IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2449 of 2019

Suvo Bhattacharjee
Vs.
The State of West Bengal & Anr.

For the Petitioners	:	Mr. Arun Kumar Maiti (Mohanty) Ms. Amrita Pandey
For the Opposite Party No.2	:	Mr. Abhishek Banerjee Ms. Payel Ghosh Ms. Trisha Chanda
Heard on	:	13.01.2026
Judgment on	:	30.03.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The instant application has been preferred by the petitioner seeking quashment of case no. 18724 of 2017 presently pending before learned 14th Judicial Magistrate Court, Calcutta under section 384/385 of the Indian Penal Code (in short IPC).

2. The instant case had its origin on the basis of a complaint moved by opposite party no. 2 before the concerned Magistrate under section 156(3) of

the Code of Criminal Procedure (in short Cr.P.C.) Learned Magistrate by an order dated 24.03.2017 had turned down the prayer for police investigation and converted it as a complaint case and after taking cognizance transferred the same before J.M. 14th Court, Calcutta for inquiry and disposal. The transferee court directed police to conduct investigation to the alleged offence under the provision of 202 of the Cr.P.C. and thereafter by a subsequent order dated 21.11.2007 had issued process upon the petitioner under section 384/385 of IPC.

3. The opposite party no.2 alleged in the complaint that on February, 23, 2017 at about 6.30 p.m. he being a Railway employee received a call from chief vigilance officer and accordingly on 24th February, 2017 he accompanied by his wife arrived at the office of chief vigilance inspector within the prescribed time. Thereafter the petitioner/accused no.1 and his companion started interrogating opposite party no.2 relating to criminal cases pending against him. It is alleged that while opposite party no.2 was answering the queries the petitioner and the other accused persons became annoyed and started misbehaving with opposite party no.2 and his wife and also started harassing opposite party no.2 intentionally. It is further alleged that the petitioner and the other accused persons forced opposite party no.2 to give statement in writing as uttered by them and further admonished Opposite party No.2 that on refusal, they will take him into custody and will also dismiss him from service. Thus, the opposite party no. 2 was compelled to write several incriminating statements and the petitioner allegedly forced opposite party no. 2 to put his signature on some white papers and on his refusal, Petitioner had threatened him and thereby unlawfully and forcefully

compelled him to write some confessional statements under the fear of his life and under the threat of terminating him from service. It is further alleged that when the OP No.2 requested the accused persons not to create any unlawful pressure upon him, the accused persons became furious and asked his wife to go away from the spot and had misbehaved with her and thereby tried to outrage her modesty by pushing her. Therefore, the petitioners have committed offence punishable under section 384/385 of the IPC, compelling the complainant to put his signature in writing as per their instructions and also for obtaining signature of the complainant on white papers against his will and also for concealing those documents with ill motive.

4. Being aggrieved by the aforesaid impugned proceeding, Mr. Mohanty learned counsel appearing on behalf of the petitioner submits that the petitioner being the chief vigilant inspector of Eastern Railway is a public servant within the meaning of section 21, IPC and pursuant to an order of the competent higher authority, he was holding the vigilance enquiry in connection with the allegation of taking huge money from different persons by the opposite party no.2 herein. The opposite party no.2 admitted in his petition of complaint that he received telephonic message from the end of the petitioner, who asked him to attend before him for a vigilance enquiry and accordingly he attended. Therefore, whatever act done by the petitioner was in discharge of his official duty. The court below has erred in taking cognizance and issuing process against the petitioner without previous sanction and thereby has caused a grave miscarriage of justice. The uncontroverted allegations made in the complaint and the evidence collected

in support of the same do not disclose the ingredients of offences either under section 384 or under section 385 of the IPC. There is express legal bar under section 197(1) of the Cr.P.C in taking cognizance of offence against a public servant except with the previous sanction. The instant complaint is a counter blast to a possible vigilance enquiry which the accused may be facing. The crux of the acquisitions against the chief vigilance inspector /petitioner hardly attracts any penal provision.

5. Moreover section 186 of the Railways Act has provided for protection of railway employee who specially works as public servant. The statutory provisions of section 186 itself clarifies the language which is very clear, and the question of interpretation of the legislative wisdom by any judicial authority is not required. Section 186 is sine qua non in its lateral meaning as per the legislative wisdom reflected by the language of the said provision for safeguarding or protecting the interest of railway employees who ought to discharge their official duties, without fear of any malicious prosecution in discharge of their official duties.

6. He further argued that the impugned order taking cognizance and issuance of process has been done in a manner which is not in consonance with the strict compliance of the provisions of section 200 Cr.P.C., which clearly demonstrate as to what should be the parameters for issuing process against an accused, which ultimately culminates curtailment of petitioner's liberty as a citizen of India. In the Instant Case the petitioner was the chief vigilance inspector having been vested with the power of making vigilance enquiry against the opposite party no.2, in discharge of his official duties and if such a public servant is circumvented from the proceeding with the

enquiry by way of falsely dragging him in criminal cases, a fair and impartial enquiry could not be done and it would encourage the unscrupulous litigants.

7. In this context he further argued that the judgments cited on behalf of opposite party no.2, to demonstrate that sanction can be obtained at any stage of the proceeding, cannot have any standing on consideration of the factual backdrop and/or matrix of the present case, which shows that while examining the opposite party no.2 during such vigilance enquiry, the same was done by the petitioner in discharge of his official duty, in presence of other officials being a public servant. The police in his report did not find any substance in the allegation of the opposite party no.2. The issuance of process in such a case by only examining the complainant, without obtaining prior sanction from the concerned authority under section 197 Cr.P.C. cannot be said to be tenable in law, under any circumstances. Therefore initiation and continuation of the instant criminal proceeding is liable to be quashed, to prevent further miscarriage of justice.

8. Mr. Banerjee learned counsel appearing on behalf of the opposite party no.2 submits that the allegations levelled in the complaint makes out offences within the meaning of section 384 and 385 of the IPC. The Trial court on August, 21, 2017 examined the opposite party no.2 and upon considering the petition of complaint, the initial deposition of opposite party No.2 and the documents on record came to a finding that investigation by police is required under section 202 and accordingly police submitted report and thereafter the process was issued. Mr. Banerjee further argued that the petitioner has tried to take a defence that the petitioner being a public

servant within the meaning of section 21 of IPC, sanction under section 197 of the Cr.P.C. is a condition precedent for initiating any prosecution against him. However, a public servant can only be said to act or purport to act in the discharge of his official duty, if his act is of such a nature that clearly falls within the scope of his official duty. It is well settled that such immunity cannot be utilized by the public servant to camouflage the commission of a crime under the supposed colour of public office. All acts done by a public servant in the purported discharge of his official duty cannot as a matter of course be brought under the protective umbrella of section 197 Cr.P.C. In support of his contention that the purpose behind the enactment of section 197 Cr.P.C. must not be to shield corrupt officials and that the question of sanction can be raised at any time after taking cognizance, he referred number of authorities and submits that sanction under section 197(1) is not condition precedent for initiation of proceedings by way of filing complaint case. He argued that it is well settled that the question of sanction can be decided even at a later stage, after taking cognizance or framing of charge or even at the time of conclusion of trial and even after conviction as well. Therefore, the petitioner's contention that in the absence of taking cognizance, the proceeding is liable to be quashed, does not find any support in the facts and circumstances of the case.

9. He further argued that section 186 of the Railways Act does not provide any absolute prohibition against institution of prosecution or other legal proceedings of Railway Servants. Such protection is available only if the act complained of has been done in good faith or intended to be done in pursuance of the Act or any other Rules or orders made thereunder.

10. He further argued that the petitioner has contended that no case under section 384 or 385 of the IPC has been made out but it is settled law that the standard of proof at the stage of quashing is not to ascertain whether the allegation would surely lead to a conviction but whether they on their face constitutes an offence. The police investigation and Magistrate's order indicate that the preliminary threshold for presuming an offence has been met. Referring the case of ***Zandu Pharmaceutical works Ltd. Vs. Md. Saraful Haque,*** reported in **(2005) 1 SCC 122** he contended that the High Court cannot embark upon an enquiry as to the reliability and genuineness or otherwise of the allegations made in the FIR or the complaint at this stage. Discrepancies, contradictions of questions pertaining to the ultimate truthfulness of the allegations that intrinsically required an appreciation of evidence and are matters solely and unequivocally reserved for the trial court to adjudicate. The allegation on their face outlines an act which if proved undeniably constitutes criminal offence. Factual dispute, claims of *malafide* or questions regarding the truthfulness of the allegations are matters of evidence and subject matter of adjudication by the trial court. Therefore, the petitioner has failed to make out any case which merits interdiction of the proceeding, pending before the court below and as such the instant application is liable to be quashed.

Decision

11. In a petition under section 482 of the Cr.P.C. the primary materials to be considered by the High Court is the materials collected by the investigating agency during investigation including F.I.R. While the

materials collected during investigation is highly germane, the document produced by the accused are generally not considered at the stage of quashing, unless they are of:- (a) sterling and impeccable quality (b) irrebuttable document (c) proof of absurdity of prosecution.

12. Before going further, let me quote relevant portion of FIR:-

> *"Thereafter the accused no. l and his companion, i.e., the accused persons forced the complainant to give the accused persons in writing the statements uttered by them and further scolded the complainant saying that on refusal they will compel the complainant to go in custody and side by side will struck the complainant from his service. By this way the accused persons on instruction of the accused no. 1 had misused the power of the official designation and over the said getting no other alternative the complainant was compelled to wrote the following statements under the direction of the accused persons as follows:*
> *(a) "that I have received Rs 7 laksh 50 thousand from the persons in instalment by hand and one Smt. Mousumi Sen also took the money from the candidates."*
> *(b) "That the statements I have written today is according to my own wish without any force by anybody"*
> *And the accused no.1 also forced the complainant to put his signature on some white Papers and on refusal the accused persons threatened the Complainant darefully and compel him to get the said unlawfully & forcefully.*
> *That over this unwanted issue when the wife of the complainant requested the accused persons not to create any unlawful pressure upon the complainant as because he is mentally depressed, the accused persons became furious and outcast the wife of the complainant from the spot misbehaving with her with their official capacity by pushing her on body under hot alternation and tried to outrage her modesty.*
> *That the accused persons intentionally by misusing their official capacity compel the complainant to give in writing some false statement under the fear of his life and with the fear to save his service.*
> *That the accused person under the supervision of the accused no.1 with some ulterious motive compelled the complainant to put his statement in writing as per their instruction also obtain some signature of the complainant in some white Papers, against his will and concealed those said documents with some ill motive and also manhandled the wife of the complainant by which the accused persons h*as *committed an offence u/s 384,385,388,389,354, 406,506,120B of IPC."*

13. As stated above, in the instant case the complainant/opposite party no.2 initially made a prayer before learned court below u/s 156 (3) Cr.P.C. for a direction upon police to start investigation. However, court below at that stage taken a view that police investigation is not required in the instant case and therefore, he converted the same as a complaint case and took cognizance of the offence.

14. Petitioner was examined under section 200 of the Cr.P.C., wherein also he has stated in his initial deposition that he was compelled to write under the pressure of the accused persons that he has taken Rs. 7,50,000/- and the accused persons have also procured his signatures on some blank papers. Learned court below thereafter postponed the issuance of the process and directed the police to make an investigation and to submit a report. The relevant portion of the report submitted by the police on 17.11.2017 runs as follows:-

> *"During investigation of the case, the complaint of outrage of the modesty of petitioner's wife could not be substantiated but the partial claim of the petitioner could be prima-facie established in respect of giving writing self confessional statements with his signature in seven sheets before the OP which is presently in the custody of the department and kept confidential and as such could not be verified unless necessary order is being passed by Your Honour's Court."*

15. Now petitioner has strenuously argued that at the relevant time he was posted as chief vigilance inspector, Eastern Railway and as such whatever act has been done by him was under the capacity of a public servant and as such unless sanction is obtained from the competent authority under section 197 of the Code, Court cannot take cognizance of offence and furthermore he is also protected under section 186 of the Railways Act.

16. The question that comes in this context is whether trial court has done any illegality in taking cognizance of the offence, when no sanction has been obtained from competent authority to initiate proceeding and for that matter, whether proceeding is liable to be quashed.

17. In ***Omprakash Yadav Vs. Niranjan Kumar Upadhaya*** reported in **2024 SCC Online SC 3726** the court was of the clear view that the immunity under section 197 Cr.P.C. cannot be utilized by public servant to

camouflage the commission of a crime under the supposed colour of public office. In the said judgment supreme Court has laid down the law after considering the previous judgments. Para 74 of the said judgment runs as follows:-

> ***74.*** *The legal position that emerges from the discussion of the aforesaid case laws is that:*
>
> ***(i)*** *There might arise situations where the complaint or the police report may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty. However, the facts subsequently coming to light may establish the necessity for sanction. Therefore, the question whether sanction is required or not is one that may arise at any stage of the proceeding and it may reveal itself in the course of the progress of the case.*
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> ***(ii)*** *There may also be certain cases where it may not be possible to effectively decide the question of sanction without giving an opportunity to the defence to establish that what the public servant did, he did in the discharge of official duty. Therefore, it would be open to the accused to place the necessary materials on record during the trial to indicate the nature of his duty and to show that the acts complained of were so interrelated to his duty in order to obtain protection under Section 197 CrPC.*
>
> ***(iii)*** *While deciding the issue of sanction, it is not necessary for the Court to confine itself to the allegations made in the complaint. It can take into account all the material on record available at the time when such a question is raised and falls for the consideration of the Court.*
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> ***(iv)*** *Courts must avoid the premature staying or quashing of criminal trials at the preliminary stage since such a measure may cause great damage to the evidence that may have to be adduced before the appropriate trial court.*

18. It is now well settled that before seeking protection under section 197 of the Cr.P.C. by an accused person, he has in the first instance to satisfy the court that he is a public servant, not removable from his office save by or with the sanction of State or Central Government and secondly that the acts complained of, if committed by him were committed while acting or

purporting to act, in the discharge of his official duty. In the instant case it is not in dispute that the petitioner was a public servant at the time of alleged commission of offence. However important question that is to be considered herein is whether the accused can reasonably claim that the acts complained of were committed by him in discharge of his public duty.

19. In my opinion the enquiry which was supposed to be conducted by the petitioner as vigilance inspector has nothing to do with the allegation as levelled in the complaint, which states that complaint was compelled to write the statements that he has received Rs. 7,50,000/- from the persons in instalments or that another lady also took money from the candidates and that he was forced to write that the statements have been made by him voluntarily and according to his own will and without any force created by anybody, nor it can be said to be part of his duty to create pressure upon complainant to put his signature on some white papers. All that the petitioner is expected to do under his official capacity as a public servant is to make an impartial enquiry. Therefore, when the petitioner as chief vigilance officer was conducting vigilance enquiry, he might have engaged in performing his official duty or purporting to act in the performance of his official duty but one must fail to understand how the allegation of creating force to make certain statements and or to create pressure for putting signature on blank papers could be said to have any direction with the act of vigilance enquiry.

20. In ***Choudhury Parveen Sultana Vs. State of W.B. and anr.***, reported in ***(2009) 3 SCC 398*** Supreme Court had made a clear observation that all acts done by a public servant in the purported discharge of his

official duty cannot as a matter of course be brought under the protective umbrella of section 197 Cr.P.C. There can be cases, misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duty required to be performed by him. The underline object of section 197 Cr.P.C. is to enable the authorities to secure the allegations made against the public servant to shield him against frivolous, vexatious or false prosecution, initiated with the main object of causing embarrassment and harassment to the said official. However if the authority vested in a public servant is misused for doing thing which are not otherwise permitted under the law, such acts cannot claim the protection of section 197 Cr.P.C. and have to be considered dehorse the duties which a public servant is required to discharge or perform.

21. In another judgment of ***Sambhoo Nath Mishra Vs. State of U.P. and Ors.*** reported in **(1997) 5 SCC 326** Supreme Court while dealt with the provision of section 197(1) of Cr.P.C. has clearly laid down the law that if the act/omission is integral to the performance of public duty, the public servant is entitled to the protection under section 197(1) of the Cr.P.C. and without the previous sanction the complaint/charge against him for the alleged offence cannot be proceeded with in the trial. However performance of official duty under the colour of public authority cannot be camouflaged to commit crime.

22. In the instant case the trial court applied its mind and from the recital of the complaint, initial deposition as well as investigation report filed by police, under the direction of section 202, he finds that the allegation of forceful extortion of recording his statements during said enquiry or creating

pressure to put signature on the blank paper, are not the integral part of his official duty and therefore he proceeded with the impugned proceeding. In fact applying the test as settled in various judgments, it is difficult to say that the acts complained of i.e. misuse of power of official designation and to compel a person to make some incriminating statements under threat or to put someone under pressure to sign on blank papers are part of his official duty.

23. Since this is an application under section 482 of the Cr.P.C., at this stage all that I am concerned with, is whether on the facts alleged in the complaint and supported in the initial deposition and police investigation, it could be said that what the petitioner has alleged to have done, could be said to be in purported exercise of his official duty. It is well settled, if the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under section 197(1) would be necessary but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required. Here the alleged acts of the petitioner made in the complaint is clearly separable from the duties attaching to the office of chief vigilance inspector.

24. In ***P.K. Pradhan Vs. State of Sikkim*** reported in ***(2001) 6 SCC 704*** it was held by the Supreme Court in para 15 as follows:-

> ***15.*** *Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. 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 Code, 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. 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.

25. Therefore if the version of the complainant is taken to be correct at this stage of adjudicating prayer for quashing of the proceeding, obviously there is no requirement of any sanction. However, it would always be open to the petitioner to adduce evidence or by way of cross examination to substantiate his stand that whatever incident occurred, had taken place in discharge of his official duty. At this stage it cannot also be said whether the complainant's version is correct or the argument agitated herein on behalf of the petitioner herein is correct and therefore at this stage the trial court has prima facie to proceed on the basis of the prosecution version. However that does not mean that the trial court will not redecide the question of taking sanction afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner, it comes to the notice of the court that there was a reasonable nexus of the incident with discharge of official duty, then the court can always re-examine the question of sanction and take decision in accordance with law, in order to proceed with the trial. But at this stage when it is not known as to whose version is correct, it can hardly be said that the prosecution is liable to be quashed, as sanction has not

been obtained from the competent authority, before taking cognizance by the court. In short what I want to portray is that plea relating to want of sanction although ideally to be considered at an early stage of proceeding but that does not mean that the accused cannot take the said plea or the court cannot consider the same at a later stage. Obviously each case has to be considered in terms of the allegations levelled therein. Since in the instant case the question as to whether the sanction is required to be obtained or not is not possible to be determined unless evidence is taken, it cannot be said that the prosecution is liable to be quashed for want of sanction.

26. Undoubtedly at the stage of considering the prayer for quashment it would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premise arrive at a conclusion that the proceeding is to be quashed. Though the petitioner in support of his arguments has placed certain documents as a result of internal enquiry but said document is not impeachable in nature and on the basis of which it would be erroneous to come to a final conclusion that the complaint cannot be proceed with after assessing such materials. In a proceeding instituted on complaint exercise of inherent power to quash the proceeding is called for in a case where the complaint does not disclose any offence or is frivolous vexatious, or oppressive. As it appears that on consideration of the allegations in the light of the statements made on oath by the complainant that the ingredients of the offence are prima facie disclosed and since there is no material to show that the complaint is *malafide*, frivolous or vexatious

I find no justification to invoke inherent jurisdiction of the High Court. Even if there are any allegation of *malafides* against the informant, they are of no consequence and cannot by themselves be the basis for quashing the proceeding.

27. The petitioner has also taken a plea that he is protected under section 186 of the Railways Act and that he is immuned from any such proceeding under the said provision. Let me reproduce Section 186 of the Railways Act:-

> *"**186.Protection of action taken in good faith.—***
>
> *No suit, prosecution or other legal proceeding shall lie against the Central Government, any railway administration, a railway servant or any other person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder."*

28. Therefore Section 186 of the Railways Act again talks about 'good faith'. "Good faith" has been defined in section 52 of IPC and section 3 (22) of the General Clauses Act. Acting in "good faith" generally considered as question of facts that requires evidence to decide, than pure question of law, that can be determined solely by legal interpretation, because the term 'good faith' hinges on the subjective intention or the objective care (due diligence) of a person. Courts typically require evidence to determine if a person acted honestly and with "reasonable care and attention". Under the definition of good faith, there should not be personal ill-will or malice, no intention to malign and scandalize. Therefore, 'good faith' and 'public good' are the question of fact and are required to be proved by adducing evidence.

29. In ***Chamanlal Vs. State of Punjab*** reported in **(1970) 1 SCC 590,** Supreme Court has clearly held that public good is question of fact and good faith has also to be established as a fact. It is true that the meaning of 'good faith' may vary in the context of different statutes, subjects and situations

and there cannot be a constant element of its connotation, it is to be considered in the context and object of the statute, in which the term is employed, but nevertheless in the present context, the petitioner has to establish even prima facie to get protection under section 186, that his direction towards petitioner to allegedly write certain statements or allegedly procuring his signature on certain documents was honest requisite for constituting 'good faith'. There must be evidence showing that the petitioner acted with due care and caution. Therefore at this stage, the petitioner can hardly seek for protection on the ground of 'good faith' in the context of section 186 of the Railways Act. In view of aforesaid discussion I am to conclude that the trial court has not committed any error in proceeding with the criminal case without having any sanction, nor I find that this is a fit case where the proceeding can be quashed invoking this Court's jurisdiction under section 482 Cr.P.C.

30. CRR 2449 of 2019 thus stands dismissed.

31. However this dismissal order will not preclude the court below to reassess the question of taking sanction or the issue of getting protection under section 186 of the Railways Act at an appropriate stage, if the same question is raised before him after availing evidence. In this context it is also made clear, that I have not expressed here any opinion as to the truth or falsity of the allegation, which can only be decided in trial.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)