

U. Ram Lato Vs. the State

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Court : Guwahati

Decided On : Dec-06-1954

Judge : Ram Labhaya and Deka, JJ.

Appellant : U. Ram Lato

Respondent : The State

Judgement :

Ram Labhaya, J.

1. U Ram Lato (petitioner) has invoked the jurisdiction of this Court under Sections 439 and 561A of the Code of Criminal Procedure for obtaining an order quashing a complaint filed against him by U Pati Najjar (opposite party) in the Court of the Sub-divisional Officer, Jowai.

2. The case of the complainant against the petitioner who is a dolo of Jowai is that in his capacity as Dolo he collected fees, fines and decretal money in connection with cases pending in his Court. A part of this money was divisible between the Dolo and the Durbaries. The money due to the complainant was not paid when it fell due and it was misappropriated.

3. The first question that has been argued by the learned Counsel for the petitioner is that the complaint could not be taken cognizance of without previous sanction from competent authority. He argues that the spirit of the Criminal Procedure Code

was applicable under the rules relating to the administration of criminal justice in the K. and J. Hills. Section 197 requires the sanction of the State Government in the case of public servants who are removable from their office by the State Government.

In the case of Judges sanction was necessary before they could be prosecuted whether they are removable by the State Government or authorities subordinate to it. The principle of the section if followed, would require sanction from some corresponding authority as the petitioner was a Judge by virtue of his position as a Dolo. As no sanction was obtained for his prosecution the learned Sub-divisional Officer had no jurisdiction to take cognizance of the complaint,

4. There are obvious difficulties in the application of Section 197 or even its principles to the facts of this case. It is conceded that the Dolo is not removable from his office by the State Government. The District Council is the authority which can remove the Dolo from his office. Section 197 in terms applies to public servants or Judges over whom the Central Government or the State Governments have control. It cannot be applied to areas where District Councils with a certain amount of autonomy are functioning as the governing bodies.

If the section were applicable even then, it could not be argued that sanction from the District Council was necessary. The section itself merely provides for sanction in cases where the Central Government or the State Government are appropriate authorities for granting sanction. Clause 43 of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 provides that in criminal cases the procedure of the Subordinate District Council Court etc. would be in the spirit of the Code of Criminal Procedure so far as it is applicable to the circumstances of the district and not inconsistent with the rules.

Now it is obvious that it is not possible to apply Section 197 in the circumstances obtaining in the Hill District with which we are concerned in this case. The letter of law cannot be invoked admittedly. The spirit of Section 197 cannot be given effect to. There are practical difficulties. There is no authority in the Hills which can exercise the power, which the State Government or the Central Government may in certain cases exercise in respect of public servants in the matter of granting

sanctions,

It is not necessary however to dismiss the petition on this ground, for, assuming that Section 197 is not only applicable but can be applied to the facts of the case without any difficulty, it appears to me that on facts no sanction from any authority was needed for the prosecution of the petitioner. The case against petitioner is that he received monies as a public servant or even as a Judge. There is no doubt that so far as the collection is concerned it was by him in his capacity as a public servant, but the alleged subsequent misappropriation by him was not in that capacity.

When misappropriating the amount if at all he did, he did not purport to act as a public servant or a Judge. The law on the point was authoritatively stated in *Hori Ram Singh v. Emperor* AIR 1939 FC 43(A), This decision was approved by their Lordships of the Privy Council in *H.B. Gill v. The King* AIR 1948 PC 128(B) and *Phanindra Chandra v. The King* AIR 1949 PC 117(C). Both these decisions were referred to and approved by the Supreme Court in *Ronald v. State of West Bengal* AIR 1954 SC 455(D). The proposition has been very clearly stated in the 2 Privy Council cases. In AIR 1949 PC 117(C) the test for determining whether sanction is needed in a particular case or not was stated as follows:

A public servant can only be said to act or purport to act in the discharge of his official duty, if the act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act; nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. 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.

This test has been repeatedly approved in subsequent cases. It was first laid down in the Federal Court case referred to above. Applying this simple test to the facts of this case it is obvious that the alleged misappropriation would not be regarded as either an official act or an act which the petitioner purported to do or commit as a public servant or as a Judge. He therefore cannot claim any protection under the

provisions of Section 197 or the principle that underlies that section.

5-10. The learned Counsel has also argued that the dispute between the parties is of a civil nature and the complaint does not disclose any offence. We have carefully gone through the allegations in the complaint and we are not persuaded to hold that if all the allegations made in the complaint are substantiated, no offence would be constituted. Enquiry into the offence may disclose facts, which may go to indicate that the dispute is of a civil nature or that no offence has been committed, but it is not possible at this stage to say that the complaint, as it stands, does not disclose any offence.

The case of the complainant is that the money was received. A part of it had to be disbursed to the Durbaries; the opposite party was one of them. It was withheld and later on some months after the money became available for distribution, it was deposited as a result of the orders from the Sub-divisional Officer. The complainant (opposite party) is entitled to an enquiry into his allegation and we see no reason to quash the complaint at this stage,

11. Mr. Lahiri also argued that the Sub-divisional Officer had no jurisdiction to try the case in view of the fact that the District Council Court had been constituted. Without giving any decision on the objection it is directed in order to avoid possible complications that the case shall be sent to the District Council Court for transferring it to a competent authority for trial and disposal according to law. This petition is dismissed and the Rule discharged.

Deka, J.

12. I agree.

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