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Court : Rajasthan

Decided On : Jul-27-1987

Reported in : 1988(1)WLN137

Judge : M.C. Jain, J.

Appeal No. : S.B. Cr. Misc. Petition No. 67 of 1981

Appellant : Sagar Mal

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Shri. M.M. Singhvi

Disposition : Petition dismissed

Judgement :

M.C. Jain, J.

1. This is an application under Section 482 Cr. PC for setting aside the order of the Sessions Judge, Merta dated 5-2-1981 confirming the order of the Munsif and Judicial Magistrate, Nawa dated 5-12-1975 whereby the application filed under Section 197 Cr.PC was rejected. It may be stated here that against the order of the learned Magistrate a revision was earlier preferred before the Sessions Judge but the learned Sessions Judge rejected the revision petition on 27-2-1976 in limine holding that revision is not maintainable against the impugned interlocutory

order.

2. The facts of the case may briefly be stated: The applicant Sagar Mai was an Executive Officer of Municipal Board, Nawa and according to him on 20th November, 1973 he was posted as Administrator of Municipal Board, Nawa. At the instance of one Hira Lal, Dharam Chand Malick Deputy Superintendent of Police, Anti-Corruption made a trap on the application for having accepted illegal gratification. The allegations against the applicant are that the applicant was standing in the Verandah of the Municipal Board. The Deputy Superintendent of Police asked him his name He refused to disclose his name On being asked that whether his name is Sagar Mal, he accepted that his name is Sagar Mal. It was found by the Deputy Superintendent of Police that Sagar Mai was having his both hands in the pockets of his trouser. He was prevented from going away by Ram Gopal L.C., Badrinarayan L.C. and Shyamsunder L.C. which he resisted. Thereafter he was asked by the Deputy Superintendent of Police to produce the bribe money which he had accepted from Hira Lal. He refused to have accepted any money. When he was being taken to his residential apartment, it is alleged that the applicant kicked Ram Gopal and on being taken in his apartment, he again kicked Ram Gopal. As a result of kicks Ram Gopal sustained injuries on his leg. Badri Narayan, Shyam Sunder tried to intervene when he first kicked him. Shyam Sunder and Badri Narayan were also given slaps and fist blows. The Deputy Superintendent of Police, Anti Corruption lodged a report at the Police Station, Nawa on which a case under Section 353 and 323 IPC was registered. Ram Gopal was medically examined by Dr. Prabhu Singh Deora who found following to injuries on the person of Ram Gopal.

(1) Abrasion: 1/4" x 1/4" on the mid and front of Left Tibia bone, clotted blood present and it is tender;

(2) Abrasion : 1/2" x 1/4" on the lower and lateral side of left knee joint. It is oblique in direction and 1/2" from the patella when patella is fixed. It is associated with a swelling of 1/2" around it. Clotted blood deposited.

3. During the pendency of the case under Section 332, 353 and 323 IPC the accused petitioner, filed an application under Section 197 Cr.PC and it was

contended by him that at the time when the offence has been alleged to have committed, he was acting or purporting to act in discharge of his official duty and, therefore, he cannot be prosecuted without sanction of the State Government. Both the Courts below did not find that sanction is necessary and it was observed that the accused petitioner was not acting or purporting to act in discharge of any official duty.

4. I have heard Shri M.M. Singhvi learned Counsel for the petitioner and Mr. M.C. Bhati Public Prosecutor for the State.

5. The main question which requires consideration is whether it can be said that the petitioner was acting or purporting to act in discharge of his official duty. Learned Counsel for the petitioner Mr. M.M. Singhvi vehemently urged that the petitioner was within his right to resist inserting of any money in his pocket, and if any public servant sustains any injury in such resistance, then it should be taken that the public servant is acting or purporting to act in discharge of his official duty. Government servant is required to conduct himself in such a manner so as to maintain highest integrity. Reference was made by the learned Counsel for the petitioner to the Rajasthan Civil Service Conduct Rules, 1971. Mr. Singhvi therefore, submitted that when the government servant is required to conduct to maintain his integrity and in order to save his image of being honest, the public servant if puts some resistance then, there is nexus between his act and the duty which is called upon to discharge, in view of the conduct expected of him to maintain highest integrity.

6. It may be stated that it is true that every government servant is required to conduct himself in such a manner so that he may maintain his highest integrity. In my opinion one who engages himself in any activity or action in order to maintain his integrity can hardly be said to be acting or purporting to act in discharge of any official duty. I need not express any opinion on this question. However it can be said that whatever action or activity is done for maintaining integrity, is his personal action and it cannot be said to be an official duty. An official duty would be one which is required to be discharged while holding a particular office and it would be a part of job. That apart, the question here is as to whether it can be said

that while scuffling and ungaging oneself in kicking and slapping and giving fist blows one is acting or purporting to act in discharge of his official duty. Such an action on the part of the petitioner, in my opinion, cannot be said to be one falling Under Section 197 Cr. PC. It cannot be said that he was acting or purporting to act in discharge of his official duty. The nearest case of the point is Pukhraj v. State of Rajas than and Anr : 1973 CriLJ1795 . In that case the complaint was filed by the clerk of the Head Post Office in which it was alleged that at the time of arrival for inspection the Post Master General kicked the complainant and abused him when the complainant was submitting his representation for cancellation of his transfer, it was held that the act of the public servant as alleged could not be said to have been done in purported exercise of his duty. It was further observed that:

We must also make it clear that this is not the end of the matter. As was pointed out in Sarjoo Prasad v. King Emperor 1945 FCR 227 : AIR 1946 FC 25 referring to the observations of Sulaiman, J. in Hari Ram Singh's case (supra) the mere fact that the accused proposes to raise a defence of the act having purported to be done in execution of duty would not in itself be sufficient to justify the case being thrown out for want of sanction. At this stage we have only to see whether the acts alleged against the 2nd respondent can be said to be in purported execution of his duty. But facts subsequently coming to light during the course of the judicial inquiry or during the course of the prosecution evidence at the trial may establish the necessity for sanction. Whether sanction is necessary or not may have to depend from stage to stage. The necessity may reveal itself in the course of the progress of the case (see observations in : [1955]28ITR941(SC) (supra), in : 1970 CriLJ1401 (supra) also it was pointed out that it would be open to the appellant (2ad respondent in this case) to place the material on record during the course of the trial for showing what his duty was and also that the facts complained of were so inter-related with his official duty so as to attract the protection afforded by Section 197 Cr.PC.

7. Some more cases were cited by the learned Counsel for the petitioner but I neet not refer to them as the principles under-lying Section 197 are well settled. The only question is how those principles are made applicable to the facts of a given case. In the present case, in view of the allegations made by the Deputy

Suprintendent of Police Anti Corruption and the witnesses it does not appear that the accused was acting or purporting to act in the discharge of his official duty. However during the course of the trial, if the evidence shows that there is a necessity for sanction, it would be open to the petitioner to move afresh in the light of the facts which may come on record. Whether sanction is necessary or not will have to depend from stage to stage as observed in Pukhraj's case (supra).

8. Learned Counsel for the petitioner submitted that occurrence in the present case took place on 20-12-1973. Almost 14 years have elapsed. The petitioner has already been acquitted in the Anti Corruption case. If the petitioner would be called upon to appear on every date of hearing, the petitioner would suffer tremendously as the trial would be prolonged, so he urged that the trial may be got expedited and appearance may not be insisted. It is true that the matter has become sufficiently old, so in these circumstances, it would be proper to direct the learned Magistrate to conclude the trial as far as possible within three months and if any application is moved for dispensation from appearance, the same may be considered sympathetically.

9. With the above observations this petition is hereby dismissed.