

Omveer Singh and Another Vs. State and ors.

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Court : Delhi

Decided On : Feb-17-2014

Judge : Sunil Gaur

Appellant : Omveer Singh and Another

Respondent : State and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: January 20, 2014 Judgment Pronounced on: February 17, 2014 + CRL.M.C.353/2009 OMVEER SINGH & ANOTHERPetitioners Through: Mr.V.K. Malik, Advocate versus STATE & ORS. Through:Respondents Mr. O.P. Saxena, Additional Public Prosecutor for RespondentState CORAM: HON'BLE MR. JUSTICE SUNIL GAUR % 1.

JUDGMENT

Quashing of criminal complaint No.199/07 for the offences under Section 506/323/34 of IPC is sought in this petition on merits. Vide order of 3rd October, 2008 petitioners have been summoned as accused in the aforesaid complaint made by respondent No.2. The facts giving rise to the instant complaint as noticed in the summoning order of 3rd October, 2008 are as under: "The facts in brief are that the complainant had an altercation with the tenant and his three sons. They gave beatings to the complainant on the basis of which a complaint was lodged to the police. On the basis of the complaint of FIR No.392/2007 under Section 308

I.P.C. was registered against the tenant Mohd. Aslam and his sons. The matter was being investigated by SHO PS Bhajanpura. It has been claimed by the complainant that he asked accused no.1 SHO Omveer and accused no.2 Head Constable Yashveer Singh, PS Bhajanpura to arrest Mohd. Aslam and his sons and recover weapon of offence from them on which the SHO got irritated and threatened and abused the complainant by saying "Madar chod Hamen Vakalat Mat Dikha, tere Chutron mein teri saari vakalat ghused doonga aur tere parivar ko aur tujhe hathkadi pehna kar maarta hua poore mohalle men ghumaunga teri ijjat do paise ki nahi rehne doonga" and dragged him on the surface while accused no.2 HC Yashveer Singh gave a punch in the stomach and two kicks on the back of the complainant and said "Saale Sahab Se Bhidta Hai" and also abused him."

2. At the hearing of this petition, the moot question raised by learned counsel for petitioners was that cognizance of the offences in question cannot be taken without prior sanction either under Section 197 of Cr.P.C. and under Section 140 of Delhi Police Act. It was submitted on behalf of petitioners that respondent-complainant and his two associates namely Lalit Kumar and Ram Kumar, who are witnesses in the instant complaint, are in the habit of filing false complaints against police officials and to create pressure upon petitioners to harass Mohd. Aslam, against whom respondent-complainant had lodged FIR No.392/2007 under Section 308 of IPC registered at P.S. Bhajanpura, Delhi. It was pointed out that respondent-complainant has already compromised and co-operated with his tenant Mohd. Aslam to get the aforesaid FIR quashed. Thus, it was submitted on behalf of petitioners that the instant complaint is maliciously instituted with ulterior motive of wreaking vengeance against petitioners. In support of above submissions, reliance was placed upon decisions in State of Bihar v. Kamla Prasad (1998) 5 SCC690 NAFED v. State & Ors. 2011 (1) AD Delhi 23; Anil Kumar & Ors. v. M.K. Aiyappa & Ors. (2013) 10 SCC705 3. While entertaining this petition, vide order of 6th February, 2009, proceedings arising out of the instant complaint were stayed. It stands noted in the order of 15th December, 2009 that counsel for respondent-complainant had appeared. However, after admission of this petition, at the stage of final hearing, court notice was sent to respondent No.2, which was served but none had appeared on behalf of respondent No.2-complainant. Since it was pointed out by learned counsel for petitioners that

respondent No.2 is a practicing lawyer, therefore, learned Additional Public Prosecutor for Respondent-State was called upon to personally inform respondent No.2 about the date of hearing in this matter. In compliance, learned Additional Public Prosecutor for Respondent-State has placed on record verification report of 8th January, 2014, which discloses that respondent No.2 had made a written submission that he does not wish to proceed further as all his grievances have been satisfied. However, no such written submission on behalf of respondent No.2 has been placed on record.

4. Since the moot question raised in this petition needs to be answered, therefore, after having heard learned counsel for petitioners and on perusal of the impugned complaint, summoning order and the decisions cited, I find that trial court has summarily dealt with this aspect by simply observing that it is not the part of official duty to use filthy language/abuses.

5. The pivotal issue of protection under Section 197 of Cr.P.C. has been considered by Apex Court in Anjani Kumar v. State of Bihar 2008 5 SCC248 in these words: "The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before

Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty; if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant.

6. Apex Court in Anil Kumar (supra) has reiterated the legal position governing the issue of sanction in these words: "Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him.....If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab initio."

7. By applying the afore-noted dictum to the facts of the instant case, I find that petitioners had acted in the course of their official duties and so, their summoning in the instant complaint without sanction either under Section 197 of Cr.P.C. or Section 140 of Delhi Police Act is expressly barred. In view of the aforesaid, summoning order of 3 rd October, 2008 is hereby quashed with liberty to

respondent-complainant to obtain statutory sanction either under Section 197 of Cr.P.C. or under Section 140 of Delhi Police Act and upon such sanction being granted, trial court shall proceed with the complaint in question.

8. This petition is allowed to the aforesaid extent while not commenting upon merits of this case. (SUNIL GAUR) JUDGE FEBRUARY 17 2014 s

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