

## State vs Jishan Alam on 24 May, 2022

**Author: Ravindra Maithani**

**Bench: Ravindra Maithani**

C482 No.699 of 2022  
Hon'ble Ravindra Maithani, J.

Mr. Mohd. Safdar, Advocate for the petitioner.

Mr. S.T. Bhardwaj, D.A.G. for the State. The challenge in this petition is made to the cognizance order dated 31.05.2021, passed in Criminal Case No.5279 of 2021, State Vs. Jishan Alam, pending in the court of Chief Judicial Magistrate, Haridwar, Cognizance under Section 295 A .

It is the case of the petitioner that prosecution sanction has not been taken in the case before cognizance has been taken.

Learned counsel for the petitioner would submit that, in view of Section 196 of the Code of Criminal Procedure, 1973 ("the Code"), cognizance of offence under Section 295 A IPC cannot be taken except on the previous sanction of the Central Government or the State Government.

On last two occasions, learned State Counsel was required to tell the Court, as to whether, sanction, as required under Section 196 of the Code, has been taken in the matter or not.

Learned State Counsel submits that till now, the Investigation Officer ("IO") has sent no instructions. It is really strange the way State functions. A small issue is raised that cognizance is barred by provisions of Section 196 of the Code. The Court wanted the version of the State, but the State is declining to assist the Court at the initial stage. This Court has no option but to require the State to file its response.

Let notice be issued to the respondent no.2.

If the State may so like, they may file the counter affidavit, particularly, the State should categorically state in the first paragraph of the counter affidavit as to whether, sanction of the State or Central Government, as the case may be, has been obtained in the matter or not?

A week thereafter, rejoinder affidavit be filed.

List this case for final hearing on 27.06.2022 at the top of the list.

Till the next date of listing, the proceeding of the case pending before the court below shall remain in abeyance qua the petitioner.

The Court wanted to know as to who is the IO, who failed to assist the Court in terms of informing as to whether sanction as required under Section 196 of the Code has been taken or not.

The State Counsel would submit that he is not in a position to tell the Court the name of the IO who was required to give instructions.

This matter pertains to FIR No.352 of 2020, Police Station SIDCUL, District Haridwar.

The Court requested SSP, Haridwar to examine, as to who is the IO, who failed to give instructions to assist the Court in terms of sending instructions to the learned State Counsel in the matter. And if any lapses is found from the IO, the SSP may consider to take such action against him as he may deem fit and proper.

The SSP, Haridwar shall also submit an action taken report on this matter on or before 27.06.2022.

(Ravindra Maithani J.) 24.05.2022 RV