

Jayamahadevaswamy Vs. Krishna

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Court : Karnataka

Decided On : Jul-05-1985

Reported in : ILR1985KAR2586

Judge : Venkatesh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 197 and 500

Appeal No. : Crl. R.P. No. 399 of 1982

Appellant : Jayamahadevaswamy

Respondent : Krishna

Advocate for Def. : K. Subba Rao, Adv.

Advocate for Pet/Ap. : S. Chennaraya Reddy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Venkatesh, J.

1. This Petition is directed against the order dated 23-10-1981 of the Chief Judicial Magistrate, Bangalore in C. C. No. 1266/81 on his file issuing process against the petitioner for an offence under Section 500 of the I.P.C.

2. Respondent's complaint against the petitioner is in relation to an incident said to have taken place on 9-7-1981.

3. The admitted facts are :

4. In those days the petitioner was the Revenue-Tahsildar and Executive Magistrate of Bangalore North-Taluk. The complainant is a resident of village Mathkur, also of Bangalore North Taluk. There was a dispute in the village re. an alleged encroachment and obstruction of a public road in Sy. Nos. 77 and 78. In connection with that dispute one Shamanna and Basappa and others were on the one side and the complainant and some of the villagers were on the other side. There were complaints and counter complaints in the matter. There had thus arisen a revenue dispute. In that connection accompanied by his subordinates the Revenue Inspector and the Village Accountant the petitioner had proceeded to the village at about 4 p.m. in order to make a spot inspection. Number of villagers, including the complainant, were present then. The petitioner, it is said, had questioned this complainant also concerning some aspect of the dispute. It is also said that in the course of that enquiry, the petitioner had denied the complainant's claim that he was the owner of Sy. No. 78.

Now, touching this complaint what the complainant further states in his complaint filed in the Court below is that the petitioners had gone on disputing the statements made by the complainant in that enquiry and had also questioned the complainant about the age of a particular tree situated in the disputed land. The complainant, it is said, had expressed his inability to give the age stating that he was standing far away from the tree at that time. The accused being enraged is said to have abused the complainant in the presence of all those who had congregated therein stating that he, the complainant, may not be mentally alright and is further said to have exclaimed that he may have been responsible for the misfortunes of many families adding that if men like him (the complainant) remain in any place those places would be destroyed. It is to the aforesaid alleged utterance exception is taken by the complainant, and according to him, those utterances had been made maliciously by the petitioner and were per se defamatory and therefore he was liable to be proceeded against for an offence

under Section 500 I.P.C.

Challenging the order issuing process, the Counsel for the petitioner contends that in the circumstances of the case, the Court below could not have taken cognizance of the offence as there was no previous sanction under Section 197 of the Cr. P.C.

Now, that Section, amongst other things provides that 'when any person who is or was.....a public servant not removable from his office save by or with the sanction of the Government 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, no Court shall take cognizance of such offence except with the previous sanction' 'of the concerned State Government.

5. I have narrated the facts above. The case of the accused is that assuming, but not admitting that he had uttered those words, he had done so when he was on the spot making a local inspection in connection with a dispute to which the complainant himself was a party and thus discharging his duties and therefore the act complained of can only be construed as having been done by him either 'while acting or purporting to act in the discharge of his official duty.'

6. What was argued by the Learned Counsel for the respondent-complainant is that the act alleged cannot be taken as the one committed by the petitioner while discharging his official duty for the reason that there was no nexus between the performance of his duty and his utterances referred to above. He has cited a number of decisions of the Courts including those of the Supreme Court.

7. To appreciate these rival submissions, the averments made in the complaint to which reference has been made above will have to be carefully examined. What was it that this Tahsildar was doing on the spot? Evidently, in connection with his official duty, it being a spot inspection of a disputed land, he was there. Admittedly the complainant was one of those interested in the dispute, in the sense that he was a member of one of the groups. The Tahsildar could not have understood the nature of the problem or the rights or wrongs complained about by those rival groups, without questioning the interested parties. As the averments made in the

complaint show when he had uttered those words addressing the complainant he had done so in the process of actually questioning the complainant in connection with this very dispute. In the course of that questioning the petitioner is said to have lost his temper and talked in the above fashion.

8. Performance of one's official duty necessarily involve a certain movement by the person concerned and that involves the doing of certain things physically or mentally or saying something by word of mouth or putting something in the form of a writing. Sometimes in the process, depending upon the circumstances, the official may have to act forcefully and question vigorously or say something harshly. Can these things be taken out of context and said that they had nothing to do with his official duty If such a narrow construction is placed on Section 197 of the Code and cases like the one with which we are concerned are taken out of its purview, it would be impossible for any public functionary to discharge his public duties. The object of Section 197 is to protect the public functionaries named therein against irresponsible, frivolous and vexatious proceeding for acts done in discharge or purported discharge of official duty. As observed in *Matajob Dobey - v. - H.C. Bhari*, : [1955]28ITR941(SC) by the Supreme Court 'what the Court must find out is whether the act and the official duty are so interrelated 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. That is precisely the case here. The Tahsildar had gone there in his official capacity to resolve a local dispute. He wanted to know the correct facts. He was probing into it. This involves, as already stated, the questioning of the parties. While thus questioning the complainant he had behaves a little harshly towards him and had used those words. Assuming that it is so, as observed by the Supreme Court in *Matajog Dobey's* case, possibly it was in excess of the needs and requirements of the situation, but still falls within the scope of Section 197 of the Code. I need not refer to the decisions cited by the Learned Counsel for the petitioner for the reason that all those decisions proceeded in the light of the facts dealt with therein. Since admittedly no prior sanction has been obtained by the complainant to prosecute the petitioner, the Court below could not have taken cognizance of the offence at all. Its proceedings are vitiated.

9. Therefore, this Petition is allowed. The entire proceeding pending in the Court below, including the order issuing process stand hereby quashed.

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