



[2026:RJ-JD:24596]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Miscellaneous (Petition) No. 4122/2021

Mahendra Kumar S/o Kesari Chand, Aged About 52 Years, B/c
Oswal, R/o Bhura Chowk, Nokha, District Bikaner (Raj.)

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Sita Sharma, Election Officer, Municipality Election 2021,
Municipal Corporation, Nokha, District Bikaner.
3. Dwarka Prasad Sharma, Assistant Election Officer,
Municipality Election 2021, Municipal Corporation,
Nokha, District Bikaner.

----Respondents

For Petitioner(s) : Mr. L.S. Udawat

For Respondent(s) : Mr. N.S. Chandawat, Dy.G.A.

HON'BLE MR. JUSTICE FARJAND ALI

Order

REPORTABLE

19/05/2026

1. The instant misc. petition has been preferred laying challenge to the order dated 26.07.2021 passed by the learned Additional Chief Judicial Magistrate, Nokha, District Bikaner in Criminal Complaint No.04/2021 whereby the prayer made by the petitioner under Section 156(3) Cr.P.C. for forwarding the matter to the police for registration of FIR and conducting investigation came to be declined.

2. Shorn of unnecessary details, the essential facts necessary for adjudication of the present petition are that the petitioner



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instituted a criminal complaint before the learned Magistrate alleging therein that the respondents, who at the relevant point of time were functioning as Returning Officers and officers entrusted with responsibilities pertaining to the electoral process of the concerned area, had abused and misused their official authority and, in furtherance of a concerted design, manipulated and interpolated the nomination documents by forging false entries and fabricating records. According to the petitioner, the acts attributed to the respondents disclosed commission of offences punishable under Sections 166, 167, 465, 467, 468, 471 and 120-B of the IPC. Along with the complaint, a specific prayer was made before the learned Magistrate for exercise of powers under Section 156(3) Cr.P.C. so as to direct the police authorities to register an FIR and undertake investigation into the allegations.

2.1. The learned Magistrate, however, declined the said prayer principally on the ground that respondent Nos.1 and 2 were public servants at the relevant point of time and, therefore, in absence of prior sanction for prosecution under Section 197 Cr.P.C., directions for registration of FIR could not be issued. Aggrieved against the aforesaid approach adopted by the learned Magistrate, the present misc. petition has been instituted before this Court.

3 Learned counsel for the petitioner vehemently submitted that the learned Magistrate has fallen into manifest error of law



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while conflating the stage of directing investigation under Section 156(3) Cr.P.C. with the stage of taking cognizance under Chapter XIV of the Code. It was contended that sanction under Section 197 Cr.P.C. becomes relevant only at the stage where the Court proceeds to take cognizance of the alleged offences against a public servant and not at a pre-cognizance stage where the Magistrate merely exercises supervisory jurisdiction for directing registration of FIR and investigation into cognizable offences. Learned counsel further submitted that the allegations levelled in the complaint prima facie disclosed commission of cognizable offences involving forgery and fabrication of official records and, therefore, the learned Magistrate was under legal obligation to examine whether the complaint disclosed commission of cognizable offences warranting police investigation.

4. Per contra, learned Public Prosecutor supported the impugned order and submitted that since the allegations pertained to acts performed by public servants while discharging official functions connected with the electoral process, the embargo contained under Section 197 Cr.P.C. was rightly invoked by the learned Magistrate.

5. Heard learned counsel for the parties and perused the material available on record with anxious consideration.

6. At the outset, it deserves to be observed that Section 197 Cr.P.C. embodies a statutory protection intended to safeguard responsible public servants against frivolous, vexatious and



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retaliatory criminal prosecution for acts reasonably connected with discharge of official duties. The underlying legislative object behind the provision is not to create an impregnable shield insulating public servants from criminal accountability, but rather to ensure that honest discharge of official functions is not paralyzed by constant apprehension of prosecution at the instance of disgruntled individuals. The provision, therefore, seeks to strike a delicate constitutional balance between the need to preserve administrative independence on one hand and the imperative of ensuring rule of law and criminal accountability on the other. However, the protection envisaged under Section 197 Cr.P.C. is neither absolute nor all-encompassing. The embargo contemplated therein operates specifically at the stage where a Court proceeds to "*take cognizance*" of an offence alleged to have been committed by a public servant while acting or purporting to act in discharge of official duties.

6.1. A plain, literal and meaningful reading of Section 197 Cr.P.C. unmistakably demonstrates that the prohibition engrafted therein is directed against the Court taking cognizance of the offence in absence of prior sanction from the competent authority. The statutory language employed by the legislature is explicit, unambiguous and incapable of being expanded beyond its clear contours. The provision nowhere stipulates that registration of FIR or commencement of investigation under Chapter XII of the Code would also stand interdicted in absence of sanction. The



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distinction between the stage of investigation and the stage of cognizance is neither illusory nor inconsequential; rather, it constitutes one of the foundational structural distinctions under the criminal jurisprudence embodied in the Code of Criminal Procedure.

6.2. When a Magistrate entertains an application under Section 156(3) Cr.P.C., he does not undertake adjudicatory scrutiny upon the guilt or otherwise of the proposed accused, nor does he assume jurisdiction for taking cognizance of the offence. At that juncture, the Magistrate merely examines whether the allegations, taken at their face value, disclose commission of a cognizable offence warranting police investigation. The exercise under Section 156(3) Cr.P.C. is, therefore, unmistakably situated at a pre-cognizance stage. The Magistrate, while exercising powers under the said provision, neither records evidence nor evaluates the sufficiency of material for proceeding against the accused. What is contemplated is merely activation of the statutory investigative machinery so that the truthfulness, authenticity and veracity of the allegations may be unearthed through lawful investigation by the police agency.

6.3. The distinction assumes greater significance in view of the law authoritatively expounded by the Hon'ble Supreme Court in ***Lalita Kumari Vs. State of Uttar Pradesh AIR 2014 SC 187*** wherein it has been categorically held that where information discloses commission of a cognizable offence, registration of FIR



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becomes mandatory and the police authorities cannot refuse to set the criminal law into motion. The legal principle emanating therefrom leaves little room for ambiguity that once allegations prima facie disclose commission of cognizable offences, investigative machinery ought ordinarily to be activated. The stage of investigation is intended precisely to ascertain whether the allegations are ultimately substantiated or not. To import the requirement of prior sanction even before registration of FIR would amount to placing an impermissible fetter upon statutory investigation and would frustrate the very object underlying criminal procedure.

6.4. This Court is further of the considered opinion that the approach adopted by the learned Magistrate suffers from a fundamental misconception regarding the true scope and ambit of Section 197 Cr.P.C. The learned Magistrate appears to have proceeded on the erroneous assumption that the protective umbrella of sanction extends even to the stage of registration of FIR and commencement of investigation. Such interpretation not only travels beyond the express statutory language employed by the legislature but also militates against the settled principles governing criminal procedure. The issue regarding existence, validity or necessity of sanction would arise for judicial consideration at a subsequent stage when the Court is called upon to examine whether cognizance of the alleged offences ought to be taken against the concerned public servants. At that



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stage, the Court would be required to scrutinize whether the acts complained of bear reasonable nexus with discharge of official duties so as to attract the protection under Section 197 Cr.P.C. However, to foreclose investigation itself at the threshold merely on the premise of absence of sanction would amount to stifling legitimate inquiry even before relevant facts are collected through investigation.

6.5. Moreover, allegations involving fabrication, interpolation and forgery of official documents cannot, at the very inception, be immunized from investigation solely because the accused happen to be public servants. Whether the acts alleged were genuinely performed in discharge of official duty or were acts in excess, abuse or misuse of authority is itself a matter which may require factual investigation. The protective provision under Section 197 Cr.P.C. cannot be converted into a jurisdictional barrier preventing even preliminary investigative scrutiny into allegations of criminal misconduct.

7. In view of the aforesaid discussion, this Court is firmly of the opinion that for the limited purpose of registration of FIR and commencement of investigation under Section 156(3) Cr.P.C., prior sanction under Section 197 Cr.P.C. is not a sine qua non. The learned Magistrate, therefore, committed a manifest error of law in rejecting the petitioner's application solely on the ground of absence of prosecution sanction. The approach adopted by the learned Magistrate cannot be countenanced in the eye of law.



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8. Consequently, the instant misc. petition deserves to be and is hereby allowed. The order dated 26.07.2021 passed by the learned Additional Chief Judicial Magistrate in Criminal Complaint No.04/2021 is set aside. The matter is remanded back to the learned Magistrate with a direction to reconsider the application preferred under Section 156(3) Cr.P.C. afresh in accordance with law. While doing so, the learned Magistrate shall confine the inquiry to the limited aspect as to whether the averments made in the complaint, on their plain reading, disclose commission of cognizable offences. If the allegations prima facie disclose commission of cognizable offences, it shall be imperative for the learned Magistrate to forward the matter to the police authorities under Section 156(3) Cr.P.C. for registration of FIR and conducting investigation in accordance with law. The stay petition also stand disposed of.

(FARJAND ALI),J

70-Mamta/-