

Ashok Kumar Vs. Balmukund

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Court : Madhya Pradesh

Decided On : Jan-09-2003

Reported in : 2003(2)MPHT200

Judge : A.K. Shrivastava, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 197 and 197(1); Madhya Pradesh Land Revenue Code, 1959 - Sections 104; Madhya Pradesh General Clauses Act, 1957 - Sections 16

Appeal No. : Criminal Revision No. 73/96

Appellant : Ashok Kumar

Respondent : Balmukund

Advocate for Def. : Sanjay Jain, Adv. for Non-applicant No. 1 and ;Wakil Khan, Panel Lawyer for Non-applicant No. 2/State

Advocate for Pet/Ap. : Sundeep Deb, Adv.

Disposition : Criminal revision allowed

Judgement :

ORDER

A.K. Shrivastava, J.

1. Feeling aggrieved by the order dated 23-11-95 passed by the First Additional Sessions Judge, Tikamgarh in Criminal Revision No. 6/94, whereby the order dated 29-7-93 passed by the learned Chief Judicial Magistrate, Tikamgarh in Complaint Case No. 843/93 registering the case against the respondent No. 1 under Section 420 of the Indian Penal Code (in short 'the IPC), the applicant has preferred this revision petition.

2. No exhaustive statement of the facts are necessary for the disposal of this revision petition. In brief the case of the applicant, who filed private complaint before the Chief Judicial Magistrate, is that respondent Balmukund who is a Patwari, manipulated certain documents. According to the complaint, the applicant was given a Bhumiswami Patta on 15-9-1986 by the Gram Panchayat, Nayakhera of Khasra No. 959 measuring 50 x 50 sq. feet total area 2,500 sq. feet, which is equivalent to .023 hectare, the total area of the said Khasra is .798 hectare. The contention of the applicant in his complaint is that despite of the allotment in his favour, Naib Tehsildar Mr. Ashok Vyas allotted 0.5 hectare of land in favour of one Shanti Devi Sahu, which also includes the area of the applicant. According to him, no notice was served to him. The remaining area which is .298 hectare was encroached by one Urmila Singh and it is alleged that the said encroachment report was prepared by the respondent No. 1 Balmukund. It has also been putforth by the complainant that an application was made by Urmila Singh for the allotment of .298 hectare of the land, as a result of which Naib Tehsildar Mr. Ashok Vyas issued a public notice regarding the said land and the allotment in favour of Urmila Singh was made for an area .298 hectare.

3. According to the applicant the total area of Khasra No. 959 is .798 hectare which was allotted to Shanti Devi and the applicant was possessing the said land with the consent of Smt. Shanti Devi. The total area which was in favour of the applicant was .500 hectare, while .298 hectare was allotted to Smt. Urmila Singh. The applicant constructed a house on the land which was being possessed by him. In order to harass the applicant, the respondent No. 1 who is a Patwari, submitted a false report to the Naib Tehsildar Mr. Ashok Vyas, upon which a notice was given to him, and the proceedings were initiated by the respondent No. 1 and Mr. Ashok Vyas. It has been alleged that both these persons forged certain

documents. In this manner, the complainant/applicant filed complaint before the Trial Court.

4. On the basis of the said complaint, statements under Sections 200 and 202, Cr.PC were recorded and the learned Trial Court vide its order dated 29-7-93 registered the complaint of the applicant under Section 420, IPC.

5. Feeling aggrieved by the order, registering the cases against him, the respondent No. 1 preferred revision petition before the learned 1st Additional Sessions Judge, Tikamgarh, who vide the impugned order, allowed the revision petition and set aside the order of the learned Trial Court, registering the case against the respondent No. 1. Thus, the applicant-complainant has come up in revision before this Court.

6. Mr. Sudeep Deb, learned Counsel for the applicant vehemently argued that the learned Revisional Court allowed the revision on the ground that the Patwari being a public servant, the Trial Court should not have taken any cognizance except with the previous sanction of the State Government. According to the learned Counsel, the respondent No. 1 is serving on the post of Patwari and his appointment is being made by the Collector and not by the State Government, as such, he is not entitled to claim exception under Section 197(1), Cr.PC.

7. Combatting the aforesaid submission Mr. Sanjay Jain, learned Counsel for respondent No. 1 submits that the respondent No. 1, who is a Patwari, is a Government servant and therefore provision of Section 197(1), Cr.PC is applicable to him. According to him, the learned Revisional Court did not err in allowing the revision by setting aside the order of learned Chief Judicial Magistrate registering the case against the respondent No. 1, the revision has no merit and deserves to be dismissed.

8. Before taking into consideration the rival contention of the parties, it would be relevant to see Section 197 itself, which reads as under:--

'197. Prosecution of Judges and public servants.--(1) When any person who is or was a Judge or Magistrate or 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-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.'

In order to bring home the aforesaid provision, the person to be prosecuted must be a public servant and not removable from his office save by or sanction of the Government.

9. Admittedly, the respondent No. 1 is a Patwari. The appointment of Patwari is being made under Section 104(2) of the M.P. Land Revenue Code, 1959, which reads as under :--

'104. Formation of Patwari's circles and appointment of Patwari's thereto.-

(1) *****

(2) [The Collector] shall appoint one or more Patwaris to each Patwari circle for the maintenance and correction of land records and for such other duties as the State Government may prescribe.

(3) *****

Thus, the appointing authority of Patwari is the Collector and not the State Government. Though, it has not been specifically mentioned that who can remove the services of the Patwari, but by virtue of Section 16 of the M.P. General Clauses Act, the power to appoint includes the power to suspend or dismiss. Therefore, the power vests in Collector to remove and terminate the services of the Patwari.

10. So as to attract the provision contained in Sub-section (1) of Section 197, Cr.PC, three conditions are pre-supposed. Firstly, the person should be a public servant, secondly, he should not be removable from his office save by or with the sanction of the Government, and thirdly the offence should have been committed by him while acting or purporting to act in the discharge of his official duty. All these three conditions should co-exist. In the present case, the respondent No. 1 who is a Patwari is neither appointed by the State Government nor can be removed by it and thus the exemption under Sub-section (1) of Section 197, Cr.PC is not attracted.

11. In the case of *Nagraj v. State of Mysore*, AIR 1964 SC 269, a Sub-Inspector of Police was prosecuted and an objection was raised that all Inspectors were removable by the State Government and as such Sub-Inspector could not be prosecuted without the sanction of the State Government. The appointing authority of the Sub-Inspector was Inspector General of Police. The Apex Court held that Inspector General of Police was the appointing authority and competent to remove, no sanction was necessary under Section 197, Cr.PC. In the case of *K. Ch. Prasad v. J. Vanalatha Devi*, AIR 1987 SC 722, the Apex Court in Para 6 held as under :--

'It is very clear from this provision that this Section is attracted only in cases where the public servant is such who is not removable from his office save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the Government. In this view of the matter even if it is held that appellant is a public servant still provisions of Section 197 are not attracted at all.'

In the instant case, the Patwari is removable by the Collector and no sanction of the Government is necessary. In this view of the matter, the order of Revisional Court, setting aside the order of Trial Court, registering the case against the respondent No. 1, on the alleged ground of non-sanction is palpably incorrect approach of law. The said order deserves to be set aside. At this juncture, it will be profitable to refer the judgment of the Apex Court in the case of *K.N. Shukla v. Navnit Lal*, AIR 1967 SC 1331.

12. This Court in the case of State of M.P. v. Keshav Prasad, 1994 (II) MPWN 70, while considering the case of Naib Nasir of District Court, it was held that he is removable by the District Judge and as such no sanction for prosecution was necessary.

13. If the present factual scenario is appreciated on the anvil of aforesaid ratio, this Court has no iota of doubt that the approach of the Revisional Court holding that in view of the exemption under Section 197, Cr.PC. the complaint of the applicant is not maintainable against respondent No. 1, is incorrect approach of law.

14. In view of the aforesaid premised reasons, the order passed by the learned 1st Additional Sessions Judge, in revision is hereby set aside. The revision succeeds and is hereby allowed.

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