

Manoj Pant Vs. State

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Court : Delhi

Decided On : Feb-08-1996

Reported in : 1996IAD(Delhi)729; 1996(36)DRJ553; 1996RLR197

Judge : Jaspal Singh, J.

Acts : [Delhi Police Act, 1978](#) - Sections 140; [Indian Penal Code \(IPC\), 1860](#) - Sections 161

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 649 of 1995

Appellant : Manoj Pant

Respondent : State

Advocate for Pet/Ap. : K.B. Andley and; B.T. Singh, Advs

Judgement :

Jaspal Singh, J.

(1) It is a relation which principally revolves around the ambit and scope of section 140 of the Delhi Police Act. However, before I come into grip with the said provision, let us have a lord-eye view of the case.

(2) SUB-INSPECTOR Manoj Pant of the Delhi Police is facing trial in Fir 118 of 1991 under sections 218, 220, 221, 342, 193 and 161 of the Indian Penal Code. It

appears that the case was registered on the complaint made to the Station House Officer, P.S. Geeta Colony on August 11, 1991 by Inspector P.S.Patwal of the Special Staff, East District. Since that report is self-speaking, I feel tempted to reproduce the same. It runs as under:

ON 10th August, 1991 S.I. Manoj Pant Along with the staff of Special Staff, East Distt has apprehended one Lokesh Kumar s/o Mam Chand r/o A/1595, Mansarovar Park, Delhi in case Fir No.304 dated 10/8/91 under section 411 I.P.C. and 7 - X/55 E.C. Act, P.S. Krishna Nagar. On his disclosure statement, S.I. Manoj Pant has apprehended one Anil Solanki s/o Sukhbir r/o A- 92, Laxmi Garden, Loni Ghaziabad (UP) which was produced before me. I directed S.I. to book the accused as per law and on their disclosure 146 Gas cylinders were received from both the accused. During process, it is reported that Si Manoj Pant has let loose the main accused Anil Solanki and in his place his relative Gajinder Singh s/o Bhami Chand r/o 1/11154 A, Panchsheel Garden Navin Shahdara Delhi was involved in this case with the ulterior motives. It has come in the notice of the senior officers that Si Manoj Pant has released the main accused in the above case with the malafide intention and for illegal gratification. Thus Si Manoj being a public servant framed incorrect record with intention to save proper person from punishment and wrongfully confined to Gajinder Singh . Thus an offence under section 218/220/221/342/193/161, Indian Penal Code . prima facie is made out. A case may be registered and investigation be taken up by the local police as per order. The rukka is being sent through Asi Ishwar Singh of Special Staff.

Sd/

P.S.Palwal

I/C Special Staff,

EASTDistt.

11/6/91'

(3) It appears that after the registration of case and during investigation statements of number of persons were recorded under section 161 of the Code of Criminal

Procedure. What emerges out from the investigation makes an unfortunate reading. It appears that on August 10, 1991 the petitioner produced two persons namely Anil Kumar Solanki and Lokesh Kumar, before Inspector P.S.Patwal and told him that the said two persons had got recovered 144 duplicate gas cylinders. The Inspector, thereupon, instructed the petitioner to book them as per law and directed S.I.Shiv Raj and others who were also present there at that time, to assist the petitioner in the matter of registration of the case and preparation of required documents. Later it was decided to get the case registered against the said two persons under section 411 of the Indian Penal Code and under Section 7 of the Essential Commodities Act and a ruqqa to that effect was written by Head Constable Aftab at the dictation of the petitioner which after having been duly signed by the petitioner, was sent to the Police Station through Constable Pawan Kumar and Sunil Kumar for registration of the case.

(4) It further appears that the petitioner had also got prepared from the said Head Constable not only the personal search memos of Lokesh Kumar and Anil Kumar Solanki but the Index of the file as well. On August 11, 1991 not only the said Index but even the said personal search memos were found missing from the file. As if all this was not enough, even Anil Kumar Solanki was found to have been replaced by another gentleman and it so transpired that this was the handiwork of the petitioner and his associates who had charged Rs.75000.00 as illegal gratification.

(5) What is further required to be noticed is that during investigation the police managed to recover the original Memo of Personal Search of Anil Solanki, one turned carbon copy of the said Memo of Personal Search and the Original 'Index Missal' in which Anil Solanki was shown as one of the accused persons.

(6) Two things more need to be noticed before I bring this narrative to a close. First, the Lt. Governor has sanctioned the prosecution of the petitioner under sections 218, 220, 221, 342, 143 and 161 of the Indian Penal Code. Second, though the incident relates to the month of August, 1991, the challan was filed on March 6, 1993.

(7) Time now to examine what the petitioner says.

(8) The case of the petitioner is that since section 140 of the Delhi Police Act prescribes period of limitation for launching prosecution against a police officer and as the challan in this case was Filed beyond that prescribed period of limitation, therefore, the proceedings need to be quashed.

(9) What does section 140 of the Delhi Police Act say? Let us see.

'140.Bar to suits and prosecutions

(1)In any case of alleged offence by a police officer or other person, or of a wrong alleged to have' been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of;

PROVIDED that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.

(2)In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one month's notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed.

(3)The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof.

DOES section 140 apply to all the offences referred to above? Mr.K.B.Andley Advocate appearing for the petitioner says Yes and Mr.B.T.Singh appearing for the State, agrees.

Idisagree, though partly.'

(10) The legislature in India has considered it necessary to provide a large measure of protection for public officials from unnecessary harassment. In this respect reference may be made to section 197 of the Code of Criminal Procedure. Section 140 of the Delhi Police Act is also indicative of the same legislative policy.

(11) One thing is certain and it is that in order to come under the protective umbrella of Section 140 of the Delhi Police Act, the act must have been done 'under colour of duty or authority or in excess of any such duty or authority.' In other words, the Section does not extend its protective cover to every act or omission done by a police officer in service but restricts its scope of operation to only those acts or omissions which are done under colour of duty or authority or in excess of any such duty or authority. For instance, and I am borrowing it from *P.Arutswami v. State of Madras : 1967 CriLJ665* , a police officer in discharge of his duty may have to use force which may be an offence for the prosecution of which sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar is not attracted.

(12) To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by the Supreme Court in *Baijnath v. State of Madhya Pradesh : 1966 CriLJ179* . The following observations appearing therein, I feel, clinch the issue as far the case before me is concerned:

'A public servant can 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 bribe, 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 when he is examining though the examination itself 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.'

(13) In *Satwant Singh v. State of Punjab Air 1960 Sc 271* it was observed by the Supreme Court:

'IT appears to us to be clear that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of a bribe punishable under section 161, Indian Penal Code, is one of them....'

(14) Can the petitioner who, after arresting Anil Solanki under section 411, Indian Penal Code and under Section 7 of the Essential Commodities Act, let him off after accepting illegal gratification and substituted in his place another person as an accused and destroyed official documents to cover his offence, reasonably claim that the act of accepting illegal gratification was in virtue of his office? Would not the instance of a Judge given in Baijnath's case, apply to the petitioner also? It is the quality of the act that is important. I have no manner of doubt that it was no part of his official duty to accept illegal gratification and in consideration thereof to let off the real culprit despite clear directions by the superiors to proceed against him and to further replace him by another person and to destroy the record to cover up the whole affair. Section 140 of the Delhi Police Act would thus provide no protection to the petitioner as far as section 161 of the Indian Penal Code is concerned.

(15) Coming to sections 218, 220, 221, 342 and 193 of the Indian Penal Code, I do feel that there was a reasonable nexus between the acts complained of and the official obligation. The record was prepared or got prepared while acting or purporting to act in the discharge of his official duty. Similarly the acts attracting the application of sections 2,20 and 2,21 of the Indian Penal Code were in the exercise of authority vested in the petitioner though he was acting contrary to law. Same can be said about section 342 and 193 of the Penal Code since the action relates to the discharge of an official duty, although in derogation of that official duty.

(16) Let the trial court proceed in the light of this order.

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