

K.P. Singh Vs. State and anr.

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SooperKanoon Citation : sooperkanoon.com/706846

Court : Delhi

Decided On : Mar-05-2008

Reported in : 2008(106)DRJ600

Judge : Mukul Mudgal and; P.K. Bhasin, JJ.

Acts : Indian Penal Code (IPC) - Sections 217, 218 and 304; Code of Criminal Procedure (CrPC) - Sections 154, 190, 197, 197(1) and 202

Appeal No. : Crl. Appeal No. 09/2007

Appellant : K.P. Singh

Respondent : State and anr.

Advocate for Def. : Sunil Sharma, APP

Advocate for Pet/Ap. : Manmohan, Sr. Adv.,; Rajeshwar Singh and; J.P. Dhanda,

Disposition : Appeal allowed

Judgement :

Mukul Mudgal, J.

1. The trial court had delivered the impugned judgment dated 13th December, 2006 by which the accused SHO, R.P. Tyagi along with Sub Inspector Tej Singh and Inspector K.P. Singh were convicted. The appellant in the present appeal

Inspector K.P. Singh was convicted under Section 217 IPC by judgment and order dated 13th December, 2006 and sentenced to one year rigorous imprisonment as well as fine of Rs. 25,000/-, by the Additional Sessions Judge, Karkar Dooma, Delhi (hereinafter referred to as the 'trial court') on the ground that there was a 5-1/2 months delay in registering the FIR.

2. As per the facts of the case, in the intervening night of 24th and 25th August 1987, two persons Mahender and Ram Kumar were admitted in SDN hospital having sustained injuries ostensibly due to beatings. Mahender was shifted to LNJP hospital where he died at about 2.00 pm on 25th August 1987. As it appeared an unnatural death, area SDM S.S. Rathore conducted inquest proceedings and found involvement of the police in the crime and recommended registration of FIR on 26th August 1987 against the police of PS Vivek Vihar for offence under Section 304 IPC. Shri S.S. Rathore, SDM was then subsequently transferred from the post of SDM. Shri Parimal Rai, the next SDM submitted his report and after recording statements of several witnesses. Shri Parimal Rai did not agree with his predecessor SDM and reached a conclusion in his inquest report that Mahender Kumar had sustained injuries on being beaten by the public. Though the FIR about this happening was registered by the accused K. P. Singh himself being FIR No. 59/88 but this was done only when the order of the Lt. Governor of Delhi, was communicated through the Deputy Commissioner, Delhi. This FIR was registered on 11th February 1988 while Mahender Kumar died on 25th August 1987. Thus, there was a delay of 5 1/2 months in the registration of the FIR.

3. The main plea of the learned Senior Counsel for the appellant, Mr. Manmohan is that there were no documents to show that the order of the superior officer was addressed to and served upon the appellant for the registration of the FIR. Though the appellant was charged under Section 218 IPC for preparing false documents with the intent to save the accused but conviction was only recorded under Section 217 IPC which was for 5-1/2 months' delay in registration of FIR.

4. The learned Counsel for the appellant in order to strengthen the aforementioned plea submitted as under:

(a) The letter dated 28th August, 1987 was not addressed to the SHO, Vivek Vihar whereby directions appear to have been issued by the then SDM, Shahdara Mr. S.S. Rathore to the SHO, Police Station Shahdara, to register an FIR. The said letter was never received by the appellant and the same was endorsed only to the DCP (East).

(b) It is contended that on 29th September, 1987, the Lt. Governor, Delhi issued a direction to the DCP (HQ) to register a criminal case against the concerned errant police officers. However, a copy of the same was not marked to the appellant though it was marked to DCP (East). It is further submitted that appellant was not aware of the letter dated 3rd November, 1987 though it was recorded in the said letter of DCP (East) to DC(Delhi) that SHO, Vivek Vihar contacted SDM, Shahdara to collect statements and documents to proceed further in the matter but he could not get those documents.

(c) By a letter dated 15th January, 1988 addressed to the DCP (Hqrs), the DCP (East) has stated 'thereafter the matter was discussed with Legal Adviser to CP who was of the opinion that further action should be taken on receipt of Inquest Report, which is an important document since inquest was conducted by SDM, which is a semi-judicial body. On 10th February, 1988, the DCP received second report of the SDM and on 11th February, 1988, an FIR was filed by the appellant but DCP (East) directed investigation by ACP, Gandhi Nagar, who on 7th July, 1989 filed the report as 'untraced', which was then accepted by the learned Metropolitan Magistrate as 'untraced'.

(d) It is further submitted by the learned Counsel for the appellant that the appellant was not arrayed as an accused in the complaint case filed by father of the deceased Shri Tika Ram before ACMM, Karkardooma, as he had not named the appellant in the complaint. The appellant took charge of the Police Station Vivek Vihar as SHO at 10.10 pm on 25th August, 1987 after the incident when the then DCP (East) had suspended R.P. Tyagi, the then SHO of Police Station Vivek Vihar.

(e) The learned Counsel for the appellant submitted that the accused being a public servant is entitled to protection under Section 197 Cr.P.C. which requires

the sanction of the government for the offences alleged to have been committed by him while acting or purporting to act in discharge of his official duty. The learned Magistrate by taking cognizance of such offence erred in law and vitiated the whole process of trial. The learned Counsel for the appellant relied upon the following judgment:

(i) In *Sankaran Moitra v. Sadhna Das* : AIR 2006 SC1599 :

There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. 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 a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

From the aforesaid decisions, in my opinion, the law appears to be well settled. The primary object of the legislature behind Section 197 of the Code is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by a public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter under Section 197 of the Code. In other words, protection afforded by the said section is qualified and conditional.

(ii) In *S.K. Zutshi v. Bimal Debnath* : AIR 2004 SC4174 :

It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the

colour of office. Official duty, therefore, implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which, further, must have been official in nature. The section has, thus, to be construed strictly while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far as its official nature is concerned. For instance, a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance, a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in the course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. 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 this Court in *Matajog Dobey v. H.C. Bhari* thus: (AIR p.49, paras 17 & 19)

The offence alleged to have been committed [by the accused] must have something to do, or must be related in some manner, with the discharge of official duty.

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 [claim], but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

If on facts, therefore, it is *prima facie* found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it

must be held to be official to which applicability of Section 197 of the Code cannot be disputed.

(iii) In *Amrik Singh v. State of Pepsu* : 1955 CriLJ865 :The result of the authorities may thus be summed up: It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure; 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 defence 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.

5. As per the case of the prosecution, what is of considerable importance in this case is the allegation that FIR was not lodged in this case inspite of the orders by the SDM, S. S. Rathore who had directed for the registration of the FIR on the very next day of the incident which resulted in the death of Mahender and the repeated requests made to the effect of lodging the FIR by the father of the deceased Shri Tika Ram.

This allegation has to be seen in light of Section 154 Cr.P.C. which read as under:

154. Information in cognizable cases.- (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under Sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

Thus, Section 154 Cr.P.C. makes it obligatory for an officer in charge of the police station to register an information about a cognizable offence if given orally or to enter the substance thereof in a prescribed book if given in writing.

6. It is also to be noted that the trial court from para 50 to 58 of its judgment has dealt in detail with the case of the appellant. The trial court has held that being head of a police station, SHO was duty bound to bring the process of law into motion whenever information of such a heinous crime was received by him. It further held that there is nothing on record to show that the DCP had forbidden SHO K.P Singh to take action in this regard.

However, what the trial court failed to appreciate is the very fact that the appellant was just an SHO, who had other senior officers above his rank in the hierarchy. To disobey the senior officers could have invoked the ire of many other senior officers in an organization such as the Delhi Police, specially the DCP (East) who was directly handling the matter relating to the custodial death of Mahender Kumar at that time.

7. In our view, the accused K. P. Singh cannot be held guilty of the offence punishable under Section 217 IPC, for the delay in the registration of the FIR. The sequence of events from the date of the death of Mahender Kumar on 25th August 1987 to the registration of FIR on 11th February 1988 prima facie shows that the accused cannot be directly held to be involved in the delay for the registration of the FIR.

8. The following sequence of events reiterates the aforementioned position:

(a) On 25th August 1987 at about 2.00 pm the deceased Mahender Kumar died in Lok Nayak Jai Prakash Narain hospital. At 10.10 pm on 25th August 1987 the appellant K. P. Singh took charge as SHO, police station Vivek Vihar.

(b) On 28th August 1987, SDM S. S. Rathore who conducted inquest proceedings issued directions to the SHO, Shahdara, to register an FIR against the guilty officials. However, this letter was not addressed to the SHO, Vivek Vihar. Copy of this letter was never received by the appellant, though it was marked to the DCP (East). The prosecution has led no evidence to substantiate the service of the letter dated 28th August 1987 upon the appellant.

(c) On 29th September, 1987, the Lt. Governor directed the DCP (East) to register a criminal case against the concerned police officers vide Ex.CW 17/A.

(d) On 3rd November, 1987, DCP (East) wrote a letter to the Deputy Commissioner, in which it was recorded that the SHO, police station Vivek Vihar contacted SDM Shahdara, to collect statements and documents to proceed further in the matter but he could not get those documents vide Ex.DW 12/A. The appellant has categorically denied without any refutation that he was never served with the said letter. No evidence has been led by the prosecution to prove the service of the said letter dated 3rd November, 1987 upon the appellant.

(e) On 8th November, 1987, the DCP (East) wrote a letter to the DCP, (Headquarters) wherein it was stated that 'we may proceed in the matter regarding registration of the case on receipt of the inquest report from SDM, Shahdara'.

(f) On 14th November, 1987, DCP (Headquarters) wrote a letter to the Joint Secretary (Home) in which it was stated that 'in the absence of reports / documents from SDM, Shahdara, it is not possible for the Police Department to take further action in this regard.'

(g) On 26th November 1987, a complaint case was filed by the father of the deceased Shri Tika Ram before the ACMM, Karkar Dooma, Delhi, in which the appellant was not at all arrayed as an accused.

(h) On 15th January 1988, a letter addressed to the DCP (Hqrs) by the DCP (East) has stated 'thereafter the matter was discussed with Legal Adviser to the Commissioner of Police who was of the opinion that further action should be taken on receipt of Inquest Report, which is an important document since inquest was conducted by , Shri Parimal Rai, SDM, Shahdara.

(i) On 10th February, 1988, the DCP received the second inquest report from the SDM Shri Parimal Rai.

(j) On 11th February, 1988, FIR was filed by the appellant but DCP (East) directed investigation by ACP, Gandhi Nagar, who on 7th July, 1989 filed the report as 'untraced', which was then accepted by the learned Metropolitan Magistrate as 'untraced'.

It can be clearly seen from the aforesaid sequence of events that the SHO was just obeying the directions and orders of his superior officers. From a bare perusal of communications and sequence of events which occurred during the course of the proceedings which ultimately led to the delay in the registration of the FIR, it can be no way doubted that the whole matter leading to the custodial torture and death of Mahender Kumar and the delay in registration of the FIR was not occasioned by the appellant. There is no proof brought on record to prove that the appellant was served with any direction of the Lt. Governor or his superior officer to register an FIR. In fact, the facts in this matter may indicate that the then DCP (East) did not appeared to have taken prompt and appropriate action which he was duty bound as a superior officer to take and no action of any kind was taken against him.

9. It is further to be noted that the complainant did not make any allegation against the appellant in the complaint under Section 190 Cr.P.C. filed on 26th November, 1987. The learned Metropolitan Magistrate summoned the appellant by its order dated 2nd April 1994 on the basis of the deposition made by the complainant during the enquiry under Section 202 Cr.P.C after a period of six years. It is also pertinent to mention that the name of the appellant was never mentioned in the complaint nor in the representation made by the complainant to the higher authorities. It was the appellant himself who registered the FIR being FIR No.

59/1988 under Section 304 IPC immediately on receipt of the second inquest report. From the communications dated 8th November, 1987 and 15th January 1988 between the superior officials it is apparent that the directions to file the FIR was only given after the receipt of the second inquest report. In fact, very soon after the appellant was served with the second inquest report dated 8th February 1988 sent by the the DCP (East) to the appellant on 11th February 1988, he registered the FIR No. 59/88 under Section 304 IPC on the same day showing his bonafides and thus can not be convicted for the delay in registering the FIR. Hence, in our view, this is a case where no conviction is warranted as the prosecution has failed to establish the culpability of the appellant attracting Section 217 of the IPC. The question relating to sanction under Section 197 Cr.P.C. has been dealt in connected Criminal appeal No. 38/2007 and Crl. Appeal No. 11/2007 which may be read as part of this Judgment on the plea of Section 197 Cr.P.C. and a copy thereof is placed on the file.

10. Accordingly the appeal is allowed and the judgment dated 13th December, 2006 passed by the learned Additional Sessions Judge in SC No. 01/2006, in so far as it convicts the appellant under Section 217 IPC is set aside and the appellant is acquitted of all the charges and bail bonds, if any, stand cancelled and if the appellant is in custody he shall be released forthwith.