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Molvi Mohammad Usman Vs. State

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Court : Allahabad

Decided On : Oct-03-1966

Reported in : AIR1967All333; 1967CriLJ839

Judge : D.P. Uniyal, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 197(1)

Appeal No. : Criminal Revn. No. 1187 of 1965

Appellant : Molvi Mohammad Usman

Respondent : State

Advocate for Def. : S.N. Mulla, Adv.

Advocate for Pet/Ap. : J.N. Chaturvedi, ;P.C. Chaturvedi and ;S.S. Alim, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

D.P. Uniyal, J.

1. This is an application in revision against an order summoning the applicant to answer the charge under Section 409, I. P. C. In the complaint it was alleged that Molvi Mohd. Usman, Chairman Municipal Board, Deoband purported to sanction a

loan of 162 bags of cement to the Cane Development Union without the previous sanction of the Municipal Board whereas in fact no bags of cement had been transferred by the Municipal Board to the said Union and that there was no entry in the stock register of the Board with respect to the said loan.

At the instance of one Satya Prakash Qupta, the Collector of Saharanpur ordered an enquiry into the matter and a sub-inspector of police checked the stocks of cement and relevant registers of the Board on 8-3-1965. He found that no cement had been given by way of loan to the Cane Society and that there was no entry in the registers of the Board in regard to the said loan. On the lame day he also checked the stock of the Cane Development Union and its registers and found that there were 961 bags of cement in its possession on 27-3-1966, when the alleged loan was shown to have been made. On the basis of the report submitted by the sub-Inspector a complaint was filed against the present applicant and certain others under Section 409, I. P. C.

2. The Magistrate took cognizance of the complaint and examined the complainant under Section 200, Cri. P. C. On a consideration of the facts and the evidence he was satisfied that there was sufficient ground for issue of process for the appearance of the accused.

3. It was contended before the court below that the applicant being the Chairman of the Municipal Board could not be prosecuted without the previous sanction of the State Govt. and, therefore, cognizance of the offence under Section 409 I. P. C. could not be taken by the Magistrate. Mr. P. C. Chaturvedi, learned counsel for the applicant further urged that there was no material on the record to justify the Magistrate to summon the accused to appear in court to answer the charge.

It is no doubt true that the applicant ia a public servant. It is, however, now well settled that the question as to whether or not an offence committed by a public servant requires sanction under Section 197(1) Cr. P. C. depends on the facts of each particular case. It was pointed out in Baij Nath v. State of Madhya Pradesh, AIR 1966 SC 220:

"It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties, but where the act complained is directly concerned with the discharge of his official duties.'

It has further been held that the question of sanction may be considered by the Court at any stage of the trial in order to find out whether the offence charged in such as to fall within the scope of the duty of the public servant concerned.

4. The allegations made in the complaint go to show that there was a conspiracy between the applicant and the two others to commit criminal breach of trust and that in furtherance of that conspiracy the Chairman sanctioned a loan of 160 bags of cement to the Cane Society which never received nor required them. Whether these allegations are true or not is a matter which will come to be decided after the entire evidence has been gone into. At this stage I am not prepared to hold that the allegations made in the complaint which are supported by the statement of the complainant on oath are not sufficient evidence to justify the summoning of the accused before the Court.

5. For the reasons I see no force in thisapplication in revision which is accordingly rejected.

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