

Manohar Nath Kaul

Vs

State of Jammu & Kashmir

Criminal Appeal No. 677 of 1980

(Ranganath Misra, D. A. Desai JJ)

19.04.1983

JUDGMENT

RANGANATH MISRA, J.-

1. In this appeal by special leave, the short question for consideration is, if sanction under Section 197, Code of Criminal Procedure ('Code' for short) is necessary for the prosecution of the appellant for an offence of cheating punishable under Section 420 of the Indian Penal Code.

2. Appellant was Regional Officer of the Directorate of Field Publicity of the Government of India in 1972. He travelled by air from Srinagar to Delhi to and for on one occasion and from Srinagar to Jammu to and for on two other occasions by obtaining air tickets in lieu of exchange orders. The cost of the tickets obtained by the appellant was debitable to the account of the Directorate and under the rules the appellant was required to exclude the same from the bills for travelling allowance. On the allegation that the appellant submitted bills including the air fare and received payment for the same, a prosecution report was submitted against him for the offence of cheating under Section 420, IPC in the court of the Chief Judicial Magistrate of Srinagar. The appellant took the plea that in the absence of sanction under Section 197 of the Code, the prosecution was not maintainable. The trying Magistrate rejected the contention and the High Court upheld the order in a revision at the instance of the appellant.

3. Section 197 (1) of the Code provides :

When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the 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 who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

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Undoubtedly, the section is designed to facilitate an effective and unhampered performance of official duty by public servants by making provision for scrutiny into allegations against them by superior authorities and prior sanction for prosecution as a condition precedent to the cognizance of

cases against them by courts so that protection may be available from frivolous, vexatious or false prosecutions for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. As pointed out by this court in Bhagwan Prasad Srivastava v. N. P. Mishra, the umbrella of protection is available in respect of offences alleged to have been committed while acting or purporting to act in the discharge of official duty. It is the contention of the appellant that qua public officer the appellant submitted the impugned bills and has drawn the travelling allowance. According to him, the furnishing of the bills and the drawing of the allowance are integrally connected with his status of being a public servant and must, therefore, be taken to be covered by the two phrases occurring in sub-section (1) of Section 197 of the Code.

4. We are of the view that the submission advanced on behalf of the appellant is totally without any basis and has to be rejected. The state of the law as laid down by this court in several precedents may usefully be referred to in support of this conclusion. In Amrik Singh v. State of Pepsu, the accused was a Sub-Divisional Officer in the Public Works Department of Pepsu. It was a part of his duties to disburse the wages to workmen employed in certain works at a place called Karhali. The procedure usually followed was that he drew the amount required from the Treasury and disbursed the amount to the employees against their signatures or thumb impressions in the monthly acquittance roll. Payment was shown to have been made to one Parma for the month of April, 1951. The Sub-Divisional Officer was prosecuted on the allegation that Parma was non-existent and the thumb impression in the acquittance roll was of the accused himself. This had been done with a view to misappropriating the wages said to have been paid to the workman. Before a three-Judge Bench of this court on behalf of the appellant the conviction was challenged for want of sanction under Section 197 (1) of the Code in respect of the offences punishable under Section 409 and 465 of the Penal Code. Referring to certain decided cases, Venkatarama Ayyar, J. spoke for the court thus :

The result of the authorities may thus be summed up : 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.

It was further said :

In our judgment, even when the charge is one of misappropriation by a public servant, whether sanction is required under Section 197 (1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197 (1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.

The conviction was set aside in that case on a finding that the preparation of the acquittance roll and the disbursement of the money were integrally connected with the official duties of the Sub-

Divisional Officer, and without sanction the prosecution was not maintainable.

5. The question of sanction arose again in the case of *K. Satwant Singh v. State of Punjab*, and on this occasion before a Constitution Bench. Connected with the rehabilitation program in Burma after the Japanese invasion during the second world war, certain works were undertaken - some to be executed by the Army and others were entrusted to contractors. The appellant was one of such contractors and claimed payment for work done and on his request payments were made through cheques which were encashed at Lahore. The Government of Burma looked into the claims again on account of suspicion and discovered that some of the claims were false and payment therefore was not due. The contractor was, therefore, charged for an offence under Section 420 IPC and some of the officers connected with the payments were charged under Section 420/109, IPC. Imam, J. spoke for the Constitution Bench thus :

Henderson was charged with intentionally aiding the appellant in the commission of an offence punishable under Section 420 of the Indian Penal Code by falsely stating as a fact, in his reports that the appellant's claims were true and that statement had been made knowing all the while that the claims in question were false and fraudulent and that he had accordingly committed an offence under Section 420/109, Indian Penal Code. It appears to us to be clear that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of a bribe, an offence punishable under Section 161 of the Indian Penal Code, is one of them and offence of cheating or abatement thereof is another. We have no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences (vide *Amrik Singh* case). The act of cheating or abatement thereof has no reasonable connection with the discharge of official duty. The act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty (vide *Matajog Dobey* case).

The court held that the protection under Section 197 of the Code was not available.

6. The authority in *Satwant Singh* case has never been challenged in this court and as the offence of cheating was involved therein, the ratio of the aforesaid case which is binding on us would have been ordinarily sufficient for the disposal of this appeal. We would, however, like to refer to some of the later decisions of this court so that a full view of the judicial opinion on the question may be available.

7. In *Baijnath Gupta v. State of M. P.*, the Chief Accountant-cum-Office Superintendent in an Electric Supply Undertaking run by the Government of erstwhile State of Madhya Bharat was prosecuted for offences punishable under Section 477-A and 409, IPC. It was contended before this court that the offences had been committed in the discharge of official duty and in the absence of prior sanction the conviction was not maintainable. The majority quoted with approval the following observations of Lord Simonds in *Gill v. King*, 1948 FCR 19, 40 : AIR 1948 PC 128 : 75 IA 41, in which the learned Judge approved the statement of law by Varadachariar, J. in *Dr. Hori Ram Singh v. Emperor* :

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. Thus, a judge neither acts nor purports to act as a judge in receiving a bribe, though the judgment which he delivers may be such an act : nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.

The court proceeded to say :

It is not every offence committed by a public servant that requires sanction for prosecution under Section 197 (1) of the Criminal Procedure Code; 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. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.

8. The facts of *Bakhshish Singh Dhaliwal v. State of Punjab*, were similar to *Satwant Singh* case. *Bakhshish Singh* was also a contractor engaged in the rehabilitation work in Burma after the second world war and on a similar set of allegations as in that case he was prosecuted along with the public officers for the offence of cheating. The ratio in *Satwant Singh* case was quoted with full approval and sanction was held to be wholly unnecessary. It was held that the act of abetting the principal offenders could not possibly be held to have been done in the discharge of official duties as public servants. The question of sanction arose again for consideration in the case of *Harihar Prasad v. State of Bihar*, in the backdrop of prosecution of six public servants for offences punishable under Sections 120-A, 120-B and 409 of the Indian Penal Code. The court reiterated the dictum in *Amrik Singh* case where it had been 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;...

Testing the facts on the basis of this dictum the court came to the conclusion that want of sanction was no bar to the prosecution.

9. In *B. Saha v. M. S. Kochar*, a three-Judge Bench dealt with the same submission advanced on behalf of certain officers of the Customs Department convicted for offences punishable under Sections 120-B, 166 and 409 of the Penal Code. *Sarkaria, J.* speaking for the court observed : (SCC para 18, p. 185 : SCC (Cri) p. 946)

In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.

The rule in Amrik Singh case was quoted with approval. It was observed : (SCC para 17, pp. 184-85 : SCC (Cri) pp. 945-46)

The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197 (1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty which is entitled to the protection of Section 197 (1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision.

We are of the definite view that the rule quoted above from Amrik Singh case correctly lays down the legal proposition as to invocability of the protection under Section 197 (1) of the Code. The observations of Imam, J. in Satwant Singh case 3 that there could be no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offence has no necessary connection between it and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences, is also the correct exposition of the law. It has not been contended before us that official duty of the appellant was to draw travelling allowance bills though his status as a public servant authorised him to draw such bills. Drawing of T. A. bills cannot be said to have been directly and reasonably connected with appellant's duty as Regional Officer of the Directorate and the official status furnished the opportunity for doing the acts which constitute ingredients of the offence. He was, therefore, not entitled to claim the protection of Section 197 (1) of the Code. The prosecution is not vitiated for want of sanction. The appeal has, therefore, to be dismissed.

10. The prosecution was laid about eight years back and on the plea of want of sanction the matter has been dragged on for such a long time at different stages. We, therefore, direct that the trial court shall proceed to conclude the trial expeditiously in accordance with law.

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