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MCRC-26331-2025

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJESH KUMAR GUPTA

ON THE 5<sup>th</sup> OF DECEMBER, 2025MISC. CRIMINAL CASE No. 26331 of 2025*SMT. MAMTA GURJAR**Versus**POOJA KUSHWAH AND OTHERS*

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Appearance:

*Shri Arun Katare- Advocate for the petitioner.**Shri Manvardhan Singh Tomar- Advocate for respondent No.1.*  
.....

ORDER

1. The instant petition has been filed under Section 482 of the Cr.P.C. against the order dated 27.05.2025 passed by Sessions Judge, Sheopur in Criminal Revision No.3/2025 by which the order dated 10.02.2025 passed by JMFC, Sheopur in Criminal Case RCT/95/2024 has been affirmed.

2. Brief facts of the case are that the complainant Pooja Kushwaha presented a written complaint before the trial court that on 12.10.2019 at about 04:30 pm, the complainant's brother Dharendra was coming on his motorcycle and Devendra Sharma was sitting behind him on the motorcycle, when the accused persons standing a little ahead of village Partwada surrounded Dharendra and they hurled filthy abuses. When Dharendra refused, the accused asked them to check the papers of the vehicle, then Dharendra said check the papers, why are you abusing.



Accused No. 1 slapped Dhirendra on his right cheek saying that he is acting like a leader too much, today we will see you, then Dhirendra said why are you beating him, then accused No. 1 slapped him again, accused No. 1 took a stick from accused No. 2 and 3, accused No. 2 and 3 caught hold of Dhirendra, then accused No. 1 hit Dhirendra with two sticks on his left thigh and one stick on his right thigh, which caused redness and a small injury. Accused No. 2 and 3 the accused/petitioner to take him to the police station and hang him upside down, then accused No. 1 took the brother of the respondent No.1 in the vehicle to Bargawan police station and took him to the police station and in the police station, after taking off his pants, shirt and vest, abused him, beat him with sticks and locked him in the lock-up and said that today we will encounter him. Devendra informed his family about the incident. Dhirendra's sister/complainant/Pooja, was at Dhirendra's home, while his mother, father, and brother were at the farm. When Pooja arrived at the police station and saw her brother Dhirendra in the lockup and his injuries, she asked accused No. 1 why she had assaulted her brother. "File a report," she said, "or she would complain to superiors." Accused No. 1 began abusing her and threatened to beat her with a stick. When the complainant told her, "You're a woman also and don't use obscene language," accused No. 1 abused her, grabbed her face, and slapped her four or five times on the cheek, resulting in injuries. She also hit her with a stick on her left hand, left knee, and left leg, with a stick on her left



elbow, and with a stick on her chest and body. The assault caused the complainant to fall to the ground. The accused pulled off her dupatta and threw it away. Then Ravi Khare, with ill intention, bite on her shoulder and mouth.

3. The complainant and her brother, Dharendra, were harassed at the police station from that evening. Due to Dharendra's injuries and his groaning in pain, the three accused took him to the Community Health Center, Karahal, after midnight. He underwent an MLC (Medical Inspection) and returned to the police station. Due to the complainant's extensive injuries, she was treated at Sanjivani Hospital, Baran, and her treatment is ongoing. When the complainant's mother attempted to speak with the accused, they spoke rudely to her and threatened to ruin her life. The complainant's mother, Premlata, informed the Superintendent of Police, Sheopur, about the incident, but no action was taken. Again, on 22.10.2019, an application was given to SP Sheopur and a complaint was sent by registered post to the Home Ministry, DGP, IG and Chairman Human Rights Legal Cell, but as no action was taken against the accused on the complaints, the charge sheet was presented in the court of Judicial Magistrate First Class Sheopur.

4. On the said complaint filed by the complainant before the trial court, the accused were acquitted by the trial court of the charges under sections 341, 354 and 506-B of the Indian Penal Code and cognizance of the offences under sections 294, 342, 323, 34 and 506 Part-1 of the



Indian Penal Code was taken against the accused on 06.02.2024. Thereafter, the presence of the accused was ensured and the case was fixed for prosecution evidence. Meanwhile, an application was filed on behalf of the accused under section 218 of the BNSS 2023 (section 197 CrPC of the old Code) on 30.01.2025, which was dismissed on 10.02.2025 after hearing both the parties. Aggrieved by the said order, the petitioner filed a revision before Sessions Judge, Sheopur District Sheopur and the same was also dismissed vide order dated 27.05.2025. Being aggrieved by the orders date 10.02.2025 and 27.05.2025, the present petition has been filed.

5. Learned counsel for petitioner submitted that the in that private complaint the arrest warrant was issued against the petitioner without serving the summons on the petitioner or bailable warrant of the petitioner, which is absolutely unsustainable in the eyes of law. The petitioner has been granted bail.

6. The petitioner along with two others have filed an application under section 318 of BNSS (application under section 197 of Cr.P.C) in which it has been averred that the above incident was reported by the complainant and her brothers in the police station, in which the petitioner and other staff of the police station were also injured and their uniforms were torn, there is blood on the uniform which has been confiscated. On the date of incident i.e. 12.10.2019, the petitioner was posted as Sub-Inspector and on that date, the petitioner was on her



official duties and the public servants get the protection of Section 218B.N.S.S (Section 197 Cr.P.C.) for the work done during the discharge of their official duties, Therefore, the complaint against the petitioner is not maintainable without the permission of the Government. No permission has been obtained from the Government in presenting the complaint. Therefore, since no permission of the government was obtained before presenting the complaint, the complaint is not maintainable. Therefore, impugned orders dated 27.05.2025 and 10.02.2025 passed by the Sessions and trial court are contrary to the law and prevailing principles. The trial court itself concluded that cognizance had already been taken against the accused by the previous presiding officer on 06.09.2024, and they have no jurisdiction to review or recall it. However, the accused/petitioner were not present in court when cognizance was taken on 06.09.2024, nor were they issued notices to appear, nor were they heard. The petitioner immediately presented an application to the trial court after appearing in court, but the trial court did not consider the application. All the documents related to the crime registered against the complainant and his brothers Dhirendra and Sonu, which is under consideration in case number RCT/940/2019, were presented in the trial court, which proved that on 12.10.2019, the three petitioner/accused were discharging their official duties and for this act they had the protection of Section 218 BNSS, under which a public servant cannot be prosecuted for the discharge of his duty without any



reasonable cause. The trial court committed a legal error by dismissing the said application by merely writing that the revisionists can get proper assistance before the revisional court, whereas the application was admissible. Therefore, the petition filed by the petitioners may be allowed and the order dated 27.05.2025 passed by the revisional court and order dated 10.02.2025 passed by the trial court should be quashed.

7. Learned counsel for the respondent opposed the prayer and prayed for its rejection.

8. Heard counsel for the rival parties and perused the record.

9. In the case of Adalat Prasad Vs. Rooplal Jindal and others reported in AIR2004 SC 4674, the Hon'ble Apex court has held that:-

In this way the question which came up for consideration before the Supreme Court in Adalat Prasad's case was whether the view of the Supreme Court in K.M. Mathew v. State of Kerala and Anr. (supra), holding that if the Magistrate had issued process, he could also recall such an order, was a correct view or not. It was the only question which fell for consideration. It is to be noted that it was the only question argued, deliberated and decided by the Supreme Court. In this case Supreme Court while overruling the law laid down by the Court in K.M. Mathew v. State of Kerala and Anr. (supra), held that, "It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 & 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking section 203 of the Code because Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of Code.

A similar situation arose again in the case of Subramaniam Sethuraman vs State of Maharashtra & Anr; AIR 2004 SC 4711. The complainant had filed a complaint against the accused and after following the procedure laid down in Chapter XV and XVI of the Code of Criminal Procedure, 1973, the trial court issued summons to the named accused in the complaint. On receipt of the complaint, the accused challenged the same before the very same Magistrate on the ground that the Magistrate could not have taken cognizance of the



offence because of the defect of some legal provision. application came to be rejected. Thereafter, the application for discharge was filed by the accused on the very same ground which was allowed by the Magistrate following the judgment of the Hon'ble Supreme Court in the case of K.M. Mathew vs. State of Kerala & Anr. (supra). Aggrieved by the said order of discharge made by the Magistrate, the complainant challenged the same by way of a revision petition before Remedy against Summoning order U/s 204 Criminal Procedure Code, 1973 the Sessions Court on the ground that the Magistrate had no power to review his earlier order because of the bar under Section 362 of the Cr.P.C. The Sessions Court accepted the contention of the complainant and allowed the revision petition without going into the merits of the legality of the other issues. Accused thereafter challenged the said order of the Sessions Judge by way of a criminal writ petition filed under Article 227 of the Constitution of India before the High Court of Judicature at Bombay. The High Court by its order rejected the said petition on the ground that once the Magistrate records the plea of the accused and the accused pleads not guilty then the Magistrate is bound to take all such evidence as may be produced in support of the prosecution and there is no provision under the Cr.P.C. enabling the Magistrate to recall the process and discharge the accused after recording the plea of the accused. The above said order of the High Court dismissing the criminal writ petition was challenged before the Supreme Court.

The question which fell for consideration before the Supreme Court (in Subramaniam Sethuraman's case) was whether the decision in the case of Adalat Prasad would require reconsideration as in the case of Adalat Prasad. The Court proceeded on the basis that the case was a summons case but in reality it was a warrant case covered by Chapter XIX of the Criminal Procedure Code. That was the question which arose for consideration. Again the issue for consideration before the Supreme Court was whether the "Magistrate" could recall the order issuing process in a summons case as well as warrant case and the Court upheld the law laid down by them in Adalat Prasad's case and further observed that law laid down by them in Adalat Prasad's case shall apply summons as well as in warrant case. From the detailed discussion of the above two cases it is abundantly clear that Supreme Court has nowhere discussed the point that whether a revision could be preferred against the order of Magistrate issuing process? In both the above discussed cases, the Hon'ble Supreme Court only concentrated on the point that whether a Magistrate can revoke his order of summoning u/s. 204 Cr.P.C. and replied it in negative.

10. From perusal of the records, this court finds that the JMFC has dismissed the application of the petitioner filed under Section 197 of the Cr.P.C. and assigned the reasoning that the JMFC does not have any



jurisdiction to recall its own order. The same reasoning has been given by the Sessions Court also. In the obtained facts and circumstances, this court also finds that both the courts below have not committed any error in passing the impugned orders.

11. So far as question of protection under Section 197 of the Cr.P.C. is considered this court is of the considered opinion that the petitioners, who are police officials, have approached this Court seeking quashing of the proceedings on the ground that the complaint filed by the respondent-complainant is not maintainable in the absence of prior sanction under Section 197 of the Code of Criminal Procedure. The case of the complainant is that he was unlawfully detained, beaten ("marpeet") and subjected to custodial violence by the petitioners inside the police station, causing injuries and humiliation.

12. The principal question for determination is **whether custodial assault inside a police station constitutes an act done “while acting or purporting to act in discharge of official duty”**, so as to attract the protection of Section 197 CrPC.

13. From a thorough perusal of the facts of the case, this Court finds that the complainant and her brother were not accused of any offence registered prior to the instant incident. It is also evident that the complainant and her brother were not required for interrogation or investigation at that time of incident in any offence registered earlier. There was only an altercation took place between the petitioner/accused





and complainant and her brother, over which the aforesaid alleged assault was committed by the petitioner and other police officials.

14. However, the protection is not absolute. The Central Test is whether the impugned act bears a reasonable connection with the discharge of official duties that is whether one can reasonably postulate that the act was done by virtue of the office, even if in excess of the authority. Therefore, now this Court went into the demand of the situation at the time of the incident. As from the above discussion it is clear that the complainant and her brother were not any accused or offender of any offence which had been registered prior to the instant incident. Hence, this court is of the considered opinion that the alleged assault by the police officials was not the requirement/demand of the movement, therefore, the act of the petitioner, in the opinion of this Court does not fall under the discharge of official duties. If an Act is wholly unrelated to official duties, or is manifestly beyond the scope of official duty, then Section 197 of the Cr.P.C. does not apply. If a police officer exceeds his powers, protection under Section 197 relevant Police Act may apply **but only** if there is a reasonable connection between the act and official duty. Not every offence committed by a police officer automatically gets official-duty protection the impugned act must be reasonably connected to his duties.

15. The law on the subject is well settled. The protection of Section 197 CrPC applies **only when the alleged act is reasonably**



connected with the discharge of official duty. Acts of assault, torture, illegal detention, custodial violence, or “marpeet” inside the police station have repeatedly been held NOT to fall within the scope of official duty.

16. In *P.P. Unnikrishnan v. Puttiyottil Alikutty, (2000) 8 SCC 131*, the Hon’ble Supreme Court held that assault by police officers on persons in custody is not an act done in the discharge of official duty, and hence Section 197 CrPC does not apply. The SC held that a police officer who assaulted a prisoner inside a lock-up cannot claim that the act was connected with discharge of his authority or duty, unless the officer establishes that the force was used in defence of self, others or property.

17. In *State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 339*, the Supreme Court explained that the act must have a reasonable nexus with official duty. If the act has no such nexus, sanction is not required.

18. In *D.K. Basu v. State of West Bengal, (1997) 1 SCC 416*, the Supreme Court categorically held that custodial violence is illegal and unconstitutional and cannot, by any stretch, be considered part of the duties of a police officer.

19. In *Devinder Singh v. State of Punjab, (2016) 12 SCC 87*, the Supreme Court reaffirmed that abuse of power and illegal acts in custody do not attract Section 197, as they are outside the domain of official duty.



20. Most recently, in *Dr. S.M. Mansoori v. Surekha Parmar, 2023 SCC OnLine SC 436*, the Supreme Court refused to quash proceedings against police officers for assault and unlawful acts, holding that at the stage of cognizance/charge, **sanction is not required**, and the determination of whether the act is connected with official duty is a matter of evidence.

21. Thus, the allegations of custodial beating and “marpeet” against the complainant cannot, even prima facie, be said to form part of the petitioners’ official duties. Such acts are **wholly illegal**, and **Section 197 CrPC offers no protection**.

22. Section 197’s protection arises only when there is “reasonable connection” with official duty which does not exist in cases of abuse, torture, false arrests, custodial violence, or false case registration. The protection under Section 197 is **not automatic**. It only applies if the act is committed “while acting or purporting to act in discharge of official duty. There must be a “**reasonable connection**” between the act and the relevant official duty. If such nexus is absent i.e. custodial torture, third-degree treatment, abuse, false case filing, fabrication of evidence then protection fails.

23. In view of the settled legal position laid down by the Hon’ble Supreme Court, this Court finds no merit in the contention of the petitioners that the complaint is barred for want of sanction under Section 197 CrPC.



24. The petition is **dismissed**. The Trial Court shall proceed in accordance with law without being influenced by any observations made herein.

**(RAJESH KUMAR GUPTA )**  
**JUDGE**

Vishal