

State Vs. Shiv Lal

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Court : Delhi

Decided On : Mar-23-1998

Reported in : 1998IIAD(Delhi)981; 1998CriLJ3910; 72(1998)DLT567; ILR1998Delhi240

Judge : Dalveer Bhandari, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 195, 197 and 340; [Indian Penal Code \(IPC\), 1860](#) - Sections 197

Appeal No. : Criminal Reference No.1 of 1981

Appellant : State

Respondent : Shiv Lal

Advocate for Def. : Mr. Pawan Bahl and ; Mr. R.P. Luthra, Advs.

Advocate for Pet/Ap. : Mr. M.S. Butalia, Adv

Judgement :

ORDER

Dalveer Bhandari, J.

1. Brief facts necessary to dispose of this reference are recapitulated as under:-

A judgment dated 23rd September, 1980 was pronounced by the learned Additional Chief Metropolitan Magistrate, New Delhi, in a case arising out of FIR No.74/80, Police Station Lajpat Nagar, New Delhi, wherein it was observed that the Assistant Sub Inspector Shiv Lal willfully and knowingly gave false evidence and also fabricated false evidence with the intention that such evidence would be used in the proceedings against the accused in that case. In view of these facts, the learned Additional Chief Metropolitan Magistrate decided to summarily try the accused Shiv Lal under the provisions of Section 340 of the Code of Criminal Procedure.

2. A notice was given to accused Shiv Lal asking him to show cause as to why he be not tried and summarily punished under Section 340 of the Code. A search memo was falsely fabricated by the ASI knowingly the same to be a false document. This fabrication was made with a view to willfully give false evidence against the accused in that case with the intention that such evidence would be used in those proceedings. On 22.1.1980, a person named Roop Chand was apprehended by a Constable and was produced in the Police Station where it was later on shown that he was having a raider knife.

That man was also shown to have been searched in the Police station and from his personal search, another small knife, and some keys were also recovered and a memo. was prepared. The evidence indicated that the memo. was a false document prepared in the Police station and that false evidence was adduced against that man by ASI Shiv Lal.

3. After the trial of this case, the learned Additional Chief Metropolitan Magistrate arrived at a definite conclusion that ASI Shiv Lal gave false evidence and fabricated false document knowingly and willfully that such evidence would be used in such proceedings. A case under Section 340 of the Code was fully established against the ASI Shiv Lal and consequently he was convicted under Section 340 of the Code, and was sentenced to undergo imprisonment for 15 days and to pay a fine of Rs.200/- and in default of which he was directed to further undergo simple imprisonment for 5 days.

4. The ASI, Shiv Lal filed a criminal appeal before the District & Sessions Judge, Delhi. In the appeal, it was stated that the ASI, Shiv Lal was a public servant within the meaning of Section 195 of the Code and in view of the notification of the Lt. Governor issued under section 197(3) of the Code of Criminal Procedure, prior sanction of the concerned authority was necessary to prosecute the ASI Shiv Lal - a public servant and the entire proceedings stand vitiated because Shiv Lal was prosecuted without sanction and consequently proceedings are liable to be quashed.

5. It was also argued before the District & Sessions Judge that ASI Shiv Lal was also covered by the provisions of Sections 138 and 140 of the Delhi Police Act, and he could not be prosecuted without the sanction of the Administrator.

6. It was also submitted that the document in question PW-C/1 was prepared in good faith while acting or purporting to act in discharge of the official duties of the appellant. The appeal filed by the appellant was allowed. Against the order of the Additional District & Sessions Judge, the State has preferred this reference. The short question which arises in the Reference is whether the appellant could be prosecuted without sanction or not?

7. I have heard learned counsel for the State and for the ASI, Shiv Lal at length. I have also carefully examined the various judgments cited at the Bar. The legal position has been crystalised by various judgments of the Supreme Court and the Federal Court. I deem it appropriate to give brief synopsis of the leading cases which have been considered on this question of law.

8. Dr. Hori Ram Singh Vs . Emperor , is the landmark judgment on this proposition of law. In this case, the Court had examined Section 270(1) of the Government of India Act, 1935. That section seems to be pari materia with the present Section 195 of the Code of Criminal Procedure. In this case, the Court observed that,

'Having regard to the ordinary and natural meaning of the words 'purporting to be done,' it is difficult to say that it necessarily implies 'purporting to be done in good faith,' for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. The test is not that the offence is

capable of being committed only by a public servant and not by anyone else, but that it is committed by; a public servant in an act done or purporting to be done in the execution of his duty. The Section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. The Section is not intended to apply to acts done purely in a private capacity by a public servant. It must have been ostensibly done by him in his official capacity in execution of his duty, which would not necessarily be the case merely because it was done at a time when he held such office, nor even necessarily because he was engaged in his official business at that time. Moreover, an act is not less one done or purporting to be done in execution of a duty because the officer concerned does it negligently.'

9. It is further mentioned that when a public servant simply embezzles some property entrusted to him and thereby commits a criminal breach of trust under Sec.409, he is not doing an act, nor even purports to do an act in execution of his duty; when he commits the act, he does not pretend to act in the official discharge of his duty. The Court gave an illustration that an offence under section 477A, Penal Code is committed, if an officer or servant or anyone employed or acting in such capacity, wilfully and with intent to defraud falsifies any book or account. Thus where it is his duty to maintain a record or a register and in maintaining that register he makes some entries which are false to his knowledge, he is certainly purporting to act, though not actually acting in the execution of his duty, because he is making certain entries in the register, knowing them to be false. Hence for prosecution under Sec.409, the consent of the Governor is not necessary. The court in this case gave emphasis that what is really important is whether the accused acted fraudulently or not. That would be the deciding factor.

10. In another leading case *H.H.B.Gill and another v. The King*, , the Privy Council had approved the aforesaid decision of the Federal Court, and observed as under:-

'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 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 whom 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. A public servant charged with an offence under S.120B read with S.161, Penal Code cannot justify his act of receiving bribe as an act done by him by virtue of the office that he held. No sanction under S.197 is therefore necessary for the institution of proceedings against a public servant for an offence under S.120B read with S.161, Penal Code.'

11. The Constitution Bench of the Supreme Court also had an occasion to deal with this question in *Matajog Dobey Vs . H.C. Bhari*, : [1955]28ITR941(SC) . In this judgment, the Court has taken the similar view that no question of sanction can arise under Sec.197, unless the act is an offence. The only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What the court must find out 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 performance of the official duty, though possibly in excess of the needs and requirements of the situation?

12. Their Lordships of the Supreme Court also had an occasion to examine this controversy in another leading case *S.B. Saha and others Vs . M.S. Kochar*, : 1979 CriLJ1367 . The court in this case observed that the question whether the offence was committed in the course of official duty or under colour of office depends on the facts of each case. One broad test for this purpose is whether the public servant, if challenged, can reasonably claim that what he does, he does by virtue of his office.

13. The Supreme Court in the case of Balbir Singh Vs . D.N. Kadian and another, : 1986 CriLJ314 . In this case, the court had relied upon the ratio of the earlier judgment in the case of Matajog Dobey v. H.C. Bhari (supra), where the court laid down the scope of the protection afforded by Sec.197 of the Code in the following terms:-

'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.'

14. Recently, their Lordships of the Supreme Court again had an occasion to decide similar controversy in the case of R. Balakrishna Pillai v. State of Kerala and another, (1996) 1 S 478.

15. In this case, their Lordships have referred to 41st report of the Law Commission in which it is mentioned that ultimate justification for the protection conferred by Section 197 IPC is the public interest in seeing that official acts do not lead to needless or vexatious prosecutions. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant.' It was in pursuance of this observation that the expression 'was' came to be employed after the expression 'is' to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted.

16. Their Lordships of the Supreme Court while interpreting Section 197 I.P.C. observed the question whether the acts complained of had a direct nexus or relation with the discharge of official duties by the public servant concerned would depend on the facts of each case. There can be no general proposition that whenever there is a charge of criminal conspiracy leveled against a public servant in or out of office the bar of Section 197 of the Code would have no application. Such a view would render Section 197 of the Code specious. therefore, the question would have to be examined in the facts of each case.

17. Their Lordships have placed reliance on B.Shah's case (supra). In this case their Lordships while interpreting 197(1) of the Code observed that 'it is no part of

an official duty to commit an offence, and that never can be'. While summing up the Court observed that it is the quality of the act that is important and from that angle each case has to be decided on its own merit and the protection to the public servant would depend on his act in every individual case.

18. On analysis of various judgments decided by their Lordships of the Supreme Court, the conclusion becomes irresistible that the public servant is entitled for the protection of his acts done in the Course of official duty or under colour of office would depend on the facts of each case. The act of the public servant must bear such relations to the duty that the accused (public servant) could lay a reasonable but not a pretended or fanciful claim that he did it in the course of performance of duty as held by Matajog Dobey's case (supra).

19. When the facts of this case are carefully examined and analysed in view of the ratio laid down in aforesaid cases, then it is difficult to hold that the respondent ASI Shiv Lal is entitled for the protection of the Section 197 IPC. The Sub Inspector Shiv Lal wilfully and knowingly gave false evidence and also fabricated/false evidence with the intention that such evidence would be used in the proceedings against the accused in that case. This certainly cannot be part of anyone's official duty. The ASI Shiv Lal cannot legitimately claim any protection of the Act. The reference is answered accordingly.

20. The learned counsel appearing for the respondent strenuously submitted that incident is more than two decades old and if the respondent is compelled to undergo the rigmorale of criminal trial after lapse of more than two decades it would cause tremendous agony and harassment. The trial and further criminal proceedings may take several years. thereforee, on scrutiny of facts and circumstances of this case, while I set aside the judgment of the learned Additional Chief Metropolitan Magistrate, Delhi, but at the same time because of long and undue delay I direct that no further proceedings shall be initiated against the respondent ASI Shiv Lal in this case.

The reference is accordingly disposed of.

