SUPREME COURT OF INDIA

Dhannjay Ram Sharma

Vs.

M. S. Uppadaya

Crl.A.No.229 of 1959

(K. C. Das Gupta and J. C. Shah, JJ.)

11.03.1960

JUDGEMENT

DAS GUPTA, J.:

1. This appeal raises question as regards the application of S. 197 of the Code of Criminal Procedure. The appellant, formerly a Ticket Collector in Northern Railway made a complaint on October 22, 1956 in the Court of First Class Magistrate, Delhi against the three respondents, who are in the employ of the Northern Railway. The allegations in the complaint were that on September 30, 1956 at about 8-30 p.m. these accused persons along with some police officials raided the complainant's house, unlawfully confided him in a room and removed Rs. 600/- in cash (silver coins) and gold jewellery worth Rs. 1600/- i.e., 16 Tolas from a trunk lying in the "Baithak" of the house, that they did not enter these in any recovery memo and misappropriated the same, that they also removed some shirts and other clothing from another trunk belonging to the complainant, that the accused Uppadhaya took complainant's Gita Diary containing Rs. 36/- currency notes and misappropriated the same and that the cash and jewellery were kept in a bag by all the accused and was given to accused Uppadhaya. It was further alleged that the accused Uppadhaya also searched the shop of complainant's father and misappropriated Rs. 18/- from his pocket and four packets of Capstan cigarettes and one match box.

2. According to the petition of complaint the accused persons had committed offences under S. 461 read with Ss. 379, 403, 342, 166 and 167 of the Indian Penal Code. The Magistrate issued process against the three accused persons for offences under Ss. 403, 379, 342 and 166 of the Indian Penal Code.

3. Three witnesses were examined before the Magistrate on behalf of the accused to establish their claim that sanction under S. 197 of the Cr. P. C. was necessary. On a consideration of their evidence and also a copy of a memorandum issued by the Government of India, Ministry of Home Affairs, the Magistrate came to the conclusion that S. 197 of the Code of Criminal Procedure applied and in that view dismissed the complaint because no sanction of the Central Government had been obtained.

4. The Additional Sessions Judge, Delhi, was moved against this order of dismissal but he too was of the same view and refused to interfere with the Magistrate's order.

5. The High Court of Punjab was then Moved. That Court was also of opinion that as regards some

of the offences at least sanction under S. 197 Cr. P. C. was necessary, but as the other offences were inextricably mixed up with the offences for which sanction was required the learned Judge of the High Court refused to interfere with the order dismissing the complaint.

6. Thereafter the appellant applied for and obtained special leave to appeal from this Court. That is how the appeal has come up for hearing and final disposal before us.

7. Before the protection of S. 197 Cr. P. C. can be claimed by an accused person he has in the first instance to satisfy the Court that he is a public servant "not removable from his office save by or with the sanction of a State Government or the Central Government", and next that the acts complained of, if committed by him were committed "while acting or purporting to act in the discharge of his official duty." No dispute was raised in the courts below as regards the first question viz., whether these accused persons were public servants not removable except with the sanction of the Central Government and we have to proceed here on the basis that this requirement had been satisfied. The important question that still remains is whether the accused can reasonably claim that the acts complained of were committed by them in the discharge of their public duties or while purporting to act in discharge of their public duty.

8. The scope of S. 197 Cr. P. C. has been considered by the Privy Council and this Court in numerous cases. As was laid down by the Privy Council in H. H. B. Gill v. The King, 75 Ind App 41: (AIR 1948 PC 128),

"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"

their Lordships further observed

"whether the public servant if challenged, can reasonably claim that, what he does, he does in virtue of his office."

9. A somewhat wider field for the application of S. 197 was indicated in this Court's decision in Amrik Singh v. State of Pepsu, 1955-1 SCR 1302: ((S) AIR 1955 SC 309), when it was stated that the test to apply is whether acts with which the appellant is charged directly bear on the duties which he has got to discharge as a public servant.

10. In our opinion it is clear that even if the wider test indicated in Amrik Singh's case, 1955-1 SCR 1302: ((S) AIR 1955 SC 309), is applied the acts of the accused persons in the present case do not come within the protection of S. 197 Cr. P. C. In the first place it has to be noticed that the accused persons were public servants by reason of certain duties they had to perform in the Railway. Their duties as such public servants had prima facie nothing to do with witnessing any search or helping any police officer in the matter of searches. But it is urged that the Home Office memorandum imposed on these persons the additional duty of witnessing a search at the request of police officers. All that the Home Office memoramdum does is to provide that a request may be made to the different ministries of the Government - including, we shall assume, the Ministry of Transport, and

"that when the Special Police Establishment will make a request to the Ministry to depute one of their officer or officers to witness a trap case, that Ministry might extend their co-operation in the matter."

The position therefore is that if and when the Special Police Establishment had made a request to the Ministry which administers the Northern Railway and the competent officers of the Ministry directed these officers to go and witness a trap case, there would have been scope for an argument that when such an officer went to witness a trap case, he was performing his official duty. Admittedly however there was in the present case no request by the Special Police Establishment to anybody in authority in the Ministry of Transport which administers the Railway. What appears to have happened was that the Deputy Superintendent of Police Establishment, Shri Roshan Lal Khanna, himself called the accused without any reference whatever to the superior officers of these accused persons. Therefore when the accused went to witness the search they did so not in pursuance of the Home Office memorandum and so could not possibly be said to be performing their official duty or purporting to act in the performance of their official duty. It is important to note also that the Home Office memorandum speaks only of the deputation of officers "to witness a trap case". Clearly however search and seizure of property in the complainant's house was not in a "trap case". There is therefore no escape from the conclusion that the alleged presence of the accused persons in the complainant's house on September 30, 1956, had nothing to do with the performance of their official duties. Neither were the accused persons performing any official duty in going to that house nor doing any thing there nor were they purporting to do so.

11. In the second place it has to be noticed that even if it was assumed for argument's sake that witnessing the search in complainant's house could be said to be in performance of their official duty we fail to understand how it could be seriously suggested that the principal offence charged, viz., theft or misappropriation of properties belonging to the complainant, wrongful confinement could be said to have any direct connection with the act of witnessing the search. Their presence there as witnesses to the search of complainant's house obviously would give them the opportunity of committing the offence complained of. The mere fact that an opportunity to commit an offence is furnished by the official duty is not such a connection of the offence with the performance of such duty as to justify even remotely the view that the acts complained of are within the scope of their official duty.

12. Our conclusion therefore is that the courts below have erred in thinking that sanction under S. 197 Cr. P. C. was necessary in this case. We therefore allow the appeal, set aside the order of dismissal made by the learned Magistrate and order that the case be disposed of by him in accordance with law.

Appeal allowed.

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