

K. Premkumar Vs. Rajangam

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Court : Chennai

Decided On : Apr-29-1997

Reported in : 1997CriLJ3288

Judge : M Karpagavinayagam, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 294, 323, 324, 332, 341 and 506; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 197 and 245

Appeal No. : Criminal Revn. Case No. 171 of 1996 and CR. M.P. No. 705 of 1996

Appellant : K. Premkumar

Respondent : Rajangam

Advocate for Def. : M. Venkatraman, Adv.

Advocate for Pet/Ap. : P.M. Sundaram, Adv.

Judgement :

ORDER

1. This revision filed by the petitioner who is the Deputy Superintendent of Police, Pandaloor Sub-Division, Nilgris is directed against the order in Cr. M.P. No. 3342 of 1995 in C.C. No. 224 of 1994 on the file of Judicial Magistrate No. V Tirunelveli dismissing the application filed by the petitioner for discharge under S. 245 of Criminal Procedure Code.

2. The only ground that was urged before the lower Court in the application for discharge is that, the complaint was not maintainable, since the prior sanction from the Government was not obtained before launching the prosecution under S. 197 of Criminal Procedure Code. This ground has been rejected by the lower Court on the ground that the question whether or not sanction is necessary would depend from the stage to stage and that it could be decided only after the trial is over.

3. Being aggrieved over this order, the present action has been resorted to by the petitioner by filing this revision before this Court. A few facts would be necessary to have clear picture about the case.

4. The petitioner was working as a Deputy Superintendent of Police from 6-4-1993 to 28-3-1994 at Tirunelveli Head Quarters Sub-Division. On 9-9-1993, various political parties declared to observe bandh in and around the Tirunelveli District. In view of the declaration of Bandh, which is likely to cause breach of peace resulting in the (sic) detrimental to public safety, the promulgation under S. 30(2) of Indian Police Act was made to regulate procession, public meetings and public gatherings.

5. The respondent is the District Secretary of the C.I.T.U. of Tirunelveli District. On 9-9-1993 at 9-40 a.m., the respondent and his followers gathered as a group in the bus stand. The petitioner and his police men immediately rushed to the spot and requested the respondent and his followers to disperse from the place as otherwise, law and order problem was likely to be erected (erupted) at any moment. However, the respondent and their followers did not disperse and they started to attack the public, running buses owned by the State Corporation. In order to prevent the damage that would cause to the public and the State owned Buses, after due warning, the petitioner instructed his subordinate officers to use minimum force to prevent the respondent and others from indulging from any criminal activities. In pursuance of the instruction, minimum force was used and 28 persons were arrested in and around the bus stand, indulging in criminal activities and they were taken to custody by the Inspector of Police. A case was also registered in Crime No. 615 of 1993 for the offences under Ss. 147, 323, 332, 341, 506(ii) of Indian Penal Code and relevant provision of Tamil Nadu (P.P.D.) Act. In

the mean time, one Nelaiappan, a bus crew belonged to rival union was also attacked in which he sustained head injury. Thereafter, they were brought to the station and after interrogation, they were sent to the Court for the remand. Subsequently, they were released on bail.

6. After investigation, on 25-3-1994, the police filed a charge-sheet against the respondent and his followers for the offences under Ss. 147, 323, 332, 341, 506(ii) of Indian Penal Code and relevant provision of Tamil Nadu (P.P.D.) Act, 1992. In that case, the respondent is A22.

7. At this stage, the respondent filed a private complaint against the petitioner for the offences under Ss. 341, 324, 294 of Indian Penal Code alleging that on 9-9-1993 at about 10.00 a.m. when the respondent along with the party workers were standing in the bus stand the petitioner asked the respondent and other to stand near the police booth and that then the petitioner abused him in the filthy language and beat him with lathi kambu on his left thigh, right finger and his constables also who came along with the petitioner beat him and that then they were arrested and brought to the police station and registered a case in Cr. No. 615 of 1993 and that they were remanded.

8. This complaint which was filed by the respondent was taken on file by the lower Court for the offences mentioned above. On service of the summons, the petitioner appeared before the Court and filed an application for discharge on the ground of want of sanction and the same was dismissed as indicated above.

9. The question that crops up for consideration before this Court as to whether under S. 197, Criminal Procedure Code, the sanction is required to be obtained before launching the prosecution against the petitioner. Section 197 of Criminal Procedure Code provides thus :

'Prosecution of Judges and Public Servants :-

1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the 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.'

The reading of this section would make it clear that there are two conditions to be complied with to attract S. 197 of Criminal Procedure Code.

(1) The public servant should be removed only with the sanction of the Government.

(2) Offences alleged against the public servant should have been committed by him while acting or purporting to act in the discharge of his official duty.

If these two ingredients are fulfilled, then the Court cannot take cognizance of the complaint without the sanction, as contemplated under S. 197 of Criminal Procedure Code. The lower Court has ordered on the basis of : 1973 CriLJ1795 , Pukhraj v. State of Rajasthan, simply dismissed the petition for the discharge filed by the petitioner stating that the sanction point being a question of fact could be decided only after the trial is over, since the necessity of sanction would be decided only at the later stage, as it would depend upon from stage to stage.

10. In my view, the dismissal of the petition would not be valid in law for the following circumstances. No doubt, it is true, it is stated in para 4 of the complaint that the petitioner along with other constables abused him in a filthy language and beat him with the lathi kambu on his left thigh and right fingers and caused injuries. But the reading of the paragraphs 3 and 4 would make it clear that the petitioner and others came to the scene in order to supervise the bandobust activities in the light of the declaration of the bandh announced by various political parties including the political party to which the respondent belonged.

11. In the complaint in para 2, it was stated that on 9-9-1993 there was a request made by the 32 labour union on all India level to observe bandh on that date. The complainant also said in para 3 on the request made by the labour union, including the union to which the respondent belonged, the shops were closed in all the places. The complainant further stated that in order to find out the situation, he along with the other party members on 9-9-1993 at about 10.00 a.m. went to the

bus stand and stood as a group. At that time, it was stated in the complaint, the police officers, including the petitioner came and warned this group and asked them to go near the police booth and stand near the booth. In this context, it is relevant to note that the complainant himself states in his complaint in para 5 that after the respondent and others being attacked and a case was registered against them in Cr. No. 615 of 1993 and they were taken to the Magistrate, where they were remanded. So, it is quite clear that the police officers who were in bundobust duty in connection with the bundh announced by the various political parties, including the political party to which the respondent belonged and that when they found the crowd gathered there, the police used minimum force on the crowd and then arrested them and sent to the Court in Cr. No. 615 of 1993.

12. So, in the light of the admitted facts found in the complaint, we have to consider whether these two ingredients, as contemplated under S. 197 of Criminal Procedure Code have been fulfilled.

13. It is brought to my notice by the counsel for the petitioner that even in remand report filed by the police before the Magistrate at the time of request for remand, it is stated that the minimum force was used against the respondent and others when they were indulging in the criminal activities of causing damage to the public property. Even, from the F.I.R. in Cr. No. 615 of 1993, as referred in the complaint it is clear that one Nelaiappan, bus crew who sustained head injury gave a complaint against the several accused in which the respondent is also one among them. Therefore, it is quite evident that this alleged acts attributed to the petitioner was committed while he was in bandobust duty, in other words, he was in discharge of his official duty. As far as the 1st ingredient is concerned, there is no dispute in the fact that the petitioner who is a D.S.P. is removable by the Government. As far as the second ingredient is concerned, as I discussed above, even as per the contents of the complaint and the reading of the F.I.R. and the remand report with reference to the Cr. No. 615 of 1993, as mentioned in the complaint the minimum force was used by the petitioner and other constables while they were discharging their official duties.

14. The learned counsel for the petitioner cited K. P. S. Gill v. Dimbeswar Sarma 1982 CLJ NOC 181 (Gauhati), to support his submission. The following observation in the said judgment is relevant to this case :

'The question of sanction cannot arise unless the act complained of is an offence, the offence alleged must have something to do with or must be related in some manner with the discharge of his official duties i.e. there must be some reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as the question will arise only at the trial. The rest is to find out whether the act and the official duty are so inter-related that one can postulate reasonably, that the act was done by the accused in the performance of his official duty though possibly in excess of the needs and requirements of the situation. The official can reasonably claim that what he did was in virtue of his official duty whether the claim is found ultimately to be well founded or not.'

This observation was based upon the Supreme Court decision in : [1955]28ITR941(SC) .

15. Yet another decision cited by the counsel for the petitioner is R. K. Balakrishna Pillai v. State of Kerala (1994) 4 Cri 704 in which the following observation is quite relevant :

'The right approach it was pointed out was to see that the meaning of this expression lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty which is entitled to the protection. Only an act constituting an offence either directly or reasonably connected with his official duty will require sanction for prosecution. To put it briefly, it is the quality of the act that is important, and if it falls within the scope of the aforequoted words, the protection of S. 197 will have to be extended to the concerned public servant.'

The Apex Court in the above case, while dealing with the question as to whether under S. 197 of Criminal Procedure Code, the sanction for prosecution is required or not against a Minister for Electricity, State of Kerala for having allegedly

committed the offence of criminal conspiracy in selling the electricity to the Private Industry to the State of Kerala without the consent of the Government of Kerala. The Supreme Court further held in that case that since the act was committed which is directly and reasonably connected with his official duty as a Minister it would attract the protection under S. 197 of Criminal Procedure Code.

16. In this context, the judgment rendered by the Apex Court in *Pukhraj v. State of Rajasthan*, : 1973 CriLJ1795 which was observed as follows (para 2) :

'The sanction is not restricted to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. 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 test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that 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. Nor 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.'

17. In view of the above principles laid down by the Apex Court and High Courts, I feel that the lower Court ought not have taken cognizance on the private complaint filed by the respondent against the petitioner without any sanction.

18. Therefore, in my view, the order passed by the lower Court suffers with infirmity and consequently, the impugned order is liable to be set aside and accordingly set aside.

19. In the result, the revision is allowed and the petitioner is discharged. Consequently, Cr. M.P. No. 705 of 1996 is dismissed.

20. Petition allowed.

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