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Court : Rajasthan

Decided On : Dec-05-1964

Reported in : AIR1965Raj210; 1965CriLJ681

Judge : C.B. Bhargava, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 197, 202 and 526(8);
Rajasthan Municipalities Act, 1959 - Sections 203

Appeal No. : Criminal Revn. No. 379 of 1963

Appellant : Mangharam

Respondent : State and ors.

Advocate for Def. : J.S. Gupta, Adv. for No. 1 and; M.M. Vyas, Govt. Adv.

Advocate for Pet/Ap. : N.K. Issrani, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

C.B. Bhargava, J.

1. This is an application in revision by Mangharam against the order of the learned Additional Munsif Magistrate, First Class Ajmer City West dated 19th November,

1932 in refusing to take further proceedings in the complaint against the non-petitioners Shri Triloki Nath Chaturvedi, Administrator, Municipal Council, Ajmer and Shri Prayag Raj Mathur, Commissioner, Municipal Council, Ajmer on the ground that prior sanction of the State Government as required under Section 197 of the Code of Criminal Procedure, was not obtained by the petitioner for their prosecution.

2. The present complaint was filed by the petitioner on 2nd June, 1961, and the material allegations made in the complaint are set out in the judgment of this Court in Mangharam v. The State ILR (1962) 12 Raj 601. On the facts alleged it was stated that the non-petitioners had committed offences punishable under Sections 147, 427, 451, 380, 411 and 500 read with Section 34/109 of the Indian Penal Code. Before taking any proceedings on the complaint the learned Magistrate had dropped the proceedings against the non-petitioners on 14th June, 1961 on the ground that previous sanction of the State Government was not obtained by the complainant. Against this order a revision was preferred before this court and it was held that there were not proper materials before the court to come to the conclusion that the act complained of was committed by the non-petitioners while acting or purporting to act in the discharge of their official duty. It was further observed that it would be open to the Magistrate to decide about the necessity of sanction when proper materials are placed before him. The order dated 14th June, 1961 was thus set aside.

After the case was received back, it was once dismissed in default of the complainant's appearance on 1st March, 1962. This order of dismissal of the complaint was set aside by the learned Sessions Judge and the case was again sent back. It was then transferred to the court of the Munsif Magistrate, First Class, Ajmer who on 21st July 1962 fixed 10th August, 1962 for holding a preliminary enquiry under Section 202 of the Code of Criminal Procedure and also issued notices to the persons complained against. A preliminary enquiry was held and the complainant examined four witnesses on 6th September, 1962 and gave his own statement on 10th September, 1962 and examined one more witness on the same date. Thereafter the proceedings remained suspended in the court of the learned Magistrate because the complainant moved a transfer application in the court of

the learned Sessions Judge. This transfer application was rejected by the learned Sessions Judge on 3rd November, 1962 and the file was received back on 7th November, 1962.

The file was put up before the learned Magistrate on 19th November, 1962. On that date the complainant again intimated the court of his intention to move the High Court for the transfer of the case from his court. Another application for adjournment of the case to enable his counsel to prepare arguments was moved by the complainant. Both these applications were rejected and the learned Magistrate passed the order under revision. The complainant took up this matter to the court of the learned Sessions Judge, Ajmer, but his revision application was rejected. He has therefore, again come up to this Court in revision.

3. The main grounds now urged on his behalf are that the procedure adopted by the Munsif Magistrate in issuing notices to the persons complained against at the time when he was making a preliminary enquiry under Section 202 of the Code was unwarranted by law. Reliance is placed on Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 S C 1430 that the order of the Munsif Magistrate is also bad in law because it was passed after intimation had been given to him of the complainant's intention to move the High Court for the transfer of the case from his court, that the persons complained against had no right to show at that stage of the case that the act complained of was committed by them in the discharge of their official duty and lastly that on the materials on record the order of dropping proceedings against the non-petitioners was not justified.

4 Before dealing with the contentions raised, it may be mentioned here that in response to the notice issued by the court the non-petitioners through their counsel submitted an application on 10th September, 1962 praying that the court should not take cognisance of the offence against them as no previous sanction of the State Government had been obtained for their prosecution on the ground that the acts alleged to have been committed by them were done in the discharge of their official duty as would be clear from the documents annexed. Along with this application, true copies of 24 documents were also submitted, and the courts below after a perusal of those documents have come to the conclusion that

Section 197, Cr. P. C., applied in the case of the non-petitioners.

5. On the practice of giving notice to the person complained against and bearing him during the course of preliminary enquiry under Section 202, there was diversity of judicial opinion. But that controversy has now been set at rest by the decision of the Supreme Court referred to above. It has been held in that case that:

'The entire scheme of Ch. XVI of the Code of Criminal Procedure shows that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no light to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interest of justice. But beyond that, he cannot go.'

It was further held that:

'Permitting an accused person to intervene during the inquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry.'

6. Learned counsel for the petitioner says that this bar against the accused also applies in regard to the question of sanction under Section 197 of the Code. The above decision indisputably lays down that during the preliminary enquiry under Section 202 of the Code, the accused has no right to take part in the proceedings, nor has the Magistrate any jurisdiction to allow him to do so. But it is to be remembered that preliminary enquiry under Section 202 is held for the purpose of

ascertaining the truth or falsehood of the complaint and the accused can be held to have no right at that stage to say that the accusation against him is false because that is a matter which the accused can properly show in his defence during the trial. Section 197 however, occurs in Part B of Ch. XV of the Code which deals with the 'Conditions requisite for initiation of proceedings' and the underlying object of the above section is to guard against vexatious proceedings against judges, magistrates and public servants unless previous sanction for their prosecution is obtained from the Central or State Government concerned as the case may be.

As observed by the Supreme Court in *H.N. Rishbud v. State of Delhi*, (S) AIR 1955 S C 196.

'It is one of those sections which regulates the competence of the court and bars its jurisdiction in certain cases excepting in compliance therewith.'

This being the object of Section 197 and the courts being debarred from taking cognisance of the offence unless such previous sanction of the State Government had been obtained, the question is whether the accused is prevented from showing when a preliminary enquiry is being held against him under Section 202, that Section 197 applies to him and the court should not proceed with the preliminary enquiry. In my opinion the answer to this question should be 'no' and the reason is obvious because inquiry under Section 202 can be held only when the magistrate has authority to take cognisance of the offence. Sanction of requisite authority being a condition precedent for taking cognisance of the offence, it would be open to the accused even at that stage to take a preliminary objection to the maintainability of the prosecution and it would also be the duty of the court to decide whether Section 197 does or does not apply because upon that decision will depend the question of the court's jurisdiction to take further proceedings in the matter. Failure to do so would frustrate the object underlying Section 197, Criminal P. C. and in many cases proceedings would be delayed and rendered void. I am therefore, of the view that objection regarding want of sanction can be raised by a public servant to whom Section 197 Criminal P. C. applies even before process is issued against him and it would be the duty of the court to

decide that objection at that initial stage. This however, does not mean that a public servant cannot raise such objection at subsequent stage of the proceedings. This is settled beyond controversy by a decision of the Supreme Court in *Matajog Dobey v. H.C. Bhari*, (S) AIR 1956 S C 44 that whether sanction for prosecution of any accused is necessary or not can be decided by the court at any stage during the trial. The decision relied upon by the learned counsel is clearly distinguishable because in determining the question about sanction the court does not enquire about the truth or falsehood of the complaint but examines the question whether the condition necessary for its taking cognisance of the case is satisfied or not. Such enquiry cannot be said to be in the nature of trial because it does not involve any decision on the merits of the case. That being so even though the court might have acted wrongly in issuing notices to the accused persons before holding preliminary enquiry under Section 202 of the Code, yet it cannot be said to have acted illegally in deciding the question of sanction upon the materials which were placed before it on behalf of the non-petitioners before any process was issued against them.

7. The other contention that the order of the trial court is bad because it was passed after intimation was given to that court of the intention of the complainant to move a transfer application before the High Court, does not deserve any consideration because Section 526 (8) of the Code of Criminal Procedure was not applicable as the trial in the case had not begun and enquiry was not being held under Chapter VIII or XVIII of the Code.

8. As regards the question whether the acts complained of were committed by the non-petitioners in the discharge of their official duty, it may be pointed out that Section 203 of the Rajasthan Municipalities Act, 1959 which is as follows empowers the Board to remove any unauthorised obstruction or encroachment from any public street or open space.

'(1) Whoever in any place after it has become a municipality shall have built or set up, or shall build or set up, any wall or any fence, rail post, stall, verandah, platform, plinth, step or any projecting structure or thing or other encroachment or obstruction except steps over drains in any public street or shall deposit or cause

to be placed or deposited any box, bale, package or merchandise or any other thing in such street, or in or over or upon any open drain, gutter, sewer or aqueduct in such street shall be punished with fine which may extend to twentyfive rupees.

(2) The Board shall have power to remove any such obstruction or encroachment and shall have the like power to remove any unauthorised obstruction or encroachment of the like nature in any open space not being private property, whether such space is vested in the Board or not, provided that if the space be vested in the State Government the permission of such officer as may be appointed or authorised by the State Government in this behalf shall have first been obtained and the expense of such removal shall be paid by the person who has caused the said obstruction or encroachment and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chap. VIII.'

Amongst the documents submitted on behalf of the non-petitioners there is one resolution of the Municipal Council, Ajmer dated 29th June, 1960 to the effect that encroachment be removed throughout the city and the commissioner be authorised under Section 78 of the Rajasthan Municipalities Act to exercise powers under Section 203 of the said Act and take the assistance of the Superintendent of Police, Deputy Inspector General of Police and the Deputy Superintendent of Police. There is also an order dated 10th April, 1961 of the non-petitioner No. 1 who was the Administrator of the Municipal Council, Ajmer at that time indicating his approval of the action proposed by the Building Superintendent and the Commissioner in removing a portion of the projection from roof of the shop of the complainant in the first instance. There is further an order of the non-petitioner No. 1 dated 27th April, 1961 that the complainant was not going to remove the projecting structure and therefore, projection and unauthorised structure should be removed. In pursuance of this order the acts complained of are said to have been done on behalf of the non-petitioners and there is a compliance report dated 3rd May, 1961 also to the effect that the unauthorised structure overhanging on street land beyond chabutra had been removed and as the owner refused to take possession of the articles lying in the cabin a list of which was also

submitted, they were deposited in municipal garage for safe custody.

From the allegations contained in the complaint it is clear that the non-petitioners Nos. 1 and 2 were the Administrator of the Municipal Council and Commissioner of the Municipal Council, Ajmer respectively. It is also clear that the acts complained of were alleged to have been committed by the employees of the Municipal Council, Ajmer. Having regard to the above orders of the Administrator in pursuance of which the acts complained of are said to have been done it can reasonably be inferred that the acts were done in the discharge of official duty by the non-petitioners or at any rate they had a reasonable connection with the discharge of their official duty. Therefore, they were entitled to protection under Section 197 of the Code of Criminal Procedure and no proceedings on the complaint could be taken against them unless previous sanction from the State Government for their prosecution was obtained. It is not in dispute that the non-petitioners were public servants and could not be removed from their office save by or with the sanction of the State Government. I am, therefore, of the view that the order passed by the Munsif Magistrates was correct and does not call for any interference.

9. The revision application is therefore, rejected.