Pukhraj

Vs

State of Rajasthan and Another

Criminal Appeal No. 101 of 1972

(H. R. Khanna, A. Alagiriswami JJ)

29.08.1973

JUDGMENT

ALAGIRISWAMI, J. –

1. The appellant filed a complaint against the 2nd respondent before the Addl. Munsiff Magistrate of Jodhpur City under Sections 323 and 504 I.P.C. The 2nd respondent was the Post Master General, Rajasthan and the appellant a clerk in the Head Post Officer at Jodhpur. He was also the Divisional Secretary of National Union of Postal Employees. The relevant portion of the complaint is as follows :

> "4. That the accuse came on tour of Jodhpur on October 25, 1971. He arrived at the Head Post Office Jodhpur, in connection with the inspection at 5.45 p.m. The complainant reached to submit his representation to the accused for cancelling his transfer, when the accused just sat in his jeep and the complainant started narrating his story.
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> 5. That the accused being enraged by this complaint, kicked him in his abdomen and abused him by saying 'Sale, Goonda, Badmash, on one hand you are complaining and on the other hand you are requesting for the cancellation of transfer'.
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> 6. That the complainant became very much enraged over this incident but he suppressed his anger because of being responsible citizen and to avoid any further disturbance.
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> 7. That after kicking and abusing the complainant the accused ran away in his jeep."

The 2nd respondent filed an application under Section 197 of the Code of Criminal Procedure praying that the Court should not take cognizance of the offence without the sanction of the Government as the acts alleged, if at all done by the accused, were done while discharging his duties as public servant. The Munsiff Magistrate dismissed the application but Justice Mehta of the Rajasthan High Court allowed the revision petition filed by the 2nd respondent and set aside the order of the lower Court holding that 2nd respondent could not be prosecuted unless prior sanction of the Central Government had been obtained. This appeal is against that order.

2. The law regarding the circumstances under which sanction under Section 197 of the Code of Criminal Procedure is necessary is by now well settled as a result of the decision of this Court in Bhagwan Prasad Srivastava v. N. P. Misra. While the law is well settled the difficulty really arises in

applying the law to the fact to any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of and act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "cloak of office" and "professed exercise of the office" may not always be appropriate to described or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty. In Hori Ram Singh's case (supra) Sulaiman, J. observed :

> "The section cannot be confined to only such acts are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction."

In the same case Varadachariar, J. observed : "there must be something in the nature of the act complained of that attaches it to the official character of the person doing it". In affirming this view, the Judicial Committee of the Privy Council observe in Gill's case :

> "A public servant can only be said to act or 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 challenged, can reasonably claim that, what he does in virtue of his office."

In Matajog Dobey v. H. C. Bhari, the Court was of the view that the test laid down that it must be established that the act complained of was an official act unduly narrowed down the scope of the protection afforded by' Section 197. After referring to the earlier cases the Court summed up the result as follows :

> "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, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

Applying this test it is difficult to say that the acts complained of i.e. of kicking the complainant and of abusing him, could be said to have been done in the course of performance of the 2nd respondent's duty. At this stage all that we are concerned with is whether on the facts alleged in the complaint it could be said that what the 2nd respondent is alleged to have done could be said to be

in purported exercise of his duty. Very clearly it is not. We must make it clear, however, that we express no opinion as to the truth or falsity of the allegations.

3. We must also make it clear that this is a not the end of the matter. As was pointed out in Sarjoo Prasad v. The King Emperor, referring to the observations of Sulaiman, J. in Hori Ram Singh's case (supra) the mere fact that the accused proposes to raise a defence of the act having purported to be done in execution of duty would not in itself be sufficient to justify the case being thrown out for want of sanction. At this stage we have only to see whether the acts alleged against the 2nd respondent can be said to be in purported execution of his duty. But facts subsequently coming to light during the course of the judicial inquiry or during the course of prosecution evidence at the trial may establish the necessity for sanction. Whether sanction is necessary or not may have to depend from stage to stage. The necessity may reveal itself in the course of the progress of the case [see observations in Matajog Dobey v. H. C. Bhari (supra)]. In Bhagwan Prasad Srivastava v. N. P. Misra (supra) also it was pointed out that it would be open to the appellant (the 2nd respondent in this case) to place the material on record during the course of the trial for showing what his duty was and also that the acts complained of were so inter-related with his official duty so as to attract the protection afforded by Section 197, Cr.P.C.

4. This appeal is, therefore, allowed and the order of the learned Judge of the High Court is set aside.

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