

Ramdutt and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Oct-21-1965

Reported in : 1966CriLJ584

Judge : C.B. Bhargava, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 197; ;Rajasthan Panchayat Act, 1953 - Sections 17(4); [Constitution of India](#) - Article 12

Appeal No. : Criminal Revn. No. 157 of 1965

Appellant : Ramdutt and ors.

Respondent : State of Rajasthan and ors.

Advocate for Def. : M.C. Bhoot, Adv.

Advocate for Pet/Ap. : Shubh Karan, Adv.

Disposition : Revision partly allowed

Judgement :

ORDER

C.B. Bhargava, J.

1. This is an application in revision by Ram Dutt and 13 others against the order of the Additional Munsiff Magistrate, Jalore dated 5th May, 1964 in a complaint case

under Sections 384, 147 and 427 Indian Penal Code.

2. It was alleged in the complaint that the accused, who were 18 in number formed an unlawful assembly on 20th January, 1962 and in prosecution of their common object removed the complainant's 'Bada' and thatch and also dishonestly took away a number of articles including a cow. Amongst the accused Ram Dutt is Sarpanch, Mishrilal an Up-Sarpanch and Sukhraj, Thaniya and Gajra are Panchas of the Gram Panchayat, Umedabad. Some of these accused urged before the trial Magistrate that their prosecution without the previous sanction of the State was barred in view of the provisions of Section 197 Criminal Procedure Code. It was urged that the 'Bada' in dispute was removed by them in the discharge of their official duty.

It was pointed out that the resolution was passed by the Gram Panchayat for the removal of the disputed 'Bada' on 5-3-1959. Thereafter on 14th January, 1962 a notice was given to the complainant to remove that 'Bada', but he failed to do so, and so the members of the Panchayat removed it on 20th January, 1962 and also prepared an inventory of the articles found in the 'Bada' which were duly entrusted to the custody of the Motbirs. It was urged that under Section 27(2) of the Rajasthan Panchayat Act, 1953 the Panchayat was entitled to remove the 'Bada' when the complainant failed to remove it in spite of a notice given to him.

On behalf of the complainant it was urged that the complainant had filed an appeal against the resolution of the Gram Panchayat dated 5th March, 1959 and also obtained a stay order from the Vikas Adhikari on 17th January, 1962, which was duly communicated to the accused before they undertook the removal of 'Bada'. In such circumstances it was urged on behalf of the complainant that the accused cannot be said to have been acting in the discharge of their official, duty. The learned Additional Munsiff Magistrate as well as the learned District Magistrate in revision overruled the objection of the accused. Hence this revision.

3. There is no dispute that on the date the complaint was filed the petitioner No. 1 Ramdutt was Sarpanch, Mishri Lal an Up-sarpanch and Sukhraj a Panch of the Gram Panchayat, Umedabad. With regard to the petitioners Thaniya, and Gajra though the lower court has said in its judgment that they are also Panchas but

there is nothing on the record to substantiate that fact and the learned counsel for the complainant is not prepared to accept this fact, without further instructions.

4. Now in order to attract the provisions of Section 197 Criminal Procedure Code it is necessary to show that the accused is a public servant who is not removable from his office save by the sanction of the State Government or the Central Government and the act alleged to have been committed by him was done while acting or purporting to act in the discharge of his official duty. On the first question whether a Sarpanch or a Panch was a public servant only removable by or with the sanction of the State Government there was divergence of opinion in this Court. See *Chauthmal v. Pannalal*, ILR (1954) 4 Raj 464; *Kalu v. Pyara*, ILR (1959) 9 Raj 38; *Mohanlal v. State*, ILR (1959) 9 Raj 583 & *Bhagwatilal v. Bhanwar Lal*, 1960 Raj LW 610: (1961 (1) Cri LJ 558). Subsequently this question was referred to a Division Bench and the Division Bench in *Pukhraj v. Ummaidram*, 1964 Raj LW 238: (AIR 1964 Raj 174) held:

'The very word 'removable' signifies that the termination of the employment of the public servant must not come to an end automatically by force of law nor must it come to an end because he has resigned. It must come to an end on some superior authority forcing him to vacate the office. Usually in the case of Government servant, this is done on account of misconduct and certain safeguards are provided under Article 311 of the Constitution by placing restrictions on the removal of a Government servant. It is in this technical sense that the word should be construed in Section 197, Cr. P. C. and not in any other sense..... The word 'removal' must have the meaning of causing vacation of office as a result of misconduct or misbehaviour or any other similar cause.'

Finally the Division Bench came to the conclusion that a Sarpanch could be removed only by the State Government and the complaint against him could not be taken cognizance of as there was no previous sanction of the State Government. The same argument applies to the case of Panchas because the power of removal of any Panch, Sarpanch or Up-Sarpanch is contained in the same provision of the Rajasthan Panchayat Act, 1953 i.e. Section 17(4).

5. As for the second point it is well settled that 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. The question whether the act was done in excess of its power or was mala fide is not to be considered for applying the provisions of Section 197 Criminal Procedure Code. It is a matter which can be decided at the trial. Once it is shown that the act complained of had reasonable connection with the discharge of official duty the ban imposed under Section 197 Criminal Procedure Code would come into play. In *Ramayya v. State of Bombay*, (S) AIR 1955 SC 287 it was held:

'If Section 197 Criminal P. C. is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty which the courts have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it.'

It was therefore to be seen in the present case whether the act complained of had any reasonable connection with the discharge of official duty of the accused i.e. Panchas and Sarpanch. It is sufficiently clear on the record that a resolution was passed by the Panchayat on 5th March 1959 for the removal of the disputed, 'Bada'. It is equally clear from Ex. 5 that the complainant was asked to remove it. The complainant having failed to remove the disputed 'Bada' the Sarpanch Up-Sarpanch and the Panchas themselves removed the 'Bada' purporting to act under the powers given to the Panchayat under Section 27(2) of the Act. It cannot therefore be said that the removal of the disputed 'Bada' or the articles lying therein had no connection with their official duty. The question that they removed the 'Bada' after a stay order passed by the Vikas Adhikari was communicated to them should be considered to determine whether the act was mala fide and further the proper stage for it would come during the trial. But at present the lower court was not competent to take cognizance of the offence unless previous sanction for their prosecution was obtained from the State Government.

Learned counsel for the complainant has urged that the accused were not employed in the affairs of the State and therefore no previous sanction of the State Government was required. In this connection he has referred to K. Narayana v. B. Veerayya, AIR 1959 Andh Pra 27 where the learned Judge observed:

'Moreover, to attract the protection conferred by Section 197, Cr. P. C., the public servant concerned must be, as laid down by Clause (b) of Sub-section (1) of Section 197, Cr. P. C. a person employed in connection with the affairs of a State. It cannot be said that a Sarpanch or an Up-Sarpanch is a person 'employed' in connection with the affairs of a State. As already noticed, the Sarpanch and Up-Sarpanch are elected by the Gram Panchayat. They hold their office by election and not by employment. In this view also, petitioners 1 and 3 are not entitled to the protection under Section 197, Cr. P. C. It follows that a Sarpanch or an Up-Sarpanch is not a public servant not removable from his office save by or with the sanction of the State Government; nor is he a person employed in connection with the affairs of the State.'

6. With respect I am unable to subscribe to this view. The expression 'affairs of a State' has not been defined in the Criminal Procedure Code. The Gram Panchayats have been established in this State to establish and develop Local Self Government and to take measures conducive to better administration of the villages. Under Section 69 of the Act it is provided that the State Government shall be the chief controlling authority in respect of all matters relating to the administration of Panchayats. Besides the definition of the term 'the State' in Article 12 read with Entry 5 in List II of the seventh schedule of the [Constitution of India](#) clearly shows that Gram Panchayats too are included in the expression 'the State'. Therefore Sarpanchas and panchas who are employed in connection with the administration of Panchayats are employed in affairs of the State. In my view the Sarpanch, Up-Sarpanch and Panch i.e. the petitioners No. 1 Ramdutt, No. 2 Mishrilal & No. 3 Sukhraj are entitled to protection afforded by Section 197, Criminal Procedure Code and the Court was not entitled to take cognizance of the offence unless previous sanction for their prosecution was obtained. In the absence of any material on the record whether the petitioners Nos. 4 and 5 i.e. Thaniya and Gajra are also Panchas nothing can be said at this stage about them,

but if the trial court feels convinced that they were also Panchas of the Gram Panchayat when the complaint was filed against them this judgment will also govern their case. With regard to the other petitioners i.e. Nos. 5 to 14 obviously section 197 Criminal Procedure Code has no application. Evidence will be required in their case to satisfy the court that they too were acting in good faith under the directions of the petitioners Nos. 1 to 3 and the trial court will then decide whether any offence is made out against them.

7. The result therefore is that this revision is partly allowed and the proceedings taken in the complaint against Ramdutt, Mishrilal and Sukh Raj are quashed. The proceedings against the petitioners Nos. 4 to 5 will continue until it is brought to the notice of the court that they were also Panchas when the complaint was filed against them. As regards the other petitioners the case will be disposed of in accordance with law as observed above.

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