

Pratap Singh Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jan-29-1991

Reported in : 1991WLN(UC)25

Judge : B.R. Arora, J.

Appeal No. : S.B. Criminal Miscellaneous Petition No. 314 of 1987

Appellant : Pratap Singh

Respondent : The State of Rajasthan

Disposition : Petition allowed

Judgement :

B.R. Arora, J.

1. This miscellaneous petition is directed against the order dated July 30, 1987 passed by the Munsif and Judicial Magistrate, First Class Rajsamand, by which the learned Magistrate dismissed the application filed by the petitioner.

2. The learned Munsif and Judicial Magistrate, Rajsamand, filed a complaint against the petitioner in the Court of the Additional Chief Judicial Magistrate, Rajsamand. It was alleged in the complaint that in Criminal Case No. 51 of 1984 The State of Rajasthan v. Vijay Singh, warrant of Vijay Singh and notice to the accused Vijay Singh was sent to the petitioner for service on March 22, 1984, for

service on Vijay Singh and the next date fixed in the case was April 2, 1984. This notice was sent through Mahipal Singh, but the accused did not return that notice and warrant either served or unserved. Again, on April 4, 1984, warrant and notice on Vijay Singh were sent to the accused for service and the accused, on April 15, 1984 made an entry regarding the receipt of these warrant and notice instead of April 4, 1984 and returned the warrant and notice. Thereupon, a notice was issued to the accused-petitioner on April 17, 1984, to show cause and the accused gave false reply to the Show Cause Notice. It was, therefore, mentioned that the petitioner has made a false report in order to save the accused Vijay Singh from the penalty. It was, therefore, prayed that the accused petitioner has, therefore, committed an offence under Sections 187 and 218 of the Indian Penal Code. On the basis of this complaint, the learned Additional Chief Judicial Magistrate, by his order dated May 2, 1984, took cognizance against the petitioner and issued process. The petitioner, after putting-up his appearance, filed an application under Section 42 of the Police Act, mentioning therein that the accused is a public servant and as such no prosecution against the petitioner can be launched under Sections 187 and 218 of the Indian Penal Code unless and until the previous sanction, as required under Section 197(2) of the Code of Criminal Procedure is obtained against the petitioner. The Learned Magistrate, by his order dated July 30, 1987, rejected the application filed by the petitioner. It is against this order that the petitioner has filed this miscellaneous petition under Section 482 Cr.P.C.

3. Heard learned Counsel for the petitioner and the learned Public Prosecutor.

4. It is contended on behalf of the petitioner that no prosecution against the petitioner under Sections 187 and 218 of the Indian Penal Code can be launched unless previous sanction, as required under Section 197 Cr.P.C. is obtained from the competent authority. As no previous sanction was obtained before launching the prosecution, the prosecution of the petitioner, therefore, deserves to be quashed. The learned Public Prosecutor, on the other hand, has submitted that the act of the petitioner was not done in the official discharge or purported discharge of the official duties and, therefore, no previous sanction was necessary in the present case before filing a complaint or launching prosecution against the petitioner. I have considered the rival submissions made by rival parties.

5. In the present case, warrant and notice to accused Vijay Singh were sent to the petitioner being the Incharge of the Police Station, Rajsamand. The duty of the petitioner was to maintain the law and order. According to the complaint, he did not return the warrant and notice, either served or unserved on Vijay Singh. Whether he did get the warrant and notice served on accused Vijay Singh or not, is not known. The allegation against the accused petitioner is that he made a false entry regarding the receipt of these warrant and notice and returned the same. To get the summons, warrants and notices served on the accused is an official act. But by not doing a thing, which was his duty to do and making a false entry of the receipt of the warrant and notice are official acts in the same way and its omission and/or negligence would constitute an omission or neglect in the purported discharge of his duties. By not doing a thing, which was his duty to do, it means that he has neglected in discharge of his official duties and did not comply with the order made by the competent authority. The police officials of all ranks, charged with the maintenance of public order wherever they are serving, have been given the protection under Section 197 Cr.P.C. from prosecution. The Notification, issued by the State Government, giving protection under Section 197 Cr.P.C. to the police officials, published in Rajasthan Gazette (Extraordinary) No. 4-G.A. dated August 2, 1974, reads as under:

In exercise of the powers conferred upon it under Section 197 of the Code of Criminal Procedure, the State Government hereby direct that the provisions of Sub-section (2) of the said Section shall apply to police officials of all ranks charged with the maintenance of public order wherever they may be serving.

6. It is, no doubt true that Section 197 Cr.P.C. do not provide blanket protection to the police officials entrusted with the maintenance of public order wherever they may be serving, for every of their offences. The object of these provisions is to protect the responsible police officials against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while acting or purported to act as a police official. The purpose of sanction is to secure the opinion of the superior authority before the public servant is actually prosecuted before the Court. The test in such cases is : whether the act complained of is so intrinsically connected with the duties attached to the office as

to be inseparable from that or there may be no necessary connection between the alleged act and the performance of the duties; the official status merely furnishes an action and opportunity for their action. If the illegal omission of the public servant arises out of the official duties, which he was performing then the protection under Section 197 Cr.P.C. is applicable to the petitioner.

7. In order to determine whether the petitioner is in this case, being a public servant, is entitled to the protection under Section 197 of the Code of Criminal Procedure it has to be considered : whether the act complained-of against the petitioner, which is said to be constituting the offence under Sections 187 and 218 I.P.C. was committed by him while discharging his official duties and whether the act of the petitioner has a reasonable connection with his official duties. So the point, which requires determination is : whether there was a reasonable connection between the act complained-of and the official discharge of the duties by the petitioner. If the omission or neglect on the part of the petitioner to commit an act complained-of, made him answerable for the charge of dereliction of his official duties, then it can be said that such an act was committed by the petitioner while acting in the discharge of his official duties and there was a connection with the act complained-of and the official duties of the petitioner. If the petitioner would have got the warrant and notice served on the accused Vijay Singh then the petitioner would not have committed any offence. But since the petitioner did not get the warrant and notice served upon accused Vijay Singh, he has, therefore, committed an offence by his negligence or his inaction can be said to be a dereliction of his official duties as a public servant. The act was not done by him which he was supposed to do and, therefore, the omission and negligence on the part of the petitioner can be said to be a purported discharge of his official duties. In my view, there is, therefore, a coherent nexus between the act complained-of against the petitioner and the duties of the petitioner as a public servant and, therefore, the sanction to prosecute the petitioner under Sections 187 and 218 I.P.C. is necessary.

8. In the result, this miscellaneous petition, filed by the petitioner, is allowed. The proceedings under Sections 187 and 218 I.P.C. initiated against the petitioner in Criminal Case No. 214/1987, without a previous sanction, pending in the Court of

the Additional Chief Judicial Magistrate, Rajsamand, are quashed.

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