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Prasanna Kumar Mohapatra Vs. the State

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Court : Orissa

Decided On : Aug-25-1955

Reported in : AIR1956Ori86; 1956CriLJ540

Judge : Panigrahi, C.J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 197; Indian Penal Code (IPC) - Sections 409

Appeal No. : Criminal Revn. No. 400 of 1954

Appellant : Prasanna Kumar Mohapatra

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : C.M. Acharya and ;K.P. Acharya, Advs.

Disposition : Revision dismissed

Judgement :
ORDER

Panigrahi, C.J.

1. The petitioner has been convicted under Section 409, I. P. C. and sentenced to undergo rigorous imprisonment for 6 months and to pay a fine of Rs. 500/-; in

default to undergo rigorous imprisonment for a further period of one month. The petitioner was the clerk of the Industrial School at Sambalpur between January 1950 and August 1953 and in that capacity was In charge of the accounts and cash dealings of the institution.

The cash was kept in an iron chest and some loose money was kept in a separate hand box. The keys of both were in the custody of the petitioner. He used to make payments in accordance with payment orders made by the Superintendent in charge of the School. In 1952 the Superintendent (P. W. 1) checked the accounts and found certain irregularities including shortage of cash.

He reported the matter to the Director of Industries in his letter Ex. 6 dated 8-5-1952 and an explanation was taken from the petitioner on 2-7-1952. Ex. 7 is the explanation given by the petitioner on 8-7-1952 praying to be excused for the irregularity.

In April 1953, the Superintendent wanted to check the accounts again, but found that the cash book was not up-to-date. A month later, when he again wanted to verify the cash the petitioner represented that the key of the iron chest had been mislaid and that he was trying to trace it out. Sometime thereafter P. W. 1 received a letter from the Director of Industries pointing out that his office had withdrawn excess amounts under 'Contingencies' from the Bank.

P. W. 1 thereupon put a seal on the Iron chest and requested the Director of Industries to depute a man to check the accounts of the School. The Head Assistant of the office of the Director of Industries was then sent and on 1-8-1953, the iron chest was opened with a key prepared in the office by Carpenter Allauddin (P. W. 5).

The petitioner produced two more keys, one being of the padlock and the other of the hand box. On opening the iron chest a sum of 13 annas was found and the hand box contained a sum of Rs. 469/-. The book balance of the institution on 29-7-1953 was Rs. 1611/2/9. The petitioner then gave a statement explaining the state of accounts and sought to explain the shortage to the extent of Rs. 396/13/0 and undertook to account for the balance of Rs. 744/8/9.

This explanation is marked Ex. 1. P. W. 1 found vouchers to cover an expenditure of Rs. 42/13/0, besides service postage stamps of the value of Rs. 24/-, amounting in all to Rs. 66/13/0 not entered in the cash book. After deducting this amount he found that the sum defalcated by the petitioner was Rs. 1074/8/9. He did not believe the statement of the accused in Ex. 1 in which he offered an explanation for the shortage to the extent of Bs. 396/13/0.

2. The petitioner was charged with having misappropriated a sum of Rs. 1074/8/9 and committed an offence under Section 409, I. P. C. The plea taken by the petitioner at, the trial was that he never handled cash and was only maintaining accounts and that the keys of the iron chest had never been with him. He further pleaded that he wrote Ex. 1 to the dictation of P. W. 1.

Both the Courts below have disbelieved the defence case and found that the accused wasthroughout in charge of the keys of the iron chest as well as of the hand box, and that P. W. 1 was negligent in checking the accounts. They also found that P. W. 1 was never in charge of the cash or the keys of the iron sale.

3. In revision, Mr. .Acharya appearing for the petitioner attacked the findings on the very grounds taken before the Courts below. After having heard him at length I am satisfied that there is no substance in his contention that P. W. 1 is the real culprit and that the petitioner had never been entrusted with any cash,

4. A point of some importance has, however, been raised by Mr. Acharya which deserves consideration. For the first time in this court, an argument has been raised on behalf of the petitioner that the prosecution is bad inasmuch as no sanction had been obtained under Section 197, Cr. P. C. I was in doubt whether the accused is a 'public servant' at all as there is no evidence that the School is a Government institution though the charge states that the accused being a public servant committed breach of trust.

Nor is it clear whether he is not removable from his office 'save by and with the sanction of a Provincial Government' as required by Section 197, Cr. P. C. That section requires that no Court shall take cognizance of an offence if it is committed by (a) any public servant (b) who is not removable from his office save by or with

the sanction of a Provincial Government (c) and is accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty.

The argument of Mr. Acharya proceeds on two assumptions: firstly, that the accused is a public servant and that the sanction of the Provincial Government was necessary; and, secondly, that he is not removable from his office save by or with the consent of the Provincial Government. I am unable to accept the second assumption as correct as. In my opinion, the petitioner being an accounts clerk was removable by the Director of Industries.

But even if the second assumption be correct, it has yet to be established whether the offence attributed to the petitioner was committed by him while 'acting or purporting to act in the discharge of his official duty'.

5. The object of Section 197, Cr. P. C. is to give some protection to public servants against being unnecessarily harassed by criminal prosecutions at the instance of private complainants. Sufficient protection is afforded by the insistence on the previous consent of the Provincial Government.

The expression 'an act done or purporting to be done in execution of his duty' was variously interpreted by the High Courts until an authoritative pronouncement was made on the true construction of the expression by the Federal Court in -- 'Hori Ram Singn v. Emperor', AIR 1939 PC 43 (A). In that case Section 270, Government of India Act which afforded similar protection to civil servants came up for interpretation; and the extent of protection given to public servants by that section was defined.

It was held that the act which constitutes the offence could never be the official duty of a public servant, because an offence can never be an official duty. The test is whether the offence committed by a public servant is an act done or purporting to be done in execution of his duty. The appellant in that case was a member of the Punjab Provincial Subordinate Medical Service, and had been suspected of dishonestly removing to his own quarters certain medicines belonging to the hospital. He was charged with having committed breach of trust in respect of

medicines, removed them from the hospital, and also of having falsified accounts by omitting to record entries in the stock book of medicines.

The Court held that no sanction was necessary for prosecution, under Section 409, I.P.C., but such sanction was necessary for prosecuting the appellant, under Section 477A, I.P.C. Varadachariar J. observed that the question whether the act complained of is one purporting to be done in execution of his duty is substantially one of fact, to be determined with reference to the act complained of and the attendant circumstances.

In analysing cases under Section 197, Cr. P. C. the learned Judge divided the decisions under three groups. The first group consisted of those which insisted that there must be something in the nature of the act complained of, that attaches a duty to the official character of the person doing it. Instances of this class are to be found in the cases reported in -- 'Raja Rao v. Ramaswamy', AIR 1927 Mad 566 (B); --'Amanat Ali v. Emperor', AIR 1929 Cal 724 (C); -- 'Gurushidayya v. Emperor', AIR 1939 Bom 63 (D).

In the second group of cases more stress is laid on the circumstance that the official character or status of the accused gave him an opportunity to commit the offence. In the third group of cases stress is laid almost exclusively on the fact that it was at a time when the accused was engaged in his official duty that the alleged offence was committed.

The learned Judge held that the first group of cases laid down the correct view. The use of the expression 'while acting' in Section 197, Cr. P. C. lends support to this view.

In other words it is not enough if it is merely established that the person proceeded against is a public servant or that taking advantage of his position as a public servant he committed certain acts, in order to attract the operation of Section 197. It must further be established that the act complained of was an official act. Receiving illegal gratification could not be an act done or purporting to be done in the execution of a duty.

It was therefore held in -- 'H.T. Huntley v. Emperor', AIR 1944 FC 66 (E) that no sanction was required for prosecuting a public servant on a charge under Section 161, I.P.C. This statement of the law received the approval of the Privy Council in -- 'H. H. B. Gill v. The King', AIR 1948 PC 128 (F).

There appellant Gill was the Deputy Assistant Director of Contracts at Calcutta and was charged, along with one Lahiri, with having conspired to cheat the Government under Section 120B read with Section 420, I.P.C. and in addition each of the accused was separately charged under Section 161, I.P.C. Lord Simonds in delivering the judgment of the Board referred to the two cases of the Federal Court and observed as follows:

'Their Lordships while admitting the cogency of the argument that in the circumstances prevailing in India a large measure of protection from harassing proceedings may be necessary for public officials, cannot accede to the view that the relevant words have the scope that some cases have given to them.

A public servant can only be said to act or purport to act in the discharge of his official duty if his act is such as to lie within the scopeof his official duty. 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'.

In another appeal that went up from the Federal Court, -- 'Albert West' Meads v. The King', AIR 1948 PC 156 (G) the Judicial Committee applied the test laid down in Gill's case-(F) and held that

'the appellant could not justify the acts in respect of which he was charged fraudulently misapplying money entrusted to his care as a. public servant -- as acts done by him by virtue of the office that he held'.

In a later case of the Privy Council --'Phanindra Chandra v. The King', AIR, 1949 PC 117 (H) the appellant was a railway servant. He was an Inspector in the office of the Regional Controller of Priorities and while acting in that capacity, he received illegal gratification amounting to Rs. 500/- as a motive or reward for showing favour to one Sohanlal.

It was argued before the , Board that the observations of Lord Simonds were mere obiter dicta and their Lordships reconsidered the whole question and stated emphatically:

'They cannot accede to the suggestion of counsel that that part of the judgment which has been cited is to be regarded as obiter dictum'.

6. The position, therefore, is that the question whether the acts complained of in any particular case would require sanction or not, is essentially a question of fact. At this stage I may refer to two recent cases of the Supreme Court where the same view has been reiterated.

In -- 'Shreekantiah Ramayya v. State of Bombay', (S) AIR 1955 SC 287 (I) three persons were convicted under Section 409/34, I.P.C. Sanction under Section 197, Criminal P. C. had been obtained from the Governor-General, to prosecute the first, accused under Sections 120B, 409 and 109, I.P.C.

Sanction was also given for the prosecution of the first accused under Section 5(2), Prevention of Corruption Act, and similar sanction was also given in respect of the second accused. The question was whether the sanction for prosecuting the second accused under Section 5(2), Prevention of Corruption Act was sufficient to cover his prosecution under Section 409, I.P.C.

Their Lordships held that, it was not. Bose J. delivering the judgment of the Court quoted the passage from 'Hori Ram Singh's case (A)' in which Varadachariar J. observed that

'the question is substantially one of fact to-be determined with reference to the act complained of, and the attendant circumstances'.

His Lordship said:

'With that we respectfully agree. There are cases and cases and each must be decided on its own facts'.

In that particular case the Court held that both the entrustment and disposal could only be in an official capacity. It is relevant to quote the passage in full:

'Therefore, the act complained of, namely, the disposal, could not have been done in any other way. If it was innocent it was an official act, if dishonest it was the dishonest doing of an official act. But in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act, namely, officially permitting their disposal; and that he did.

He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to actprivately, there was no other way in which hecould have done it'.

His Lordship further observed that

'if Section 197, Criminal P. C. is construed too narrowly it can never be applied for, of course, it is no part Of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the Act because an official act can be preferred in the discharge of an official duty as well as in dereliction of it.'

Two months later another case was decided by the Supreme Court in -- 'Amrik Singh v. State of Pepsu', (S) AIR 1955 SC 309 at p. 312 (J) where the identical question was raised. Reviewing the cases on the subject Venkatarama. Ayyar J. summed up the position as follows:

'It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1), Criminal P. C.; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would be a matter of defence on the merits which would have to be investigated at the trial and could not arise at the stage of the grant of sanction which must precede the institution of the prosecution'.

In that case the appellant, a Sub-divisional officer, was charged with having misappropriated a sum of Rs. 51/-. The accused pleaded that he had paid the

amount to Khalasi Parma, and the acquittance roll recorded the payment and in acknowledgment thereof a thumb impression as against his name had been taken on the roll.

In these circumstances, it was held that the acts with which the appellant was charged fell within the scope of his duties, and could be justified by him as done by virtue of his office. Sanction was, therefore, required under Section 197(1), Criminal P. C. before the appellant could be prosecuted under Section 409, I.P.C.

These two cases, therefore, do not in any way affect the reasoning of the Federal Court adopted in 'Hori Ram Singh's case (A)'.

7. Let me now examine the acts attributed to the petitioner and see whether he could have Justified his acts as being done in the discharge of his official duty. It has been found that he was entrusted with cash belonging to the institution and he had dominion over it at the relevant time. The disappearance of the cash or the shortage of cash in the cash balance could have been explained by him as being due to the money spent for the purposes of the institution.

But curiously enough he took the plea that he had never been entrusted with any cash and never attempted to explain how the money had been spent.

He could not reasonably claim, as held bythe Privy Council, that what he did, he did byvirtue of his office. I am satisfied thereforethat it is a clear case of misappropriation ofpublic funds and had no relation to the dutiesattached to the office of Clerk.

It is not every act of a public servant, but only such act as purports to have been done by him in the discharge of his official duties that requires sanction under Section 197, Criminal P. C. In the instant case no sanction was needed andthe conviction of the petitioner cannot, on that score, be quashed.

The revision is dismissed.

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