

Balbir Singh

Vs

D.N. Kadian, M.M. Delhi and Another

Delhi Administration, Delhi

Vs

D.N. Kadian and Others

Criminal Appeal Nos. 844-845 of 1985

(A. P. Sen, B. C. Ray JJ)

10.12.1985

JUDGMENT

B.C. RAY, J. -

1. The only question involved in these two appeals is whether the criminal proceedings initiated against the appellants, i.e. Balbir Singh, Sub-Inspector and Ram Shankar, Constable of Delhi Police Force is maintainable in the absence of any prior sanction obtained from the Lt. Governor as required under Section 197(3) of the Code of Criminal Procedure.
2. Section 197(1) of the Code of Criminal Procedure envisages that no court can take cognizance of any offence alleged to have been committed by a judge or magistrate or a public servant while acting or purporting to act in the discharge of his official duty without previous sanction of the government. Sub-section (2) of that section further provides that no court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in discharge of his official duty, without obtaining the prior sanction of the Central Government. Sub-section (3) of the said section further provides that the State Government may by notification direct that the provisions of sub-section (2) shall apply, to such class or category of members of the Forces charged with the maintenance of public order as may be specified in the said order, and upon such notification being made, the provisions of sub-section (2) will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.
3. The appellants are undoubtedly the members of Delhi Police Force. It is also not in dispute that these appellants do not fall within the category of officers mentioned in sub-section (1) of Section 197 of Criminal Procedure Code and as such no prior sanction of the government is necessary in order to launch a prosecution against these officers. The only question remains to be considered is whether the appellants being members of the Delhi Police Force are entitled to get the benefit of sub-section (3) of Section 197 of Criminal Procedure Code by virtue of the Notification No. S.O. 183(E) dated March 20, 1974 issued by the Under Secretary, Government of India read with the notification dated April 7, 1980 issued by the Lt. Governor, Delhi under No. F. 10/77/78-HP-II. Delhi is a Union territory within the meaning of Article 1 read with the First Schedule to the

Constitution as amended by the Constitution (Seventh Amendment) Act, 1956. The power to administer the Union Territory is vested in the President under Article 239 of the Constitution and clause (1) of the said article empowers the President to administer the Union Territory through an Administrator to be appointed by him. The Administrator appointed by the President under Article 239(1) of the Constitution with the designation of Lt. Governor of Delhi derives only such powers, functions and duties as are entrusted to him by the President under Article 239(1). In accordance with the provisions of this Article 239(1) the aforesaid notification dated March 20, 1974 has been made whereby the President had directed that the Administrators of all the Union Territories other than Arunachal Pradesh and Mizoram shall exercise, subject to the control of the President, the powers and discharge the functions under the Code of Criminal Procedure, 1973 as mentioned in Schedule annexed thereto, subject to the condition mentioned therein. The said notification was enforced on April 1, 1974. In this Schedule all powers and functions of the State Government except those conferred by Sections 8 and 477 of the Code were conferred on the Administrator. Therefore, by virtue of this notification, the President empowered the Administrator of Union Territories, i.e. Lt. Governor of Delhi to exercise the powers and functions of the State Government as provided in the Code of Criminal Procedure except the powers and functions provided in Sections 8 and 477 of the said Act. It also appears from the notification dated April 7, 1980 that the Lt. Governor directed that the provisions of sub-section (2) of Section 197 "shall apply to serving police officials of all ranks of Delhi Police Force" charged with the maintenance of public order. This notification was made in exercise of powers conferred upon the Administrator under sub-section (3) of Section 197 of the Code of Criminal Procedure read with the Government of India Notification dated March 20, 1974 mentioned before. Reading these two notifications together, it is crystal clear that to start a proceeding against the members of all ranks of Delhi Police officials in a criminal court, previous sanction of the Lt. Governor is imperative, provided the offence alleged to have been committed by such members of the Delhi Police Force has been committed while acting or purporting to act in discharge of their official duty.

4. In the instant case the act of tempering of the search memos by the two appellants i.e. Balbir Singh and Ram Shankar cannot be said to have been done in discharge of their official duties inasmuch as the said search memos were in the custody of the court. The complaint was filed by the Special Railway Magistrate alleging that the search memos which were signed by the sub-inspector Balbir Singh did not bear any signature of the witness Ram Shankar at the time when the said search memos were in the custody of the court. Subsequently, it has been interpolated by getting the same signed by the accused Ram Shankar. This act of tempering and interfering with the records of the court by the two petitioners by any stretch of imagination cannot be said to have been done or purported to have been done by the petitioners in discharge of their official duty. It is pertinent to refer in this connection to the decision of this Court in *Matajog Dubey v. H.C. Bhari* ((1955) 2 SCR 925 : AIR 1956 SC 44 : (1955) 28 ITR 941) where this Court laid down the scope of the protection afforded by Section 197 of the Code of Criminal Procedure in the following 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.

These observations have been followed by this Court in *Pukhraj v. State of Rajasthan* ((1973) 2 SCC 701 : 1973 SCC (Cri) 944)

5. In that case the Post Master General of Rajasthan abused and kicked a clerk of the Head Post Office when a clear of the Head Post Office of Jodhpur went to make some oral representations to

the Post Master General. The clerk filed a complaint against the Post Master General under Sections 323 and 504 IPC before the Additional Munsif Magistrate of Jodhpur city. An application was filed praying that no cognisance of the offence would be taken without the sanction of the Government under Section 197 of Criminal Procedure Code. It was held that the acts alleged were not done in due discharge of his official duty and so no prior sanction of the government was necessary under Section 197 of the Code.

6. In *Bhagwan Prasad Srivastava v. N.P. Misra* ((1971) 1 SCR 137 : (1970) 2 SCC 56 : AIR 1970 SC 1661), the respondent filed a complaint alleging that the appellant, a civil surgeon used defamatory and abusive words and got him pushed out by the cook of the hospital. It was found that the case was not covered by Section 197 of the said Act as those acts were not done in discharge of his official duty.

7. In the case of *Darshan Kumar v. Sushil Kumar Malhotra* (1980 Cri LJ 154 : 1980 Mad LJ (Cri) 47), it was found that the acts complained of against respondents 1, 3 and 4 were purported to have been done by them in discharge of their official duties and it was reasonably connected with their official duties. As such it was held that prior sanction of the State Government was necessary in prosecuting them in respect of the offence, if any, made out from the commission of such acts.

8. As regards scope and ambit of Section 197(3) of the Code of Criminal Procedure it has been rightly observed by the Division Bench of the Gujarat High Court in *Bhikhaji Vaghaji v. L.K. Barol* (1982 Cri LJ 2014) that after the issuance of the notification by the government under Section 197(3) of the Criminal Procedure Code directing that the provisions of sub-section (2) of Section 197 shall apply to the police officers charged with the maintenance of public order, the same could not be questioned on the ground of non-application of mind as it is within the scope and ambit of sub-section (3) of Section 197 of the Code. It was also observed that :

Before the protection of sub-section (2) of Section 197 of the Code could be had and the proceedings are dropped on that count, the learned Magistrate is under an obligation to decide that the alleged acts attributed to the members of the police force are acts done in the discharge of their official duties, or at any rate, they purport to be, or bear the colour or semblance of, the acts that could be done in the discharge of their official duties.

9. We have already said that the alleged acts of tampering with the search memo while the same was in custody of the court cannot be deemed to be an act purported to have been done by these two appellants in discharge of their official duties. Therefore, the previous sanction of the Lt. Governor as provided in Section 197(3) Criminal Procedure Code was, in our considered opinion, not at all necessary for initiating the proceedings against these two appellants, who are members of the Delhi Police Force. For the reasons stated hereinbefore the appeal filed by the Delhi Administration succeeds and is allowed and the appeal filed by the accused is dismissed. The judgment and order of the High Court declaring the impugned notification dated April 7, 1980 issued by the Lt. Governor of Delhi to be ultra vires is set aside and the learned Magistrate is directed to proceed with the case in accordance with law.

10. We are thankful to Sri Anil Kumar Gupta for the assistance he has rendered as amicus curiae.

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