discharge of his official duty.

40. As seen above, the allegation made against the petitioner is of brutally assaulting the accused Munna Singh after taking him in police remand.



41. The issue of police excess and torture of accused and suspects in police custody and requirement of sanction for prosecution in that regard has arisen in past in several cases.

42. In *D.K. Basu Vs. State of West Bengal*, since reported in *(1997) 1 SCC 416*, the Supreme Court observed :-

“Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but **it must be remembered that the law does not permit use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third-degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.**”

(emphasis mine)

43. In *D.K. Basu* (Supra), the Supreme Court further held as under :-

“... Using any form of *torture* for extracting any kind of information would neither be “right nor just nor fair” and, therefore, would be impermissible, being offensive to Article 21. Such



a crime-suspect must be interrogated — indeed subjected to sustained and scientific interrogation — determined in accordance with the provisions of law. He cannot, however, be *tortured or subjected to third-degree methods* or *eliminated* with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons etc. His constitutional right cannot be abridged in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to “terrorism”. That would be bad for the State, the community and above all for the rule of law. ...”

44. In *Munshi Singh Gautam (Dead) & Ors. Vs. State of M.P.*, since reported in *(2005) 9 SCC 631*, the Supreme Court observed that 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 “*khaki*” 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 the criminal justice-delivery system would be shaken and civilisation 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 judiciary itself, which if it happens, will be a sad day, for anyone to reckon with.

45. The observations made by the Supreme Court in ***D.K. Basu (Supra) and Munshi Singh Gautam (Supra)*** would make it clear that it is no part of duty of the police to subject any form of torture to an accused or an under-trial prisoner in custody.

46. In order to have protection under Section 197 of the Cr.P.C, the alleged act of the public servant concerned should not only be within the scope of his official duty but that offence must not be unconnected therewith. When the act complained of is prohibited to be done by a public servant in discharge of his official duty, even if it is committed in purported discharge of official duty, will not be protected under Section 197 of the Cr.P.C.



47. In *Parkash Singh Badal Vs. State of Punjab*, since reported in *(2007) 1 SCC 1*, the Supreme Court held that a public servant is not entitled to indulge in criminal activities and to that extent the Section 197 of the Cr.P.C has to be construed narrowly and in a restricted manner.

48. In *K. Kalimuthu Vs. State*, since reported in *(2005) 4 SCC 512*, the Supreme Court observed that official duty implies that the act or omission must have been done by the public servant within the scope and range of official duty for protection. It does not extend to criminal activity, but where there is reasonable connection between the act and official duty, it must be held to be official.

49. In *Devinder Singh Vs. State of Punjab*, since reported in *(2016) 12 SCC 87*, After taking into consideration several judgments rendered earlier, in para 39, the Supreme Court ruled as under :-

39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. 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.



39.2. 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 CrPC has to be construed narrowly and in a restricted manner.

39.3. 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 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, 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 CrPC would apply.

39.5. 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.

39.6. 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 the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.

39.7. 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.

39.8. 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 the accused to place material during the course of trial



for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.

39.9. In some cases 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.”

50. Regard being had to the observations made by the Supreme Court in the aforesaid judgments, let me once again examine the facts of the instant case and analyze whether the alleged offence had any reasonable connection with the official duty of the petitioner.

51. At the relevant time the petitioner was posted as Officer-in-charge of Jamui Police Station. The informant Arvind Kumar Mishra, the Superintendent of Jail, Jamui has alleged that one Munna Singh, an inmate of Jamui Jail in Jamui P.S. Case No. 95 of 2013, namely Munna Singh was badly assaulted by the petitioner and another police officer on 23.06.2013 after taking him on police remand in Town Police Station at Jamui. It has transpired from the record that the deceased Munna Singh had surrendered in the court of the Chief Judicial Magistrate on 12.06.2013 and was remanded to judicial custody. On 17.06.2013,



the investigating officer of the case made a prayer before the court for taking him in police remand. The said prayer was allowed vide order dated 19.06.2013 and the accused Munna Singh was taken on police remand from jail on 20.06.2013 and was sent back to jail on 22.06.2013. Since he had sustained multiple injuries on his person, he was immediately shifted from jail to a local hospital on 23.06.2013 from where he was shifted to Patna Medical College and Hospital, Patna for better treatment where he died in course of treatment on 01.07.2013. The autopsy report of the deceased corroborates multiple ante-mortem injuries on his person by hand and blunt substance. The father of the alleged victim has deposed as an eye-witness to the alleged assault inflicted upon the victim.

52. Taking the accused in police custody and mercilessly assaulting him with hand and blunt substance in police lock-up in the name of custodial interrogation, by no stretch of imagination can be said to be an act either in discharge of official duty or in purported discharge of official duty.

53. The police play a vital role in course of investigation into a cognizable offence. They are required to be committed and sensitive during investigation. They must keep in mind that they also answerable to the law and are not above it. The allegation of brutal custodial violence by the petitioner resulting in death of an



accused in a criminal case, in my considered opinion, cannot be protected in the name of requirement of sanction under Section 197(1) of the Cr.P.C. The facts of the case of the petitioner are quite distinct from the facts of the case of *Sankaran Moitra* (Supra). Hence, the ratio of *Sankaran Moitra*'s case cannot be made applicable in the case of the petitioner.

54. In that view of the matter, I see no illegality in the order dated 09.04.2015 passed by the learned Additional Sessions Judge-I, Jamui whereby he has rejected the application dated 19.12.2018 filed by the petitioner.

55. The application is dismissed.

56. The trial court is directed to proceed with the trial and conclude the same as early as possible.

57. However, any observation made by this Court in the present matter shall not prejudice the trial court in any manner while deciding the case of the petitioner on merits.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
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