

Bhagwan Prasad Srivastava

Vs

N. P. Mishra

Criminal Appeal No. 139 of 1967

(A. N. Ray, I. D. Dua JJ)

20.04.1970

JUDGMENT

DUA, J. -

1. In this appeal by special leave arising out of a complaint filed by the respondent Shri N. P. Mishra against the appellant Shri. Bhagwan Prasad Srivastava, the only question requiring determination is if cognizance of the case by the Magistrate required previous sanction under Section 197, Cr. P.C. The Sub-Divisional Magistrate, in whose court the complaint was instituted, upheld the preliminary objection based on the absence of previous sanction and the Second Additional Sessions Judge, on revision, agreed with this view. On further revision the Patna High Court disagreed with the view taken by the two courts below and holding Section 197, Cr. P.C. to be inapplicable to the case directed the Sub-Divisional Magistrate to make further enquiry into the petition of complaint. Before us the view taken by the High Court is assailed.

2. The complaint was filed by the respondent Shri N. P. Mishra, Civil Assistant Surgeon, Sardar Hospital, Chapra (hereinafter called the complainant) against Shri. Bhagwan Prasad Srivastava, Civil Surgeon, Chapra (appellant in this Court) and Shri. Rajesh Pandey, cook, Sardar Hospital, Chapra. It was alleged in the complaint that on the 6th and 7th January, 1964, the appellant had used defamatory language towards the complainant and the two accused persons had insulted and humiliated him in the eyes of the public. As a result, the complainant was put to great mental pain and agony, his reputation was harmed and his professional career prejudicially affected. The relevant averments in the complaint may now be stated with the requisite detail. The complainant claiming to be a Master of Surgery and a specialist in Ophthalmology had joined Chapra Sadar Hospital as Civil Assistant Surgeon (C.A.S.) in January, 1962. The appellant joined the said hospital as Civil Surgeon towards the end of 1962. The appellant bore ill-will and malice towards the complainant and was always on the look out for an opportunity to harm him in his profession and to humiliate and disgrace him in the eyes of the public. Some cataract operations were to be performed on January 7, 1964 in the Blind Relief Camp to be organised for that purpose. On January 6, when the complainant was making final selection of the patients for the cataract operations to be performed on the following day, the appellant informed the complainant that he had not been able to arrange for cataract knives and that the complainant should arrange for them from somewhere. The complainant requested the appellant to place orders for the knives with some local firm and give him the necessary letter of authority so that the same could be purchased on credit. The appellant apparently did not like this suggestion. He got enraged and in an insulting tone and language told the complainant that it was his job to arrange for the knives and that as a last resort he might bring his own knife. The complainant reported his suggestion adding that in the alternative a man be sent to Patna to make local purchases. On this the appellant again addressed the complainant in highly

defamatory language in the presence of the hospital staff and the attendants. On January 7, 1964 at about 9 a.m. the complainant was in the operation theatre. Some members of the hospital staff and some attendants of the patients who were waiting outside the operation theatre were also present. The appellant came there and again asked the complainant if he had brought two more cataract knives from somewhere. The complainant replied that in the absence of the appellant's final orders the two knives could not be arranged from the local market. The appellant again got annoyed and addressed the complainant in insulting tone and defamatory language. Not satisfied with the use of such language the appellant ordered Rajesh Pandey, cook of the hospital, to turn out the complainant, the purport of the actual words used Being "Pandey turn out this Badmash (one who follows evil courses)". To his utter humiliation the complainant was then actually pushed out by the cook. The actual words used in Hindi by the appellant have been reproduced in the judgment of the High Court. We have, therefore, not considered it necessary to reproduce them again, except the word 'Badmash' of which the literal meaning in English as stated by us is generally well understood.

3. The question which falls for decision by this Court is whether the complainant's case is covered by Section 197, Cr. P.C. and previous sanction of the superior authority is necessary before the Trial Court can take cognizance of the complaint.

Section 197, Cr. P.C. provides as under :

"(1) When any person who is a Judge within the meaning of Section 19 of the Indian Penal Code, or when any Magistrate or when any public servant who is not removable from his office save by or with the sanction of a State Government or the Central Government, 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, no Court shall take cognizance of such offence except with the previous sanction -

(a) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and

(b) in the case of a person employed in connection with the affairs of a State, of the State Government,

(2) Power of Central or State Government as to prosecution. - The Central Government, or the State Government, as the case may be, may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

4. The object and purpose underlying this section is to afford protection to public servants against frivolous, vexations or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. The larger interest of efficiency of State administration demands that public servants should be free to perform their official duty fearlessly and undeterred by apprehension of their possible prosecution at the instance of private parties to whom annoyance or injury may have been caused by their legitimate acts done in the discharge of their official duty. This section is designed to facilitate an effective and unhampered performance of their official duty by public servants by providing for scrutiny into the allegations of commission of offence by them by their superior authorities and prior sanction for their prosecution as a condition precedent to the cognizance of the cases against them by the courts. It is neither to be

too narrowly construed nor too widely. Too narrow and pedantic construction may render it otiose for it is no part of an official duty-and never can be-to commit an offence. In our view, it is not the "duty" which requires examination so much as the "act" because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. One must also guard against too wide a construction because in our Constitutional set up the idea of legal equality or of universal subjection of all citizens to one law administered by the ordinary courts has been pushed to its utmost limits by enshrining equality before the law in our fundamental principles. Broadly speaking, with us no man, whatever his rank or condition is above the law and every official from the highest down to the lowest is under the same responsibility for every act done without legal justification as any other citizen. In construing Section 197, Cr. P.C., therefore, a line has to be drawn between the narrow inner circle of strict official duties and acts outside the scope of official duties. According to the decision of this Court in *Matajog Dobey v. H. C. Bhari* ((1955) 2 SCR 925) cited by Shri. Sarjoo Prasad on behalf of the appellant there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. In *Amrik Singh v. The State of Pepsu* ((1955) 1 SCR 1302 at 1307) this Court said :

"It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution."

Recently in *Baijnath Gupta v. State of M. P.* ((1966) 1 SCR 20) this Court further explained that it is the quality of the act that is important and if it falls within the scope and range of the official duties of the public servant concerned the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted.

5. The principle embodied in this section seems to be well-understood; the difficulty normally lies in its application to the facts of a given case. The question whether a particular act is done by a public servant in the discharge of his official duty is substantially one of fact to be determined on the circumstances of each case. In the present case the alleged offence consists of the use of defamatory and abusive words and of getting the complainant forcibly turned out of the operation theatre by the cook. There is nothing on the record to show that this was a part of the official duty of the appellant as Civil Surgeon or that it was so directly connected with the performance of his official duty that without so acting he could not have properly discharged it.

6. As suggested by this Court in *Prabhakar V. Sinari v. Shanker Anant Verlekar* (Cr. A. No. 152 of 1967 decided on 29-11-1968) it would be open to the appellant to place material on the record during the course of the trial for showing that his duty as Civil Surgeon was and also that the impugned act were inter-related with his official duty so as to attract the protection afforded by Section 197, Cr. P.C. We do not find any material on the existing record suggesting that the impugned acts were done by the appellant in the discharge of his official duty or that they are

directly connected with it. This appeal accordingly must fail and it is dismissed.

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