

N.K. Ogle

Vs

Sanwaldas @ Sanwalmal Ahuja

Criminal Appeal No. 288 of 1993

(G.B. Pattanaik, M.B. Shah JJ)

18.03.1999

JUDGMENT

G.B. Pattanaik, J.

1. The appellant was Tehsildar in Damoh. The District Collector had ordered by sending a Revenue Collection Certificate to collect lease money amounting to Rs. 4,653/- from Sanwaldas, respondent herein. The Tehsildar on receipt of the information from the office of the Collector registered the matter and passed an order for issuance of Demand Letter. Under the said Demand Letter the initial date had been fixed as 14.11.1989 which was, however, changed later on to 28.11.89. The Tehsildar in his order-sheet Exhibit D mentioned that the Demand Letter has been received back after being duly served on the respondent Sanwaldas. On 4.12.89 an order of attachment warrant was passed. On 21.12.89 respondent Sanwaldas came to the office of Tehsildar and objected to the legality of the order of issuing the Demand Letter. This fact was immediately intimated by the Tehsildar to the District Magistrate on the same day. Respondent Sanwaldas then filed a complaint alleging that while he had gone to the Tehsil Office on his scooter the Tehsildar forcibly kept the Scooter, and as such, has committed an offence under Section 379 of the Indian Penal Code. It may be stated that after the seizure of the scooter the Tehsildar directed for auctioning of the same and the scooter was ultimately auctioned on 22.1.90. On the basis of the complaint filed by respondent Sanwaldas the learned Judicial Magistrate First Class, Damoh, took cognizance of the offence and directed issuance of process against Tehsildar. Tehsildar appeared before the Magistrate on 2.3.90 and filed an application raising objection to the order taking cognizance of the offence on the ground that the acts complained of was in discharge of the official duty of the Tehsildar and therefore, in the absence of sanction under Section 197 of the Code of Criminal Procedure the Court will have no jurisdiction to entertain the complaint. The learned Magistrate, however, rejected the said application filed by the Tehsildar by its order dated 7th March, 1990 on a finding that the acts complained of have no rational nexus with the discharge of official duty of the Tehsildar and, therefore, immunity under Section 197 Cr.P.C. will not be attracted. This order of the Magistrate was assailed in Revision by the Tehsildar in the Court of Sessions Judge, Damoh which was registered as Criminal Revision No. 17/90. By judgment dated 24.4.90 the learned Sessions Judge came to the conclusion that the alleged act of the Tehsildar is directly connected with the performance of his official duties and, therefore, the claim of the applicant regarding immunity under Section 197 Cr.P.C. can neither be said to be pretended nor fanciful. The Sessions Judge came to the conclusion that the Tehsildar cannot be prosecuted for the acts complained of without prior sanction of the Government as required under Section 197 of the Code of Criminal Procedure. Accordingly, the order of the Magistrate was set aside and the complaint was held to be not maintainable. Against the aforesaid order of the learned Sessions Judge the complainant moved the High Court invoking the jurisdiction of the Court under Section 482 of the Code of Criminal

Procedure. The High Court by the impugned judgment dated 3.12.91 being of the opinion that the acts complained of in fact do not appear to relate with the responsibility of the post of Tehsildar and Tehsildar has mis-used his powers, interfered with the order of Sessions Judge and held that the provisions of Section 197 of the Criminal Procedure has no application to the case in hand. In coming to the aforesaid conclusion the High Court examined the provisions of the M.P. Land Revenue Act and came to hold that the order of attachment of the Collector was not in accordance with law, and therefore, any purchased action taken by Tehsildar on the basis of such invalid order will not give him protection of Section 197 of the Code of Criminal Procedure. According to the High Court the Tehsildar must be held to have mis-used his post of taking sanction from the Government before initiating any criminal proceeding does not arise. It is this order of the High Court which is being assailed in the present appeal.

2. Mr. Bachawat, learned senior counsel appearing for the appellant contended that the Court while examining the question of applicability of Section 197 Cr.P.c. in a given case is required to find out whether the acts complained of constituting the alleged offence can be said to have been done in exercise of the powers of the public officer or in purported exercise of the power of the said officer and if the answer is in the affirmative then the provisions of Section 197 Cr.P.C. would get attracted. According to Mr. Bachawat, if it is found that the concerned public officer has acted bona fide in exercise of or in purported exercise of power conferred upon him and not on the basis of a pretended plea, then the provisions of Sub-section (1) of Section 197 of the Code of Criminal Procedure would apply, even if such officer has done something in excess than what is provided for. According to Mr. Bachawat on the findings of the High Court the acts complained of having been done in exercise of the powers under the provisions of M.P. Land Revenue Act which order of the Tehsildar in turn was issued pursuant to the order of the District Magistrate, Damoh for recovering the lease money from the respondent, the High court committed error in examining the legality of such order and then coming to a conclusion on the question about the applicability of Section 197 Cr.P.C. In support of this contention reliance was placed on the Constitution Bench decision of this Court in the case of *Matajog Dobey v. H.C. Bhari*, 1955(2) SCR 925 and a recent decision of this Court in the case of *Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan and others*, (1998) 1 SCC 205.

3. Mr. Upadhyay, learned counsel appearing for the respondent on the other hand contended, that the acts of the Tehsildar which was the subject matter of the complaint filed by the respondent cannot be said to have reasonable nexus with the duties of the Tehsildar, and therefore, for such illegal acts the protection provided under Section 197 Cr.P.C. will not apply. According to Mr. Upadhyay, the plea of the Tehsildar that he forcibly retained the scooter in exercise of his power under the provisions of M.P. Land Revenue Act is nothing but a pretended and fanciful plea and consequently the High Court was fully justified in recording the findings that the provisions of Section 197 will have no application to the case in hand. In support of this contention reliance was placed on the decision of this Court in the case of *B. Saha and others v. M.S. Kochar*, (1979) 4 SCC 177 and in the case of *B.S. Sambhu v. T.S. Krishnaswamy*, (1983) 1 SCC 11 and in the case of *Pukhraj v. State of Rajasthan and Another*, (1973) 2 SCC 701. According to Mr. Upadhyaya the legislative intent engrafted behind Section 197 of the Code of Criminal Procedure is to prevent a public servant from being unnecessarily harassed. But if an authority misuses his power as found by the High Court in the present case and such protection is given then the very purpose for which Section 197 was engrafted on the Statute Book would get frustrated.

4. Bearing in mind the rival submissions at the bar and examining the allegations made in the complaint petition we are persuaded to agree with the submissions made by Mr. Bachawat, learned

senior counsel appearing for the appellant Undisputedly the appellant at the relevant time was the Tehsildar and the District Collector had passed an order for collecting the lease money of Rs. 4,653/- from the respondent Sanwaldas. On the basis of the aforesaid order of the District Collector the Tehsildar, the present appellant, appears to have registered the matter in his Court and ordered for issuance of the Demand Letter and infact such a Demand Letter had been issued and had been duly served on the respondent and yet the respondent had not made the payment. If further appears that as no steps had been taken by the respondent to pay the money an order of attachment warrant was issued on 4.12.89 and it is then on 21.12.89 when the respondent was available with the scooter in the Tehsil officer the said scooter was seized and it is such seizure and retention of the scooter of the respondent which is the gravamen of the allegation of offence under Section 379 in the complaint case. Such action of the Tehsildar in our considered opinion cannot but be a bona fide act on the part of the Tehsildar in purported exercise of the power under the M.P. Land Revenue Act. In Saha's case (supra) what this Court had held is that there must be direct and reasonable nexus between the offence committed and the discharge of the official duty. Charge of dishonest misappropriation or conversion of goods by customs authority which they had seized was held not to be in discharge of official duty and as such Section 197 has to application as misappropriation cannot be said to be in discharge of official duty. We see no reasons how the aforesaid decision is of any application in the present case. It is nobody's case that the Tehsildar forcibly retained the scooter and used it for his own purpose. On the other hand the scooter after being seized was put to public auction for recovery of the legal dues of the government as against the respondent.

5. In Sambhu's case (supra) the Court was examining as to whether a defamatory language used by a judge to an advocate can be said to be in discharge of the official duty. Obviously this Court held that use of such defamatory language by no stretch of imagination can be held to be in discharge of official duty and consequently the provisions of Section 197 will have no application. The aforesaid decision has no application to the present case.

6. The third decision relied upon by Mr. Upadhyay is the Pukhraj's case (supra). In the said case the question for consideration was that when a government servant on orders of transfer had requested his employer for cancellation of the transfer and the employer started abusing and giving kicks to the said government servant whether it can be said to be in purported exercise of his duty. This Court in no uncertain terms came to the conclusion that the act of abusing and giving kicks cannot be said to be an act done in the execution of duty or in purported exercise of the execution of the duty. In our considered opinion the ratio of the aforesaid case also will have no application.

7. The Constitution Bench decision of this Court in Matajog Dobey's case (supra) clearly enunciates where a power is conferred or a duty is imposed by statute or otherwise and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution, because it is a rule that when the law commands a things to be done, it authorities the performance of whatever may be necessary for executing its command. The Court was considering in the said case the allegation that the official authorised in pursuance to a warrant issued by the Income Tax Investigation Commission in connection with certain pending proceedings before it, forcibly broke open the entrance door and when some resistance was put the said officer not only entered forcibly but tied the person offering resistance with a rope and assaulted him mercilessly causing injuries and for such act a complaint had been filed against the concerned public officers. This Court, however, came to hold that such a complaint cannot be entertained without a sanction of the Competent Authority as provided under Section 197 Cr.P.C. This Court had observed that before coming to a conclusion whether the

provisions of Section 197 of the Code of Criminal Procedure will apply the Court must come to a conclusion that there is a reasonable connection between the act complained of and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim that he did it in the course of the performance of his duty. Applying the aforesaid ratio to the case in hand the conclusion is inescapable that the act of the Tehsildar in seizing the scooter of the respondent was in discharge of his official duty which he was required to do on the basis of the order issued by the Collector for getting the lease money from the respondent and the said act cannot be said to be a pretended or fanciful claim on the part of the Tehsildar. The High Court, in our view committed error at that stage in examining the flaw or legality of the order of attachment issued by the Tehsildar.

8. In Suresh Kumar's case (supra) relying upon Matajog Dobey's case (supra) and bearing in mind the legislative mandate engrafted in Sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with a previous sanction of the Government concerned this Court has held that the said provision is a prohibition imposed by the statute from taking cognizance and as such the jurisdiction of the Court in the matter of taking cognizance and, therefore a Court will not be justified in taking cognizance of the offence without such sanction on a finding that the acts complained of are in excess of the discharge of the official duty of the concerned government servant.

9. In the aforesaid circumstances and in view of our earlier conclusions as to the circumstances under which the order of attachment was issued and the scooter was seized we have no hesitation to hold that the acts complained of by the respondent against the Tehsildar had been committed in discharge of the official duty of the such Tehsildar and, therefore, no cognizance can be taken by any court without prior sanction of the Competent Authority. Admittedly there has been no such sanction of the Competent Authority. We accordingly allow this appeal and set aside the impugned order of the High Court. The order passed by the learned Sessions Judge is affirmed.