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Bal Krishan Vs. State of Delhi

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Court : Delhi

Decided On : Jan-19-2000

Reported in : 2000IIAD(Delhi)193; 2000CriLJ1217; 83(2000)DLT508; 2000(52)DRJ502

Judge : K.S. Gupta, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 197 and 482; Indian Penal Code (IPC), 1860 - Sections 34 and 325; Delhi Police Act - Sections 140; Code of Criminal Procedure (CrPC) , 1973 - Sections 197

Appeal No. : Crl. M. (M) No. 1966/99

Appellant : Bal Krishan

Respondent : State of Delhi

Advocate for Pet/Ap. : Sh. K.B. Andley and; Sh. Roopesh Sharma, Advs; Sh. S.B. Ja

Judgement :
ORDER

K.S. Gupta, J.

1. This petition under Section 482 Cr.P.C. seeks quashing of the charge framed by a Metropolitan Magistrate under Section 325/34 IPC on 6th October, 1998 against

the petitioner and setting aside of the order dated 23rd April, 1999 passed by an Addl. Sessions Judge dismissing the revision petition filed against the said charge by the petitioner.

2. In regard to the occurrence dated 10th October, 1992 Dhir Singh made a complaint to Commissioner of Police on 16th October, 1992 and on failure of the police to register FIR, Crl. W. No. 624/92 was filed by him. This writ petition came to be disposed of by a Division Bench of this Court by the order dated 13th May, 1994 with the direction to the police authorities to register an FIR on the basis of complaint which was the subject matter of the petition and to investigate it as per law. Investigation was, however, ordered to be carried out by the Crime Branch instead of local police. As is manifest from the said order, the allegations made in writ petition in short were that on 10th October, 1992 at about 11.00 PM petitioner along with Constable Sunder Lal Parashar came to the house of aforesaid Dhir Singh and started beating his family members; that petitioner pushed Manoj Kumar, son of Dhir Singh from the roof of the house resulting in compound fracture in his left leg. However, in the reply affidavit the stand taken by the petitioner and others was that on 10th October, 1992 at about 10.40 PM, the police received information that criminal Mahinder Fauzi might be available in the house of said Dhir Singh and, thereforee, a raid was conducted. After seeing the police, Manoj Kumar jumped from the roof and received injuries on his leg. FIR No. 499/92 under Section 309 IPC was registered on 11th October, 1992 against Manoj Kumar at P.S. Bhajanpura. Thereafter, another FIR being No. 17/93 under Section 309 IPC was registered at PS Seelampur as the place of occurrence fell within the jurisdiction of that police station. After completion of investigation, charge sheet under Section 173 Cr. P.C. was filed against said Manoj Kumar before the concerned Metropolitan Magistrate. Indisputably, pursuant to the said order dated 13th May, 1994 FIR No. 319/94 under Sections 452/325/506/34 IPC was registered at PS Seelampur and after completing investigation, charge sheet was filed on 2nd December, 1996 against the petitioner and Sunder Lal Parashar. Impugned charge under Section 325/34 IPC was framed on 6th October, 1998 against both of them and the criminal revision preferred by the petitioner filed against the framing of the charge under the said head came to be dismissed by an Addl. Sessions Judge by the aforementioned order dated 23rd April, 1999.

3. Submission advanced by Sh. K.B. Andley appearing for the petitioner was that the prosecution of the petitioner is barred by limitation under Section 140 Delhi Police Act, 1978, not having been instituted within three months form the date of the alleged occurrence dated 10th October, 1992. According to him, prosecution is also barred under Section 197 Cr. P.C. for want of sanction from the competent authority. He invited my attention to the notification No. 10/77/78-H.P. II dated 7th April, 1980 issued by Delhi Administration in terms whereof protection under Section 197 Cr. P.C. has been extended to the serving police officials of all ranks in Delhi Police force charged with the maintenance of public order. On the contrary, it was argued by Sh. S.B. Jaisinghani, Addl. Solicitor General appearing pursuant to the order dated 12th July, 1999 that the petitioner cannot reasonably claim that the act of pushing by him of Manoj Kumar from the roof which resulted in fracture in his left leg, was done under colour of his duty or in excess of duty imposed or authority conferred on him either under the Delhi Police Act or any other law or by any rule and, thereforee, none of the said two sections has any applicability to the facts of the present case.

4. The words 'colour of office' 'colour of duty' and the other cognate phrases have been construed in a series of decisions. In Hori Ram Singh Vs . The Emperor , a Sub-Assistant Surgeon was prosecuted under Sections 409 and 477-A IPC on the allegation that when he was in charge of the hospital, he had removed certain quantity of medicines to his own quarter and omitted to enter the particular stock of medicines in the appropriate register. It was contended before the Federal Court that the prosecution was liable to fail as the consent of the Governor of the Province was not taken as required by Section 270(1) of the Government of India Act, 1935 which provided that no proceedings could be instituted against the person in respect of any act done or purporting to be done in the execution of his duty except with the consent of the authority mentioned therein. While dealing with that contention it was held :-

'That there must be something in the nature of the act complained of that attaches it to the official character of the person doing it in order that it could be said that the act was done by the public servant in the purported execution of his duty.'

6. The Federal Court took the view that the consent of the Governor was not necessary for the offence of breach of trust under Section 409 because the official capacity of the accused was material only in connection with the entrustment and did not necessarily enter into the later act of misappropriation or conversion. It was, however, held that the consent of the Governor to the prosecution under Section 477-A was necessary as the official capacity of the accused was involved in the very act complained of, the gravamen of the charge being that the accused had acted fraudulently in the discharge of his official duty.

7. In Hector Thomas Huntley Vs . Emperor , a station master was tried for an offence under Section 161 IPC on the charge of having accepted illegal gratification of Rs. 20/- in order to provide wagons to the complainant. In repelling the contention that the prosecution was bad because the consent of the Governor of the Province was not obtained as required by Section 270(1) of the Government of India Act, 1935, the Federal Court followed its earlier decision in Hori Ram Singh's case (supra) and held that the act of accused in taking the illegal gratification could not be said to have been done by him in the execution or purported execution of his duty.

8. The question of sanction under Section 197 Cr. P.C. arose before the Privy Council in H.H.B. Gill Vs . The King in which the accused was prosecuted under Section 161 IPC. It was urged before the Privy Council that the prosecution was vitiated as consent of the Governor to the prosecution of the accused was not obtained. While approving the two decisions of the Federal Court in Hori Ram Singh's and Hector Thomas Huntley's cases (supra), it was held :-

'A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bride, though the judgment which he delivers may be such an act; nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may be such an act. 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. Applying such a test to the present case, it seems clear that Gill could not justify the acts in respect of which he was charged as acts done by him by virtue of the office that he held. Without further examination of the authorities, their Lordships, finding themselves in general agreement with the opinion of the Federal Court in the case cited Hori Ram Singh's case , think it sufficient to say that in their opinion no sanction under Section 197 of the Code of Criminal Procedure was needed.'

Decision in Gill's case was reiterated by the Privy Council in Phanindra Chandra Neogy Vs . The King .

9. In the decision in R.W. Mathams v. State of West Bengal, AIR 1954 SC 455 it was argued before the Supreme Court that the conviction of accused, a public servant under Section 161 IPC was bad because sanction under Section 197 of the Code of Criminal Procedure was not obtained before instituting the prosecution. Contention was rejected observing that :-

'The question whether sanction under Section 197 was necessary for instituting proceedings against the appellant on charges of conspiracy and of bribery is now concluded by the decisions of the Judicial Committee in and must be answered in the negative.'

10. In the decision in Shreekantiah Ramayya Munipalli Vs . State of Bombay, : 1955 CriLJ857 , the question for consideration was whether sanction under Section 197 of the Code of Criminal Procedure was necessary for the prosecution of a public servant under Section 409 of the Indian Penal Code. The Supreme Court approved the view expressed in Hori Ram Singh's case (supra) that the question involved was substantially one of fact to be determined with reference to the nature of the act complained of and the attendant circumstances, and held that the offence of breach of trust under Section 409 can in conceivable cases be said to have been committed while the public servant was acting or purporting to act in the discharge of his official duty. It was held on the facts of that case that the entrustment was made to the accused in his official capacity.

11. In yet another decision in Amrik Singh Vs . State of Pepsu, : 1955 CriLJ865 , the argument on behalf of the accused who was charged under Section 409 of the Indian Penal Code, was that the prosecution was vitiated for want of sanction under Section 197 of the Criminal Procedure Code. While dealing with that aspect of the matter, it was held :-

'It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1), Criminal Procedure Code; 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 really be a matter of defense, 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.'

It was further held that :-

'If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.'

12. In B.S. Sambhu Vs . T.S. Krishnaswamy, : 1983 CriLJ158 , a Munsiff Magistrate in a letter sent to the District Judge submitted his remarks against the allegations made by the respondent an advocate in a transfer petition and called the respondent 'a rowdy', 'a big gambler' and 'a mischievous element' and on this letter being read in open court, the respondent filed a criminal complaint against the Munsiff Magistrate under Section 499 IPC, Objection taken by the Munsiff Magistrate to the taking of cognizance of the said offence without the sanction contemplated under Section 197 Cr.P.C. was negatived by the Magistrate dealing with the complaint. In a petition under Section 482 Cr. P.C., the High Court upheld the Magistrate's view. It was contended before the Supreme Court that the letter

sent by the Munsiff Magistrate to the District Judge was in discharge of his duties because the District Judge had called for his remarks and hence whatsoever had been written therein by Munsif Magistrate was done while acting or purporting to act in discharge of his official duty and as such the ingredients of Section 197 Cr. P.C. were satisfied. While dealing with that argument it was held by the Apex Court in paras 4 & 5 of the report :-

'4. It is not possible to accept this contention for in our view there is no reasonable nexus between the act complained of and the discharge of duty by the appellant... In Matajog Dubey Vs . H.C. Bhari, : [1955]28ITR941(SC) , this Court has laid down the test in these terms (para 19 of AIR);

There must be a reasonable connection between the act and the discharge of official duty; 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 the performance of his duty.

Applying this test to the facts of the present case it is impossible to come to the conclusion that the act complained of has any connection with the discharge of official duty by the appellant.

5. We might refer to the decision of this Court in Pukhraj's case, : 1973 CriLJ1795 where the facts were similar to the facts in the instant case. Pukhraj filed the complaint against the respondent No. 2, his superior officer, in the postal department, under Sections 323 and 502 of I.P.C. alleging that when he went with his certain complaint to the second respondent the second respondent kicked him at his abdomen and abused him by saying 'sale, gunde, badmash .....'. The second respondent raised the contention that the Court could not take cognizance of the offence without the sanction of the Government under Section 197 of the Cr. P.C. That contention was negatived and this Court posed the question whether the acts complained of were done by the second respondent in purported exercise of his duties and applying the test laid down in Matajog Dubey's case held that the acts complained of, namely, kicking the complainant and abusing him could not be said to have been done in the course of the performance of the duty by the second respondent.'

13. One more decision in State Vs . Gorakh Fulaji Mahale : AIR1965 Bom124 rendered by a Division Bench of the Bombay High Court which is material, needs to be referred. In this decision one of the questions referred in an appeal by a Single Judge was whether the special rule of limitation contained in Section 161(1) of Bombay Police Act applies to prosecution under Section 161 IPC and Section 5 of the Prevention of Corruption Act. It is pertinent to state that Section 140(1) of the Delhi Police Act, 1978 is verbatim reproduction of said Section 161(1) excepting that in addition to police officials, protection has also been extended to the Revenue Commissioner, Commissioner and Magistrate and the limitation prescribed for launching prosecution is six months therein. As is evident from the discussion made in para No. 15 of the report on page 197, it was urged on behalf of the appellant that the wording of Section 161(1) of the Bombay Police Act was in material respects different from the wordings of Sections 197(1) of Cr. P.C. and 270(1) of Government of India Act, 1935 but that argument was held to be having no substance.

14. Applying the ratio/test enunciated in the aforementioned decisions to the facts of the present case, the act of the petitioner in pushing Manoj Kumar from the roof of the house which resulted in fracture in the left leg, cannot lie within the scope of his official duties as there is no reasonable nexus between that act and the duties attached to his office. The defense as reflected in the reply affidavit filed in said Crl. W. No. 624/92 can only be examined at an appropriate stage in the trial by the concerned court. Thus, Section 140 of Delhi Police Act or Section 197 Cr. P.C. are not attracted to the facts of this case as contended by the learned Additional Solicitor General. Decisions in Nandu Zambauliker Vs . Shrikant Naik & Anr. and R. Ninge Gowda Vs . A.N. Gopal : 1999(2)KarLJ104 relied on behalf of the petitioner were rendered on the facts of those cases and have no applicability whatsoever to the facts of the present case. Petition thus deserves to be dismissed being without merit.

15. For the foregoing discussion, the petition is dismissed. Petitioner is directed to appear before the concerned Court on 27th January, 2000 for directions.

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