

Shailendra Kumar Sengupta Vs. State of Maharashtra and anr.

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Court : Mumbai

Decided On : Aug-26-2005

Reported in : 2006(2)MhLj29

Judge : K.J. Rohee, J.

Acts : Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(1) and 3(2); Code of Criminal Procedure (CrPC) , 1974 - Sections 197, 197(1) and 482; [Constitution of India](#) - Article 227; Indian Penal Code (IPC) - Sections 34 and 500; Discipline and Appeal Rules

Appeal No. : Cri. Appln. Nos. 663, 2221 and 2524 of 2003

Appellant : Shailendra Kumar Sengupta

Respondent : State of Maharashtra and anr.

Advocate for Def. : S.S. Doifode, APP for Respondent No. 1 and ;S.T. Dhurvey, Adv. for Respondent No. 2

Advocate for Pet/Ap. : Shyam Dewani, Adv.

Disposition : Application allowed

Judgement :

K.J. Rohee, J.

1. By these applications under Section 482 of the Code of Criminal Procedure read with Article 227 of the [Constitution of India](#) issuance of summons by the Judicial Magistrate, First Class, 5th Court, Nagpur for the offence punishable under Section 3(1)(x), 3(2)(vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Act') upon Criminal Complaint Case No. 152/2000 instituted by respondent No. 2 (hereinafter referred to as the 'Complainant') has been challenged.

2. The complainant is a Sikh belonging to Mehtar caste which is a Scheduled Caste. At the relevant time he was serving as Diesel Mechanic Grade-I in South Eastern Railway, Motibagh Diesel Shed, Nagpur. Heeralal Pande, the petitioner in Criminal Application No. 2221/2003 (hereinafter referred to as accused No. 1) was serving as Sectional Engineer (Electrical). Srinivasa Kalyanaraman, the petitioner in Criminal Application No. 2524/2003 (hereinafter referred to as accused No. 2) was serving as Assistant Mechanical Engineer. Shailendrakumar Sengupta, the petitioner in Criminal Application No. 663/2003 (hereinafter referred to as accused No. 3) was serving as Senior Sectional Engineer in the same office. They were the superiors of the complainant.

3. According to the complainant, accused No. 1 knowing the caste of the complainant, used to harass the complainant on one or the other excuse and used to abuse him on caste. Despite protest by the complainant accused No. 1 did not stop humiliation to the complainant.

4. On 1-2-1999 accused No. 1 pointing to the complainant uttered following words in presence of the staff:--

You are Mehtar by caste, I shall never listen to your complaint, You will never improve, Mehtar - Mehtar - Mehtar

5. The complainant immediately reported the incident to one M. M. Majhi, who advised him to make complaint to accused No. 2. Accordingly on 2-2-1999 the complainant made complaint to accused No. 2 who patiently heard the complainant and assured that suitable action against accused No. 1 would be taken. On 6-2-1999 the complainant lodged written complaint to accused No. 2

whereupon accused No. 2 warned him by communication dated 11-2-1999.

6. In violation of the Discipline and Appeal Rules, accused No. 3 issued charge-sheet dated 24-2-1999 against the complainant. Despite cogent explanation dated 8-3-1999 submitted by the complainant, accused No. 3 inflicted punishment on the complainant on 9-3-1999. On 5-5-1999 the complainant served notice to the accused persons calling upon them to tender unqualified apology. However they did not respond. Hence in July, 2000 the complainant filed complaint against accused Nos. 1 to 3 for the offences punishable under Section 3(1)(x) and 3(2)(vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with section 500 read with 34 of the Indian Penal Code. On the basis of the said complaint, the learned Magistrate issued summons to accused Nos. 1 to 3 to appear before him. The said action has been challenged by the accused persons by preferring three separate applications.

7. I have heard Shri Shyam Dewani, Advocate for the petitioners/accused Nos. 1 to 3, Shri S. S. Doifode, APP for respondent No. 1/State and Shri S. T. Dhurve, Advocate for respondent No. 2/complainant.

8. While assailing the issuance of summons by the learned Magistrate against accused Nos. 1 to 3, Shri Dewani, the learned Counsel for accused Nos. 1 to 3, submitted that the complainant instituted the complaint only as a counter blast to the disciplinary proceedings in which he was punished. Thus the complaint is mala fide and is liable to be dismissed.

9. Shri Dewani further submitted that the learned Magistrate has no jurisdiction to take cognizance of the offence punishable under Section 3(1)(x), 3(2)(vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and it is only the Special Court constituted under the said Act which can take cognizance of the offences under the said Act, In support of his submission Shri Dewani relied on the following cases :

i) M. A. Kuttappan v. E. Krishnan Nayanar and Anr. : 2004 CriLJ1770 ii) Vidyadharan v. State of Kerala : 2004 CriLJ605 iii) Arun s/o Balwantrao Mahurkar v. State of Maharashtra and Ors. : 2003(1)MhLj927 iv) Nona Narayan Shinde and

In all the above cases Gangula Ashok and Anr. v. State of Andhra Pradesh : 2000 CriLJ819 has been referred to.

10. The ratio of Gangula Ashok's case is that the Special Court constituted under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 can take cognizance of the offence under the said Act only after the case is committed by the Magistrate in accordance with the provisions of the Code of Criminal Procedure, A charge-sheet or private complaint cannot be filed before the Special Court directly.

11. In the instant case after receiving the complaint the Magistrate issued summons to the accused persons to appear before him. After appearance of the accused before him the Magistrate may commit the complaint case to the Special Court for trial. Unless the case is committed by the Magistrate, the Special Court cannot take cognizance of the offence punishable under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thus there is no illegality in the action of the learned Magistrate in issuing summons to the accused persons. Hence the ground put-forth by the accused persons for quashing the proceedings on this count is devoid of any force.

12. Shri Dewani, the learned Counsel for accused Nos. 1 to 3, further submitted that the learned Magistrate could not have taken cognizance of the offences in the absence of previous sanction of the Central Government. Shri Dewani submitted that accused Nos. 1 to 3 were at the time of the commission of the alleged offence employed in connection with the affairs of the Union. Shri Dewani submitted that, according to the complainant, accused No. 1 abused him on caste when the complainant was working as subordinate of accused No. 1. Shri Dewani submitted that the alleged act of accused No, 1 can be said to have been committed by him while acting or purporting to act in the discharge of his official duty and as such previous sanction under Section 197 of the Code of Criminal Procedure is necessary. In respect of accused Nos. 2 and 3 the allegations are that they protected accused No. 1 by not taking action against him. Shri Dewani submitted that this was also done by accused Nos. 2 and 3 while acting or purporting to act

in the discharge of their official duties. As such previous sanction of the Central Government under Section 197 of the Code of Criminal Procedure is necessary. In the absence of such sanction the proceedings initiated by the learned Magistrate are vitiated and they need to be quashed.

13. In *State of Maharashtra v. Dr. Budhikota Subbarao* : [1993]2SCR311 , it has been held as under :--

So far public servants are concerned the cognizance of any offence, by any Court, is barred by section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means taking notice of. A Court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no Court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the Court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint cannot be taken notice of.

14. In *Shambhoo Nath Misra v. State of U.P. and Ors.* : 1997 CriLJ2491 , it is held as under :--

The essential requirement postulated for sanction to prosecute the public servant is that the offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. In such a situation, it postulates that the public servant's act is in furtherance of his performance or his official duties. If the act/omission is integral to performance of public duty, the public servant is entitled to the protection under Section 197(1) of Criminal Procedure Code. Without previous sanction, the complaint/charge against him for the alleged offence cannot be proceeded with the trial. The sanction of the appropriate Government or competent authority would be necessary to protect a

public servant from needless harassment or prosecution. The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat or prosecution demoralises the honest officer. The requirement of sanction by competent authority of appropriate Government is an assurance and protection to the honest officer who does official duty to further public interest.

15. In *State through the CBI v. B.L. Verma and Anr.* : (1997)10SCC772 , it has been held that:

where the actions alleged against a public servant and constituting the offences had been done in purported discharge of his duties, even though amounting to abuse of power, the trial Court could not, in absence of sanction under Section 197, take cognizance of the said offences.

16. In *Abdul Wahab Ansari v. State of Bihar and Anr.* : 2000 CriLJ4631 , it has been held that:

Plea that sanction was required to be obtained under Section 197(1) before taking cognizance of offence can be raised at any stage of the proceedings.

17. It may be seen that in the present case the acts complained by the complainant against the accused persons have a reasonable nexus with the official duties of the accused persons. Hence, they are entitled to protection from criminal proceedings in the absence of sanction under Section 197 of the Code of Criminal Procedure. Since no sanction has been obtained by the complainant the complaint is vitiated and it needs to be quashed. Hence the order :

i) The applications are allowed.

ii) Criminal Complaint Case No. 152/2000 pending before the Judicial Magistrate, First Class, 5th Court, Nagpur is hereby quashed.