

Jinender Singh Vs. State

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Court : Delhi

Decided On : Mar-15-1995

Reported in : 67(1997)DLT561

Judge : Vijender Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 197(3); [Indian Penal Code \(IPC\), 1860](#) - Sections 503

Appeal No. : Criminal Revision Appeal Nos. 42 of 1993 and C.M., 22 of 1994

Appellant : Jinender Singh

Respondent : State

Advocate for Pet/Ap. : K.K. Sud,; A.K. Kohli,; Meenakshi Jain,;

Judgement :

Vijender Jain, J.

(1) This is a petition under Sections 397/401 of the Code of Criminal Procedure (Cr.P.C.) filed by the petitioner, aggrieved by the order of learned M.M. dismissing his complaint on 21.1.93. Mr. Sud has argued that complainant filed the complaint dated 8.1.93 on 20.1.95. He has also contended that the petitioner has alleged in his complaint that on 22.12.93 at about 8.30. p.m. the respondent waived and called the complainant in filthy language and threatened the complainant with dire

consequences in the event the complainant did anything against the said Shri Jai Kishan Aggarwal. The exact word used by the respondent are as follows:

'BEHENCHOD Agar Tu Agarwal Ko Tang Kiya To Main Teri Ma Chod Doonga Or Tujhe Uthwa Kar Va Tere Bar Ko Under Karva DOONGA.'

(2) Mr. Sud has contended that on these allegations the evidence under Sections 503,504, 505 and 506 of the Indian Penal Code were made out. Mr. Sud has also contended that the learned M.M. by his impugned order dismissed the complaint on 21.1.93 without following the provisions of Section 202 of the Criminal Procedure Code Mr. Sud has argued that the sole ground of dismissing the complaint was that the complaint was filed against Sho, Ranbir Singh, who was a Police Officer, on the ground that under Section 197(3), Criminal Procedure Code Court cannot take cognizance unless the prior sanction of the Government is obtained and in the absence of such sanction the Court cannot take cognizance.

(3) What has been contended before me by the learned Counsel for the petitioner is that M.M. complete mis-read the provisions of Section 197 of the Cr.P.C. He has further contended that all acts done by the Police Officer, sanction would not be pre-requisite for lodging or maintaining prosecution if those acts are not done in purported official duty by such Police Officer. Mr. Sud has further contended that at best this defense ought to have been taken by the respondent after, he has been summoned or in case he was not summoned then the M.M. ought to have been satisfied himself by taking recourse of Section 200 of the Criminal Procedure Code by examining the complainant or such witnesses. Another leg of the arguments of the learned Counsel is that even if the Magistrate was of the opinion that sanction was required, he could have taken recourse to Section 202 of the Criminal Procedure Code but abrupt dismissal of the complaint by the learned M.M. amounts an act of abdication of jurisdiction. In support of his contentions he has cited : 1955 CriLJ865 .

(4) On the other hand, Mr. S.K. Sharma, learned Counsel for the respondent has argued that lot of litigation is pending between one Mr. Jai Kishan Aggarwal and the petitioner is in habit of filing cases against the Police Officers. Mr. Sharma has contended that this complaint was also filed to deter the police officials to act in

performance of their official duties. Another leg of the argument of Mr. Sharma is that the complainant himself in paragraph 10 of the complaint has stated that in view of the allegations made in the complaint, there was no need for sanction to be obtained under Section 197 of the Criminal Procedure Code and the Magistrate knowing the law regarding the sanction has applied its judicial mind and come to a finding that the sanction was required and, therefore, rightly dismissed the complaint. In his support he has cited, 1987 Cr.LJ. 872.

(5) I have given my careful consideration to the submissions advanced by the learned Counselor both the parties. In this case at this stage, this Court is not going to touch the merits of the case. Court has to see whether on the basis of complaint, offence was made out or not on which the learned M.M. could have taken cognizance on the complaint and proceeded in accordance with law. From the allegations as made in the complaint which are reproduced above, whether sanction was required at the time of Magistrate taking cognizance and proceeding in the matter is the short question which has to be answered by this Court. Once a complaint has been filed, under Section 200 of the Criminal Procedure Code Magistrate taking cognizance of an offence, will examine on oath the complainant and the witnesses, if any present. One course under Section 202 of the Criminal Procedure Code open to the Magistrate is to enquire the case himself or to direct the investigation to be made by the police officials or by such other person as he thinks fit for the purposes of deciding whether or not there is sufficient ground for proceeding. In the present case before me, admittedly, the complaint was filed on 20.1.93 and the same was listed before the learned M.M. on 21.1.93, he had perused the complaint and dismissed the same obviously under the provisions of Section 203 of the Criminal Procedure Code. It was obligatory on the part of the learned M.M. to have investigated, recorded the finding as to whether in view of the allegations made in the complaint the sanction was required or not. That finding is absent from the impugned order. The order is mechanical in nature which gives an impression that for any act or offence committed by the police official/public servant, a sanction is pre-requisite for lodging a prosecution that would amount to total mis-reading of the provisions of Section 197 of the Criminal Procedure Code

(6) In *S.B. Saha 6- Ors. v. V.M. S. Kochar*, : 1979 CriLJ1367 the Supreme Court held:

'The words any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. As pointed by Ramaswami J. in *Bajnath v. State of Madhya Pradesh*, : 1966 CriLJ179 '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 of the Criminal Procedure Code will be attracted.'

In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.

While the question whether an offence was committed in the course of official duty or under colour of office, cannot be answered hypothetically, and depends on the facts of each case, one broad test for this purpose, first deduced by Varadachariar J. of the Federal Court in *Hori Ram v. Emperor*, 1939 Fcr 159 is generally applied with advantage. After referring with approval to those observations of Varadachariar J., Lord Simonds in *H.B. Gill v. The King*, tersely reiterated that 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.'

(7) In my considered opinion, learned Magistrate ought to have recorded a finding before dismissing the complaint whether offence alleged was under the purported performance of public duty or under colour of the office held by the respondent.

(8) In view of the above observations, I set aside the impugned order and direct the M.M. to proceed in accordance with law in terms of the observations made hereinabove. Any thing said will not be an expression of opinion on the merit of the case of either party. Complainant to appear before the M.M. on 3.4.95.

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