IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No.667 of 2022

Subodh Bara Babu @ Subodh Kumar Yadav
..... … Petitioner
Versus
1.The State of Jharkhand
2.Yogmaya Sarkar …. …. Opposite Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. B.M. Tripathy, Sr. Advocate
For the State : Mr. Manoj Kumar Mishra, A.P.P.
For the O.P. No.2 : Mr. Afaque Ahmed, Advocate

C.A.V. on 19.09.2023 **Pronounced on 18.10.2023**

1. Heard learned senior counsel for the petitioner, learned A.P.P. for the State and learned counsel for the Opposite Party No.2.
2. The instant criminal revision is against the order dated 28th June, 2022 passed by the learned Additional Sessions Judge-I, Sahebganj in M.C.A. No.45 of 2020, arising out of S.T. Case No.10 of 2020, whereby the petition for discharge filed on behalf of the petitioner had been dismissed.
3. Mr. B.M. Tirpathy, learned senior counsel appearing on behalf of the petitioner submitted that the impugned order passed by the learned court below is erroneous in the eyes of law as well as on facts. The learned trial court did not consider the allegations made against the petitioner which were far from truth. The police after concluding the investigation had filed the Final Report against which the informant filed protest-cum-complaint petition on 28th September, 2010 and the learned Chief Judicial Magistrate, Sahebganj took cognizance against the petitioner under Section

376 of the I.P.C. It is further submitted that against the order taking cognizance dated 18th October, 2018, the petitioner preferred a criminal miscellaneous petition being Cr.M.P. No.1595 of 2010 before this Court which was quashed vide order dated 1st September, 2016 and the matter was remanded to the learned Chief Judicial Magistrate, Sahebganj with a direction to pass a fresh order in accordance with law after considering the materials on record. Thereafter, the learned S.D.J.M., Sahebganj again took cognizance on 19th December, 2016 against the petitioner under Section 376 I.P.C. Against the said cognizance order, the petitioner again preferred a criminal miscellaneous petition being Cr.M.P. No.69 of 2017 before this Court and vide order dated 16th July, 2019 the same was dismissed with an observation that the Court has not expressed any opinion or view on the merit of the case and discussion is confined to the legality of the cognizance taking order. The trial court was further directed to decide the case on its own merit without being prejudiced or influenced by any observation made by this Court. It is further submitted that the learned trial court while rejecting the discharge application of the petitioner relied upon the testimony of Bishu Paswan, the peon of Employment Exchange, Sahebganj while from the attendance register, it appears that he was not present in office on 26th November, 2009. The learned trial court did not rely upon the medical evidence in which no sign of rape or injury i.e., external or internal over the body party of the victim was found. The victim

was a married women aged about 52 years and she is also having children. It is also submitted that the employment exchange card of the victim was valid up to 26th April, 2010, as such, there was no occasion for renewal of the same as alleged by the victim/informant on 26th November, 2009. Indeed, the petitioner has falsely been implicated in this case in order to harass him and also to extort money. From the investigation itself, it is found that the vaginal swab report was not received during investigation and merely relying upon the testimony of the statement of the prosecutrix, the learned trial court declined to allow the discharge application of the petitioner. Lastly, learned senior counsel for the petitioner has submitted that the informant has stated in the F.I.R. that she reached at Sahebganj at 10:00 a.m. by Dhulian passenger train on 26th November, 2009 but as per certificate received from the Railway Station, the train on the very day of occurrence had reached to Sahebganj at 12:10 p.m. and it was not possible for the victim/informant to reach at the Employment Exchange Office at 1:00 p.m.

4. Per contra, Mr. Manoj Kumar Mishra, learned A.P.P. and Mr. Afaque Ahmad, learned counsel appearing for the O.P. No.2 opposed the contentions made by the learned senior counsel for the petitioner and contended that though the Investigating Officer filed the Final Report after conducting the investigation, yet the learned trial court even on remand of the case in first round of litigation before this Court had taken cognizance of the offence afresh by taking

into consideration the statement of the victim and the friend of victim and also the statement of the office peon of Employment Exchange and while rejecting the discharge application of the petitioner also found sufficient materials to proceed for trial against the accused. So far as the plea raised by the learned senior counsel for the petitioner that informant/victim could not have reached to the employment exchange office since the train had come at 12.10 p.m. at the Shaebganj Railway Station or the petitioner has been falsely implicated in this case is concerned, all these questions are subject of trial. It is further submitted that while disposing of the discharge application, the court concerned has to see the sufficient materials to proceed for trial and is not required to appreciate or weigh the evidence so as to conduct mini trial.

5. I have heard the learned counsel for the parties and perused the materials available on record.

6. It is the settled law that while framing charge, the court concerned has to go through the allegations made in the F.I.R. and also the evidence collected by the I.O. during investigation, and if from the same, there are sufficient materials to proceed for the trial, the court ought to frame the charge. If the Court is of definite opinion that the allegations made in the F.I.R. are not corroborated with any cogent evidence and there is no trustworthy material to proceed against the accused, the court should not decline to allow the discharge application. It is also the settled law

that while framing charge, the Court is not required to scrutinize or appreciate the evidence. The marshalling of the evidence is not permissible and the Court has not to conduct the mini trial while framing charge. So far as the defence version adduced on behalf of the accused is concerned, the same can be taken into consideration only if the defence case totally over rules the prosecution story and the evidence collected by the I.O., otherwise the defence case cannot be taken into consideration by the court while framing the charge or disposing of the discharge application.

6.1 The Hon'ble Apex court in the case of ***Palwinder Singh vs. Balwinder Singh & Ors.*** reported in ***(2008) 14 SCC 504*** at paragraph 13 has held as under :

> **"13. Having heard the learned counsel for the parties, we are of the opinion that the High Court committed a serious error in passing the impugned judgment insofar as it entered into the realm of appreciation of evidence at the stage of the framing of the charges itself. The jurisdiction of the learned Sessions Judge while exercising power under Section 227 of the Code of Criminal Procedure is limited. Charges can also be framed on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. This aspect of the matter has been considered by this Court in State of Orissa v. Debendra Nath Padhi wherein it was held as under:**
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> > **"23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra case [Satish Mehra v. Delhi Admn. holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly**

decided."

6.2 The Hon'ble Apex Court in the case of ***CBI v. Mukesh Pravinchandra Shroff*** reported in ***(2009) 16 SCC 429*** at paragraph 2 has held as under :

> **"2. By the impugned order, the Special Court has discharged the accused Raghunath Lekhraj Wadhwa, Jitendra Ratilal Shroff and Mukesh Pravinchandra Shroff from Special Case No. 4 of 1997. From a bare perusal of the impugned order, it would appear that the Special Court has virtually passed an order of acquittal in the garb of an order of discharge. It is well settled that at the stage of framing of the charge, what is required to be seen is as to whether there are sufficient grounds to proceed against the accused. In our view, the Special Court was not justified in discharging the aforesaid accused persons."**

6.3 The Hon'ble Apex Court in the case of ***Vikram Johar vs State of Uttar Pradesh*** reported in ***AIR 2019 SC 2109*** at paragraph 19 has held as under :

> **"19. It is, thus, clear that while considering the discharge application, the Court is to exercise its judicial mind to determine whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not to hold the mini trial by marshalling the evidence."**

6.4 The Hon'ble Apex Court in the case of ***P. Vijayan vs. State of Kerala and Another*** reported in ***2010(2) SCC 398*** at paragraphs 11 and 25 has held as under :

> **"11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.**
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> **25. As discussed earlier, Section 227 in the new Code**

confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he finds that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and documents at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time when a prima facie case was not disclosed and to save the accused from avoidable harassment and expenditure."

7. As per prosecution case, the informant/victim gave the written information with the police station concerned alleging that on 26th November, 2009 in the morning, she had left her house for Shaebganj to get her name registered in Employment Exchange Office, Sahebganj which is near ITI College. It is further alleged that when she reached to the said office, she met to Head Clerk, Subodh Babu (the petitioner in this case) and she handed over her old employment registration card and requested him to prepare the new one in place of the same. The accused/petitioner told her that no employee had come as yet and he asked her to sit in the office. She remained there and after few minutes, the petitioner came in the office and he closed the door from inside and said her "you do my work then I will do your work" and forcibly raped her. She wanted to raise alarm but he closed her mouth by the hand. At the same time, her friend Sandhya Devi came and she also told her in regard to the occurrence. The occurrence was of 1 o' clock

of day time on 26th November, 2009. On this written information, Case Crime no.187 of 2009 was registered against the accused Subodh Bada Babu for the offence under Section 376 I.P.C.

8. The I.O. conducted the investigation and submitted Final Report before the court concerned. Against the said Final Report, the protest-cum-complaint petition was also filed on behalf of the informant/victim. The court concerned allowed the protest petition and took cognizance on 18th October, 2010 directly under Section 190(1)(b) Cr.P.C. as a State case taking into consideration the evidence collected by the I.O. during investigation. Against the order dated 18th October, 2010, a criminal miscellaneous petition being Cr.M.P. No.1595 of 2010 was preferred and the same was allowed vide order dated 1st September, 2016 remanding the matter back to court concerned with a direction to pass a fresh order in accordance with law after considering the materials on record. The court concerned in compliance of the order dated 1st September, 2016 passed by a co-ordinate Bench of this Court, passed a fresh order on 19th December, 2016 taking cognizance against the petitioner/accused for the offence under Section 376 of the I.P.C. on the basis of the materials on record collected by the I.O. during investigation.

9. Thereafter, the case was committed to the court of Sessions for trail. The Sessions Judge, Sahebganj transferred the same to the court of learned Additional Sessions Judge-I, Sahebganj and before the said court, the discharge application under Section 227

Cr.P.C. was filed and the same was rejected vide order dated 28th June, 2022.

10. In order to see the veracity of the allegations made in the F.I.R., this Court deems it fit and proper to go through **the evidence collected by the I.O. during investigation**.

10.1 In paragraph 2 of the case-diary, the informant/victim in her restatement stated that on 26th November, 2009 at 8 o' clock she left her house Narayanpur Diyara Colony No.1 to Rajmahal station and took the train to Teen Pahad station and at around 10 o' clock she caught the Dhulian passenger and reached Sahebganj station. It is further stated that from station she reached to the Employment Exchange office, where the Head Clerk, namely, Subodh Kumar asked her to sit in the office. Thereafter he came in the office and closed the door from inside and raped her. At the same time, she also received the phone call of her friend Sandhya Devi as both has to attend a NGO awareness program in regard to health of children. The accused – Subodh Kumar taken her mobile phone and attended the phone and told her friend that the victim would come after 20 minutes. After having raped her, the accused left the victim and, thereafter, she reached to Sahebganj market where she met her friend Sandhya and told her in regard to the occurrence. She further stated that thereafter they both went to outpost of police station to lodge the F.I.R. She also stated that when she was going to the Employment Exchange Office, near the petrol pump, she met with the office peon, Bishu Paswan who

was going towards Sahebganj. She also told that her card was so old and she wanted new one in place of the same. She also stated that her card number is BLW 49/2007 which was registered on 27th April, 2009 and was valid up to 25th April, 2010.

10.2 In her re-statement victim **improved the F.I.R. story and stated that at the time of occurrence, the mobile phone call of her friend had come over her phone which was picked up by the accused who told her that victim would come after 20 minutes; while in the first information report, she stated that at the same time her friend Sandhya had come there.**

10.3 The statement of friend of victim was also recorded by the I.O. in paragraph 3 of the case-diary. The **friend of the victim** stated that on 26th November, 2009 about 10 o' clock, she made the phone call over the mobile phone of victim which was picked up by some male person and told her the victim would come after 20 minutes and the phone call was ended. After one hour, when victim reached to the hospital, where the awareness in regard to health of the children in NGO was to be given, the victim told her in regard to commission of rape by the accused.

10.4 In **paragraph 18** of the case diary, **the I.O. recorded the statement of Bishu Paswan**, Peon of the employment exchange office. He stated that on **26th November, 2009 at 11 o' clock he was in Exchange Office near ITI college and after cleaning the office he was going back to his house.**

He further stated that Head Clerk Subodh Kumar Yadav was present in the office. He also stated that when he reached to petrol pump, the victim had met her and she told that she was going to employment exchange office.

10.5 In **paragraph 72** of the case-diary the details of medical examination report of victim is given. On perusal of the same it appears that, the victim was medically examined on 27th November, 2009 at 10 o' clock. In the medical examination report, it is stated that **no lacerations or abrasions present over her external or internal part of the body. No swelling present anywhere over the body. Old rupture of hymen is present. No foreign hair or any material found over her private part of the body. The vaginal swab was taken and sent to pathologist to Dhanbad for confirmation of sperm on vaginal swab over the microscope**.

10.6 During investigation, **no report of pathologist was received in regard to the vaginal swab which was sent for medical examination during investigation**.

11. In the case in hand, the learned trial court while rejecting the discharge application of the petitioner relied upon the testimony of the prosecutrix which the learned trial court found to be corroborated with the testimony of her friend Sandhya Devi and also in corroboration of the statement of office peon in regard to proceeding of the victim to the employment exchange office.

12. Herein it would be pertinent to mention that the **accused is a public servant and while lodging F.I.R. against a public servant in regard to commission of any offence during discharge of his official duties, the police officer is duty bound to enquire into the matter before registering the F.I.R. The object behind this is only that there may not be frivolous or harassing allegations against any public servant with any ulterior motive or with any object of extortion**.

12.1 The Hon'ble Apex Court in the case of ***State of Harayana and Ors. Vs. Bhajan Lal and Ors.*** reported in ***1992 Supp (1) SCC 335*** at paragraph 102 has held as under :

> **"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.**
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> **(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.**
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> **(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.**
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> **(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.**
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> **(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.**
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> **(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no**

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12.2 The Hon'ble Apex Court in the case of ***Kailash Vijayvargiya versus Rajlakshmi Chaudhuri and others*** reported in ***2023 Livelaw (SC) 396*** at paragraph 16 has held as under :

"16.Further there is a distinction between Section 154 and 157 as the latter provision postulates a higher requirement than under Section 154 of the Code. Under Section 157(1) of the Code, a Police officer can foreclose the investigation if it appears to him that there is no sufficient ground to investigate. The requirement of Section 157(1) for the Police officer to start investigation is that he has "reason to suspect the commission of an offence". Therefore, the Police officer is not liable to launch investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence. When the Police officer forecloses investigation in terms of clauses (a) and (b) of the proviso to Section 157(1), he must submit a report to the Magistrate. Here, the Magistrate can direct the Police to investigate, or if he thinks fit, hold an inquiry. Where a Police officer, in a given case, proceeds to investigate the matter, then he files the final report under Section 173 of the Code. The noticeable feature of the scheme is that the Magistrate is kept in the picture at all stages of investigation, but he is not authorised to interfere with the actual investigation or to direct the Police how the investigation should be conducted."

13. In the case in hand, the police officer without making any inquiry in regard to the allegations made by the victim straightaway registered the F.I.R against the accused, though the investigating officer after concluding the inquiry found no charge against the accused and submitted the final report. But the learned S.D.J.M., Sahebganj took cognizance on the same under Section 190(1)(b) of the Cr.P.C. relying upon the testimony of the victim, her friend and peon as well. **The learned trial court had erred while**

taking cognizance and also while disposing of the discharge application of the petitioner without looking into the provisions of Section 197 Cr.P.C.

14. The relevant provisions of Section 197 of the Cr.P.C. is being reproduced hereunder :

> **"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]-**
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> **(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;**
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> **(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: 1 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……."**

14.1 Thus from perusal of Section 197 Cr.P.C., it is crystal clear that the learned Magistrate while taking cognizance or framing charge is required to direct the investigating officer of the case to obtain the prosecution sanction while disagreeing with the conclusion drawn by the I.O. during investigation. On the basis of the evidence relying upon which the learned court below had taken cognizance against the accused under Section 376 I.P.C. as per F.I.R. allegations, the petitioner/accused was the Head Clerk in the office and he was on his official duty. The victim had also alleged that she had gone there to get the new employment

registration card in place of old one. The object of prosecution sanction to a public servant is to protect the public servant discharging the official duties and functions free from the harassment by initiation of frivolous and retaliatory criminal proceedings.

14.2 The Hon'ble Apex Court in the case of ***Urmila Devi vs. Yudhvir Singh*** reported in ***2013 (15) SCC 624*** at paragraphs 54 to 59 has held as under :

> **"54. A careful reading of the above would show that protection against prosecution will be available only if the following ingredients are satisfied:**
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> **(*i*) The person concerned is or was a Judge or Magistrate or public servant.**
> **(*ii*) Such person is not removable from his office save by the sanction of the Government.**
> **(*iii*) Such person is accused of commission of an offence.**
> **(*iv*) Such offence is committed while the person concerned was acting or purporting to act in the discharge of his official duties.**
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> **55. There is in the instant case no dispute that the first three of the four requirements set out above are satisfied inasmuch as the respondent public servant was not removable from the office held by him save by or with the sanction of the Government and that he is accused of the commission of offences punishable under the Penal Code. What constituted the essence of the forensic debate at the Bar was whether the offences allegedly committed by the respondents were committed while he was "acting or purporting to act in the discharge of his official duty". The words "acting or purporting to act in the discharge of his official duty" appearing in Section 197 are critical not only in the case at hand but in every other case where the accused invokes the protection of that provision. What is the true and correct interpretation of that provision is no longer res integra. The provision has fallen for consideration on several occasions before this Court. Reference to all those decisions may be unnecessary for the law has been succinctly summed up in the few decisions to which we shall presently refer. But before we do so we may point out that the expression "*official duty*" appearing in Section 197 has not been defined. The dictionary meaning of the expression would, therefore, be useful for understanding the expression both literally and contextually.**
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> **56. The term "*official*" has been defined in *Black's Law Dictionary* as under:**
> **"*official*.—(*1*) Of or relating to an office or position of trust or authority <official duties>."**
> **The term "*office*" is defined in the same dictionary as under:**

"*office*.—(*1*) A position of duty, trust, or authority, esp. one conferred by a governmental authority for a public purpose <the office of attorney general>."

57.*Law Lexicon* also gives a similar meaning to the expressions "*official*" *and* "*office*" as under:

"*Official*. ... As adjective, belonging to an officer: of a public officer; in relation to the duties of office."

"*office*.— ... The word 'office' refers to the place where business is transacted...."

58. The term "*duty*" is defined by *Black's Law Dictionary* in the following words:

"*duty*.—(*1*) A legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right."

59. The expression "*official duty*" would in the absence of any statutory definition, therefore, denote a duty that arises by reason of an office or position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his official duty or purporting to act in the discharge of such a duty arises for consideration, the court will first examine whether the accused was holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence that the protection under Section 197 CrPC may be available and not otherwise. Just because the accused is a public servant is not enough. A reasonable connection between his duties as a public servant and the acts complained of is what will determine whether he was acting in discharge of his official duties or purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant within the meaning of that expression under Section 197 of the Code."

14.3 The Hon'ble Apex Court in the case of ***D. Devraja vs. Owais Sabeer Hussain*** reported in ***2020 (7) SCC 695*** at paragraphs 66, 67 and 70 has held as under :

"66. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the Government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate Government.

67. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under

Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a policeman assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However, if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

70. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law."

15. In the case in hand, there is only statement of the victim in regard to commission of rape, who herself lodged the F.I.R. The contents of the F.I.R. is also at major variance with her restatement. In regard to phone call made by friend of victim on her phone, there is no CDR details.

16. The statement of prosecutrix is not corroborated with medical evidence wherein no sign of rape was found. The report of vaginal swab which was sent for examination was never collected to confirm the commission of rape during investigation.

17. In the present case, since, the accused is a public servant, **the F.I.R. was lodged without any prior enquiry and after investigation, the I.O. filed the final report. Thereafter the court concerned took cognizance on the evidence collected by the I.O. The magistrate concerned had not taken into consideration that the requisite prosecution**

sanction under Section 197 Cr.P.C. was not obtained till date of framing charge.

18. In view thereof, I find that the impugned order dated 28th June, 2022 passed by the learned Additional Sessions Judge-I, Sahebganj is unsustainable in the eyes of law and same is set aside.

19. Accordingly, the present criminal revision is, hereby, allowed and the petitioner is discharged from the alleged offence under Section 376 of the I.P.C.

20. Let a copy of this order be communicated to the court concerned.

(Subhash Chand, J.)

Jharkhand High Court, Ranchi
Dated, the 18 October, 2023.
Rohit / A.F.R.