

Phanindralal Bardhan Vs. Ashes Kumar Deb Barman

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Court : Guwahati

Decided On : Jun-27-1984

Judge : K. Lahiri and T.C. Das, JJ.

Appellant : Phanindralal Bardhan

Respondent : Ashes Kumar Deb Barman

Advocate for Pet/Ap. : Mr. S.K. Sen

Judgement :

K. Lahiri, J.

1. There is a spate of criminal prosecutions against public servants and if things continue in this manner and the protection under Section 197 Cr. P.C. is not granted, perhaps the day is not far when all functions of the State shall be at a standstill by interested persons desiring to stall the activities of the State performed through the public servants.

2. In the instant case the petitioner filed an application asking for lease of certain railway land and allegedly paid Rs. 410/- to the Railways for the said purpose. The opposite party is the Divisional Railway Manager, N. F. Railway, Lumding, an employee under the Ministry of Railways, Government of India in Class-I Service, appointed by the President of India. It is alleged that the railway authority did not lease out the land to the complainant in spite of repeated requests made by the

petitioner-complainant. It is further alleged that on 25-4-83 the complainant voluntarily met the accused and requested him for grant of lease and the opposite party desired to peruse the file and documents at the disposal of the complainant. Strange was the request as the railway department had all the relevant papers at their disposal. It appears more true than not that the petitioner handed over his personal file to the accused. Be that as it may, let us assume that the accused had asked for the personal file of the complainant. It is alleged that the complainant handed over the file on the assurance by the accused that he would return the same to the petitioner. It is alleged that in spite of repeated demands, including pleader's notice, the accused did not return the file. The complainant alleged that the accused refused to return the file with a view to cause disappearance of evidence in respect of the anomalies regarding the procedure in leasing out lands by the railways. The complainant instituted a criminal case against the accused under Section 420 I.P.C. and obtained a search warrant. The records were brought before the Court. The records so produced from the office of the opposite party contained the file of the complainant. Learned Magistrate observed inter alia, 'there is no subsequent allegation that any of the papers or documents in the file was missing'. As such, it is evident that 'the tile' handed over by the complainant and subsequently seized by virtue of the search warrant, was intact. However, these are matters touching the merits of the case. It appears from the findings reached by the learned Magistrate that on perusal of the file he reached the conclusion that no offence had been committed by the accused person as the records were intact. On that ground alone the learned Magistrate could have discharged the accused person.

3. However, the learned Magistrate also considered the question as to whether the accused could be prosecuted in absence of any sanction required under Section 197 of Cr. P.C, The protection Under Section 197 is granted to a person against whom materials for commission of offence are found but the alleged offence was committed by him 'while acting or purporting to act in the discharge of his official duty'. The three conditions precedent for invoking Section 197 Cr. P.C. are the following:

(A) The public servant must be one who is removable from his office either by the Union Government or by the State Government and not by a lesser authority;

(B) The public servant must be accused of an offence;

(C) The offence must have been committed by him while acting or purporting to act in the discharge of his official duty.

Learned Magistrate reached the conclusion that the first two elements were present in the instant case. He proceeded on the assumption that the alleged offence had been committed by the Divisional Railway Manager, N. F. Railway, Lumding while acting or purporting to act in the discharge of his official duty.

4. It appears incoherent and revolting as to why should law extend protection to the offenders or the criminals or alleged criminals. However, if we pause and try to comprehend the design of the section and the legislative object to grant protection we find that it has been done for 'Public interest'. The section is designed to protect public servants of a higher echelon against criminal prosecution for 'acts done or purported to have been done in the discharge of official duty' and to see that no prosecution commences unless the matter is scrutinised by the authorities mentioned in the section to satisfy whether there exist some foundation for the charges brought against the official. To put it in other words, the appropriate authority must satisfy itself that there is a *prima facie* case in which it would be just and expedient that the public servant should stand his trial. The *prima facie* satisfaction of the appropriate authority is the safety valve or safeguard before actual prosecution commences. The object is not to put a wall around the public servants but to enable them (public servants) to perform their public duties fearlessly by protecting them from prosecution for acts done in the performance of their official duty. We refer to the 41st Report of the Law Commission (para 15'123). The Law Commission observed that the protection is necessary for the public interest in seeing that the official acts done do not lead to needless or vexatious prosecution and it should be left to the appropriate government to determine the question of prosecution of a public servant. The history of privilege, protection or immunity conferred upon the three branches of the Government is a long story of uneven development throughout the world. Such protections have

been upheld as constitutional all over the world. It is true that constitutional freedom and individual rights ought not to be allowed to be trampled in the name of 'official excursion to crime'. However, the social interest lies at the basis of all other interests, in the sense that if the legal order be lacking then other interests cannot be realised. The existence of an efficient and effective system of enforcement is essentially necessary to maintain legal order. There is public interest in preserving this order. Parliament thought it important that public servants should be free to perform their duties unencumbered by fear of criminal prosecution in respect of acts done in the course of their duties, proceedings which would consume time and energy which would otherwise be devoted to official public duty. Further, the threat might appreciably inhibit the fearless, vigorous and effective administration of policies by the public servants. It does indeed go without saying that an official, who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive unconnected with public duties, should not escape liability. The apparent justification for the protection is that it is impossible to know whether the case is ill founded until the whole hog of trial is over. The protection is not a badge or emolument of exalted office, but an expression of a policy designed to aid in the effective functioning of the government. The complexities and magnitude of governmental activities have become so great that there must of necessity be such check and balance or protection for acts or omissions of the public servants.

5. In *Hari Ram Singh v. Emperor* AIR 1939 FC 43 (at p. 57) : 40 Cri LJ468 (at p. 482) Varadachriar J, dealing with the provisions of Section 270(1) of the Government of India Act, 1935 observed as follows:

Section 270(1) applies not only to criminal proceedings like Section 197, Cr. P.C. but also to the institution of civil proceeding. In the initiation of criminal proceedings the protection of public interest is the main concern, and it may well be left to the local Government to determine the question of expediency of prosecution from that point of view. But when a citizen seeks civil remedy against a public servant the legislature must be presumed to have been very cautious in depriving the aggrieved citizen of redress in a Court of law and any restriction on such a remedy imposed in the interest of public servant should not be lightly

extended so as unduly to restrict remedy of the citizen.(Emphasis added).

The same view has been expressed by their Lordships in *Matajog v. H.C. Bhari* : [1955]28ITR941(SC) , where the validity of the section was questioned as violative of Article 14 of the Constitution. Their Lordships negated the contention and held, *inter alia*:

Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require such safeguard.... There is no question of any discrimination between one person or another-, in the matter of taking proceeding against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duty.

In *Bhagawan Prasad Srivastava* : 1970 CriLJ1401 it has been held that larger interest of efficiency of state administration demands that public servants should be free to perform their official duty fearlessly and undeterred by apprehension of their possible prosecution at the instance of private parties. The section is designed to facilitate effective and unhampered performance of official duties by providing for scrutiny into the allegations by superior authorities, and prior sanction for prosecution has been made a condition precedent to the cognizance of offences against public servants.

6. Perhaps there is another reason for the protection against hasty prosecution of a public servant. He has a stature or status. If he is allowed to be prosecuted without appropriate scrutiny about the nature and character, veracity and truthfulness of the allegations in respect of the alleged offences committed while acting or purporting to act in the discharge of official duty it will tarnish his honour, status and reputation. Once he takes his stand in dock as an accused, his subsequent discharge or acquittal never wipes out the stigma. Figuring as an accused in dock as a criminal for howsoever a short period will surely affect his style of functioning as well. The efficiency of good administration controlled by the Officer would certainly receive a setback. No good government can withhold prosecution if the facts and circumstances of the case and public interests demand such prosecution. There may be microscopic element of injustice due to wrong assessment of cases, giving benefit to a few officers but, by and large, no good

government can or should refuse prosecution where it is just and expedient to prosecute the public servant. So many public servants are daily prosecuted on sanctions granted by appropriate authorities.

7. In the instant case the allegation of the complainant is that the opposite party in the capacity of Divisional Railway Manager at Lumding, received the papers from the complainant and retained the same in his official capacity. As such, the retention of his papers, even if it amounts to an offence has a reasonable nexus with the official duty of the opposite party. It is a settled law that to obtain protection under Section 197(1) it is sufficient to show that the act, which includes omission, is somehow related to the discharge of the official duties, that is, there is reasonable connection between the act which amounts to offence and the official duty. In *Matajog Dobey* : [1955]28ITR941(SC) their Lordships observed as follows:

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....

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, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

It follows, therefore, that the contour of the official duties is relevant. We find that if the act constituting the offence strictly comes within the four corners of the official

duty the question of offence cannot arise as no official duty ever prescribes commission of an offence. We should, therefore, visualise three concentric circles. The first circle takes the strict official duty, and, the second concentric circle contains those acts which may not fall within the ambit of strict official duties but they have some reasonable nexus with the official duties, though possibly done in excess of the requirements of the situation resulting in commission of offence. However, protection under Section 197 of the Code can be claimed in respect of those acts, provided the acts were done in connection with the official duty. There may be another class of acts of the officials which do not fall within the two concentric circles. They form a separate and independent circle namely, those acts which are in no way reasonably connected with the official duties but independent expedition into crime, using the opportunity of office, having no nexus with the discharge of official function. Say, while performing the act of search and seizure, a Police Officer commits an offence of rape. Is not it an independent excursion to crime which goes beyond the two concentric circles to fall within the third circle? The acts which constitute the offence of rape can by no stretch of imagination be reasonably connected with the official duty of any public servant. There may be a case where a Medical Practitioner picks the pocket of his patient. He cannot be granted protection under Section 197 as the act of pick-pocketing cannot be an act in the discharge of official duty. The true meaning of the expression 'purporting to act in discharge of official duty' has been well settled in *Hori Ram Singh* AIR 1939 FC 43 : 40 Cri U 468; *Gill* AIR 1948 PC 128 : 49 Cri LJ 503; *Phanindra Chandra v. King* AIR 1949 PC 117 (at P. 118) : 50 Cri LJ 395; *Amrik Singh v. State of Pepsu* : 1955 CriLJ865 and, *Matajog Dobey* : [1955]28ITR941(SC) .

8. The Constitutional Bench in *Matajog Dobey* held that the accused were protected under Section 197. In that case the allegations were that in connection with certain pending proceedings before the Income-tax Investigation Commission it was found necessary to search two premises, to inspect, take copies and secure possession of certain books, papers and documents. A warrant was issued for the purpose in favour of the respondent and others. They went to the first premises. Matajog, a darwan of the premises who was the complainant in one of the cases alleged that he found them forcibly breaking open the entrance door of the flat. He

challenged them but to no avail. They broke open the door and interfered with some boxes and drawers. They also tied him with a rope and assaulted him causing injuries. The complaint was under Sections 223/341/342 and 109, I.P.C. The respondents took the objection of want of sanction under Section 197. The objection was overruled. The accused took the matter to the High Court and succeeded. There was another case against the respondents. When the respondents and others went to the other premises on 26-12-1950, Nandaram came and found that the officials had forcibly opened the lock of a room. Nandaram protested, pointed out that their actions were illegal and oppressive whereupon two policemen held him, assaulted mercilessly, kicked, dragged downstairs, put (him) in a police van, took him to thana, assaulted him and thereafter took him to hospital, brought back and detained him in lockup till midnight. Protection was granted by their Lordships holding as follows:

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

Their Lordships approved the following observations of Sulaiman J. in *Hari Ram* AIR 1939 FC 43 (at P. 51) : 40 Cri LJ 468.

The section cannot be confined to only such acts as are done by Public Servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go the length of saying that the act constituting the offence should be so inseparably connected with the official as to form part and parcel of the same transaction.

9. Their Lordships having considered all the decisions concluded that 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 but not a pretended or fanciful claim that he did it in the course of the performance of his duty. Their Lordships observed, in para 24 of the judgment, as follows:

Let us, however, assume that Mr. Issacs is right in his contention. Still it can be urged that the accused could claim that what they did was in the discharge of their official duty.

The belief that they had a right to get rid of the obstruction then and there by binding down the complainants and removing them from the place might be mistaken, but surely, it could not be said that their act was necessarily 'mala fide' and so entirely divorced from or unconnected with the discharge of their duty that it was an independent act maliciously done or perpetrated. They could reasonably claim that what they did was in virtue of their official duty whether the claim is found ultimately to be well founded or not.

On these principles their Lordships held that it was fairly clear that the assault and use of criminal force etc. alleged against the accused were definitely related to the performance of their official duties. There is a plethora of decisions of Supreme Court even after *Matajog* 1956 Cri LJ 140 outlining the contours of Section 197 of the Cr. P.C. However, we refer only to *Somchand Sanghvi v. B.B. Chakravorty* : 1965 CriLJ499 , *Aklesh Prasad v. Union of Mizoram* : 1981 CriLJ407 wherein their Lordships approved the law laid down in *Pancham Lal v. Dadan Singh*, 1979 Cri LJ 1018 (Pat).

10. It is the complainant's case that the opposite party committed alleged acts or omissions in course of performance of his official duty or purporting to act in the discharge of his official duty. Learned Magistrate on perusal of the complaint and other materials reached the conclusion that acts complained of were nothing but acts done by the opposite party in discharge of his duty as a public servant. Learned Magistrate held as follows:

The complainant met the accused to settle what he says land dispute with the Railway. Admittedly, therefore, the accused had the authority to settle the dispute. It would appear that as per allegation the complainant met the accused on 25-4-83 and he lodged the complaint on 21-9-83. That means the accused kept the file with him for about 5 months. The complainant does not allege that he did not want lease of railways land any more. That being the position, it was within the jurisdiction of the accused to settle the issue or dispute either this way or that way.

So, there might have arisen some occasion or reason on his part to retain the file for sometime. The perusal of the seized documents supports this view. Therefore, the retaining of the file though for an excess period was directly concerned with his official duty. It cannot be presumed that the Divisional Railway Manager, as the accused is required to do only one and particular job. He has a lot of works to do which are varied in nature, innumerable in quantity and responsible in extent. Therefore, I am persuaded to hold that the act complained of and the official duty were so inter-related that one could 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. To arrive at the conclusion I have relied on 1960 Supreme Court : 1969 CriLJ1057 (supra). Therefore, regarding the act complained of there appears to be an explanation. That being the position sanction Under Section 197, Cr. P.C was mandatory. That being not done the case must fail for want of sanction.

Having observed the same learned Magistrate dismissed the complaint for want of sanction under Section 197 of the Code.

11. Mr. S.K. Sen, learned Counsel for the petitioner has strenuously urged before us that the acts of the opposite party has no connection with his official duty at all. We cannot persuade ourselves to accept the said contention. Learned Counsel has referred a recent decision of the Supreme Court in Manohar Nath Kaur v. State of J & K : [1983]2SCR791 . In that case the appellant, Regional Officer of the Director of Field Publicity of the Government of India travelled by air from Srinagar to Delhi to and fro on one occasion and from Srinagar to Jammu to and fro on two other occasions by obtaining air tickets in lieu of exchange orders. The cost of the tickets obtained by the appellant was debitable to the account of Directorate and under the rules the appellant was required to exclude the same from the bills for travelling allowance. On the allegations that the appellant submitted bills including the air fare and received payment for the same, a prosecution report was submitted against him for the offence of cheating under Section 420, I.P.C. The appellant took the plea that in absence of sanction under Section 197 the prosecution was not maintainable. The question came up for consideration whether (in) submission of false bill and receipt of payment by a public servant

which amounts to an offence under Section 420, I.P.C., he was protected under Section 197(1) of the Code. The appellant claimed that what he had done was so done while he was acting or purported to act in discharge of his official duties. Their Lordships have held that drawing of false T.A. Bills could not be said to have been directly and reasonably connected with appellant's duty as Regional Officer but the Official status merely furnished the opportunity for doing the acts which constituted the ingredients of the offence. In our opinion the facts of the case are poles apart from the present case. The acts imputed to the appellant are different so much so that the apex court held that they had no reasonable nexus with his official duty.

12. However, in the instant case it appears from the own assertion of the complainant that the file in question was handed over to the opposite party in his official capacity of Divisional Manager and he received the same in the said capacity. The acts of taking the file and retaining it on the own assertion of the complainant were connected with the official duty of the opposite party. We hold that the acts complained of and the official duty were so inter-related that any reasonable person could postulate reasonably that the acts were done by the accused in the performance of the official duty. As such, the principles of *Manohar Nath Kaul* 1983 Cri LJ 988 (supra) are not applicable in the instant case.

13. We are of the firm opinion that in the instant case no offence was committed by the accused as revealed from the unchallenged findings of the trial court that not a scrap of paper was removed from 'the file'. Assuming that there was some wrong or dereliction of duty or an offence committed by the opposite party, he was fully protected under Section 197(1) of the Code because the acts complained against were done by him acting or purporting to act in the discharge of his official duty.

14. For the foregoing reasons we reject in limine the prayer for leave to appeal against the order of acquittal.