

Nisar Ahmad vs Superintendent Jof Police on 13 August, 2024

Author: Vishal Dhagat

Bench: Vishal Dhagat

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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VISHAL DHAGAT
ON THE 13th OF AUGUST, 2024
MISC. CRIMINAL CASE No. 19018 of 2014
NISAR AHMAD
Versus
SUPERINTENDENT JOF POLICE AND OTHERS

Appearance:

Shri Uttkarsh Agrawal - Advocate for the petitioner.

Shri Akshay Namdeo - Government Advocate for the State.

ORDER

Notice is served on respondent No.2. Despite service of notice, none is appearing for respondent No.2. hence, respondent No.2 is proceeded ex-parte.

2. Petitioner has filed this petition 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS) challenging order dated 14.07.2014 passed by Judicial Magistrate First Class, Deosar, District-Singrauli (MP) by which cognizance under Sections 166, 167, 120-B, 420, 465 of the IPC is taken against the petitioner.

3. Learned counsel appearing for the petitioner submitted that impugned order is bad in law and without jurisdiction as previous sanction of State Government under Section 197 of the Cr.P.C. is to be obtained for prosecuting a Government Servant. Petitioner was acting in course of his duty. It is submitted that an advertisement was issued for appointment of Panchayat Karmi. Pursuant to said advertisement, one candidate was selected. Later on, a complaint was filed that said candidate has not attained age of 18 years. Petitioner was not responsible for selection of said candidate. It is submitted that petitioner has constituted a team to examine irregularities or illegalities. Thereafter, a team was constituted in which Santosh Kumar, D.N. Mishra and Ram Milan Pandey were members who had given report 2 MCRC-19018-2014 in favour of said candidate. Petitioner is made accused as he had constituted a team and has acted on the report, though candidate was minor. In these circumstances, it is submitted that Judicial Magistrate First Class could not have proceeded with the matter without sanction under Section 197 of the Code of Criminal Procedure.

4. Learned Government Advocate appearing for the State opposed the petition and submitted that Additional Collector is required to act in accordance with law. Collector knowing fully well the facts of the case had acted upon the report and, therefore, he was also a party. No error has been

committed by the Magistrate.

5. Heard the counsel for the parties.

6. Learned counsel appearing for the petitioner has relied upon the judgement passed by Apex Court reported in (2013) 10 SCC 705 { Anil Kumar And Others Vs. M.K. Aiyappa And Another} . Reliance is placed upon paragraph No.13 of said judgment, which is quoted as under:-

"13.The expression "cognizance" which appears in Section 197 Cr.P.C. came up for consideration before a three-Judge Bench of this Court in State of Uttar Pradesh v. Paras Nath Singh (2009) 6 SCC 372, and this Court expressed the following view:

"6. '10..... And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought 3 MCRC-19018-2014 out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty."

7. Petitioner is public servant and act is said to have been committed in performance of his official duty. Petitioner is authority who has to notify appointment as per Section 69 of the Madhya Pradesh (Panchayat Raj Avam Gram Swaraj) Adhiniyam, 1993. Act of petitioner falls within the ambit of Section 197 of the Cr.P.C. and petitioner is protected from prosecution until sanction is obtained from State Government.

8. In view of aforesaid circumstances, order dated 14.07.2014 stands quashed. Petition filed by petitioner is allowed.

9. Prosecution is at liberty to take sanction in accordance with law and proceed.

(VISHAL DHAGAT) JUDGE \$A