

M.K. Issac Chandy Vs. State Represented by the Deputy Superintendent of Police

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Court : Kerala

Decided On : Jan-24-1996

Reported in : 1996CriLJ3155

Judge : P.V. Narayanan Nambiar, J.

Acts : Indian Penal Code (IPC) - Sections 34, 465, 468, 471, 477A and 500; Code of Criminal Procedure (CrPC) , 1974 - Sections 197 and 197(1)

Appeal No. : Crl. R.P. No. 743 of 1995

Appellant : M.K. Issac Chandy

Respondent : State Represented by the Deputy Superintendent of Police

Advocate for Def. : D.G.P. and; Ratnasingh, Adv. and; K. Ravikumar, Publ

Advocate for Pet/Ap. : C.S. Rajan and; T.V. Ajayakumar, Advs.

Judgement :

ORDER

P.V. Narayanan Nambiar, J.

1. M. K. Issac, who is the first accused in CC Nos 90, 303 and 451 of 1994 pending before the Judicial First Class Magistrate, Ranni is the petitioner in all the three revisions. He was a Forest Range Officer who retired from service on 31-3-1990. Vigilance investigation was initiated against him in 1986. On the basis of the investigation, he along with another was charge-sheeted to face the trial for offences punishable under Sections 465, 468, 471, 477A read with Section 34 I.P.C. He filed an application in all the cases in which he prayed that charge against him may be quashed for want of sanction and also on the ground of limitation. The Court below dismissed the applications. The challenge is against those orders.

2. Counsel contended that the prosecution has no legs to stand on for want of sanction under Section 197(1) Cr. P. C. A copy of the First Information Statement was made available to me. In the F. I. statement it is specifically stated that the accused committed offence by misusing his official position. According to the prosecution, he had defalcated the amounts which belong to the Government by obtaining false and bogus receipts and forged vouchers from third parties. The Court below while dismissing the application stated that commission of an offence cannot be said to be part of his official duty and so it cannot be said that the action complained of is done in the course of discharge of his official duty.

3. I am afraid the conclusion arrived at by the Court below is not sustainable. Going by Section 197(1) Cr. P. C. sanction is required for prosecuting an officer of the Government in respect of the offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. There is a bar in taking cognizance of the offence in the absence of sanction in a case where sanction is required. The point was considered in the decision reported in *Ramayya v. State of Bombay* (AIR 1955 SC 287): (1955 Cri LJ 857) and held that the provision regarding sanction cannot be construed too narrowly. If Section 197 Cr. P. C. is construed too narrowly, it can never be applied, for it is no part of an official's duty to commit an offence and it never can be. On a reading of paragraphs 18 and 19 of the decision, it is clear that sanction is necessary for prosecuting an officer who has committed the offence in the discharge of his official duty. It is stated therein that provisions contained in Section 197 are

attracted when, the allegation is that the accused misused his official position and thereby committed the offence. Such action cannot be said to be unconnected with the discharge of his official duty. The decision reported in *Somchand Sanghvi v. Bhusan Chakravarty*, (AIR 1965 SC 588 : 1965 (1) Cri LJ 499), also comes to the rescue of the petitioner. The *Director of Inspection and Audit v. Sri C.L. Subramaniam*, (JT 1994 (6) SC 50) wherein the Supreme Court considered whether sanction under Section 197 Cr. P. C. is required to prosecute an officer for an offence punishable under Section 500 I. P. C. based on the statement in an affidavit made in the course of discharge of his official duty. The Supreme Court came to the conclusion that sanction is required as the statement which gave rise to the filing of the complaint was filed in discharge of his official duty.

4. The position cannot be different because of the fact that the petitioner has retired from service as sanction is required for prosecuting retired officials also.

5. Going by the allegations in the First Information Statement and the charge-sheet, it is clear that the petitioner committed the crime by misusing his power as Forest Range Officer and also purporting to act in the discharge of his official functions. So, sanction is required for prosecuting the petitioner. So. it cannot be held that such action is unconnected or not reasonably connected with the official functions. Sanction is required if an offence is connected with the discharge of official duty. The complaints filed without obtaining sanction cannot have been taken cognizance of by the Court below. The Court below' should not have taken cognizance of the offence without sanction. So, CC Nos 90, 303 and 451 of 1994 pending before the Judicial First Class Magistrate, Ranni stand quashed. It is made clear that there is no bar in prosecuting the petitioner after obtaining sanction as required by law.

6. The Revision Petitions are disposed of as above.