

Santosh Arora Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Jan-17-2007

Reported in : 2007CriLJ3463,2007(2)JKJ41

Judge : J.P. Singh, J.

Appellant : Santosh Arora

Respondent : State and ors.

Advocate for Pet/Ap. : Mr. K.S. Johal

Disposition : Petition dismissed

Judgement :

J.P. Singh, J.

1. This petition under Section 561A of the Code of Criminal Procedure, Svt. 1989 seeks quashing of F.I.R No. 16/2000 registered with Police Station, Pacca Danga, Jammu, and Order dated 03-06-04 of learned Chief Judicial Magistrate, Jammu.

2. The petition arises in the back-drop of few write-ups, published by an English daily STATE TIMES in its publications of 21st, 24th & 27th of November, 1999 under the caption 'CAN ANYONE NURSE THIS SICK SYSTEM BACK TO HEALTH? WHY DO MINISTERS, BUREAUCRATS, WIPS LOOBY FOR STALLING PROBE INTO SEXUAL EXPLOITATION OF NURSES? AND

'GOVERNMENT ATTEMPTS TO DEFEND AMT PRINCIPAL, KEEPS SILENT ON STUDENTS INTERESTS' which resulted in an attack at about 11.30a.m on 29th of April, 1999 by about 40/50 students undergoing training in A.M.T. School, Jammu, at the office premises of the english daily, 'STATE TIMES'. This procession of students had been reportedly taken out at the instigation of Professor Vikram Singh and Mrs. Santosh Arora, the Principal of A.M.T. School, Jammu. The processionists had been raising slogans that whosoever spoke against their teachers and Principal would not be spared. This procession was being led by eleven persons which included Amit Khajuria, Romesh Chander, besides others. SHO Police Station, Pacca Danga, Jammu reached the spot and noticed the processionists entering the office of STATE TIMES and damaging its furniture, computers etc. Finding the processionists to have committed cognizable offences, he sent a request to Incharge Police Station, Pacca Danga, Jammu to register a case against the processionists and others under Sections 120B/452/341/147/148/336/427 RPC. A Case F.I.R No. 178/99 was, accordingly, registered on this report. The case was investigated and Final Police Report was filed with the Chief Judicial Magistrate, Jammu indicating commission of offences under Sections 452/147/148/336/341/427/120B RPC. On this challan, coming up for consideration, the petitioner and one Professor Vikram Singh appear to have raised an objection that they were protected by Section 197 of the Code of Criminal Procedure and in the absence of sanction of the Government, they could not be proceeded against. Learned Chief Judicial Magistrate, Jammu dismissed the plea of the petitioners and directed the file to come up for framing charge against the accused.

3. Petitioner, Santosh Arora has filed this petition to seek quashing of the F.I.R, and Order dated 03-06-04 of learned Chief Judicial Magistrate, Jammu.

4. I have heard learned Counsel for the parties and perused the records.

5. Learned Counsel for the petitioner, referred to various judgments to support his contention that Section 197 of the Code of Criminal Procedure was attracted and the petitioner could not be prosecuted in the absence of sanction of the Government. He submitted that there was no evidence on the basis whereof the

petitioner could be charged for having instigated the students to take out the procession and commit offences in the premises of STATE TIMES.

6. Mr. B.S. Salathia, Learned Additional Advocate General appearing for the State, on the other hand, submitted that enough evidence had been collected during the investigation of the case which proved that the petitioner had instigated the students to commit cognizable offences with a view to deter the weekly from publishing write-ups against the School and its functionaries.

7. The first question which falls for consideration is as to whether or not the petitioner's alleged act of committing the offence, in instigating the students to take out the procession, trespassing the office of STATE TIMES and damaging its property could be said to be an act done by her while acting or purporting to act in the discharge of her official duties.

8. To deal with the questions raised by learned Counsel for the petitioner, law relating to Section 197 of the Code of Criminal Procedure, needs to be understood.

9. Having gone through the judgments cited at the Bar by learned Counsel for the parties and the view taken by Hon'ble Supreme Court of India in Shankaran Moitra v. Sadna Dass 2006, SCC (Criminal) 358, Romesh Kumar Mishra v. State of Bihar and Ors. : 2006 CriLJ808 and Jai Singh v. K.K. Velayutham and Anr. 2006 (4) Supreme 507, the legal position relating to Section 197 of the Code of Criminal Procedure, on the question raised in the present case, may be stated thus.

10. Protection given under Section 197 of the Code of Criminal Procedure is to protect responsible public servants against possible vexatious criminal proceedings for offences alleged to have been committed by them while acting or purporting to act as public servants. This protection available to the public servants cannot, however, be claimed as a cloak for doing any objectionable act in the garb of the official duty. There may be cases where while doing the official duty, the public servant, may exceed his duty which may fall within the definition of an offence. Such excess, will not, as such, be sufficient ground to deprive the public servant from the protection provided by Section 197 of the Code of Criminal

Procedure. At the same time, if the act complained of, had nothing to do with the official duty, but was done, while on duty, and was an act falling within the definition of an offence, the public servant would not be entitled to protection under Section 197 of the Code of Criminal Procedure.

During the process of examining the question as to whether or not the act of the public servant had been committed by him while acting or purporting to act in discharge of his official duties, it is not the duty which may require examination so much, as the act, because the official act may be performed both in the discharge of, or in dereliction of, the official duty. It is the quality of the act which is important and the protection of Section 197 of the Code of Criminal Procedure will be available, if the act falls within the scope and range of the official duty of the public servant.

In nut-shell, therefore, WHEREAS AN ACT FALLING WITHIN THE DEFINITION OF AN OFFENCE CONNECTED DIRECTLY AND REASONABLY WITH HIS OFFICIAL DUTY, WILL CERTAINLY REQUIRE SANCTION FOR PROSECUTION OF THE GOVERNMENT SERVANT, BUT THE PROTECTIVE UMBRELLA OF SECTION 197 OF THE CODE OF CRIMINAL PROCEDURE WILL NOT COVER EVERY ACT OR OMISSION OF THE PUBLIC SERVANT IN SERVICE. Performance of the act, in the discharge of official duty, thus plays an important role in determining the availability or otherwise of protection to the public servant.

11. In view of the legal position demonstrated hereinabove, I do not find merit in Mr. K.S. Johal's submission that failure of the petitioner to control her students in taking the procession and ransacking the office of the STATE TIMES would be a dereliction of her duty in not controlling the students thus attracting Section 197 of the Code of Criminal Procedure.

I have two reasons to disagree with the submission of learned Counsel viz.(i) nothing has been brought on records by the petitioner on the basis whereof it could be said that the petitioner had tried to control the students who had ransacked and damaged the office of STATE TIMES', and (ii) the material on records i.e. the statements of majority of the prosecution witnesses recorded under Section 161 of the Code of Criminal Procedure indicates that the attack had

been perpetrated at the instance of the petitioner and one of her professor in the school, Mr. Vikram Singh. The prosecution witnesses had gone to the extent of saying that even before the attack on 29th of April, 1999 the functionaries of the STATE TIMES had been receiving threats from the Principal and the School Authorities to stop publishing write-ups against the Principal and the A.M.T. School.

In such state of affairs, I am not inclined to accept the submission of Mr. K.S. Johal, learned Counsel for the petitioner, that the case of the petitioner was covered by Section 197 of the Code of Criminal Procedure. I do not find the alleged act of the petitioner in instigating students to be directly and reasonably connected with her official duty. Judgment cited by Mr. K.S. Johal, learned Counsel for the petitioner reported as State of Orissa v. Ganesh Chandra Jew : 2004 CriLJ2011 , too does not support the case of the petitioner. Paragraph 11 of the judgment, clearly takes the petitioner's case out of the purview of Section 197 of the Code of Criminal Procedure. Para 11 of the judgment, for facility of reference, is reproduced hereinbelow:

(11) Such being the nature of the provision the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', be understood? What does it mean? 'Official' according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In B. Saha and Ors. v. M.S. Kochar : 1979 CriLJ1367 , it was held:-- SCC Pp. 184-85, Para 17:

The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the merit of these

words lies between 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 of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution of said provisions. Use of expression, 'official duty' implies that the act or omission must have been done by the public in the course of his service and that it could have been in discharge of his duty. The section does not extend its protective cover every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

The protective power of Section 197, thus, does not cover the case of the petitioner. First submission of Mr. K.S. Johal, learned Counsel for the petitioners therefore, fails and is, accordingly, rejected.

12. The next submission of learned Counsel for the petitioner that there was no material on records for framing charge against the petitioner, is premature. Learned Magistrate has neither evaluated the evidence on records nor has he recorded his conclusion as to whether or not the existing material was sufficient to frame a charge against the petitioner. The petitioner has hastened to approach this Court rather than having the view of learned Magistrate on the question. In the absence of any finding or order of the Magistrate as to existence of evidence on records justifying the framing of charge against the petitioner, the plea raised on behalf of the petitioner cannot be examined. This plea is, accordingly, rejected as premature.

13. Regarding next submission of learned Counsel for the petitioner that there was no material with the Officer Incharge of Police Station Pacca Danga, Jammu to register the F.I.R, suffice it would be to say that the written information by Station House Officer, Police Station Pacca Danga, Jammu who had himself been present on spot and had witnessed the damage caused to the Office premises of STATE TIMES was sufficient enough for the registration of an F.I.R for the commission of cognizable offences.

14. In view of the evidence collected by the Investigating Agency during the currency of investigation, I do not find any substance in the submission of Mr. K.S. Johal, learned Counsel for the petitioner, that the F.I.R. deserves to be quashed.

15. For all what has been said above, I do not find any merit in this petition which is, accordingly, dismissed.

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