

Ram Nath Vs. Salig Ram Sharma

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Court : Allahabad

Decided On : Jul-29-1966

Reported in : AIR1967All519; 1967CriLJ1463

Judge : D.P. Uniyal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164 and 197; [Indian Penal Code \(IPC\), 1860](#) - Sections 194, 195, 196, 323, 330 and 342

Appeal No. : Criminal Revn. Nos. 1997 and 1998 of 1964

Appellant : Ram Nath

Respondent : Salig Ram Sharma

Advocate for Def. : A.G.A.

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

Disposition : Petition allowed

Judgement :

ORDER

D.P. Uniyal, J.

1. These two connected revisions are directed against the Judgment of the Sessions Judge, Jaunpur, upholding an order of the Magistrate dismissing the

complaint filed by the applicants on the ground that sanction to prosecute the accused under Section 197 Cr. P. C had not been obtained

2. There was an incident on the 19th October, 1963 in the town of Jaunpur in the course of which some students and members of the staff of a local college raided the railway station, looted it and damaged its property. In that connection several students, teachers and other persons were arrested on 20-10-1963 and taken to police station for interrogation. It was alleged that the applicants were arrested on the 20th October 1963 and were kept under detention at the police station till 8 p.m. During this period the Station Officer asked them to make a statement against the Principal of the College which they refused to do.

Then at 2 p.m. on 21-10-1963 the Deputy Superintendent of Police arrived there and enquired whether the applicants had made a statement. When he was informed that they were unwilling to do so the Dy. S. P. assaulted them with fists and kicks, as well as with a gupti (sharp-edged weapon). The applicants were threatened and told that if they did not agree to make a statement they would be dealt with severely. On account of fear induced by the said threats and assault committed on them they were coerced to make a statement before a Magistrate 1st Class of Jaunpur who recorded their statements under Section 164 at 6 p.m on 21-10 1963

3. On these allegations two complaints were filed, one by Ram Nath and the other by Jagat Ram. against the opposite party Sri Salig Ram Sharma, Deputy Superintendent of Police, Jaunpur under Sections 323, 330, 342, 194, 195 and 196 I.P.C. The Magistrate entertained the complaint and recorded the statement of the complainant and his witnesses. At this stage an application was moved on behalf of the opposite party contending that the complaints were barred under Section 197 on the ground that the sanction of the State Government had not been obtained against the opposite party in respect of acts done or purporting to be done by him in the discharge of his official duty. This objection was upheld by the Magistrate who dismissed the complaint on the short ground that the opposite party was a public servant and the offence alleged to have been committed by him being an act done or purported to have been done in discharge of official duty, the

complaint lodged against him without the sanction of the State Government was liable to be dismissed

4. In dismissing the complaints the Magistrate placed reliance on *Matajog Dobey v. H.C. Bhari* : [1955]28ITR941(SC) . In that case the Supreme Court was considering the meaning of the words any offence alleged of have been committed by him while acting or purporting to act in the discharge of his official duty occurring in Section 197 Cr.P.C. It was observed that in order that an act of a public servant may fall within the ambit of his official duty it must be shown that 'it was committed in the discharge of his official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits .

5. On the facts alleged in the complaints under consideration the acts attributed to the opposite party could not have any relation to his official duty as a police officer. It is no part of the duty of a police officer to assault a witness or an accused in order to obtain a statement from him. It is equally no part of a police officer's duty to put a person under unlawful restraint in order to extort a confession from him. None of these acts could be said to have any connection with the official duty of the opposite party.

6. In *Nagwant Sahay v. D.W. Ife* AIR 1946 Pat. 482, certain students who were suspected to have taken part in a fracas were taken to the bungalow of the Deputy Commissioner and were alleged to have been caned there by the Deputy Superintendent of Police after consultation with the Deputy Commissioner. Complaints were lodged against these officers under Section 328 I.P.C. before a Magistrate who dismissed them on the ground that sanction for the prosecution of the accused had not been obtained under Section 197. It was held that it is no part of the duty of a Deputy Commissioner, or of an officer of the police force, to chastise persons who have committed, or are alleged to have committed offences, even though it may be admitted by the persons accused of committing the offence that they had in fact committed it.

Their duty is to apprehend the offenders and to produce them before a court and it is the duty of the Court alone to decide whether the alleged offence has been committed and what punishment should be inflicted on the offenders. The High Court of Patna was of the opinion that on the allegations made in the complaint the Magistrate was not justified in dismissing the complaint on the ground of want of sanction. I am in respectful agreement with the above observations

7. The State Counsel referred to *Somchand Sanghvi v. Bibhuti Bhushan* : 1965 CriLJ499 and contended that it was within the scope of the official duty of the opposite party to interrogate the applicants at the police station and that if he believed that they were involved in a cognizable offence, to keep them in police custody. These various acts, according to him, fell within the scope of the duty of the opposite party and, therefore, he could not be prosecuted without sanction of the State Government under Section 197. The facts relating to the case of *Somchand Sanghvi* : 1965 CriLJ499 were clearly such as would bring the acts alleged within the scope of the official duty of the police officer. In the instant case the allegation against the opposite party was not that he had no authority to take the applicants to the police station or to interrogate them. On the other hand, it was alleged that they were taken to the police station with the object of being forced to make a statement under Section 164 Cr.P.C and were assaulted and coerced into making such a statement. The case of *Somchand Sanghvi* AIR 1966 SC 688 is, in my opinion, clearly distinguishable and has no application to the facts of the present case.

8. It was next contended on behalf of the State that sanction to prosecute a public servant is required to be obtained before the court takes cognisance of the offence and, therefore, the Magistrate had no jurisdiction to entertain the complaint against the opposite party without a formal sanction of the State Government under Section 197 Cr. P.C. This contention appears to me to be unfounded. In the case of *Matajog Dobey* : [1955]28ITR941(SC) (supra) the Supreme Court made it clear that whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case. Their Lordships pointed out that the complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of

public duty; but facts that may come to light subsequently in the course of the prosecution evidence at the trial, or otherwise, may establish the necessity for sanction. In that event the court shall dismiss the complaint on the ground that the accused could not be prosecuted without sanction of the State Government under Section 197.

9. I am, therefore, of the opinion that the courts below were in error in holding that the complaints were liable to be thrown out on the short ground that sanction to prosecute the opposite party had not been obtained by the applicants.

10. I accordingly allow these revisions, set aside the orders of the Magistrate dismissing the above complaints and direct that the Magistrate shall proceed with the case according to law.

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