

State of Maharashtra

Vs

Narharrao

Criminal Appeal No. 214 of 1964

(K. Subha Rao, V. Ramaswami I, J. M. Shelat JJ)

14.03.1966

JUDGMENT

RAMASWAMI, J. –

This appeal is brought, by special leave, from the judgment of the High Court of Bombay, Nagpur, Bench dated November 11, 1963 in Criminal Appeal no. 153 of 1963.

The respondent Narharrao, a police Head Constable was attached to the Murtizapur Police Station in September, 1962. He was investigating offences under sections 110, 102 and 117 of the Bombay police Act against two persons, viz., Onkar and Harihar. It is alleged that Onkar and Harihar approached Narharrao for showing them some favour. The latter demanded Rs. 25 as a bribe for weakening the prosecution case which was to be launched against Onkar and Harihar. The respondent accepted Rs. 5 on or about October 14, 1962 and Rs. 10 on or about October 19, 1962 as illegal gratification. The respondent was tried in the Court of the Special Judge, Akola for accepting bribe under s. 161, Indian Penal Code or alternatively for committing criminal misconduct in the discharge of his duties which is punishable under s. 5(2) read with s. 5(1)(b) of the Prevention of Corruption Act. By this Judgment dated June 25, 1963, the Special Judge held the respondent guilty of both the offences and sentenced him to rigorous imprisonment for one year and also to pay a fine of Rs. 200 or in default to a rigorous imprisonment for a further period of 3 months. The respondent filed an appeal in the High Court, being Criminal Appeal no. 153 of 1963. The High Court allowed the appeal on the ground that s. 161(1) of the Bombay Police Act was a bar to the prosecution of the respondent. The High Court did not discuss in detail the question as to whether there was sufficient evidence to support the conviction of the respondent on merits but acquitted him on the technical ground that no prosecution could be launched more than six months after the date of alleged offence, as required under s. 161(1) of the Bombay Police Act.

The question of law presented for determination in this appeal is whether the alleged act of offence was committed by the respondent "under colour or in excess of any such duty or authority as aforesaid" within the meaning of s. 161(1) of the Bombay Police Act (Bombay Act 22 of 1951).

Section 159 of this Act provides as follows :

"159. No Revenue Commissioner, Magistrate or Police Officer shall be liable to any penalty or to payment of damages on account of an act done in good faith, in pursuance or intended pursuance of any duty imposed or any authority conferred on him by any provision of this Act or any other law for the time being in force or any rule, order or direction made or given therein".

Section 160 enacts :

"160. No public servant or person duly appointed or authorised shall be liable to any penalty or to payment of any damages for giving effect in good faith to any such order or direction issued with apparent authority by the State Government or by a person empowered in that behalf under this Act or any rule, order or direction made or given thereunder."

Section 161(1) states as follows :

"161. (1) In any case of alleged offence by the Revenue Commissioner, the Commissioner, a Magistrate, Police Officer or other person, or of a wrong alleged to have been done by such Revenue Commissioner, Commissioner, Magistrate, Police Officer or other person, by any act done under colour or in excess of any such duty or authority as aforesaid, or wherein, it shall appear to the Court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained, or shall be dismissed, if instituted, more than six months after the date of the act complained of."

It is manifest that in order that the accused person against whom a prosecution has been launched may get the benefit of six months period of limitation under the section, it must appear to the Court (1) that the offence was committed under colour of any duty imposed or any authority conferred by any provisions of the Bombay Police Act or any other law for the time being in force, or (2) that the act was done in excess of any such duty or authority as aforesaid. The question arising in this case, therefore, is whether the alleged act of the respondent in accepting bribe was an act done under colour of the duty imposed or the authority conferred on the respondent by any provision of law or in excess of any such duty or authority as aforesaid. In examining this question it is necessary in the first place, to ascertain what act is complained of and then to see if there is any provision of the Bombay Police Act or any other law under which it may be said to have been done or purported to have been done. In this connection, it is important to remember that an act is not done under colour of an office merely because the point of time at which it is done coincides with the point of time the accused is invested with the powers or duty of the office. To be able to say that an act was done under the colour of an office one must discover a reasonable connection between the act alleged and the duty or authority imposed on the accused by the Bombay Police Act or other statutory enactment. Unless there is a reasonable connection between the act complained of and the powers and duties of the office, it is difficult to say that the act was done by the accused officer under the colour of his office.

For example, if a police officer is prosecuted for an offence under s. 323 of the Indian Penal Code said to have been committed in making an arrest, the prosecution must fail unless commenced within six months of the act complained of, as required by s. 161(1) of the Bombay Police Act. Again, if the prosecution is for an offence under s. 304, Indian Penal Code said to have been committed in the process of dispersing an unlawful assembly under s. 128 of the Criminal Procedure Code, the limitation provided under s. 161(1) of the Bombay Police Act will apply. Similarly, if the prosecution is for an offence under s. 341 of Indian Penal Code said to have been committed by the Act of closing a street or passage in or near which a fire is burning in exercise of the powers under s. 152 of the Criminal Procedure Code, or for an offence under s. 426 of the Indian Penal Code, said to have been committed by the pulling down of a house for the purpose of extinguishing a fire, the prosecution must fail unless brought within the period prescribed under s.

161(1) of the Bombay Police Act.

But unless there is a reasonable connection between the act complained of and the powers and duties of the office, it cannot be said that the act was done by the accused officer under the colour of his office. Applying this test to the present case, we are of the opinion that the alleged acceptance of bribe by the respondent was not an act which could be said to have been done under the colour of his office or done in excess of his duty or authority within the meaning of s. 161(1) of the Bombay Police Act. It follows, therefore, that the High Court was in error in holding that the prosecution of the respondent was barred because of the period of limitation prescribed under s. 161(1) of the Bombay Police Act. The view that we have expressed is borne out by the decision of this court in *The State of Andhra Pradesh v. N. Venugopal and others* ((1964) 3 S.C.R. 742) in which the Court had construed the language of a similar provision of s. 53 of the Madras District Police Act (Act of 24 of 1859). It was pointed out in that case that the effect of s. 53 of that Act was that all prosecutions whether against a police officer or a person other than a police officer (e.g. a member of the Madras Fire Service, above the rank of a fireman acting under s. 42 of the Act) must be commenced within three months after the act complained of, if the act is one which has been done or intended to be done under any of the provisions of the Police Act. In that case, the accused police officers were charged under ss. 348 and 331 of the Indian Penal Code for wrongly confining a suspect Arige Ramanna in the course of investigation and causing him injuries. The accused were convicted by the Sessions Judge under ss. 348 and 331 of Indian Penal Code but in appeal the Andhra Pradesh High Court held that the bar under s. 53 of the Police Act applied and the accused were entitled to an acquittal. It was, however, held by this Court that the Prosecution was not barred under s. 53 of the Police Act, for it cannot be said that the acts of beating a person suspected of a crime or confining him or sending him away in an injured condition by the police at a time when they were engaged in investigation are acts done or intended to be done under provisions of the Madras District Police Act or Criminal Procedure Code or any other law conferring power on the police. The appeal was accordingly allowed by this Court and the acquittal of the respondent set aside.

On behalf of the respondent reference was made to the decision of this Court in *Virupaxappa Veerappa Kadampur v. State of Mysore* ((1963) Supp. 2 S.C.R. 6). But the ratio of that decision is not applicable to the present case. In that case, a police officer authorised under the Bombay Prohibition Act to seize smuggled Ganja, prepared a false Panchnama and a false report as regards the seizure of the Ganja and it was held by this Court that the provisions of s. 161(1) of the Bombay Police Act were applicable. It is clear that in that case it was the duty of the police Head Constable to prepare a Panchnama and the act of preparation of false Panchnama was, therefore, done under the colour of his office. There was hence a nexus between the act complained of and the statutory duty that the police Head Constable was to perform and the provisions of s. 161(1) of the Bombay Police Act were applicable. In the present case the material facts are quite different.

For the reasons expressed, we allow this appeal, set aside the judgment of the High Court acquitting the respondent and order that the appeal should go back in remand to the High Court for being re-heard and dealt with in accordance with law.

Appeal allowed.

</html