

Dal Chand and ors. Vs. the State of Rajasthan and anr.

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Court : Rajasthan

Decided On : May-05-1979

Reported in : 1979WLN266

Judge : C.M. Lodha, C.J.

Appeal No. : S.B. Criminal Revision Petition No. 64 of 1979

Appellant : Dal Chand and ors.

Respondent : The State of Rajasthan and anr.

Disposition : Petition allowed

Judgement :

C.M. Lodha, C.J.

1. This revision petition by the accused is directed against the order dated February 5, 1979, by the Judicial Magistrate No. 3 Udaipur, by which the learned Magistrate over-ruled the preliminary objection raised by the accused under Section 197, Cr PC that the Court had no jurisdiction to take cognizance of the offence without the previous sanction of the State Government.

2. The relevant facts for appreciating the point of law canvassed before me may be stated within a narrow compass. Petitioner No. 1 is the Sarpanch of the Gram Panchayat, Gogunda Petitioners Nos. 2 to 5 are the panchas of the said

Panchayat, petitioner No. 6 Roop Singh is a peon in the said Panchayat and petitioner No. 7 is the Gram Sewak of village Gogunda. Non-petitioner No. 2 Dal Chand son of Ratilal (who will hereinafter be referred to as the complainant) filed a complaint under Sections 448 and 427, IPC against the petitioners in the court of the Judicial Magistrate No. 3, Udaipur, on December 20, 1978, alleging therein that he had taken on lease a plot of land from the Gram Panchayat, Gogunda, on a monthly rent of Rs. 10/-, about five years before the filing of the complaint and had enclosed the plot of land and covered it with a 'Chappar' wherein he was carrying on a restaurant. It is alleged that on December 10, 1978, while the complainant had gone out to Udaipur, the accused-petitioners went to the spot and demolished the structure raised by him on the plot in question and took away the articles lying therein. The complainant further alleged that on account of the aforesaid illegal act of the petitioners, he had been put to loss of Rs. 4000/-. The learned Magistrate held an enquiry under Section 202 Cr PC and inter alia issued process against the petitioners. On December 20, 1978, the petitioners submitted an application to the effect that a false complaint had been filed against them. It was pleaded that the Gram Panchayat had passed an order against the complainant on October 23, 1977, from which the complainant had filed an appeal before the Panchayat Samiti, Gogunda, which by its order dated December 1, 1977, upheld the order of the Gram Panchayat and directed that the complainant may be dispossessed from the land in question forthwith. Thereafter, the Gram Panchayat served notice dated December 9, 1978, on the complainant directing him to vacate the land within 24 hours failing which the Panchayat would remove the structure and would recover from the complainant the cost incurred. It was also alleged that a meeting of the Panchayat was called on December 12, 1978, and a decision was taken by it that since the complainant had not vacated the land in question in spite of notice, the structure may be got demolished by the Panchayat and the expenses for removal as well as the arrears of rent may be recovered by sale of the articles lying therein. The case of the accused is that when the complainant did not comply with the orders of the Panchayat and the Panchayat Samiti, and the notice served in pursuance thereof, the structure on the land in dispute was got removed on December 10, 1978.

3. On February 5, 1979, an objection was raised on behalf of the petitioners that the complaint could not proceed in absence of sanction under Section 197, Cr PC. By a perfunctory order dated February 5, 1979, the learned Magistrate over ruled the objection raised by the accused-petitioners. Hence, they have filed this revision petition.

4. The learned Counsel for the accused-petitioners has urged that the petitioners Nos. 1 to 5 are public servants not removable from their office save by or with the sanction of the State Government and so also petitioner No.6 is a public servant but removable from his office by the Panchayat. It is urged that so far as petitioners Nos. 1 to 5 are concerned, they are accused of an offence alleged to have been committed by them while acting or purporting to act in the discharge of their official duty and, therefore, the trial court had no jurisdiction to take cognizance of such offence without the previous sanction of the State Government. As regards the petitioners Nos.6 and 7, reliance is placed on Section 78 of the Rajasthan Panchayat Act, 1953, (hereinafter referred to as the Act) and it is urged that they have acted lawfully and in good faith and, therefore, they too cannot be prosecuted.

5. I shall first deal with the case of petitioners Nos. 1 to 5. It is not disputed that they are public servants not removable from their office save by or with the sanction of the State Government. In *Pukhraj v. Ummaidram* AIR 1964 Raj. 1974 it was held that a Sarpanch was a public servant and could be removed only by the State Government. In *Ramdutt v. State of Rajasthan* AIR 1966 Raj. 125, it was held that Panchas also are public servants removable only by the State Government. Learned Counsel for the complainant has not challenged this position and rightly so.

6. The important question, therefore, is whether in the facts and circumstances of the case it can be said that the petitioners Nos. 1 to 5 committed the alleged offence while acting or purporting to act in the discharge of their official duty. The learned Counsel for the complainant non-petitioner has strenuously urged that there to no power vested in the Panchayat under the Rajasthan Panchayat Act in exercise of which the Panchayat can dispossess the complainant who was in

occupation of the land in question as a lessee. It is submitted that this is not a case where the accused have acted in excess of their duty, but it is a case where the petitioners were not competent to perform a certain duty at all and/therefore, they cannot claim protection under Section 197, Cr PC. In support of this contention, Mr. Bhagwati Prasad learned Counsel for the complainant, has placed reliance on *Sukhdeo v. Kistur Chand* 1971 RLW 147. In that case a complaint had been lodged against the Sarpanch to the effect that he along with others had opened a new way through the held of the complainant after closing the way which lay through the field of one of the accused and in so doing, they caused damage to the complainant's crop, as also the fencing of the complainant's field. After examining the provisions of the Act, the learned Judge came to the conclusion that there was no power vested in the Panchayat under the provisions of the Act for removal of obstruction of a way through an agricultural land. In this view of the matter, it was held that it cannot be said that the accused were acting in proper discharge of their official duties under the Act and, consequently, they cannot claim protection under Section 197, Cr PC.

7. Scope of Section 197, Cr PC came to be considered by the Supreme Court in *Pukhraj v. State of Rajasthan* AIR 1973 SC 2591. It was observed that the law regarding circumstances under Section 197 of the Code of Criminal Procedure is necessary is well settled as a result of decisions in *Hari Ram Singh v. Emperor* AIR 1939 PC 43, and *Bhagwan Prasad Srivastava v. K.P. Mishra* AIR 1970 SC 1961. The difficulty really arises in applying the law to the facts of a particular case. Their Lordships observed as follows:

The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in the execution of duty. The rest appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty, no need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction.

What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant.

In *Hori Ram Singh's case* (supra), Sulaiman J. observed as follows:

The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction.

In *Matajog Dobey v. N.C. Bhati* AIR 1956 SC 44, the Supreme Court summed up as follows:

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.

In *H.H.B. Gill v. King* AIR 1948 O.C. 128, Varadachariar J. observed as follows:

A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of the official duty.... The test may well be whether the public servant, if challenged, can reasonably claim that, what he does in virtue of his office.

In the present case, the Panchayat had ordered on October 23, 1977 that the complainant had raised structure on the plot in question against the terms of the lease & that the Panchayat was not competent to grant lease far more than three years under the relevant law. Consequently, the complainant was liable to vacate the land. Aggrieved by this order, the complainant filed an appeal before the Panchayat Samiti which, while dismissing the appeal, gave a positive direction that the complainant shall be dispossessed from the land forthwith. Of course, no clear provision in the Act has been pointed out to the effect that in such cases the Panchayat may itself dispossess the person in occupation of the land. However,

while passing the order dated October 23, 1977, the Panchayat directed that the complainant shall vacate the land in question within 15 days of the order, failing which a penalty of Re. 1/-, per day would be realised from him. The execution of this order is sought to be justified under Section 27(2) of the Act. This order was upheld by the Panchayat Samiti. At any rate, the accused-petitioners acted in pursuance of this order or under a mistaken belief as to the existence of such duty that in compliance with the orders passed by the Panchayat as well as the Panchayat Samiti possession of the complainant over the land had to be removed.

8. Applying the test laid down by, their Lordships of the Supreme Court in the cases referred-to-above, it cannot be said that the accused petitioners were not acting in the course of performance of their duty. The offence alleged to have been committed must be held to be in respect of an act done or purported to be done in the discharge of an official duty and not on a private capacity. The objection raised by the complainant that there is no provision in the Act for removal of his possession from the land in question is not a sufficient ground to take the case out of the purview of Section 197, Cr.P.C. The Panchayat Samiti gave a definite direction to the Panchayat to remove the complainant's possession and the petitioners executed the Panchayat Samiti's order. As pointed out by their Lordships, an act done under the mistaken belief as to such duty entitles a public servant to claim such protection. It appears that the scope of the protection has been extended to all acts done or purported to, be done by a public servant in the discharge of official duty as opposed to purely private capacity. Therefore, it cannot be said, in the facts and circumstances of the present case, that there is no reasonable connection between the act and the discharge of the official duty. The act of demolishing the structure standing on the land in question has relation to the duty of the accused-petitioners and it cannot be said that the petitioners are laying a pretended or a fanciful claim that they did the act in the course of performance of their duty. In this view of the matter, I am of the opinion that the petitioners Nos. 1 to 5 are entitled to claim protection under Section 197, Cr.P.C.

9. As regards the petitioners Nos. 6 and 7, reference may be made to Section 79 of the Act, which provides that no prosecution shall be maintainable against an officer or a servant of a Panchayat or against any person acting under the

direction of any such Panchayat, Sarpanchpanch etc. in respect of anything lawfully and in good faith done under the Act or any rule or bye-law made thereunder. In view of my findings in respect of the petitioners Nos. 1 to 5, it has to be held that petitioners Nos. 6 and 7 were acting lawfully and in good faith under the direction of the Panchayat and Panchayat Samiti. The prosecution against petitioners Nos. 6 and 7 is, therefore, barred under Section 79 of the Act.

10. The result is that I allow this revision-petition, set aside the order passed by the Judicial Magistrate No. 3, Udaipur, on February 5, 1979, and dismiss the complaint for want of sanction under Section 197, Cr.P.C.

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