

B. S. Sambhu

Vs

T. S. Krishnaswamy

Criminal Appeal No. 15 of 1979

(V. D. Tulzapurkar, A. Varadarajan JJ)

09.11.1982

JUDGMENT

1. The question raised in this appeal is whether sanction under Section 197, CrPC is required for prosecuting the appellant who at the material time was working as Additional Munsif and Judicial Magistrate First Class, Madhugiri ?

2. It appears that the respondent, an Advocate, was representing a party (defendant) in Suit No. 522 of 1973 which was being heard by the appellant. An application for transfer of the suit from his court to some other court was moved by the defendant before the District Court being Miscellaneous Case No. 30 of 1975. The District Judge called for remarks from the appellant regarding certain allegations that were made in the transfer application. The appellant submitted his remarks in the form of D. O. letter No. 16/75 dated December 5, 1975 wherein he made the following statement :

In this connection I may also bring to Your Honour's kind notice that the conduct and character of Sri T. S. Krishnaswamy are not good and that he misbehaves in the open court making all nonsense allegations. Further, it is brought to my notice that Shri T. S. Krishnaswamy is a big gambler in this town and is a rowdy also and on account of that he exhibits all sorts of rowdism in the open court. The District Judge is requested to safeguard him from the hands of such mischievous elements.

3. It appears that this letter was read out by the learned District Judge in open court. The respondent filed a criminal complaint against the appellant alleging that the aforesaid contents of the D. O. letter amounted to his defamation under Section 499, IPC. A question was raised whether the court could take cognizance of the offence without the sanction contemplated in Section 197, CrPC. The learned Magistrate negatived the contention of the appellant that the sanction was necessary. In an application under Section 482 the High Court upheld the Magistrate's view.

4. It was contended before us as was done before the High Court that the D. O. letter sent by the appellant to the District Judge was discharge of his duties because the District Judge had called for the remarks and hence whatsoever had been written by the appellant was done while acting or purporting to act in discharge of his official duty and as such the ingredients of Section 197, CrPC were satisfied. It is not possible to accept this contention for in our view there is no reasonable nexus between the act complained of and the discharge of duty by the appellant. Calling the respondent as 'rowdy', 'a big gambler' and 'a mischievous element' cannot even remotely be said to be connected with the discharge of official duty which was to offer his remarks, regarding the allegations made in the transfer petition. In *Matajog Dubey v. H. C. Bharij* this Court has laid down

the test in these terms :

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 to the facts of the present case it is impossible to come to the conclusion that the act complained of has any connection with the discharge of official duty by the appellant.

5. We might refer to the decision of this Court in Pukhraj's case where the facts were similar to the facts in the instant case. Pukhraj filed the complaint against respondent 2, his superior officer, in the postal department, under Sections 323 and 502 of IPC alleging that when he went with his certain complaint to the 2nd respondent the 2nd respondent kicked him at his abdomen and abused him by saying "sale, gunde, badmash...". The 2nd respondent raised the contention that the court could not take cognizance of the offence without the sanction of the Government under Section 197 of the CrPC. That contention was negatived and this Court posed the question whether the acts complained of were done by the 2nd respondent in purported exercise of his duties and applying the test laid down in Matajog Dubey case held that the acts complained of, namely, kicking the complainant and abusing him could not be said to have been done in the course of the performance of the duty by the 2nd respondent.

6. For the reasons indicated above we are satisfied that the High Court was right in coming to the conclusion that Section 197 was not attracted. There is, therefore, no substance in the appeal and the same is dismissed.

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