

Sita Ram Vs. State

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Court : Allahabad

Decided On : Mar-23-1967

Reported in : AIR1968All207; 1968CriLJ721

Judge : S.D. Khare and ;Yashoda Nandan, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 197 and 197(1); [Constitution of India](#) - Article 309; Lekhpals Service Rules, 1958 - Rules 16 and 28(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 218

Appeal No. : Criminal Revn. Nos. 1623 of 1964 and 36 of 1965

Appellant : Sita Ram

Respondent : State

Advocate for Def. : R.R. Shukla, Adv.

Advocate for Pet/Ap. : T. Rathore, Adv.

Disposition : Revision allowed

Judgement :

S.D. Khare, J.

1. In both these criminal revisions, which have come before us for disposal on a reference made by a learned single Judge, it has to be considered whether the bar

of Section 197 Cr. P. C will apply in the case of a Lekhpal in Uttar Pradesh and he cannot be prosecuted for having committed an offence under Section 218 I.P.C. without first obtaining the sanction of the Governor. Such sanction would be necessary if he is a public servant not removable from his office save by or with the sanction of the State Government and the offence alleged to have been committed by him had been committed by him while acting or purporting to act in the discharge of his official duty. The learned single Judge-allowed this plea to be raised for the first time at the stage of revision because it affects the question of jurisdiction.

2. In both these cases the previous sanction of the Governor had not been obtained before launching the prosecution.

3. The prosecution story in Criminal Revision No. 1623 of 1964, briefly stated, was that the complainant Rampat was the tenant of plot No. 769, measuring 35 decimals, situate in village Kharawan, district Varan-asi. He had become its bhumidhar in the year 1949, and had continued to remain in the possession in the years 1367 and 1368 Fasli and even thereafter. The accused, who was a Lekhpal, colluded with Sheoioog (since dead) a brother of Rampat, and, in order to cause wrongful loss or injury to the complainant and wrongful gain to Sheojog and his son Chandrabhushan, made an entry in the Khasra that Sheojog was in actual possession of that plot during the years 1367 and 1368 Fasli. The charge against the applicant in Criminal Revision No. 36 of 1965 was that sometime between 17-2-1963 and 15-6-1963 he had wrongfully framed the Khasra for the year 1370 Fasli of village Sanehua, within police circle Qasimabad, district Ghazipur, by adding the words 'sir Kharif' after the entry of possession existing in favour of complainants Bechan Rai and Jeot Rai against plots nos. 2378, 2380 and 2381 of that village and that he did so with intent to cause wrongful loss to them and wrongful gain to Theguni Nonia of that village.

4. In both the cases the courts below have held that the complainants were in possession of the plots in question and the Lekhpal had knowingly made incorrect entries in order to cause wrongful loss to them and wrongful gain to other party.

5. It is the duty of the Lekhpal, who is admittedly a public servant, to make partial and, on the basis of the Partial to make entries in the Khasra regarding the names of persons actually found to be in possession of the various plots. The Lekhpal therefore, could -- and in fact did --- in reply to the charge plead fiat the entries made by him in the revenue records were genuine and in regular discharge of his public duties. It is, however, contended that the duty of the Lekhpal was to make correct entries in the revenue records and not to make incorrect entries in them knowingly so as to cause wrongful gain to one party and wrongful loss to the other.

6. The law on the point is very clear. No question of sanction arises under Section 197 Cr P. C. unless the act complained of is an offence The point that has to be determined in each case is whether the offence was committed in the discharge of official duty. Thus there must be a reasonable connection between the act and the official duty. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then the sanction under Section 197(1) Cr. P. C. would be necessary. However, if there was no necessary connection between them and the performance of those duties and the official status furnished only the occasion or opportunity for the acts, no sanction would be required.

7. It was held in the case of H.H.B. Gill v. The King, that-

'A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to He 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. A public servant charged with an offence under Section 120B read with Section 161, Penal Code cannot justify his act of receiving bribe as an act done by him by virtue of the office that he held. No sanction under Section 197 is therefore necessary for the institution of proceedings against a public servant for an offence under Section 120B read with

Section 161, Penal Code.'

8. The view taken in (supra) was followed by the Privy Council in *Albert West Meads v the King* and reaffirmed in *Phanindra Chandra v. The King* and adopted by the Supreme Court in *R.W. Mathams v State of West Bengal*, AIR 1954 SC 455.

9. It was observed in the case of *Satwant Singh v State of Puniab.* : [1960]2SCR89 that -

'Where a public servant commits the offence of cheating or abets another so to cheat the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty as such offence has no necessary connection between it and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offence.'

10. However, it is not the intention of law that sanction under Section 197 Cr. P.C. may not be necessary at all in any case whatsoever on the hypothesis that the commission of an offence can never form part of one's official duties. The case of *Shreekantiah Ramayya Munipalli v. State of Bombay* : 1955 CriLJ857 is an authority for the proposition that -

'. . . . if Section 197 Cr. P. C is construed too narrowly it could never be applied because it was no part of the duty of a public servant to commit an offence, and never could be. The section . . . and its language must be given meaning '

11. In the cases of *Amrik Singh v. State of Pepsu*, : 1955 CriLJ865 and *Matajog Dobey v. H. C. Bhari*, : [1955]28ITR941(SC) it was held that if the acts complained of are so integrally connected with the duties attaching the office as to be inseparable from them, then sanction under Section 197 would be necessary. It was, however, again emphasised that no question of sanction will arise where the official status furnishes only the occasion or opportunity for the criminal acts complained of.

12. In this connection reference might be made to the case of Hari Ram Singh v. Emperor, . One of the points to be considered by the Federal Court in that case was whether an offence under Section 477A I.P.C. (falsification of accounts) would be an act done by the accused in his official capacity even though it was done fraudulently and in violation of the duty to maintain correct accounts. It was held that in respect of a charge under Section 477A I.P.C. the official capacity involved is in the very act complained of as amounting to a crime became the gravamen of the charge is that the accused acted fraudulently in the discharge of his official duty and, therefore, the consent of the Governor would be necessary for starting proceedings against the accused under Section 477A I.P.C. There appears to be no reason why for purposes of obtaining previous sanction of the Governor under Section 197 Cr. P. C. an offence under Section 218 I.P.C. should be treated on a different footing than an offence under Section 477A I.P.C. Both the offences involve dereliction of duty by a public servant in the discharge of his official functions.

13. In both the revisions now before us the accused was undoubtedly a public servant. The offence with which he was charged related to the preparation of revenue records, to wit Khasras. It was part of his duty as a public servant to make partial and to prepare Khasras. It is therefore, plain that the act of the preparation of the Khasra was an act done by the Lekhpal in his official capacity and in the discharge of the public duties as a public servant This mistake in the preparation of the Khasra could either be due to negligence or be intentional. In either case it would have been open to the accused to plead that he had made the impugned entries in the Khasra in the discharge of his duties as a public servant. Therefore, applying the tests which have been laid down in the cases of (supra), : 1955 CriLJ865 (supra) and : [1955]28ITR941(SC) (supra) the sanction under Section 197(1) Cr. P. C. would be necessary provided the Lekhpal was a public servant removable only by the State Government.

14. The next point to be considered is whether a Lekhpal in Uttar Pradesh is a public servant, who is not removable from his office save by or with the sanction of the State Government or some higher authority. Lekhpals in Uttar Pradesh are appointed under the Lekhpals Service Rules, 1958, published in the U. P. Gazette

dated May 17, 1958. It is provided in Rule 2 that the Lekhapals' service is a non-gazetted subordinate service. Rule 7 provides that whenever the halqa of a Lekhpal falls vacant the Assistant Collector shall appoint thereto the senior most candidate on the list maintained under paragraph 6 (1), provided further that the order passed by the Assistant Collector shall be appealable before the Collector whose orders shall be final. Rule 16 lays down that all persons on appointment as Lekhpals shall be placed on probation for a period of two years, and the Assistant Collector may at his discretion extend the period of probation in individual cases for a period not exceeding one year. Clauses (d) and (e) of Rule 16 read as follows:--'(d) where it transpires at any time during or at the end of the period of probation or extended period of probation that a Lekhpal has not made sufficient use of his opportunities or has otherwise failed to acquit himself satisfactorily his service shall be terminated after observing the formalities prescribed in Rule 5(3) of the Civil Services (Classification, Control and Appeal) Rules without entitling him to any compensation, (e) A probationer shall be confirmed in his appointment by the Assistant Collector at the end of the period of probation or the extended period of probation if his work and conduct are found satisfactory. The period of probation shall continue till the order of confirmation is passed or the probation is terminated.'

15. It has not been specifically mentioned in Clause (d) of Rule 16 that the Assistant Collector shall have the powers to remove a Lekhpal under that clause. However, the Rule read as a whole makes it clear that the intention must have been that the powers under Clause (d) of Rule 16 must also be exercised by the Assistant Collector, who is authorised to confirm a Lekhpal in his appointment under Clause (e) of Rule 16.

16. In this connection two other rules of the Lekhpals Service Rules, 1958, might be considered. Sub-rule (2) of Rule 28 runs thus:

'When it is proposed to dismiss or remove a Lekhpal as a measure of punishment he shall first be suspended, and shall make over his papers and records to the Supervisor Kanungo or to such other person as the Supervisor Kanungo may indicate within one week from the receipt of the order. In either case the

Supervisor Kanungo shall be responsible for seeing that the Lekhpal has made over all his records and papers.' Rule 29 provides: 'A Lekhpal will be punished by the Collector or the Assistant Collector for misconduct or neglect of duty by fine not exceeding three months' pay.'

17. Rule 28(2) does not specifically mention that the Assistant Collector shall be empowered to dismiss or remove a Lekhpal. However, if the rules are read as a whole, there can be no doubt that the intention was that the said powers should be exercised by the Assistant Collector and no one else, it is significant to note that the rules nowhere lay down that in cases where it is proposed to dismiss or remove a Lekhpal the proceedings need be submitted by the Assistant Collector to any higher authority for passing final orders.

18. Prior to the reorganisation of the services of Lekhpals, the Patwaris, who used to do the same work as the Lekhpals, were governed by the rules framed under Section 234 (b) of the Land Revenue Act, 1901, and contained in the Land Records Manual. It was provided in those rules (vide Rule I) that the punishing authority shall be the Collector, and the Assistant Collectors in charge of sub-divisions were also authorised to exercise the powers of the Collector. It was specifically mentioned in Rule 13 that a Patwari may be removed or dismissed by the Collector or the Assistant Collector in charge of the sub-division on any of the grounds mentioned therein. Rule 14 provided that a patwari could also be punished by the Collector or Assistant Collector in charge of a sub-division for misconduct or neglect of duty by fine not exceeding three months' pay, by reduction from a higher grade to a lower grade or by loss of seniority within his grade.

19. The Lekhpals Service Rules, 1958, virtually followed the same pattern which existed in the rules framed earlier under Section 234 (b) of the Land Revenue Act, 1901. with this exception only that

(a) the Assistant Collectors were primarily made appointing authorities, and

(b) it was not mentioned in the rules framed under Article 309 of the [Constitution of India](#) that the Assistant Collectors shall be the authority to dismiss or remove the

Lekhpals.

20. It has, therefore, to be considered whether under the Lekhpal Service Rules, 1958 the State Government conferred only the power of appointment on the Assistant Collectors, reserving for itself the power to dismiss the Lekhpals by its own orders, or whether the power to appoint given to the Assistant Collectors by implication also conferred on them the power to remove or dismiss the Lekhpals.

21. It has been contended by the learned counsel for the applicant that the State Government must be deemed to have reserved for itself the powers to remove or dismiss the Lekhpals because it did not specifically confer that power on the Assistant Collectors. In our opinion there is no force in this contention.

22. Article 311(1) of the [Constitution of India](#) dealing with the dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State provides as follows:

'No person, who is a member of the civil service of the Union or an All-India Service or a civil servant of a State or holds a civil post under the Union or a State, shall be dismissed or removed by an authority subordinate to that by which he was appointed.'

There existed a similar provision (vide Section 240) in the Government of India Act, 1935, also. The constitutional guarantee, therefore, extends only to this extent that the authority dismissing or removing any person holding a civil post under a State shall not be an authority subordinate to that by which he was appointed.

23. Section 16 of the General Clauses Act provided that where a power of appointment is, conferred by any Act or Regulation, then unless a different intention appears the authority having the power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power. However, the provisions of Section 16 of the General Clauses Act will not apply to the interpretation of the rules framed under Article 309 of the Constitution for the simple reason that the provisions of the General Clauses Act as such apply only to the interpretation of an Act passed by the Legislature or a

Regulation.

24. It has, however, to be seen whether the principle underlying Section 16 of the Central Clauses Act can be applied to the interpretation of the Lekhpals Service Rules, 1958, framed under Article 309 of the Constitution. It can so apply if the provisions contained in Section 16 of the General Clauses Act embody a Rule of general interpretation (vide *National Sewins Thread Co. Ltd. v. James Chadwick and Bros Ltd.* : [1953]4SCR1028 and *Harish Chandra v State of Madhya Pradesh.* : [1965]1SCR323 .

25. In our opinion Section 16 of the General Clauses Act embodies a Rule of general interpretation and unless the context otherwise requires, it must be held that the authority competent to appoint had also by implication been authorised to dismiss or remove the Lekhpal who was a person in civil employment of the State. A perusal of the Lekhpals Service Rules, 1958, clearly indicates that the intention must have been to confer the power of dismissal also on the Assistant Collector, who was specifically authorised to appoint a Lekhpal.

26. In the Full Bench case of *Emperor v. Maung Bo Maung*, AIR 1935 Rang 263 (FB) where the power to appoint assistant accountants in treasury had been transferred by the State Government to Deputy Commissioners by means of a circular letter containing rules, it was held that (1) The Deputy Commissioner was not acting on behalf of the State Government while making the appointment and he himself was the authority constituted to do so, and (2) although the rules did not confer on the Deputy Commissioner the power to dismiss treasury assistant accountants also, that power also stood transferred to him by implication.

27. We are in respectful agreement with the view expressed in the Rangoon case.

28. Under Section 197 Cr. P. C. the sanction of the Governor is necessary where

(1) the accused is a public servant who is not removable from his office save by or with the sanction of the State Government or some higher authority, and

(2) he 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.

In the present case the second condition is satisfied, but the first condition is not satisfied, and, therefore, no sanction of the Governor was necessary before launching the prosecution against the applicant.

29. Now that the two criminal revisions have also been referred to us for disposal, we proceed to consider each of them separately on merits.

(Cr. R. No. 1623 of 1964.)

30. It has been held by the courts below that plot No. 769 of village Kharawan in district Varanasi, had continued to remain in possession of Rampat (complainant) during the years 1367 and 1368 Fasli, that Rampat had become its bhumidhar in the year 1949 and that his brother Sheojog had nothing to do with the said plot and was not in possession of it during the years 1367 and 1368 Fasli, but the Lekhpal had wrongly shown Sheojog to be in possession thereof during those years. It was also held that the aforesaid wrong entries facilitated Chandrabhushan, son of Sheojog, to file copies of those documents in a criminal case in support of the prosecution case.

31. The defence of the present applicant was that it was during the course of Partial that he had come to know that Sheojog was in possession over the disputed plot during the years 1367 and 1368 Fasli, and for that reason he had made those entries in the Khasra in the due discharge of his duties.

32. Chandrabhushan was also prosecuted but. was acquitted as the prosecution could not establish its case against him beyond reasonable doubt. The applicant who was the Lekhpal was however, convicted and sentenced because the evidence led in the case revealed that Rampat and not Sheojog, was in possession of the disputed plot during the relevant years. It was also held that the Lekhpal had neither prepared a list in Form P A 10 nor sent its copy to the village Sabhapati nor did he issue ill, extracts to the complainant. It was, further held that he had failed to comply with the provisions of Paras A80 and A81 of the Land Records Manual,

33. It was on the basis of the above findings that it was held by the court that the charge under Section 218 I. P. C. was made out against the applicant. There was no direct evidence in support of the prosecution case to prove that the applicant acted dishonestly.

34. The main question to be considered by the courts below was whether the applicant had acted dishonestly. There is nothing on the record to show that the applicant, who was the Lekhpal, did not make any Partal. In case it had been represented to the Lekhpal (applicant) at the time of the Partal that Sheoiog, and not his brother, was in actual physical possession of the disputed plot during the years 1367 and 1368 Fasli and he had made the entries in the Khasra on the basis of, that Partal it could not be inferred from his act in making those entries that he had acted dishonestly in order to cause wrongful gain to one party and wrongful loss to the other. The Lekhpal was not required to make a very detailed enquiry on the point of possession. There was already dispute between the two brothers regarding the possession of the said plot and so it could have been represented to him at the time of the Partal that during the years in question Sheoiog, and not Ram-pat, had been in possession of the disputed plot. A very heavy burden, therefore, lay on the prosecution to establish that the Lekhpal had acted dishonestly when he made the impugned entries in the Khasra for 1367 and 1368 Fasli. In our opinion the circumstantial evidence available in the case does not satisfactorily discharge that burden.

35. The facts that the statement in form PA 10 was not prepared, that the provisions of paras A80 and A81 of the Land Records Manual were not complied with, that copies of form PA 10 were not sent to the village Sabhapati and its extracts were not sent to the complainant can well establish the negligence of the Lekhpal, but it is difficult to draw from such acts the inference that he also acted dishonestly. Strong suspicion might arise against the Lekhpal (applicant). But suspicion, howsoever strong, cannot take the place of legal proof.

36. In our opinion the circumstances relied upon by the prosecution do not lead to one and the only conclusion in the case, that is, that the applicant had acted dishonestly with the intention of causing wrongful gain to one party and wrongful

loss to the other.

37. In our opinion the applicant is on-titled to the benefit of doubt and acquittal.

(Cr R No. 36 of 1965)

38. The courts below have on good evidence arrived at the following conclusion. The applicant was the Lambardai of village Sanehua, district Ghazipur, in the Fasli year 1370 prior to the abolition of zamindari. Theguni and Ganesh were the tenants of plots nos. 2378, 2380 & 2381 situate in that village. They had, however, been dispossessed by the zamindars, namely, Bechan Rai (complainant) and others sometime in the year 1355 Fasli and the zamindars had continued to remain in possession of those plots till after the year 1376 Fasli. The tenants had filed an application in the court of the Sub-Divisional Magistrate on 29-9-1961 alleging that they were in actual possession of the aforesaid plots. A mutation case was started on the basis of that application and the Kanungo, who was required to submit a report did not support the case of Theguni and Ganesh. Two years later, i.e., on 16-6-1963 the tenants presented an application for withdrawal of the mutation case on the ground that their names had already been entered in the Khasra against the plots in dispute. Bechan Rai had obtained a copy of the Khasra entry for 1370 Fasli from the Lekhpal on 1-2-1963 and it did not support the case of the tenants. He again obtained a copy of the same document on 17-6-1963 and found that the words 'Sir Kharif' had been added sometime after 17-2-1963 to show that the zamindars were not in possession of the plots after Kharif 1370 Fasli and that the Lekhpal claimed to have made the Partial on 1-5-1963.

39. The courts below also arrived at the finding that it was not satisfactorily established that any partial had been made by the Lekhpal on 1-2-1963. There is no reliable evidence in support of this finding which is based on surmises only. The burden of proof lay heavily on the prosecution to establish that the official act of Partial about which a mention was made in the diary of the Lekhpal and the entry had been witnessed by two witnesses had not been performed. The defence had led oral evidence to show that the Partial had in fact been made on 1-2-1963. The courts below did not consider that evidence to be reliable mainly on the ground that the witnesses who signed the entry regarding the Partial had not been

examined by the defence. The Lekhpal was expected to make a Partal and in our opinion, after some evidence had been led in support of the Partal having been made, a heavy burden lay on the prosecution to prove that the Partal had in fact not been made. The witnesses who had attested the Partal entry should, therefore have been called by the prosecution and not by the defence, to establish one of the following facts-

(a) Either they had not in fact signed the Partal entry,

or

(b) they had reasons to falsely attest the Partal entry although the Partal had not in fact been made.

40. The courts below have misguided themselves by laying undue emphasis on the fact as to which party was in actual possession of the disputed plots in Rabi 1370 Fasli. The main point to be considered was whether circumstances existed in which the Lekhpal could at the time of the Partal be made to believe that the tenants, and not the Zamindars were in possession of the disputed plots in Rabi 1370 Fasli. There was dispute between the tenants and the zamindars regarding the possession of those plots. In the circumstances the probability that at the time of the partal, it was represented to the Lekhpal that the tenants were in possession of those plots in Rabi 1370 Fasli cannot be excluded. The tenants produced a good deal of oral and documentary evidence in support of their case on the point of possession. That evidence cannot be considered to be satisfactory in comparison with the evidence led by the complainant on the point. However, the fact remains that the Lekhpal who was not expected to examine the entire evidence of both the parties on the question of possession at the time of making the Partal could well have been misinformed.

41. The mere fact that no entry of the words 'sir Kharif' was made in the copy issued on 17-2-1963 can be no proof of the fact that till that date the Lekhpal had not made the Partal. It appears from the evidence on the record that the Lekhpal was in the habit of making belated entries in the Khasra. The probability could not, therefore, be ruled out that on the basis of the Partal dated 1-2-1963 the Lekhpal

made entries in the Khasra sometime after 17-2-1963. That may account for the difference between the two copies, both issued by the same Lekhpal. one on 17-2-1963 and the other on 17-6-1963.

42. Again, the facts that the Lekhpal (applicant) did not prepare statements in Form PA 10 and made an entry which was not quite in conformity with the provisions of the Land Records Manual might raise some suspicion against the applicant. But suspicion, howsoever strong, cannot take the place of legal proof. Negligence in the performance of duty cannot be construed to be due to dishonest motive only.

43. There is no direct evidence in support of the prosecution case. The circumstantial evidence is wholly insufficient to bring home the charge under Section 218 I. P. C. to the applicant, who is entitled to benefit of doubt and acquittal.

44. Both the revision applications are allowed and the conviction and sentence of the applicants under Section 218 I. P. C. are set aside. They are on bail, and need not surrender. Their bail bonds are discharged. The fine, if already paid, shall be refunded to them.

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