

Vijayan Vs. Sanalkumar

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Court : Kerala

Decided On : Dec-11-2002

Reported in : 2003(1)KLT980

Judge : R. Rajendra Babu, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 197(1)

Appeal No. : CrI.R.P. No. 1348 of 2002C

Appellant : Vijayan

Respondent : Sanalkumar

Advocate for Def. : Sujith Mathew Jose, Public Prosecutor

Advocate for Pet/Ap. : E. Subramani and; S. Easwaran, Adv.

Disposition : Criminal revision petition dismissed

Judgement :

ORDER

R. Rajendra Babu, J.

1. The revision petitioners are accused Nos. 1 and 3 in C.C.No.440/99 pending before the C.J.M. Court, Kollam. They filed CrI. M.P. 6622/01 for dropping the proceedings as against them claiming protection under Section 197(1) Cr.P.C. The

above CrI.M.P. was dismissed by the court below. Aggrieved by the above order, petitioners have come up in revision challenging the above order and praying for an order dropping the proceedings pending against them.

2. Heard the learned counsel for the petitioners, the 1st respondent complainant and also the learned Public Prosecutor.

3. The 1st petitioner was the Circle Inspector and the 2nd petitioner was the Sub Inspector of Police, Chavara Police Station during the relevant period. The 1st respondent herein filed a private complaint against the petitioners and four other police officials alleging the commission of different offences including offences under Sections 307 and 305 read with Section 34 IPC. The case of the 1st respondent was that he along with his friends were travelling in a car bearing No. KL 2/6615 by about 3.30 p.m. on 5th May, 1997 from Puthenthura to Kollam and when they reached the Altharamoodu temple, they were taken to the Chavara Police Station by the accused and the complainant and others were brutally assaulted and tortured in the police station. The complaint was originally filed before the J.F.C.M. Court, Karunagappally and from there it was transferred to the C.J.M. Court as per the order of the Sessions Court in CrI. M.P. 2085/97. The C.J.M. conducted an enquiry and issued process against the accused for the offences under Sections 307 and 305 read with Section 34 IPC. The petitioners challenged the proceedings before this Court in CrI.M.C. 5657/99 and the above CrI.M.C. was later withdrawn. Thereafter the accused filed CrI. M.P. 6622/2001 before the court below for dropping the proceeding contending that sanction under Section 197(1) of CrI.P.C. was not obtained from the Government for proceeding against the accused who were police officials and the offences were alleged to have been committed in the discharge of their official duties. The court below after considering the nature of the allegations and the circumstances held that the sanction under Section 197(1) Cr.P.C. was not necessary and accordingly the CrI. M.P. was dismissed. The above order is under challenge.

4. The learned Counsel for the petitioners submitted that the local people were on agitation against the mechanisation in Indian Rare Earths at Chavara, and on 5th May, 1997 by about 9 a.m. the erection of the machinery was started by an

Australian company. At about 11.30 a.m. a group of persons started pelting stones at the foreigners who were engaged in the erection of the machinery. The Circle Inspector of Police, Chavara, tried to prevent further clash and nearly 150 persons under the leadership of one Sri Felix Babu and the 1st respondent armed with deadly weapons attacked the police. The Assistant Sub Inspector and other police personnels sustained injuries. A police jeep was damaged. Accordingly Crime 125/97 of Chavara Police Station was registered for offences under Sections 143, 147, 148, 332 and 307 read with Section 149 IPC and also Section 3(2)(c) of P.D.P.P. Act. The first respondent herein was the 2nd accused and by about 5.30 p.m. on 5th May 1997 the 1st respondent was arrested and was produced before the court on 6th May, 1997. He had no complaints before the Magistrate when he was produced and as the offence was alleged to have committed in the course of the discharge of the official duties of the petitioners, sanction under Section 197(1) was necessary and in the lack of the sanction, the proceedings initiated against the petitioners are liable to be dropped. The learned Counsel for the 1st respondent-complainant submitted that the 1st respondent was tortured and assaulted at the police station after their arrest from a different place and the above act was not part of or in the course of the discharge of their official duties and as such sanction under Section 197(1) Cr.P.C. was not necessary. It was further submitted that it was not a case where the police was using any force at the time of disbursing or disrupting the mob, but it was a case where the 1st respondent-complainant had been tortured at the police station and as such sanction was not at all necessary for proceeding with the complaint. Reliance was placed on the decision of the Supreme Court in *B. Saha v. M.S. Kochar* ((1979) 4 SCC 177) wherein it was held that for getting the protection under Section 197(1) Cr.P.C., there should be direct and reasonable nexus between the offences committed by the accused and the discharge of official duties. In *Gauri Shankar Prasad v. State of Bihar* ((2000) 5 SCC 15) the Supreme Court held:

'Section 197 Cr.P.C. affords protection to a Judge or a Magistrate or a public servant not removable from his office save by or with the sanction of the Government against any offence which is alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. The protection is provided in the form that no court shall take cognizance of such offence except

with the previous sanction of the Central Government or the State Government as the case may be. The object of the section is to save officials from vexatious proceedings against Judges, Magistrates and public servants but it is no part of the policy to set an official above the common law. If he commits an offence not connected with his official duty, he has no privilege. But if one of his official acts is alleged to be an offence, the State will not allow him to be prosecuted without its sanction. Section 197 embodies one of the exceptions to the general rules laid down in Section 190 Cr.P.C., that any offence may be taken cognizance of by the Magistrates enumerated therein. Before this section can be invoked in the case of a public servant two conditions must be satisfied i.e. (1) that the accused was a public servant who was removable from his office only with the sanction of the State Government or the Central Government; and (2) he must be accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty.

What offences can be held to have been committed by a public servant while acting or purporting to act in the discharge of his official duties is a vexed question. Broadly speaking the alleged action constituting the offence said to have been committed by the public servant must have a reasonable and rational nexus with the official duties required to be discharged by such public servant,'

5. In *P.K. Pradhan v. State of Sikkim* ((2001) 6 SCC 704) the Supreme Court held that:

'For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, and the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped.'

6. There the Supreme Court further held:

'It is well-settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.'

7. So far as the present case is concerned, the acts alleged to have been committed by the accused do not have any nexus or connection with the discharge of their official duties. In order to get the protection under Section 197(1) of the Code, the acts alleged to have been committed by the accused should have been committed in the course of the discharge of their official duties. But as the alleged offences were committed at the police station after taking the injured from a different place, it cannot be said to be done in the course of the discharge of their official duties. There is no nexus between the acts alleged and the discharge of official duties. But if the evidence disclose at a later stage that the alleged offences were done in the course of the discharge of the official duties, in view of the decision of the Supreme Court in P.K. Pradhan's case (supra), the accused can raise the contention regarding the protection under Section 197(1) Cr.P.C. But in the nature of the allegations, no sanction is necessary under Section 197(1) of the Act for proceeding with the case against the accused. The court below is fully justified in rejecting the prayer of the petitioner and I find no reasons to interfere with the same. Hence this Crl.R.P. is liable to be dismissed. But it shall be open to the petitioners to raise the same contention at a later stage, on the basis of the evidence in the case.

8. In the result this Crl.R.P. is dismissed.

