

Supriya Basu Vs. Babulal Agarwal

Supriya Basu Vs. Babulal Agarwal

SooperKanoon Citation : sooperkanoon.com/876775

Court : Kolkata

Decided On : Jul-02-1993

Reported in : (1994)1CALLT177(HC),98CWN772

Judge : Gitesh Ranjan Bhattacharjee, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 190, 197 and 200; ;
[Indian Penal Code \(IPC\), 1860](#) - Sections 379, 385 and 506; ;West Bengal Sales
Tax Act, 1954 - Section 7

Appeal No. : Crl. Rev. No. 641 of 1993

Appellant : Supriya Basu

Respondent : Babulal Agarwal

Advocate for Def. : Asit Kumar Sengupta, Adv.

Advocate for Pet/Ap. : Dilip Kumar Dutta, ;Arup Kumar Chatterjee and ;Madhuri
Das, Advs.

Judgement :

Gitesh Ranjan Bhattacharjee, J.

1. In this revisional application the petitioner prays for quashing the proceeding in the court below being CR. 98 of 1993 pending in the court of the learned Judicial

Magistrate Alipurduar. In this case process was issued against the petitioner accused under Sections 385/379 I.P.C. on the basis of a complaint filed by the opposite party herein. The main ground on which the proceeding in the court below has been challenged is that previous sanction under Section 197 Cr. P.C. is necessary for prosecuting the petitioner on the allegations made in the complaint but no such sanction was obtained. The petitioner is a Commercial Tax Officer appointed by Governor under notification No. 2748 F.T. dated 8th October, 1991. He is also removable from service only by the Governor who is his appointing authority. After his appointment as Commercial Tax Officer the petitioner has been posted at Jaigaon check post under the Alipurduar range in the district of Jalpaiguri which is stated to be very close to Indo-Bhutan border.

2. It is the case of the petitioner that on 23rd March, 1993 at about 11/11-30 a.m. a Jonga covered jeep bearing No. WGS 983 loaded with various articles was proceeding towards the border and came near the check post when the vehicle was intercepted by the petitioner at the said check post in order to verify whether the goods which were being carried, were notified and taxable goods and that after the vehicle came to a halt the petitioner asked the driver of the vehicle to produce the necessary documents relating to transportation of the said goods but the driver pleaded his inability to produce the necessary papers and promised to return with those papers within a short time, leaving the vehicle at the check post duly locked. It is the further contention of the petitioner that the driver however did not turn up for days and instead a registered letter dated 23rd March, 1993 addressed to the petitioner containing various false allegations regarding seizure of the van and papers relating to goods was received by the check post office on 27th March, 1993. On 26th March, 1993 the opposite party who is the Manager of M/s. Malchand Mahabir Prasad filed a petition of complaint before the Sub-Divisional Judicial Magistrate, Alipurduar against the petitioner over the incident alleging commission of offences under Sections 385, 379 and 506 I.P.C.

3. The complainant also prayed for search warrant and pursuant to the search warrant issued by the learned court below police seized the vehicle from the compound of the commercial tax check post office, Jaigaon on the 31st March, 1993 and broke open the lock of the vehicle as the key was not available and

seized from inside the vehicle a good number of articles, such as, horlicks, biscuit, soap etc. and prepared a seizure list which is Annexure-B to this revisional application. No papers or challans were however found. Annexure-C to the revisional application is the petition of complaint on the basis of which the opposite party started the proceeding in the court below. Briefly stated, the allegation in the petition of complaint is this. The complainant sent various types of non-taxable goods worth more than rupees forty-one thousand from Alipurduar to Jaigaon in the said vehicle with his representative for selling the goods to the retail shops at Jaigaon market on 23rd March, 1993. But the accused, without wearing any uniform, along with some anti-social elements forcibly snatched away the vehicle along with goods and took away the same at the compound of the C.T.O. check post and on being asked the accused claimed himself as the commercial tax officer at Jaigaon check post and told that taxable goods were lying in the van. When the representative of the complainant had shown the challans and other documents relating to the van and the goods the accused became furious and threatened him with dire consequences and asked the representative to satisfy him. There are also other allegations about subsequent abortive request of the complainant for release of the vehicle along with goods and there is also the allegation of retention of documents by the petitioner.

4. The question that requires consideration now is whether sanction under Section 197 Cr. P.C. is required for this case. Annexure-B to the revisional application is a letter dated the 23rd March, 1993 addressed to the Commercial Tax Officer, Jaigaon check post by the complainant. In the said letter it is stated that the van with loaded goods and all papers relating to said goods and van were detained and seized at the check post without furnishing any seizure list showing seizure of the same and without letting the driver to know the reason of seizure of the same. It is pointed out on behalf of the petitioner that in the said letter there is no mention of the presence of any representative of the complainant besides the driver, as alleged in the complaint, at the time when the vehicle was intercepted. Be that as it may, the principal allegation against the petitioner relates to detention of the vehicle without supplying any copy of seizure list or without informing any valid reason for such detention. In considering the question whether any sanction under Section 197 Cr. P.C. is necessary, it will have to be seen whether the public

servant concerned 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.'

5. In this connection, the learned Advocate for the opposite party attracted my attention to the decision of the Supreme Court in *S.B. Saha v. M.S. Kochar*, : 1979 CriLJ1367 in support of his argument that no sanction under Section 197(1) Cr. P.C. is necessary in this case. In that case the accused persons who were officers of the Customs Department raided the premises of the complainant and seized some imported goods as well as certain other goods. In the case brought against the Customs officers it was alleged that the Customs officers/accused persons had seized the goods and were holding them in trust in the discharge of their official duty, for being dealt with or disposed of in accordance with law, but in dishonest breach of that trust they criminally misappropriated or converted those goods and thereby committed an offence under Section 409 I.P.C. The question that fell for consideration in that case was whether sanction for prosecution under Section 197 Cr. P.C. was necessary. In that context, the Supreme Court observed that the act complained of was dishonest misappropriation or conversion of the goods by the accused persons which they had seized and as such were holding in trust to be dealt with in accordance with law and there could be no dispute that the seizure of the goods by the accused persons and their being thus entrusted with the goods or dominion over them, was an act committed by them while acting in the discharge of their official duty, but the act complained of was subsequent dishonest misappropriation or conversion of those goods by the accused persons and that it could not be said in the context of the facts of the case that the act of dishonest misappropriation or conversion complained of bore such an integral relation to the duty of the accused persons that they could genuinely claim that they had committed it in the course of the performance of their official duty. It was accordingly held that no sanction under Section 197 Cr. P.C. was necessary. Obviously the facts of that case are distinguishable from the facts of our present case. There the alleged misappropriation or conversion could not have been in any way connected with any justification under cover of discharge of official duty. But here in our present case the detention of the vehicle was directly related to the discharge of the official duties of the petitioner coming within the ambit of Section 7 of the West Bengal Sales Tax Act, 1954 which authorises the petitioner to

intercept, detain and search any road vehicle and also to seize any notified commodities as referred to in Section 6.

6. Another decision of the Supreme Court relied upon by the learned Advocate for the opposite party in this connection is *Prabhakar v. Shanker*, : 1969 CriLJ1057 . There a complaint was filed against a Deputy Superintendent of Police in respect of various alleged offences. The question arose whether sanction under Section 197 Cr. P.C. was necessary. The relevant facts involved in that case are stated hereafter. The complainant reported to the police station that some hawkers (vendors) were attempting to encroach upon his land. Thereupon the police came to the spot and sent the vendors away. An hour later, the accused who identified himself as Deputy Superintendent of Police, came to the spot in civilian dress and threatened the complainant that if he was to interfere with the vendors, he would arrest him. The accused directed the vendors to enter the plot and threatened the complainant that he would slap him on his face, making some gestures of threats of assault with hands. The complainant kept mum and the vendors took possession of the plots. In these circumstances, the Supreme Court held that no sanction under Section 197 Cr. P.C. was necessary. Obviously the Deputy Superintendent of Police in that connection was not acting in discharge of his official duty. The facts of the said case are therefore clearly distinguishable from the facts involved in our present case.

7. In the present case the petitioner accused is a public servant of a category envisaged in Section 197 Cr. P.C. In his initial deposition before the learned court below the driver of the vehicle stated that at the check post of Jaigaon the vehicle was intercepted by the officer and he took the vehicle and detained it there. The complainant also in his initial deposition stated before the learned court below that the vehicle reached Jaigaon check post at 11-30 a.m. and his representative reported to him at 5-00 p.m. to the effect that the vehicle along with articles was taken by the Commercial Tax Officer forcibly. In the letter dated the 23rd March, 1993, Annexure-B, also the complainant stated inter alia that the vehicle with loaded goods and all papers relating to the said goods and van was detained and seized at the check post without furnishing any seizure list. Under Section 7 of the West Bengal Sales Tax Act, 1954, a Commercial Tax Officer by virtue of

delegation of power has got the authority and jurisdiction to intercept a vehicle as well as to detain and search the same and also make seizure of goods falling within the ambit of the said section. It is submitted on behalf of the petitioner that the seizure list prepared by the police in this case would show that the van contained notified commodities falling within the purview of the West Bengal Sales Tax Act, 1954 and this would prima facie justify the interception and detention of the vehicle by the petitioner in discharge of his official duty. I have considered the matter in the perspective relevant for our present purpose and I find that the interception and detention of the vehicle is directly related to the official duty and power of the petitioner under Section 7 of the West Bengal Sales Tax Act. Assuming that the detention of the vehicle should have been followed by prompt search and formal seizure, if seizure was warranted, even then it cannot be said in the present context that such interception and detention was not inextricably connected with the exercise of official function of the petitioner under the said Section 7. It is a case where prima facie the petitioner was exercising function in discharge of his official duty. Any formal irregularity, excess or lapse in the matter of discharge of such official function of the petitioner will not necessarily dispense with the sanction required under Section 197 Cr. P.C. if the petitioner is sought to be prosecuted in that connection. When an act is purportedly performed in discharge of official duty and when the act falls within the purview of the official duty the mere allegation that the act was motivated for an oblique and illegal purpose will not take the matter out of the purview of Section 197 Cr. P.C, particularly where the act is purportedly and seemingly covered within the fold of the official function of the concerned officer. Section 197 Cr. P.C. has been enacted with the wholesome object of protecting officials of higher categories, who are required to discharge higher responsibilities, from being unduly harassed or pressurised by motivated quarters for distracting them from proper discharge of their official responsibilities' If by mere allegation of improper motive attributed to an officer an act which is otherwise prima facie covered under Section 197 Cr. P.C. could be taken away from the ambit of that section then anyone would be at liberty to bring a prosecution against an officer in respect of his official acts or acts purportedly covered by his official duties and responsibilities by simply making an allegation of some collateral or improper motive on the part of the officer

concerned in discharge of his official duties. That is why the law cares that officials who are required to discharge more responsible duties are not exposed to undue harassment sought to be inflicted for any oblique purpose or by way of retaliation. Law however does not say that prosecution in a proper case is totally barred, even where things have gone criminally wrong, but rather only provides that sanction of the appropriate authority is necessary for such prosecution so that the sanctioning authority may at the first instance satisfy himself, if necessary by proper enquiry, whether the prosecution of the concerned officer is warranted or whether the prosecution is sought to be initiated with the oblique purpose of demoralising or blackmailing public service to the detriment of public interest. In this connection, it is also to be noted that for prosecuting a public servant for corruption sanction of the appropriate authority is necessary under Section 19 of the Prevention of Corruption Act, 1988.

8. Therefore in any view of the matter it cannot be held that mere allegation of an improper motive attributed to a public servant will dispense with the necessity of prior sanction under Section 197 Cr. P.C. for filing a prosecution in respect of acts which are otherwise covered by the sweep of Section 197 Cr. P.C. An aggrieved person in proper circumstances, instead of filing a complaint straightway without the required sanction under Section 197, can approach the appropriate authority for necessary sanction for direct prosecution or for departmental action or report the matter to the police so that police may, if it is considered to be a fit case, take appropriate steps according to the procedure of law or the aggrieved party may, in appropriate circumstances, even approach the High Court in its writ jurisdiction for appropriate direction upon the erring public servant to discharge his functions properly but it is a wholly mis-conceived action to straightway file a complaint against a public servant without obtaining the necessary sanction under Section 197 Cr. P.C. where the public servant was acting or purporting to act in discharge of his official duty, by merely attributing an improper motive to him. Since the prosecution in the present case has been started without the required sanction under Section 197 Cr. P.C. and since such sanction is necessary in this case in view of the facts and circumstances discussed above, the proceeding pending against the petitioner in the learned court below is hereby quashed. The seized vehicle and the articles shall however be returned to the opposite party by the

learned court below without delay, but this will be without prejudice to the taking of any lawful steps, if considered necessary, under the West Bengal Sales Tax Act in respect of the same. The revisional application stands disposed of accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com