

Mukesh Kumar vs.manoranjana & Ors.

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Court : Delhi

Decided On : Jul-07-2017

Appellant : Mukesh Kumar

Respondent : Manoranjan & Ors.

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

23. d March 2017 Decided on:

7. h July, 2017 CRL.M.C. 2004/2009 and Crl. M.A. No.14768/2016 MUKESH KUMAR

... Petitioner

Represented by:

... Petitioner

in person. versus MANORANJANA & ORS.

... RESPONDENTS

Represented by: Mr. Sanjay Jain, Additional Solicitor General with Mr. Sharat Kapoor, Mr. Rahul Jain, Ms. Ruchi Jain, Mr. Sarfaraz Ahmad and Ms. Aastha Jain, and Ms. Tani Kalra, Advocates for respondent Nos. 1 to 4. Mr. Ravi Nayak, APP for the State for respondent No.5. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA1 The petitioner filed a complaint being Crl. Complaint No.1037/1/06 titled

as Mukesh Kumar vs. Dr. Manoranjan and others, before the learned Metropolitan Magistrate seeking summoning of the accused for offences punishable under Sections 420/468/471/166/167/120B/34 IPC and Sections 7 and 10 of the Protection of Civil Rights Act, 1955 (in short the Act).

2. The allegations in the complaint are that the complainant was appointed as Management Trainee (Administration) vide SAIL Appointment letter dated 10th May, 1991 and joined the organization at Rourkela plant. Thereafter he was posted at various positions and lastly he was the Manager at E-4 grade. In the complaint it is stated that the petitioner belonged to Crl. M.C. No.2004/2009 Page 1 of 15 Scheduled Caste community and though as per the Directive Principles of the Constitution of India representation of SCs/STs in each cadre/group of services was required to be improved including within Group-A posts, however, contrary to the policy of the Constitution and the objectives of the Directive Principles, the SAIL Management vindictively in the name of merit denied promotion to the petitioner by three years, depriving him of the benefits of the reservation policies in promotion and victimized him. It is alleged that except the SCs/STs, all the other seven general category candidates of the year 1991, MT (A) batch were promoted to E-4 grade w.e.f. 30th June, 2001, however, the promotion of the petitioner was delayed by three years. Assessment grades were never communicated to the petitioner at the end of each year and promotions within Executive Cadre upto E-7 grade were not based on vacancy and were decided upon the suitability of the candidates considered for promotion.

3. It is further alleged that in the year 2003, petitioner was superseded by his juniors. Realizing that some officers were silently spoiling the service record of the petitioner without disclosing the same to him, petitioner exercised his right under the Right to Information Act, 2005 (in short RTI Act) to have access to his own file. However, the same was also denied to him without specifying any concrete reason. In order to annoy the petitioner, senior officers unilaterally changed his job profile from Marketing Division to Civil Maintenance, wasting his 15 years of experience in marketing. Further the petitioner was also annoyed deliberately when he was unilaterally excluded and discriminated from amongst the 38 officials (Executives) of SAIL-ISPs Branch Sales Office who were transferred to SAIL-CMO

in March/April, 2006 after dissolution of Branch Sales Offices Crl. M.C. No.2004/2009 Page 2 of 15 at IISCO. Later IISCO branch offices were merged with SAIL-CMO in April, 2006 and six staff personal, subordinate to the petitioner were also transferred to SAIL-CMO offices at Delhi itself. Further with mala fide motive and to annoy the petitioner, he was transferred and the transfer/ release order was served simultaneously at his residence on 20th April, 2006 while he was availing his leave for MBA examination. The transfer/release order was served deliberately on the petitioner on his anniversary date to further annoy him and increase his pain. It is alleged that officials were intentionally giving the petitioner wrong replies under the RTI Act. Despite extraordinary achievements and exceptional performance at Okhla Stockyard and excellent record of past ten years, accused persons deliberately discriminated with the petitioner only for the reason that he belonged to Scheduled Caste community and awarded him poor grade in assessment with sole intention and knowingly to annoy him to deprive him of his due legal rights.

4. On the said complaint and after examining the petitioner as CW-1, though observing that substantive role of each accused has not been provided however, since it has been testified on oath that all the accused were part of the decision making process which has ultimately affected the petitioner, the learned Metropolitan Magistrate summoned the 11 accused for offences punishable under Sections 7 and 10 of the Act and for offences punishable under Sections 166/167/420/468/471 read with 120B IPC vide order dated 6th May, 2008.

5. Aggrieved by the order dated 6th May, 2008 summoning them as accused respondent Nos. 1 and 2 along with Steel Authority of India and Union of India who were also impleaded as accused Nos. 12 and 13 filed a Crl. M.C. No.2004/2009 Page 3 of 15 revision petition before the learned Additional Sessions Judge. Vide the impugned order dated 4th May, 2009 the revision petition was allowed and the summoning order dated 6th May, 2008 passed by the learned Metropolitan Magistrate was set aside. The matter was remanded back to the learned Magistrate directing him to exercise his jurisdiction of taking cognizance of the offences only after the petitioner obtains sanction under Section 197 Cr.P.C. and places the same on record. The learned Additional Sessions Judge noted that

since the allegations against the public servants were in discharge of their official duty, learned Metropolitan Magistrate could not have taken cognizance of the offences without sanction under Section 197 Cr.P.C. Hence the present petition.

6. Since the order of the learned Metropolitan Magistrate has been set aside only for want of sanction and once the petitioner obtains the sanction only thereafter cognizance can be taken, this Court need not go into the other issues elaborately argued by the petitioner and confines itself to the arguments of the petitioner and the respondents on point of sanction under Section 197 Cr.P.C. only.

7. It is not disputed that some of the accused including respondent No.1 were removable by the Government. As noted above, even as per the complaint it is the case of the petitioner himself that the acts alleged which purportedly constituted the offences under the IPC and the Act were done in discharge of the official duty. It is alleged that the accused deliberately gave poor assessments to the petitioner affecting his promotional avenues, thus affecting his civil rights as a member of the scheduled caste community.

8. Honble Supreme Court in the decision reported as AIR 1955 SC287Shreekantiah Ramayya Munipalli v. State of Bombay held: CrI. M.C. No.2004/2009 Page 4 of 15 18. Now it is obvious that if Section 197 of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning. What it says is- when any public servant ... is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty.... We have therefore first to concentrate on the word offence.

19. Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the present case, the elements alleged against the second accused are, first, that there was an entrustment and/or dominion; second, that the entrustment and/or dominion was in his capacity as a public servant; third, that

there was a disposal; and fourth, that the disposal was dishonest. Now it is evident that the entrustment and/ or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity. Therefore, the act complained of, namely the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act, namely officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in *CrI. M.C. No.2004/2009* Page 5 of 15 9. the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it. Clarifying the legal position further on the issue Supreme Court in the decision reported as (1955) 2 SCR925: AIR 1956 SC44 *Matajog Dobey v. H.C. Bhari* held: in there was anything sound and substantial The minor contentions may be disposed of at the outset. Even if the constitutional point about the vires of Section 5(1) of the Act, we declined to go into it as it was not raised before the High Court or in the grounds of the petition for special leave to appeal. Article 14 does not render Section 197 of the Criminal Procedure Code ultra vires as the discrimination is based upon a rational classification. Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. It was argued that Section 197 of the Criminal Procedure Code vested an absolutely arbitrary power in the Government to grant or withhold sanction at their sweet-will and pleasure, and the legislature did not lay down or even indicate any guiding principles to control the exercise of the discretion. There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction. If the

Government gives sanction against one public servant but declines to do so against another, then the government servant against whom sanction is given may possibly complain of discrimination. But the petitioners who are complainants cannot be heard to say so, for there is no discrimination as against any complainant. It has to be borne in mind that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be CrI. M.C. No.2004/2009 Page 6 of 15 is vested in the discretion easily assumed where the government and not in a minor official. Further, we are not now concerned with any such question. We have merely to see whether the court could take cognisance of the case without previous sanction and for this purpose the court has to find out if the act complained against was committed by the accused while acting or purporting to act in the discharge of official duty. Once this is settled, the case proceeds or is thrown out. Whether sanction is to be accorded or not is a matter for the government to consider. The absolute power to accord or withhold sanction conferred on the government is irrelevant and foreign to the duty cast on the court, which is the ascertainment of the true nature of the act. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. But the difference is only in language and not in substance. The offence alleged to have been committed must have something to do, or must be related in some manner with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation. In *Hori Barn Singh v. Crown* [(1939) FCR159178]. Sulaiman, J.

observes: The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to Crl. M.C. No.2004/2009 Page 7 of 15 the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction. The interpretation that found favour with Varadachariar, J.

in the same case is stated by him in these terms at p. 187: There must be something in the nature of the act complained of that attaches it to the official character of the person doing it. In affirming this view, the Judicial Committee of the Privy Council observe in Gill case [(1948) LR75IA

A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office. Hori Ram case [(1939) FCR159178]. is referred to with approval in the later case of Lieutenant Hector Thomas Huntley v. King-Emperor [(1944) FCR262 but the test laid down that it must be established that the act complained of was an official act appears to us unduly to narrow down the scope of the protection afforded by Section 197 of the Criminal Procedure Code as defined and understood in the earlier case. The decision in Meads v. King [(1948) LR75IA185 does not carry us any further; it adopts the reasoning in Gill's case [(1948) LR75IA41 .

10. Explaining the import of Section 197 Cr.P.C. Supreme Court in the decision reported as (1993) 3 SCC339State of Maharashtra v. Budhikota Subbarao (Dr) held as under:

6. Such being the nature of the provision the question is how should the expression, any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, be understood?. What does it mean?. Official according to dictionary, means pertaining to an office. And official act or official duty means an act or duty done by an officer in his official capacity. In S.B. Saha v. M.S. Crl. M.C. No.2004/2009 Page 8 of 15 Kochar [(1979) 4

SCC177:

1979. SCC (Cri) 9

AIR 1979 SC1841 it was held: (SCC pp. 184-85, para

17) The words any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, it is no part of an official duty to commit an offence, and never can be. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. Use of the expression, official duty implies that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. In *P. Arulswami v. State of Madras* [(1967) 1 SCR201 2

AIR 1967 SC776:

1967. Cri LJ665 this Court after reviewing the authorities right from the days of Federal Court and Privy Council held: It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office,

then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then Crl. M.C. No.2004/2009 Page 10 of 15 the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in *Matajog Dubey v. H.C. Bhari* [AIR 1956 SC44: (1955) 2 SCR925:

1956. Cri LJ140 thus: [T]he offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the

discharge of official duty there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. (emphasis supplied) If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.

11. In the decision reported as (2004) 8 SCC31S.K. Zutshi v. Bimal Debnath, it was further held:

5. 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 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 it, complete control of Crl. M.C. No.2004/2009 Page 11 of 15 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. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. [Emphasis supplied]. CrI. M.C. No.2004/2009 Page 12 of 15 12. In the decision reported as 2016 SCC OnLine SC357Devinder Singh & Ors.v. State of Punjab through CBI Supreme court noting its earlier decisions summarized the following principles: 42. The principles emerging from the aforesaid decisions are summarized hereunder: Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 Cr PC has to be construed narrowly and in a restricted manner. 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. In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary under Section 197 Cr PC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was

incomplete without proving, the official act, ordinarily the provisions of Section 197 Cr PC would apply. In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound CrI. M.C. No.2004/2009 Page 13 of 15 objective assessment. The court is not to be a sanctioning authority. 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. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage. 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. In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial. 13. Considering that the allegations of the petitioner against the respondents which purportedly constitute the offences alleged were committed in discharge of their official duty and the law laid down by the Supreme Court as noted above, this Court finds no infirmity in the impugned CrI. M.C. No.2004/2009 Page 14 of 15 order passed by the learned Additional Sessions Judge remanding back the matter to the learned Metropolitan Magistrate to apply its mind on the allegations only after sanction under Section 197 Cr.P.C. is placed on record by the petitioner.

14. Petition and application are dismissed. JULY07 2017 vn (MUKTA GUPTA)
JUDGE CrI. M.C. No.2004/2009 Page 15 of 15