

In Re: Ramachandran

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Court : Chennai

Decided On : Apr-27-1979

Reported in : 1980CriLJ349

Judge : Maheswaran, J.

Appellant : In Re: Ramachandran

Judgement :

ORDER

Maheswaran, J.

1. This revision is directed against the order of the learned Judicial Second Class Magistrate, Uthamapalayam dismissing, an application under Section 258 of t-the Code of Criminal procedure filed by the revision petitioner. The revision petitioner contended that he is the President of V. Ammapatti Village Panchayat, that the act complained of against him, namely the removal of encroachment, was done in the discharge! of his official duty as President, that sanction is required under Section 169 of Act XXXV of 1958 and as no sanction was obtained the ; proceedings have to be stopped under Section 258 of the Criminal P. C. The learned Magistrate found that the first accused-President has Bought the eviction of the complainant through the officers of the 'Revenue Department and that notice had been served on Meenamhal, mother of Selvaraj, the Complainant, and that though a week's lime was granted, the first accused-President has removed the encroachment

before the expiry of that period and therefore the President has not acted or purported to act in his official capacity and consequently no sanction is necessary. In the end, as already pointed out, he dismissed the application, The first accused-President is aggrieved and has filed this revision.

2. Section 169 of the Madras Act XXXV of 1958 prohibits any court from taking cognizance of any offence alleged to have been committed by the President while acting or purporting to act in the discharge of his official duty except with the previous sanction of the Government. The Act itself prohibits a court taking cognizance of any offence except with the previous sanction of the Government, It is clear that such sanction would be necessary only when the act complained of was done in the discharge or purported discharge of the duty of the President. In this case; the petitioner invokes the aid of not only Section 169 of the Panchayats Act, but Section 197 of the Cr. P. C. Before a protection under Section 197 Cr, P. C. is claimed by any accused, he shall have to satisfy three conditions,

(1) that he is a public servant,

(2) that he is not removable from his office save by or with the sanction of the State Government or the Central Government, and

(3) that he is accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. No arguments were advanced either by the learned Counsel for the petitioner or by the learned Public Prosecutor in respect of the first two conditions in view of Section 169 of the Panchayats Act. The only question therefore that requires consideration in this case is whether the accused has committed the offence while acting or purporting to act in the discharge! of his official duty. The answer to this question would depend on the true interpretation of the words 'acting or purporting to act in the discharge of his official duty' occurring in Section 197 Cr. P. C. Both the learned Counsel for the revision petitioner and the learned Public Prosecutor have cited certain authorities on this point. The tests formulated by the various decisions cited do not appear to be uniform and consequently the question as to whether the act of any public servant comes within the purview of his official duty or lies outside the scope of his official duty, does not admit of easy solution.

3. Before I proceed to discuss the law on the subject, I must point out that the act complained of is that the President-first accused and others demolished that house of the complainant and also assaulted the complainant and his mother Meenambal. The defence was that the President has been authorised by a resolution of the panchayat to remove the encroachment and he acted in pursuance of that resolution in the discharge of his duties. The fact that the President was so authorised is not, disputed. What the learned Public Prosecutor contends is that the president has no power to remove the encroachment in 'natham porambokes' and all that he must do is to complain of such encroachments to the officers of the Revenue Department and seek eviction under the Tamil Nadu Land Encroachment Act, 1905. He invited my attention to G. O. Ms. No. 972. R. D. & L. A., dated 4th April 1961 (see Manual of Panchayat Administration, page 220, 1967 Edition). Per contra, the learned Counsel for the petitioner relied on S. R. O. A. 411/70 amendment to Rules 11, 12 and 13 in respect of 'Restrictions and Control to regulate the use of porambokes in ryotwari tracts' (see Manual of Panchayat Administration, page 214, 1967 Edition). The relevant portion of the amended Rule 11 runs thus:

The panchayat shall take steps to remove the encroachments on any poramboke; the use of which is regulated by it under Sub-sections (2) and (4) of Section 86 of the Tamil Nadu Panchayats Act, 1958 and if the Panchayat makes default in doing so, after three months from the date of detection of such encroachments, the Tahsildar or the Independent Deputy Tahsildar concerned or any other officers specifically authorised by the State Government in this behalf, shall have the right to order the removal of such of those encroachments as are considered objectionable by him. An appeal shall lie against such an order to the Revenue Divisional Officer in the districts other than the Nilgiris district, where the appellate powers shall lie with the Personal Assistant (General) to the Collector.

It is pointed out by the learned Counsel for the petitioner that the words 'taking steps' occurring in the amended Rule 11. include the step of removing the encroachment. Bearing these contentions, we may now advert to the cases cited by the learned Counsel for the petitioner and by the learned Public Prosecutor. The learned Counsel for the petitioner placed reliance on Shrilal V. Manmath

Kumar . That was a case where the petitioner therein instituted a suit against a municipal board and obtained interim injunction restraining the board from demolishing a wall and though that order was served on the chairman of the Board, the wall was demolished by the other accused and the chairman and the Executive Officer of the board were alleged to be parties to a conspiracy to demolish the wall. It was held that the impugned act of the chairman and the Executive Officer assuming that they were individually responsible for it was an act which was clearly relatable to the discharge of their official duties.

4. Som Chand Sanghvi v. Bibhuti Bhusan Chakravarty : 1965 CriLJ499 was a case where! the appellant therein made a complaint against an Assistant Commissioner of Police for having committed an offence under Section 348, Indian Penal Code alleging that on the arrest of the appellant under Section 120B/420, Indian Penal Code, the Assistant Commissioner has refused to grant him bail until certain amount was paid or acknowledged in writing to be paid to the person who has lodged the! complaint against the appellant therein. The Chief Presidency Magistrate! issued process and on revision, the High Court quashed the process holding that sanction of the State Government under Section 197, Cr. P. C. ought to have been obtained. On appeal by special leave, it was contended that the High Court in quashing the process had proceeded to decide on the merits of the case even though there was no material before it and therefore its judgment could not stand. Their Lordships of the Supreme Court made the following observations:

[It cannot be disputed that whether a person charged with an offence should or should not be released on bail was a matter within the! discretion of the respondent (Assistant Commissioner) and if while exercising a discretion he acted illegally by saying that bail would not be granted unless the appellant did something which the appellant was not bound to do, the respondent cannot be said to have acted otherwise than in his capacity as a public servant. For this reason, the sanction of the appropriate authority for the respondent's prosecution was necessary under Section 197, Cr. P. C.]

(Brackets Mine).

5. In *Matajog Dobey v. H.C. Bhari* : [1955]28ITR941(SC) , the Supreme Court held 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.

6. *Bhagwan Prasad Srivastava v. N.P. Mishra* MLJ Cri 343 was a case where a civil surgeon who bore ill-will and malice towards an assistant surgeon working under him used defamatory and abusive words in the presence of hospital staff and attendants of patients and actually directed a cook of the hospital to turn out the assistant surgeon, the complainant therein, and to the utter humiliation of the assistant surgeon-complainant, he was actually pushed out by the cook. Their Lordships of the Supreme Court referring to Section 197, Cr. P, C. observed thus:

This section is designed to facilitate effective and unhampered performance of their official duty by public servants by providing for scrutiny into the allegations of commission of offence by them by their superior authorities and prior sanction for their prosecution as a condition precedent to the cognizance of the cases against them by the Courts. It is neither to be too narrowly construed nor too widely. Too narrow and pedantic construction may render it otiose for it is no part of an official duty and never can be to commit an offence. In our view, it is not the 'duty' which requires examination so much as the 'act' because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. One, must also guard against too wide a construction because in our constitutional set up the ideal of legal equality or of universal subjection of all citizens to one law administered by the ordinary Courts has been pushed to its utmost limits by enshrining equality before the law in our fundamental principles.

In the end, the; Supreme Court, pointed out that the alleged offence consists of the use of defamatory and abusive words and of getting the complainant forcibly turned out of the operation theatre by the cook and that there was nothing on record to show that this was a part of the official duty of the appellant therein as civil surgeon or that it was so directly connected with the performance of his official

duty that without so acting he could not have properly discharged it.

7. In *Amrik Singh v. State of Pepsu* : 1955 CriLJ865 , the Supreme Court observed as follows:

The result of the authorities may thus be summed up : It is not every offence committed by a public servant that requires sanction for prosecution under Section 197 (1). Cr. P. C. nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary;'

8. In *H. H. B. Gill v. King Lord Simonds* when delivering the judgment of the Board observed:

A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act, nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.

9. The result of the authorities cited above can be stated thus : (1) Protection under Section 197, Criminal P. C- cannot be claimed unless the impugned act .falls within the scope of the duties attached to the office of the public servant; (2) there must be a reasonable connection between the act and the discharge of the official duty; and (3) 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. Bearing this principle in mind we may now examine the impugned act of the accused. The accused-president of the panchayat is alleged to have removed the encroachment by demolishing the house of the complainant Selvaraj and his mother Meenambal. The order of the Magistrate itself clearly states that the accused-president was authorised to

remove the encroachment by a resolution of the panchayat dated 16-7-1977. It is contended that in pursuance of this resolution the accused-president has removed the encroachment by demolishing it and that it was done in the normal course of his official duty. The learned Public Prosecutor, as already pointed out, contended that the president has no right to demolish the building or remove the encroachment, but has only to apply to the Revenue Authorities for removing such encroachment, I have already referred to G. O. Ms. No. 972, R. D. & L. A., dated 4th April, 1961 referred to by the learned Public Prosecutor. But, I must point out that the act complained of must have some nexus with the duty so as to give rise to a reasonable conclusion that it was done by the accused in the performance of his official duty and the accused will be entitled to the protection of Section 197, Cr. P. C. It may be that the president thought that he has a right under the rules. In fact, he is fortified with the resolution of the panchayat in removing the encroachment. The act may be in excess of the duty or in the absence of such duty, but if the accused could lay a reasonable claim that he did it in the course of the performance of his official duty, he could claim the protection under Section 197, Cr. P. C.

The act complained of, namely removal of encroachment, must in this case be held to have reasonable relation with the discharge of the official duty of the president. It cannot be said that the removal of the encroachment has no relation whatsoever with the duties and functions of the office of the President of the Panchayat. It is contended that the accused-President has deliberately assumed the colour of office to serve his own end. Reference is made by the learned Public Prosecutor to the allegation in the complaint where it is pointed out that Selvaraj and his mother Meenambal worked for a political party during elections. But I must point out that the act complained of does not cease to be an act done in the purported discharge of the duty of the president, merely because such an allegation has been made in the complaint. The rulings already referred say that the section should be applied not only to the acts done by a public servant in the discharge of his official duty, but also to the act purported to have been done in the discharge of official duties. The test as laid down by their Lordships of the Privy Council in *H. H. B. Gill v. The King* is whether the public servant, if challenged, can reasonably claim that what he does, he does in virtue of his office. Applying that

test to the present case, the president-accused can well say that the panchayat has authorised him by a resolution to remove the encroachment and he was justified in removing the encroachment and his act falls within the scope of his duties attached to his office as President.

10. Subbiah v. Ramacharlu 1939 MWN 105 : (1939) 49 MLW 781 referred to by the learned Counsel for the revision petitioner requires mention. That was a case where the complainant objected to the dictation by the clerk of the panchayat court of the order to be pronounced in the matter and asked the president not to allow the clerk to dictate the judgment as the court was bound in law to write its own judgment and on account of that objection the president of the court is said to have got up from his seat abusing the complainant and is said to have slapped him on his cheek twice and when the complainant warned the president that he has no business to assault him in open court, the president unlaced his shoe, took it in his hand and raised it saying that 'I will beat you with my shoe'. The learned Judge (Pandrang Row, J.) thought that the presiding officer was acting in the capacity of a Judge till he started dictating the judgment and cannot be said to have ceased to. have acted as such when he started abusing and assaulting and showed his shoe to the complainant. In the end. he. observed:

In this case the circumstances clearly show that throughout the president was acting as a judge and therefore the protection which is meant to be given to persons in his position must be available to him.

With the greatest respect to the very learned Judge who has decided this case, I find it difficult to persuade myself to agree that in that case the law was laid down correctly. I fail to see how a Judge can be said to be acting or purporting to act in the discharge of his official duty when he beats the complainant on his cheek and also unlaces his shoe and raises it with a view to beat him merely because he protested that the judgment of the court should not be dictated by the clerk. I cannot also understand how the act of slapping the complainant and raising the shoe to beat him can have any relation whatsoever with the duties and functions of a Judge. By no stretch of imagination, the exhibition of the temper by the presiding officer of the panchayat court can be claimed to have been included in the official

duty, nor can it be said to have been done in the purported exercise of such duty. This decision cited by the learned Counsel for the petitioner is an extreme case and I find it extremely difficult to appreciate the reasoning given by the learned Judge. I have already held that the act of the accused-President in the instant case in removing the encroachment by demolishing the building can well be brought within the scope of the discharge of the duties or the purported discharge of the duties of the president. Therefore competent sanction under Section 197 (1), Cr. P. C. is necessary before the complaint could be entertained. The revision is therefore allowed and the order of the learned Magistrate is set aside and as other persons who are not public servants are assigned as accused in the case, the matter is remitted to the court below for being dealt with in accordance with law.

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