

State Vs. B.K. Badhawan

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Court : Himachal Pradesh

Decided On : Aug-03-1973

Reported in : 1974CriLJ197

Judge : H.C.P. Tripathi, J.

Appellant : State

Respondent : B.K. Badhawan

Judgement :

ORDER

H.C.P. Tripathi, J.

1. One Shri B. K. Badhawan the then Subdivisional Officer, Electrical Sub-Division B. S. L. Pandoh was prosecuted by the police for an offence under Section 324, I.P.C. in the Court of a Magistrate at Mandi. The prosecution examined some witnesses in support of its case. Shri Badhawan moved an application that the prosecution was incompetent inasmuch as no sanction has been obtained from the State Government as is envisaged in Section 197 of the Criminal Procedure Code. The contention advanced on behalf of Shri Badhawan was that the act complained of was committed by him, if at all, in the discharge of his official duty and as such the Court was not competent to take cognizance of the case without the previous sanction of the State Government. The Magistrate accepted the application and acquitted him under Sub-section (3) of Section 251-A of the

Criminal Procedure Code. A revision petition, was filed against the order of the Magistrate by the State before the Additional Sessions Judge at Mandi. The learned Additional Sessions Judge by his well reasoned order, dated 13th October, 1971 has made a recommendation to this Court for setting aside the order of the Magistrate.

2. I have heard Mr. Chhabil Dass, learned Counsel for Shri Badhawan. Learned Counsel has placed reliance on the case of R. A. Goel v. Kartar Singh decided by a learned Single Judge of the Delhi High Court 1970 Delhi LT 25 in support of his contention that the allegation in the police challan made it obvious that the alleged offence, if committed at all, was committed by the respondent in connection with the discharge of his official duty and as such sanction under Section 197(1) of the Code for his prosecution was necessary.

3. The law on the point is well-settled. '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.... The test may well be whether the public servant, if challan-ed, can reasonably claim that, what he does, he does in virtue of his office'. It is not, therefore, every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code. The sanction is necessary only if the act complained of is directly connected with his official duty. It is also well settled that while considering whether Section 197 of the Criminal Procedure Code would apply, the Court must confine itself to the allegations made in the complaint. In this case, the allegation in the charge-sheet submitted by the police is to the effect that when the complainant went to the accused to enquire from him as to why the accused had marked him absent when he had already worked overtime, the accused lost his temper, pushed him, got up from his chair, abused him and hurled a glass bottle which was lying on his table on the complainant and thereby caused him an injury. It is, thus, obvious that the allegations made in the charge-sheet submitted by the police which is based on the complaint of the injured do not show any connection between the act complained of and the official duty of the accused. It is, therefore, obvious that at this stage Section 197(1) of the Criminal Procedure Code is not attracted. The judgment of the Delhi High Court relied upon by the learned Counsel is

distinguishable on facts. There it was a bona fide dispute between the complainant and the Public Works Department regarding the land. Both claimed the same as their own. The Public Works Department had put up pillars on the land for demarcating it. Even then the complainant collected building material on the spot and put up some sort of a structure. The officials of the Public Works Department believing the land to belong to the Public Works Department and the construction put up by the complainant as unauthorised removed it by force. In these circumstances, it was rightly held by the learned Single Judge that the case attracted the provisions of Section 197(1) of the Code.

4. The instant case is, however, covered by the decision of the Supreme Court in the case of *Bhagwan Prasad Srivastava v. N.P. Mishra* : 1970 CriLJ1401 .

5. In the result I accept the reference made by the learned Additional Sessions Judge and quash the impugned order of the Magistrate and direct that the case against the respondent shall proceed in his Court in accordance with law.

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