




HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 3377/2018

Rajeev Dutta S/o Shri Indra Kumar Dutta, R/o B-10, JDA Flats,
Lal Kothi, Jaipur.

----Petitioner

Versus

1. The State of Rajasthan through PP

----Respondent

2. Vijay Sharma S/o Gopal Sharma, R/o SB-2, Akanksha
Opposite, OTS, JLN Marg, Jaipur

----Complainant-Respondent

For Petitioner(s)	:	Mr. Vibhuti Bhushan Sharma with Mr. Sandeep Pathak, Ms. Anindya Gupta, Mr. Harshit Tiwari and Ms. Suman Kalal
For Respondent(s)	:	Ms. Manju Dave, PP
For Complainant	:	None Present

HON'BLE MR. JUSTICE PRAMIL KUMAR MATHUR

Judgment

Date of Conclusion of Arguments	06.02.2026
Date on which the judgment was reserved	06.02.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	10.03.2026

1. The prosecution case originates from a written report lodged by the complainant, Shri Vijay Sharma, at Police Station Bajaj Nagar, Jaipur. It was alleged that on 06.03.2002, between 5:00 to 6:00 AM, approximately 50-60 persons, along with several vehicles, unlawfully entered the premises in question and demolished the boundary wall and gate. Damage was allegedly



caused to the property and articles lying there and the persons present at the site sustained injuries. It was specifically alleged that the said acts were committed at the instance and under the directions of the Commissioner. On the basis of the above report, FIR No. 101/2002 was registered under Sections 147, 451, 323, and 427 of the IPC, and investigation was set in motion.

After investigation a negative final report was submitted before the competent court. Upon a protest petition filed by the complainant Vijay Sharma, the learned Magistrate took cognizance against the present petitioner on 10.02.2009 which was subsequently affirmed by the revisional court vide order dated 21.05.2018.

2. The present petition assails the aforesaid orders taking cognizance against the petitioner, who at the relevant time was serving as an Enforcement Officer in the Jaipur Development Authority (JDA). The allegations arise out of proceedings undertaken for removal of encroachment from public land.

3. Heard learned counsel for the parties and perused the material available on record.

4. Learned counsel for the petitioner submits that the petitioner was posted as an Enforcement Officer in JDA and was working as a public servant. In furtherance of the official order for removal of encroachment, the petitioner acted in discharge of his official duties. Therefore, the act of the petitioner is protected under Section 197 of the Cr.P.C., which provides that where any offence is alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duty, prior





sanction of the competent authority is required for prosecution. It is further submitted that the learned Trial Court as well as the Revisional Court have failed to consider the aforesaid mandatory legal provision in its proper perspective and have passed the impugned orders in violation of law. Therefore, the orders passed by the Courts below deserve to be set aside.

5. Learned counsel for the petitioner has placed reliance upon the judgment rendered by Hon'ble Apex Court in the case of **Suneeti Toteja Vs. State of U.P. & Anr.** reported in **2025 SCC OnLine SC 433.**

6. Learned Public Prosecutor has vehemently opposed the submissions made by learned counsel for the petitioner and submitted that the order dated 10.02.2009 passed by the trial Court and order dated 21.05.2018 passed by the revisional Court are just and proper and warrant no interference by this Court.

7. The principal question that arises for consideration is whether sanction under Section 197 of the Code of Criminal Procedure, 1973 was a pre-condition before the learned Magistrate could take cognizance.

8. I have considered the submissions made by both counsel and scanned the matter carefully.

9. For the sake of convenience, the provisions of Section 197 Cr.P.C. 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."

10. The object and purpose of the aforesaid provision was reiterated by the Hon'ble Supreme 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."

11. Similarly, in **Amrik Singh Vs. The State of PEPSU, AIR 1955 SC 309**, The Hon'ble Apex Court explained the scope of Section 197 of CrPC as follows:

"9. ... It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could





not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.”

12. Further, in **Indra Devi V. State of Rajasthan and Anr. (2021) 8 SCC 768**, the Hon'ble Supreme Court has held as under:-

“10. We have given our thought to the submissions of learned counsel for the parties. Section 197 of the CrPC seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognizance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. [See **Subramanian Swamy Vs. Manmohan Singh, (2012) 3 SCC 64**:]. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him “while acting or purporting to act in the discharge of his official duty” and in order to find out whether the alleged offence is committed “while acting or purporting to act in the discharge of his official duty”, the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. [See **State of Maharashtra Vs. Budhikota Subbarao, (1993) 3 SCC 339**]. The real question, therefore, is whether the act committed is directly concerned with the official duty.”

13. As per the aforementioned propositions, the law is well settled that where the alleged act has a reasonable nexus with the discharge of official duty, the protection under Section 197 Cr.P.C. is attracted. The test is not whether the act was strictly lawful, but





whether it was performed in the course of official duty or had a reasonable connection with such duty. Even if the act is alleged to be in excess of authority or involved procedural irregularities, the protection would still apply so long as the act is not wholly unrelated to official functions.

14. It is also pertinent to refer the Section 78 of the JDA Act, 1982, which provides as follows:-

“Immunity to Authority:- No suit, prosecution or other legal proceeding shall be maintainable against the Authority or any person acting under the direction of the Authority or the Chairmen, member or any officer or servant of the Authority, Executive Committee, other committees, any Functional Board or any body thereof in respect of anything lawfully and in good faith and with due care and attention done under this Act.”

15. In the matter of ***Jaipur Development Authority and Anr. v. The Appellate Tribunal and Ors. (S.B. Civil Writ Petition No. 7007/2003, decided on 18.10.2023)*** arising out of the same incident, this Court has observed that the proposal regarding removal of encroachment from the site in question was approved by the Director Law and Commissioner, JDA. It was also observed that Enforcement Officer and other officials acted pursuant to the directions of the competent authority.

16. It is not in dispute that at the relevant time the petitioner initiated and carried out the said action pursuant to statutory powers vested in him and under the directions of the Commissioner, which is also evident from the First Information Report itself.





17. Therefore, from the above factual matrix, it is apparent that the petitioner acted under the directions of the Commissioner, Jaipur Development Authority and proceeded in a bona fide manner while taking action regarding removal of encroachment.

In such circumstances, the acts complained of cannot be said to be wholly unconnected with the discharge of official functions.

Consequently, the bar contained in Section 197 of the Code of Criminal Procedure, 1973 squarely applies and cognizance could not have been taken in the absence of prior sanction from the competent authority.

18. The allegations concerning removal of encroachment and the consequential exercise of authority arise directly out of the statutory duties assigned to the petitioner. Even assuming procedural irregularities or excesses, the act cannot be said to be wholly dehors the discharge of official duty.

19. Apart from this, Section 78 of the JDA Act, 1982 provides statutory protection to the officers of the Authority for acts done in good faith under the said Act. In the absence of any prima facie material indicating mala fide exercise of power, continuation of criminal proceedings would amount to an abuse of the process of law.

20. In view of the foregoing discussion, this Court is satisfied that the impugned proceedings were initiated without complying with the mandatory requirement of sanction under Section 197 of the Code of Criminal Procedure, 1973 and the acts complained of are also protected by Section 78 of the JDA Act, 1982, having been performed in the discharge of statutory duties.





21. In the absence of prior sanction from the competent authority, the learned Magistrate could not have taken cognizance of the offence. The bar under Section 197 Cr.P.C. as well as under Section 78 of the JDA Act, 1982 goes to the root of jurisdiction.

22. Accordingly, the order taking cognizance dated 10.02.2009 passed by trial Court and the order dated 21.05.2018 passed by revisional Court are bad in the eye of law and require interference.

23. Consequently, the order of cognizance dated 10.02.2009 passed by the trial Court and the order dated 21.05.2018 passed by the revisional Court are set aside and all consequential proceedings against the petitioner are hereby quashed.

(PRAMIL KUMAR MATHUR),J

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