

Bharat Singh Vs. Vimla and ors.

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Court : Rajasthan

Decided On : May-07-2001

Reported in : 2001(3)WLN199

Judge : B.J. Shethna, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 197, 399(3) and 482;
[Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 379, 427 and 447

Appeal No. : S.B. Cr. Misc. Petition No. 527 of 1998

Appellant : Bharat Singh

Respondent : Vimla and ors.

Advocate for Def. : Sanjay Mathur, Adv.

Advocate for Pet/Ap. : N.R. Chaudhary, Adv.

Disposition : Petition allowed

Judgement :

Shethna, J.

1. The case of petitioner complainant is that on 26.7.1980 he applied for permission from the Gram Panchayat for construction on the land of his ownership alongwith the map of the land. Permission was accorded to him on 31.3.1981

by the Gram Panchayat. On 4.10.1989, when he started to construct 'Pakka Wall' in front of his house, Ganesh Lal (Present respondent No.8) and Laxman Singh (father of Lal Singh-respondent No.10) and his brother Dilip Singh prevented him from putting up 'Pakka Wall' and tried to encroach upon his land. Therefore, he filed civil suit No. 47/89 before the Court of Civil Judge (Jr. Div.) Sagwara against them for declaration and permanent injunction. The said suit was decreed in his favour by the trial court on 19.2.1996 and the said plot measuring 22' x 25' was declared to be of his owner-ship and in his possession. Accordingly, they were restrained from interfering with the work of putting up 'Pakka Wall.'

2. The aforesaid judgment and decree passed by the trial court was challenged by them before the District Court, Doongarpur in appeal No. 3/96. However, the same was dismissed on 20.11.1996 by the learned District Judge, Doongarpur:

3. In spite of the judgment and decree passed by the learned trial court, which was confirmed in appeal by the learned appellate court, the present respondent No. 8 Ganesh Lal and respondent No. 10. Lal Singh committee trespass on his land and also got the tap fitted on it. For that a F.I.R. was filed against them for the offence punishable under Sections 447, 427 I.P.C. before the Sagwara Police Station.

4. Respondent No.11 -Mahesh, respondent No.12-Upendra, respondent No.13 - Kalpesh, respondent No. 14- Jai Prakash and respondent No. 15- Manoj are sons of respondent No.8 - Ganesh Lal. They atongwith respondent No. 10- Lal Singh, Dev Shanker- respondent No.7, Shanker - respondent No. 9 and respondent Nos. 1 to 6, who are members of Gram Panchayat illegally entered upon his plot on 23.4.1997 in Tractor No. RJ-12 -0395 and forcibly removed 4000 bricks and other things lying there on the plot. Thus, therefore, respondent Nos. 1 to 6 have mis-used their position and abeled the respondent Nos. 7 to 15 for their illegal act, though they were in know of the fact that plot is of his owner-ship for which courts have also passed decree in his favour.

5. On 24.4.1997, the petitioner-complainant filed compliant case No. 153/97 directly before the court of Addl. Chief Judicial Magistrate, Sagwara against all the respondents accused for the offence punishable under Sections 447, 379, 120B I.P.C.

6. Learned Magistrate, after considering the material on record, was of the opinion that though the respondents accused No. 1 to 6 were public servants, but their act was not bonafide, therefore, without obtaining sanction from the State Govt. to prosecute them for the offences for which they were charged, cognizance can be taken against them and accordingly, learned Magistrate took cognizance against them alongwith private respondents accused No. 7 to 15 by his impugned order dated 17.5.1997.

7. The aforesaid order passed by the learned Addl. Chief Judicial Magistrate, Sagwara taking cognizance against the respondents accused was challenged by them before the Sessions Court, Doongarpur in revision petition No. 86/97, which was allowed by the learned Sessions Judge by his judgment and order dated 17.1.1998. This has been challenged by the present petitioner complainant by way of this misc. petition before this Court under Section 482 Cr.P.C.

8. A Preliminary objection was raised by learned counsel Shri Sanjay Mathur for the respondents accused that the impugned order passed by the learned Sessions Judge on 17.1.1998 allowing the revision petition filed by the respondents accused was revisable. He submitted that instead of filing revision petition, the petitioner complainant has filed this misc. petition under Section 482 Cr.P.C., therefore, only on this ground this misc. petition be dismissed.

9. The impugned judgment and order allowing the revision petition filed by the respondents accused was passed by the learned Sessions Judge on 17.1.1998. The certified copy of the same was applied on 28.2.1998 and the same was ready for delivery on 2.3.1998 and received on 4.3.1998. Thereafter, this misc. petition was filed on 16.4.1998. The period of limitation in filing revision petition is 90 days. If the revision petition was required to be filed then also it would have been within time.

10. It is true that the petitioner complainant could have filed revision petition against the judgment and order passed by the learned Sessions Judge allowing the revision petition filed by the other side because revision would lie against such order. However, it appears that in view of some wrong impression that no second revision under Section 399(3) Cr. P.C. would lie, the present petitioner has filed

this misc. petition under Section 482 Cr. P.C. There is a bar of second revision at the instance of same person under Section 399(3) Cr.P.C., but it seems that because of some wrong impression, this misc. petition was filed by the present petitioner instead of revision without taking any chance. When the revision petition would have been within time then there would not have been any difficulty in granting permission to the learned counsel for the petitioner to convert this misc. petition into a revision petition and then decide the matter. Thus, revision petition lies or not, this question loses all its significance because in my considered opinion the impugned order passed by the learned Sessions Judge allowing revision petition filed by the respondents accused was not at all sustainable.

11. When there is decree from the competent civil court in favour of petitioner complainant then the respondents were not justified in taking law in their hands. Out of 15 respondents accused, respondents No. 1 to 6 are public servants. Rest of the respondents accused No. 7 to 15 are not public servants. The court can always go on with the case against them without any sanction. The case of complainant was that the respondents No. 1 to 6 abetted the private respondents No. 7 to 15 while committing offence. However, learned Sessions Judge while allowing the revision petition held that when the respondents accused No. 1 to 6 cannot be allowed to be prosecuted without prior sanction from the State Govt. then the respondents No.7 to 15 also cannot be prosecuted though they may not be public servant. This reasoning assigned by the learned Sessions Judge is wholly against the law.

12. When the trial court, which took cognizance against all the respondents including the respondents No. 1 to 6, who are public servants on the ground that though they were public servants, but the act alleged to have been committed by them was not with bonafide intention, then they can always be prosecuted without sanction from the State Govt. to prosecute them. In my considered opinion, it was not open to the revisional court to interfere with such order in its revisional jurisdiction on the ground that law does not provide whether the act of the public servant should be bonafide or not. This reasoning of learned Sessions Judge is wholly unsustainable.

13. I would like to reproduce para No. 6 of the judgment of learned Sessions Judge, which makes it clear that learned Sessions Judge was wholly in error in allowing the revision petition, which is as under:-

^6 ;ksx; U;k;ky; us viusvkns'k fnukad 17-5-97 esa ;g rks ekuk gS fd dqN vfHk;qDrx.k jktdh; lsod gS ysfdu mudk nqHkkZoukiw.kZ d`R; gksus ls lj{k.k gksuk ugha ekuk gS rks mudh ;g ckr xyrgS dkuwu esa ln~Hkkoukiw.kZ d`R; gksuk vko';d ugha g SA yksd lsod ds :i esa dk;Zdjuk gh vko';d gksrk g SA vr% ;ksX; U;k;ky; us bl ekeys esa izlaKku ysdj ds xyrdh g SA ;kfpdk Lohdkj djus ;ksX; g SA**

14. Before parting, I must state that learned counsel Shri Sanjay Mathur for the respondents accused tried to rely upon the judgment of Hon'ble Supreme Court in case of Abdul Wahab Ansari v. State of Bihar and Anr. (1), and submitted that the act of respondents No. 1 to 6 was in discharge of their duty as public servants, therefore, the learned Sessions Judge was right in allowing the revision petition as the learned Magistrate took cognizance against them without any sanction from the competent State Govt. to prosecute them. I fail to understand that how the judgment of Hon'ble Supreme Court in case of Abdul Wahab (supra) will have any application to the facts of this case.

15. In that case, the accused was a public servant. His explanation was called for by S.D.O. to show cause as to why encroachment in question was not removed notwithstanding the direction of High Court. He was appointed as Duty Magistrate with another person as Senior In-charge Magistrate of Police Force for removing the encroachment in question. The day of incident, the accused alongwith armed forces reached the encroachment site, several miscreants were there armed with weapons. They started hurling stone and when the situation was going out of control then after due warning to them the appellant accused of that case was compelled to give order for opening fire and dispersed the mob. On account of such firing, one person died and two others were injured. The son of deceased filed complaint against him before the court of Chief Judicial Magistrate for the offence under Section 302 IPC etc.

16. In Abdul Wahab case (supra) the Hon'ble Supreme Court has also considered the judgment of Constitutional Bench in case of Matajog Dobey v. H.C. Bhari (2),

wherein, the Hon'ble Supreme Court held that in the matter of grant of sanction under Section 197 Cr.P.C. the offence alleged to have been committed by the accused must have something to do, or must be released in some manner, with the discharge of official duty.

17. In other words, there must be a reasonable nexus 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 claim, but not a pretended or fanciful claim, that he did it in the course of performance of his duty.

18. Facts of this case are already stated by me in nutshell and I am of the considered opinion that on facts of present case, it cannot be said that there was a reasonable connection between the act and discharge of official duty of accused respondents No. 1 to 6 who are public servant. When there is already a pronouncement of competent civil court then the public servants are bound by it. They cannot take law in their hands in this manner. Therefore, the judgment of Hon'ble Supreme Court in case of Abdul Wahab case (supra) will have no application on the facts of present case.

19. In view of the above discussion, this misc. petitioner is allowed. The judgment and order passed by the learned Sessions Judge, Doongarpur in criminal revision petition No. 86/96 filed by respondents accused is quashed and set aside. The impugned order dated 17.5.1997 passed by the learned Addl. Chief Judicial Magistrate, Sagwara taking cognizance against the respondents accused is hereby restored. The learned Addl. Chief Judicial Magistrate, Sagwara may now proceed against the respondents accused with the criminal complaint No. 33/997 filed by present petitioner complainant and decide the same in accordance with law.