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**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE  
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA  
ON THE 28<sup>th</sup> OF NOVEMBER, 2023**

**MISC. CRIMINAL CASE No. 46278 of 2022**

**BETWEEN:-**

1. **HEMRAJ PAWAR (ASI), AGED ABOUT 57 YEARS,  
OCCUPATION: SERVICE R/O POLICE STATION  
AZAD NAGAR (MADHYA PRADESH)**
2. **TAKE SINGH DHULIA (ASI) OCCUPATION:  
SERVICE R/O. POLICE STATION BERCHA ,  
SHAJAPUR (M.P.) (MADHYA PRADESH)**

**.....APPLICANTS**

***(BY SHRI SUNIL JAIN, LEARNED SENIOR COUNSEL WITH SHRI  
KUNJAN MITTAL, LEARNED COUNSEL)***

**AND**

**ABDUL RASHEED SHEIKH S/O MOHAMMAD IBRAHIM  
SHEIKH, AGED ABOUT 63 YEARS, OCCUPATION:  
RETIRED R/O 477 MADINA NAGAR (MADHYA  
PRADESH)**

**.....RESPONDENT**

***(BY SHRI MOHAN SHARMA, LEARNED COUNSEL)***

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*This application coming on for admission this day, the court passed the  
following:*

**ORDER**

The present petition is filed under Section 482 of the Code of Criminal Procedure for quashment of the complaint Case No.14883/2020 and also the order dated 25.06.2022 passed in Criminal Revision No.7915/2021 passed by fourth Additional District & Sessions Judge, Indore.

2. Facts of the case are that the petitioners are police officers at the rank of Assistant Sub-Inspector (ASI) in the M.P. Police Department. The petitioner

No.1 is posted at Azad Nagar Police Station-Indore and the petitioner No.2 is posted at Bercha Police Station - Shajapur and they were posted in the same police station at the time of the alleged incident. The respondent/complainant is retired police officer. Before his retirement he was posted at Bercha District Shajapur on the post of Thana In-charge from 3.10.2015 to 28.02.2017. On 27.02.2017 respondent/complainant sold his home appliances and other articles to one Firoz Jilani. Thereafter on non-payment of installments by Firoz, as per the agreement respondent/complainant filed a complaint and requested to register a case against Firoz Jilani for fraud and cheating at Police Station Shajapur. In the above-mentioned transaction Firoz also filed complaint against respondent/complainant for taking money by defrauding him. For the purpose of the aforesaid complaints the respondent/complainant was not cooperating and not responding to the phone calls of the officer-in-charge. Therefore, *Rojnamcha* No.08 dated 27.06.2017 was recorded and petitioner No.2 was directed to go to Indore for service of notice on the respondent/complainant after recording the *rojanamcha* No.07 dated 27.08.2017. In order to enquire/investigate the aforesaid complaints, a notice was issued to the respondent to remain present before the Thana In-charge (TI), Police Station-Bercha, Shajapur. Thereafter the petitioner No.2 went to the Azad Nagar Police station to serve notice as the respondent/complainant is a resident within the Azad Nagar police station area, Indore. The petitioner No.2 reached at Azad Nagar police station on 28.06.2017 at 17:46 pm to serve notice to the respondent/complainant, here the petitioner No.1 accompanied with petitioner No.2 for service of the notice. The petitioners reached to the respondent/complainant's house to serve the notice. On ringing the bell, wife of

the complainant opened the door and informed that her husband is inside the house and asked the petitioners to come inside the house. After some time she informed that that he is not present in the house and has gone to the market. Thereafter, the petitioner No. 2 called the respondent/complainant on his Mobile No. 9406600519, but he did not receive the call. Then petitioner No. 1 called the respondent/complainant, he received the call, the petitioner No.2 informed about the notice but the respondent refused to accept the notice. Even he threatened the petitioners that now never come to his residence and his house is equipped with CCTV cameras. The petitioners even tried to serve the notice to the family members but in vain they also denied the acceptance of notice. The petitioners, thereafter, came back to the Police station Azad Nagar, Indore and informed the whole incident to their superior and Rojnamcha No. 47/17 was recorded by the petitioners. After completing all formalities in Azad Nagar Police Station, Petitioner No.2 came back to the Police station - Bercha and informed about the whole incident to his superior and Rojnamcha was recorded by him. The respondent/complainant on the basis of false and fabricated facts on very next date submitted a complaint against the petitioners, thereby leveled false and fabricated allegations against the petitioners. Even thereafter wrote multiple letters to the superior officers of the police department to lodge complaint against the petitioners.

3. The department conducted enquiry in the matter and did not find any case of complaint against the petitioners. Thereafter, the respondent/complainant approached the Hon'ble High by way of a writ petition in W.P. No. 4430/17 in which the Hon'ble High Court ordered the respondent/complainant to avail remedies available under the provisions of Cr.P.C. Thereafter the respondent/complainant approached the JMFC, Indore

and filed a private complaint against the petitioner's under section 456, 448 & 380 of IPC. The JMFC on the basis of complaint and evidence before charge took cognizance of the matter and ordered to register a Private complaint against the petitioners only u/s.448 of IPC. The petitioners, aggrieved by the order of taking cognizance and issuance of summons. of the learned JMFC filed a revision. Similarly, the respondent/complainant also filed a revision against the order, thereby taking cognizance under section 448 of IPC. The learned judge by the order dated 25.06.22 rejected the revision petition.

4. On the basis of the aforesaid averments, counsel for the petitioner submitted that the applicants have registered the FIR against the respondent/complainant in compliance to the directions of the Apex Court in the case of *Lalita Kumari vs. Government of Uttar Pradesh & Ors. (2014) 2 SCC Page 1*. He relied on para 110. In the said case, it has been held that the registration of FIR is mandatory under Section 154 if the information discloses commission of a cognizable offence. In pursuant to that after the registration they had gone to make an enquiry in the matter and their act was in discharge of official duty and, therefore, the Magistrate ought not to have taken cognizance without previous sanction of the appropriate government in view of the provisions of Section 197 Cr.P.C. By the impugned order dated 12.02.2020 the Magistrate has taken cognizance for offences under Section 448 of IPC for criminal trespass without there being any sanction for prosecution under Section 197 Cr.P.C. Even on merit also the complaint is false, frivolous and malicious and malicious prosecution. They have not committed any offence as they were discharging their official duty.

5. The said order was challenged in the revision and the revision has

been dismissed on the ground that the petitioner ought to have raised the aforesaid contention first before the Magistrate, who had taken cognizance in the matter.

6. Apart from that a quashment is sought of the complaint filed by the petitioner on the ground that prima facie the complaint is nothing, but an abuse of process of law.

7. It is argued that as per the judgment passed by the Apex Court in the case of *Devinder Singh and Ors. vs. State of Punjab (2016) 12 SCC 87*, as per para-39 of the said judgment specially 39.3, 39.6 & 39.8, question of sanction can be considered at any stage of proceedings, the relevant paras of 39 of the said judgment reads as under:-

**39.3** Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under section 197 Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.

**39.6** Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.

**39.8** Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.

8. He further referred the judgment passed by the Apex Court in the case

of *D. Devaraja vs. Owais Sabeer Hussain (2020) 7 SCC 695*. He relied on para-66, 72 to 74. In the said judgment it has been held that the 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 given 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 Cr.P.C. In para-73 after referring to the previous judgments of the Apex Court, it is held that whether sanction is necessary or not have to be determined at any stage of the proceedings. He also relied on the judgment of the Apex Court in the case of *State of Bihar vs. Kamla Prasad Singh & Ors. (1998) SCC 690* where the Court while considering the provisions of Section 197 Cr.P.C. held that "acting in the discharge of his official duty", Magistrate has to consider not only the allegations made in the complaint but also other materials on record. Allegation in the complaint that the accused police officials raided the house of the complainant without warrant, assaulted and abused his wife and others and took away certain articles belonging to him. Material on record showing that material facts were suppressed by the complainant and some of the allegations were false and in the circumstances it was held that sanction was necessary. He also relied on the judgment passed by Coordinate Bench at Gwalior in the case of *Akhilesh Kumar Jha vs. State of MP & Anr.* decided on 24.09.2015 in *MCRC No.1084/2010* in which it is held that if the complaint pertains to a public servant who is alleged to have committed the offence in discharge of his official

duties, the cognizance of the complaint filed under Section 200 cannot be taken without there being any sanction under Section 197 of Cr.P.C.

9. Per contra counsel for the respondent supported the order impugned and submitted that the allegation in the complaint pertains against the applicant which was not in discharge of official duty, but they have acted unlawfully and had trespassed into his house in a drunken condition which would not be in the discharge of official duty and, therefore, sanction under Section 197 Cr.P.C. is not required. He submitted that he has filed CCTV footage which would prove his case. However, he does not dispute the law laid down by the Apex Court in the case of *Devinder Singh* (supra) that the question of sanction can be considered at any stage of proceedings even for the first time before the appellate Court. He also relied on the judgment passed by the Apex Court in the case of *Lalita Kumari* (supra) and *D. Devaraja* (supra) to contend that the respondents have acted unlawfully by registering a false case and committing criminal trespass and the said act was not in discharge of their official duty and, therefore, protection under Section 197 Cr.P.C. was not available to them.

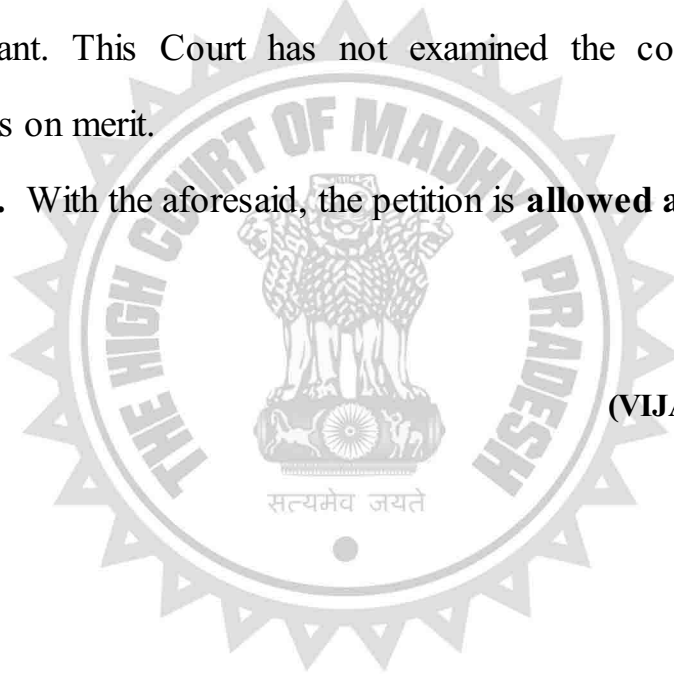
10. In view of the aforesaid enunciation of law, it is no longer res-integra that the issue of sanction for prosecution under section 197 Cr.P.C. for cognizance of offence against public servant can be raised at any stage of trial.

11. After hearing learned counsel for the parties and taking into consideration the law laid down by the Apex Court in the case of *Devinder Singh* (supra) and also in the case of *D. Devaraja* (supra), the present petition is allowed and the impugned order dated 12.02.2020 taking cognizance for offence Section 448 of IPC by the Judicial Magistrate First Class, Indore is set aside and the liberty is granted to the applicants to raise the issue regarding question of sanction before the Magistrate within 15 days from today and the

Magistrate shall decide the said objection in accordance with the law after hearing the applicants and the complainant before taking cognizance in the matter. The revisional Court dismissed the revision on the ground that the applicants ought to have raised the question of sanction first before the Magistrate, but did not grant any liberty to raise the said issue before the Magistrate, therefore, the impugned order of revisional Court dated 25.06.2022 is also set aside. The Magistrate shall decide the said issue of sanction before taking cognizance on the complaint without being influenced by any observation made by this Court after affording opportunity of hearing to the petitioners and complainant. This Court has not examined the complaint and defence of petitioners on merit.

**12. With the aforesaid, the petition is allowed and disposed off.**

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**(VIJAY KUMAR SHUKLA)**  
**JUDGE**