

Tapas Kumar Rath Vs. Harekrushna Pradhan

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Court : Orissa

Decided On : Nov-26-1996

Reported in : 1997(I)OLR84

Judge : Dipak Misra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 197

Appeal No. : Criminal Revision No. 232 of 1996

Appellant : Tapas Kumar Rath

Respondent : Harekrushna Pradhan

Advocate for Def. : A.K. Mishra, G.S. Panda and R. Pati

Advocate for Pet/Ap. : R.K. Nayak and C.R. Swain

Judgement :

Dipak Misra, J.

1. The petitioner calls in question legality of the order passed by the learned SDJM, Udala refusing to take cognizance in respect of the offences against the sole accused on the ground of absence of sanction as envisaged under Section 197(1) of the Code of Criminal Procedure (in short, 'the Code') in 1. C. C. No. 38/1996.

2. The facts as uncurtained are that the petitioner as complainant set the criminal action into motion by instituting the aforesaid complaint case for the offences under Sections. 323, 294, 341 and 220, IPC. The allegations, as depicted are that the opposite party, the O.I.C., Khunta Police station was involved in a vigilance case wherein the present petitioner was a witness for which he was pressurised time and again not to depose against the said O. I. C. Having failed in his attempt, the O. I. C. on 10-4-1996 at about 8 a. m. arrested the petitioner on the strength of a non-bailable warrant issued in Criminal Misc. Case No. 65/94 and detained him in police hazat whole day and night and did not forward him to Court in spite of repeated requests by his relatives. Not only he refused to forward him but contrary to all norms he abused the complainant-petitioner in filthy language, assaulted him by slaps, kick and fist blows and kept him without supply of food and water. On the next day, 11-4-1996 though a recall order from the Court was produced before the accused-opposite party, instead of releasing him he forwarded the complainant to the Court by handing him to the escort party. The petitioner was not produced before the learned SDJM, but was released by the C. S. I. attached to the Court of the SDJM. With these allegations the complaint petition was filed and the learned SDJM recorded the initial statement on 23-4-1996 and adjourned the case to 25-4-1996 for enquiry under Section 202 of the Code. On behalf of the complainant three witnesses were examined who corroborated the statement of the complainant. The learned Magistrate passed the impugned order on 8-5-1996 referring to Section 197(1) of the Code, and came to hold that sanction was necessary for taking cognizance and in absence of the same the complaint petition was liable to be dismissed, and accordingly he dismissed the same.

3. Mr. R.K. Nayak, the learned counsel for the petitioner has contended that the initial statement and the evidence on record would clearly show that the act committed by the accused was not connected with his official duties and the same is not integrally connected with the duty attached to the office held by the accused. He has further canvassed that the filthy abuse and the assault are definitely not a part of the duty and the said act is also not justifiable in the present facts and circumstances of the case and, therefore, insistence upon sanction by the learned Magistrate is absolutely misconceived. Mr. Nayak has urged that the order passed by the Court below is cryptic and does not reflect proper application of mind and

that makes the impugned order susceptible in law.

4. Mr. A.K. Mishra, the learned counsel for the opposite party-accused has supported the impugned order. He has canvassed that the finding of the learned Magistrate that sanction in the present case is necessary is not unjustified inasmuch as he has recorded that the act complained of by the O. I. C. is integrally connected with the duty, attached to the office and inseparable. The learned counsel has also submitted that the complaint case has been instituted with mala fide intention to cause harassment to the opposite party to shatter his morals.

5. On perusal of the impugned order I find that the learned SDJM has observed that the accused-opposite party had arrested the complainant on the basis of the non-bailable warrant issued by the said Court in Criminal Misc. Case No. 65/94 and, therefore, he was discharging his duties. The detention of the petitioner for the whole day and night in spite of the requests by his relatives to forward him to the Court cannot be taken exception to. After so observing he has recorded as follows:

'The act complained of by the complainant against a public servant, the O. I. C. Harekrushna Pradhan of Khunta Police Station, so integrally connected with the duty attached to the office as to be inseparable from them. Therefore, necessary connection between them and the performance of duty are integrally connected.'

So observing he has referred to the relevant provision of the Code and rejected the complaint for lack of sanction.

6. Before I address myself with regard to the sustainability of the order it is worthwhile to analyse the requirement of sanction as enjoined under Section 197 of the Code. A Division Bench of this Court in the case of Abani Ch. Biswal v. State of Orissa and Anr.; 64 (1987) CLT 659 dealt at length with regard to the concept of sanction under Section 197 of the Code. Chief Justice H. L. Agarwal speaking for the Court held as follows :

'There is no gainsaying that whether an offence was committed in the course of official duty or not will depend upon the facts of each case and the test may well

be as to whether the public servant can reasonably claim or challenge that what he did was by virtue of his office. But he cannot claim blanket privilege for all the acts and uncalled for overdoings while discharging any public duty.'

Again in the said decision after referring to the decision in the case of *Balbir Singh v. D.W. Kadian* : AIR 1986 SC 345 it has been held as under :

"To emphasize the obvious, it is held that the cardinal principle is that there must be a reasonable connection between the act and the discharge of official duty and the act must bear such relation to the duty that the accused could lay a reasonable but not a pretended or fanciful claim that he did it in the course of performance of the duty.'

The question of sanction had again engaged the attention of this Court in the case of *Bishnu Prasad Mohapatra v. Harihar Patnaik* : 1992 (I) OLR 186 wherein it has been held as under :

'Section 197 is intended as a protection against malicious or vexatious prosecution of certain categories of official or authorities. It is not an absolute requirement in law that wherever any of the named categories or officers are proceeded against, sanction under Section 197 is a must. It is no part of the requirement of law to set any of them above the common law. If he commits an offence, he has no peculiar privilege. It is only when one of his official acts is alleged to be an offence, the State will not allow him to be prosecuted without its sanction. Section 197 embodies one of the exceptions to the general rule laid down in Section 197 that cognizance of any offence may be taken by the Magistrates enumerated therein. The privilege of immunity from prosecution without sanction is only extended to acts which can be shown to have been done in the discharge of official duty, or in purported exercise of such power. The use of the expression 'while acting' determines the nature of the act complained of. An offence arising out of official position but not purported to be a part thereof does not require any sanction under Section 197. There is no scope for either narrow or wide construction of the Section. It is not the duty which requires examination so much as the 'act' because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. (See *Bhagwan Prasad Srivastava v. N.P. Misra* : AIR 1970 SC

1661). The basic requirement of Section 197, therefore, is that the delinquent officer must be discharging an official duty and the act complained of was a part thereof and, therefore had close nexus or link with the same. What has to be found out by the Court is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.'

I may in this context refer to the decision of the apex Court in the case of *Bakhshish Singh Brar v. Smt. Gurmej Kaur* : AIR 1988 SC 257, wherein the apex Court while emphasizing on the balance between protection of public officers and protection of private citizens observed as follows :

It is necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, that is the rationale behind Section 196 and Section 197. But it is equally important to emphasise that rights of the citizens should be protected and no excesses should be permitted, 'Encounter death' has become too common. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence.'

(Quoted from placitum)

This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. At this juncture, I may refer to the decision in the case of *P. Arulswami v. State of Madras* : AIR 1967 SC 776, wherein the apex Court held as under :

'It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197, Cr PC will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is Only when it is either within the scope of the official duty or in excess of it that the protection is claimable.'

Recently this Court in the case of Kumar Raghavendra Singh and others v. Ganash Chandra Jew: (1996) 10 OCR 97 after referring to the Division Bench decision of this Court ruled as follows :

'The protection under Section 197, Cr PC is available to a public servant when the act complained of is reasonably connected with his official duty and not merely a cloak for doing that act which is undisputedly an offence. It is the quality of the act that is important and protection is available if the same falls within the scope and range of official duty. It is not always possible to lay down any hard and fast rule for determining whether the act was reasonably connected with official duty. However, one safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for charge of dereliction of duties. If this question is answered in the affirmative, it may be said with least hesitation that such act was committed by the public servant while acting in the discharge of his official duties and there was every connection with the act complained of and his official duty.'

From the aforesaid enunciation of law it is clear as day that the question of availability of protection under Section 197 of the Code would arise depending upon the facts of each case, the allegations made the commission of the act by the public servant vis-a-vis the duty assigned to him and 'due discharge' of his official duty and the permissible excess under the circumstances.

6. In this context, the learned counsel for the opposite party has drawn my attention to the decision of this Court in the case of Premjit Mahananda v. Mohan Pani Kama and Anr., 1995 (8) OCR 594 wherein this Court on scrutiny of the materials on record came to hold that the allegations of rebuke and assault by the Arresting Officer might be in excess of the performance of the official duty, but

they cannot be said to be totally unconnected with the official duty or cannot be held to be not in course of performance of official duty. So observing, this Court held that sanction for prosecution was not necessary. As I notice, in the said case learned single Judge has dealt with the facts and has concluded as indicated above. The aforesaid decision should be confined to the facts of the case.

7. Keeping the position of law in view I find the approach of the learned SDJM is erroneous in law and the impugned order cannot stand close scrutiny. It is apparent that the learned Magistrate has cryptically referred to the status v. of the accused person and has concluded that sanction was necessary. True it is, the accused satisfied the first requirement as enjoined under Section 197 of the Code as he was protected because of the notification made under Section 197(3) of the Code, but that alone would not entitle him to claim privilege as such claim is dependent upon the allegations made. There is no discussion with regard to the nature of the occurrence and the type of allegations made. As it appears the learned Magistrate has not kept himself alive to the position of law.

8. In view of my preceding analysis I conclude and hold that the order passed by the learned SDJM refusing to take cognizance on the ground of lack of sanction is fallacious and accordingly I set it aside. The learned Magistrate is directed to reconsider the matter keeping in view the allegations on record and the legal position as indicated above.

9. With the aforesaid observations and directions the criminal revision is disposed of.