

Behari Lal Vs. Moola

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Court : Rajasthan

Decided On : Apr-28-1961

Reported in : 1962CriLJ192

Judge : Sarjoo Prosad, C.J.

Appellant : Behari Lal

Respondent : Moola

Judgement :

ORDER

Sarjoo Prosad, C.J.

1. This is a reference made by the District Magistrate of Alwar for quashing the order of the trying Magistrate who held that in the circumstances no sanction was necessary for the purpose of taking cognizance of the case.

2. The material facts leading to the reference may be stated at this stage. It appears that the Panchayat Barkhera passed a resolution for removal of certain 'Bar' and a peon of the Panchayat was sent to execute the order but when the peon failed to do so another resolution was passed by the Panchayat on 13th December, 1959. By virtue of that resolution the Panches were asked to go to the spot and get the 'Bar' removed. A complaint was lodged by one Moola that on the date in question the petitioners went to the spot and set fire to the roof of the opposite party Moola and also outraged the modesty of Mt. Soni. The accused

mentioned in the complaint were the Sarpanch Behari Lal, Panch Laloc, the chowkidar of the Panchayat Barkhera and two other persons, Mt. Maluki and Netia.

The first three accused, the Sarpanch the Panch and the Chowkidar raised an objection that in the absence of any sanction under Section 187 of the Code of Criminal Procedure they who were public servants as members of the Panchayat, could not be prosecuted, The trying Magistrate overruled this objection and held that there was no reasonable connection between the act complained of and the discharge of official duty by the petitioners and, therefore, the petitioners were not entitled to any protection under, Section 197 of the Code. It is against this order of the trying Magistrate that the learned District Magistrate has made the reference in question.

3. In support of the reference long arguments have been addressed before me by Mr. J.P. Jain on behalf of the petitioners who has referred to several decisions to fortify his contention. There is no doubt that under Section 78 of the Rajasthan Panchayat Act, 1953 (Act No. XXI of 1953) as it now stands, the Sarpanch, every Panch, every officer and servant of the Panchayat shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. That being so, ?as public servants these officers would be entitled to the protection under Section 197 of the Criminal Procedure Code provided certain other conditions are fulfilled. Section 197, Criminal Procedure Code, inter alia, says:

When any public servant who is not removable from his office, save by or with the sanction of a State Government or the Central Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person employed in connection with the affairs of the Union of the Central Government; and

(b) in the case of a person employed in connection with the affairs of a State, of the State Government.

In order to invoke, therefore, the protection of Section 197. Criminal Procedure Code, two further points have to be established. Firstly, that the petitioners were not movable from their office save with the sanction of the State Government; and secondly, that the offence alleged to have been committed by them was committed while acting or purporting to act in the discharge of their official duties. So far as the chowkidar is concerned, there can be no dispute that he was not a person removable except by the order of the State Government. Therefore, he is not a public servant within the meaning of Section 197 of the Code. In regard to the other two petitioners, the Sarpanch and the Panch, there is some doubt as to whether they can be treated as public servants. In fact, there are divergent views of this. Court on the point. It may not be necessary for me at present to resolve that conflict of opinion; but even assuming that these persons were not removable, save with the sanction of the State Government, the question still to be answered is whether on the facts and circumstances of the case the offences alleged were committed by them while acting or purporting to act in the discharge of their official duties.

A great many authorities have been cited before me on the point. Those authorities can be only illustrative, because the question whether or not an offence alleged to have been committed was committed while acting or purporting to act in the discharge of official duties, would depend upon the facts of each case. The principle, however, is well settled that there should be a reasonable connection between the alleged offence and the official duty which was being performed by the person concerned, If in the discharge of that official duty the person responsible has exceeded his authority and thereby committed some offence, of course the protection of Section 197 of the Code of Criminal Procedure can be extended to him. But if he has done something which had little or no connection whatsoever with the duties which he was officially required to perform and which he could as well do as a private individual the mere fact that an occasion was provided for the commission of the offence on account of his performance of some official duty will not entitle him to any such protection.

What is to be seen is whether the offence alleged is reasonably interlinked with the performance of the official duty in question. If it is so, he is entitled to the

protection which Section 197 provides. The offence alleged to have been committed must have something to do with or must be in some manner related to the discharge of the official duty. It is obvious that no question of sanction can arise under Section 197 of the Code, unless the act complained of is an offence, but the main point which has to be determined is whether the alleged offence was committed in the discharge of official duty. In other words, there must be a reasonable connection between the act complained of and the official duty which the offender was performing or purported to perform. Even if the act exceeds what is strictly necessary for the discharge of the duty, that would not matter. That may be a consideration which would arise at a later stage when the trial proceeds on merits; but what the Court has to find in order to hold whether sanction was necessary is that the official duty and the alleged offence are so inter-related that one can reasonably postulate that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and the requirements of the situation.

If Section 197, Criminal P.C. is construed narrowly it can never apply to any case, because it is no part of the official duty of a person to commit an offence and it can never be so. 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 thereof. The sanction required by Section 197 of the Code has a meaning and content and should be given effect to in an appropriate case. An offence seldom consists of a single act; it is usually composed of several acts which have to be proved before an offence is established. The above principles emerge from the decision of the Supreme Court in *Matajog Dobey v. H.C. Bhari* : [1955]28ITR941(SC) and *Shreekantiah Ramayya Munipalli v. State of Bombay* (S) AIR 1955 SC 887.

4. Applying these principles one has to see whether on the facts of this case any sanction was needed. The allegation in the complaint is that the petitioners burnt the 'Bar' of the complainant and when the brother's wife of the complainant protested, they outraged her modesty. It is difficult to see how these acts can be said to be in the discharge of their official duty, even assuming that the petitioners had gone there for the purposes of removing the 'bar'. It is not for me at this stage

to say whether the allegations made in the complaint petition are true or untrue, That will depend upon the proof which is given by the prosecution in support of the complaint. At this stage, I have only to see whether the acts complained of could be said to be reasonably connected with the official duty which the petitioners were said to be performing in the removal of the 'bar'.

In my opinion it is impossible to assume that these acts were reasonably inter-linked with any such official duty. It may be that under cover of the resolution passed by the Panchayat, these petitioners along with others had gone to remove the thorn fencing in question which was said to be an obstruction on some part of the public road, but merely because an occasion was provided for them to go to the place to perform an official act, will not necessarily connect the alleged offences with the official act in question. The reference made by the learned District Magistrate, Alwar is, therefore, misconceived and I hold so in spite of the arguments which have been presented by Mr. Jain in support of the reference.

5. I, accordingly discharge the reference.

6. Mr. Jain contends that if the allegations about the burning of the 'bar' or the outraging of the modesty of the woman are found to be false, then obviously merely because some force may have been used which exceeded the necessary force for the purpose of removal of the 'bar', would require a sanction for the prosecution of the petitioners under Section 323 of the Code. That is a point which may need consideration at a later stage of the proceedings, if necessary.