

Ram Kumar

Vs

State of Haryana

Criminal Appeal No. 25 of 1987

(M. P. Thakkar, B. C. Ray JJ)

13.01.1987

JUDGMENT

THAKKAR, J. :-

1. Can a sanction to PROSECUTE surrogate for a sanction to take COGNIZANCE ?
2. Two safeguards are provided in regard to prosecution of members of the Armed Forces or of the forces charged with the maintenance of public order sought to be prosecuted for use of excessive force in the discharge or purported discharge of their duty :

(1) They cannot be "Prosecuted" without obtaining a sanction to prosecute from the appropriate Government (Section 132 [132. Protection against prosecution for acts done under preceding sections. - (1) No prosecution against any person for any act purporting to be done under Section 129, Section 130 or Section 131 shall be instituted in any Criminal Court except -

(a) with the sanction of the Central Government where such person is an officer or member of the armed forces;

(b) with the sanction of the State Government in any other case.

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of the Code of Criminal Procedure) (CrPC).

(2) No Court can take "cognizance" of an offence against such an official in the absence of the previous sanction of the appropriate Government (see Section 197 [197. Prosecution of Judges and public servants. -

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(2) 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 the discharge of his official duty, except with the previous sanction of the Central government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged

with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and 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.] of CrPC).

3. In the present case the trial court has taken cognizance without the previous sanction (of the State Government) as envisioned by Section 197(2) read with Section 197(3) of the Code of Criminal Procedure in respect of a charge that the appellant had in the purported discharge of his duties used force in excess of what was necessary and thereby committed an offence. Admittedly, there is no such previous sanction authorising any court to take 'cognizance' of the offence against the appellant. The High Court has, however, taken the view that inasmuch as the State Government itself had accorded sanction to 'prosecute' the appellant in exercise of powers under Section 132 of the CrPC there was no need for sanction under Section 187 of CrPC. The reasoning runs along these lines : Both sanctions are (1) to be given by the State Government, (2) in respect of the same person, and (3) on the same allegations. Therefore, the sanction under one provision (Section 132) can be treated as a sanction under the other provision Section 197(3) as well. We are afraid, the High Court has overlooked the scope, purpose and character of sanction under Section 132 of CrPC on the one hand and Section 197 CrPC on the other. Six significant points of difference need to be highlighted :

(1) The two sanctions are addressed to altogether different persons. While sanction under Section 132 is addressed to the intending complainant, sanction under Section 197 is addressed to the Magistrate presiding over a court.

(2) The two sanctions serve two altogether different purposes. While the sanction under Section 132 clothes the intending complainant with authority to institute a complaint and set the machinery of the Criminal court in action, the sanction under Section 197 clothes the court with the jurisdiction to take cognizance of the offence. Without the former, the intending complainant cannot trigger the proceedings, without the latter the Magistrate cannot have seisin over the matter or act in the matter.

(3) The absence of sanction in each case visits different persons with different consequences. Absence of the former disables the intending complainant whereas absence of the latter disables the court.

(4) The disability operates in two different spheres. Want of sanction under Section 132 renders the complaint invalid. Want of sanction under Section 197 vitiates all the proceedings in the court. For want of the former, the complainant cannot complain, for want of the latter the court cannot try the case.

(5) The sanctioning authority has to address itself to different questions. In regard to a sanction under Section 132 CrPC the question to be answered is whether the intending complainant is a suitable person to be authorized for prosecuting the matter in good faith. In regard to the sanction under Section 197 the question to be answered

is which particular court should be empowered to try the case. So also in granting sanction under Section 197 the sanctioning authority has to consider whether or not to exercise the power under Section 197(4) to specify "the person by whom, the manner in which, and the offence or offences for which" the concerned public servant should be tried and "the court before which the trial is to be held". The authority seized of the matter in the context of sanction under Section 132 does not have to address himself to these questions and in fact has no competence in this behalf.

(6) One is an authority to an individual to 'prosecute' the alleged offender, the other is an authority to 'try' the alleged offender.

4. Therefore, a sanction under Section 132 is no substitute for a sanction under Section 197. Under the circumstances, the court could not have taken cognizance of the offence insofar as the appellant was concerned for there was no jurisdiction to do so in the absence of the requisite sanction. The appeal must, therefore, be allowed, the order passed by the High Court must be set aside, and the proceedings against the appellant must be quashed as lacking in jurisdiction. No doubt, this order will not operate as an acquittal on merits and the appellant can be proceeded against afresh. Whether or not to do so is for the competent authority to decide. So far as the proceedings giving rise to the present appeal are concerned, the same will stand quashed.

5. The appeal is disposed of accordingly.

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