SUPREME COURT OF INDIA

Shri S.K. Zutshi

Vs

Shri Bimal Debnath

Appeal (Crl.) 30 of 1999

(S. N. Variava and Arijit Pasayat)

10/08/2004

JUDGMENT

ARIJIT PASAYAT, J.

Appellants call in question legality of the judgment rendered by learned Additional Sessions Judge, Belonia, South Tripura in Criminal Revision No.29(4) of 1997. Appellants had challenged legality of the cognizance taken and issuance of process on the basis of a complaint filed by respondent no.1. The complaint was filed by respondent no.1 alleging that on 21.3.1997 the present appellants along with some other personnel of Border Security Force (in short 'BSF') came to his crockery-cum-cloth shop and demanded Rs.10, 000/- as illegal gratification which the complainant refused to pay. They entered into his shop without any authority, ransacked the shop and illegally took away some commodities which were stored for business purposes. Certain documents were also taken away. It was further alleged that they threatened him to take away his life and with dire consequences on the point of revolver. They illegally took away the articles on the basis of a purported seizure memo taking signature of some persons forcibly. Allegations were also made about the illegal activities of BSF personnel and as to how the people in the locality were subjected to reign of terror by them. It was in essence alleged that the accused persons committed offences punishable under Sections 395, 447 and 506 of the Indian Penal Code, 1860 (in short the 'IPC'). Learned Additional Sessions Judge, Belonia, took cognizance of the offences and issued process to the present appellants. The order taking cognizance and the continuance of the proceedings were questioned by the appellants before the learned Additional Sessions Judge, Belonia by filing an

application under Section 397 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The only point which was urged was that the appellants were, on the basis of a notification issued in June, 1986, authorized to function under Sections 100-104, 106, 107, 109 and 110 of the Customs Act, 1962 (in short the 'Customs Act'). As the appellants suspected that the complainant had stored articles in his shop for the purpose of smuggling to Bangladesh, seizure was made. There was no demand of gratification as alleged. The acts done were clearly within the permissible area of statutory duties and they were entitled to get the protection under Section 197 of the Code.

The stand was resisted by the respondent-complainant on the ground that the acts complained of had not even any remote link with any official acts and duties and, therefore, Section 197 of the Code has no application. Learned Additional Sessions Judge, Belonia, accepted the stand of the complainant and held that Section 197 of the Code had no application to the facts of the case.

In support of the appeal learned counsel submitted that the factual scenario clearly shows that the acts done by the appellants were sanctioned by law. Under the belief that articles were stored with the object of smuggling, the search and seizure were made. There is no evidence except the vague assertion of the complainant about the alleged demand of any illegal gratification and/or other acts. Taking into account the objective for which Section 197 of the Code has been enacted it is a fit case where the protection provided by the said provision should be extended. Learned counsel for the respondent no.1-complainant, however, submitted that the acts alleged do not have any link whatsoever with the officials acts and, therefore, the order taking cognizance and/or directing issuance of process cannot be faulted. The judgment of learned Additional Sessions Judge, Belonia, does not suffer from any infirmity to warrant interference.

The pivotal issue i.e. applicability of Section 197 of the Code needs careful consideration. In Bakhshish Singh Brar v. Smt. Gurmej Kaur and Anr.), this Court while emphasizing on the balance between protection to the officers and the protection to the citizens observed as follows

"It is necessary to protect the public servants in the discharge of their duties. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence." *

The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is

granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

At this juncture, we may refer to P. Arulswami v. State of Madras), wherein this Court held as under:

"... It is not therefore 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 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." *

Section 197(1) and (2) of the Code reads as under:

"197. (1) 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 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;

(b) 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 a State, of the State Government.

(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." *

The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance no prosecution can be initiated in a Court of Sessions under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has been committed. So far public servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means 'taking notice of'. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty.

Such being the nature of the provision the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', be understood? What does it mean? 'Official' according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In B. Saha and Ors. v. M. S. Kochar), it was held : (SCC pp. 184-85, para 17)

"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 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 and the said provision." *

Use of the expression, 'official duty' implies that the act or omission must have been done by the public in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. #

It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification there for then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in Matajog Dobey v. H. C. Bhari) thus :

"The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty ... 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 (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty." *

If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to official to which applicability of Section 197 of the Code cannot be disputed.

The correct legal position, therefore, is that **an accused facing prosecution for offences under the Old Act or New Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences.** # But the position is different in cases where Section 197 of the Code has application. Above position was highlighted in R. Balakrishna Pillai v. State of Kerala), State of M.P. v. M.P. Gupta 2004 (2) SCC 349) and in State of Orissa through Kumar Raghvendra Singh & Ors. v. Ganesh Chandra Jew). In this case the complaint is that illegal gratification of Rs.10, 000/- was demanded and because of refusal to pay the shop was ransacked and goods taken away. When this factual background is considered on the anvil of legal principles delineated above, the inevitable conclusion is that the appellants have not made out any case for interference. The appeal fails and is dismissed.

Before we part in the case, it has to be noted that learned counsel for the appellants submitted that there was prayer made for transfer of the proceedings in terms of Section 475 of the Code which has not been considered. To a pointed query whether such a stand was taken before learned Additional Sessions Judge, no definite reply could be given. In addition, we find that after disposal of the matter by learned Additional Sessions Judge, a petition was filed before learned SDJM with reference to Section 475 of the Code. The same has been dealt with and orders have been passed on 18th June, 1998 which have become final. That being so, the plea in that regard presently raised has no leg to stand.

The appeal fails and is dismissed.