SUPREME COURT OF INDIA

Paul George

Vs.

State of N.C.T. of Delhi

Crl.A.No.501 of 2008

(S.B.Sinha and H.S.Bedi,JJ.)

14.03.2008

JUDGMENT

Harjit Singh Bedi, J.

(arising out of SLP (Crl) No. 40/2007)

1. Leave granted.

2. This appeal by way of special leave is directed against the judgment of the High Court of Delhi dated 30th May, 2006 confirming the judgment of the trial court and the first appellate court convicting the appellant for offences punishable under Sections 279 and 304-A of the IPC but reducing the sentence imposed by the first two courts to 6 months imprisonment but retaining the fine as it is.

3. The appellant who was working as a Head Constable with the Delhi Police and posted at P.S. Kashmere Gate was directed to go to the Police Headquarters at ITO to convey an urgent message. He left the Police Station driving police Mini Truck No. DDL-6462. As the vehicle reached under the railway bridge on the Ring Road going towards Jamuna Bazar it went over the road divider and hit a scooter driven by Hans Kumar with his friend Atma Ram sitting on the pillion seat. Unnerved, the appellant attempted to steer the truck back on the other side of the road but in doing so, struck an electric pole and came to a halt. The Police Control Room was called and Atma Ram was taken to the Jai Prakash Narain Hospital where he subsequently succumbed to injuries. The appellant was accordingly tried and convicted under sections 279 and 304-A of the IPC, as already mentioned above. The conviction and sentence was confirmed by the first appellate court, by the High Court in revision and was further challenged by way of a special leave petition in this Court.

4. The primary plea raised at that stage was that the order of the High Court dismissing the revision petition was a non-speaking one and as the main plea that the prosecution was bad abinitio as being beyond limitation prescribed under Section 140 of the Delhi Police Act, 1978 (hereinafter called the Act) had not been dealt with as the appellant had been acting

under the colour of duty. This Court allowed the appeal and remitted the case to the High Court. It is in this circumstance that a second round of litigation started before the High Court. Before the High Court, the learned counsel appearing for the petitioner (the present appellant) conceded that section 140 would not come into play but that sanction had nevertheless to be taken under Section 197 of the Code of Criminal Procedure as the appellant had been acting or purporting to act in discharge of his police duty in driving an official vehicle when the accident had taken place. The learned counsel for the appellant placed reliance on *Sankaran Moitra Vs. Sadhna Das*[1] The learned counsel for the State, however, submitted that that no sanction under section 197 was necessary inasmuch as there was no connection between the duty of the appellant and his rash and negligent act in crossing the road divider and hitting a vehicle on the other side and as such the question of the applicability of Section 197 of the Cr.P.C. did not arise. Several judgments were cited by the learned counsel for this proposition as well. In addition, the State counsel urged that Section 197 of the Code was applicable only in a case where the public servant concerned was not removable from service save by or with the sanction of the Government and the appellant, a mere Head Constable, did not fall in this exalted category. It was also urged that even assuming sanction was required the trial would still not be vitiated and the proceeding and the sentence could not be set aside because of a mere irregularity more particularly as the non-obtaining of the sanction had not in any way occasioned a failure of justice in the trial.
5. The High Court in the course of its judgment held that as per the provisions of Section 465 of the Code a irregularity in the sanction would not ipso-facto entitle a court of appeal or revision to reverse an order of conviction unless it could be established that such an error had resulted in a failure of justice. The Court accordingly held that as the appellant had not raised this issue before the trial court and the first appellate court, it was unnecessary to examine as to whether the sanction under Section 197 of the Code was required or not. The revision petition was accordingly dismissed, leading to this appeal.

6. Before us the learned counsel for the appellant has made a volte-face and has submitted that the prosecution against the appellant was completely barred under section 140 (1) of the Delhi Police Act as it has not been initiated within 3 months from the date of incident. This plea has been opposed by the Government counsel, as being an after thought and not even pressed earlier. The matter must thus be examined. Section 140 of Delhi Police Act is re-produced below: Bar to suits and prosecutions.-

> "(1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of: Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.

(2) In case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one months notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed.

(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service and shall state what tender or amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof."

7. A bare perusal would show that sub-section (1) of Section 140 provides that any action against a wrongful act by a police officer done under the colour of duty has to be initiated within three months from the date of the act complained off and if this time limit is exceeded, it would bar the suit or prosecution. The learned counsel for the appellant has then argued that as the appellant was carrying an urgent message from the Kashmere Gate Police Station to the Police Head Quarters when the accident had taken place, he had been acting under the colour of duty and was therefore entitled to the benefit of sub section (1) of Section 140 of the Act. It has also been pleaded that the term offence used in the Section ibid could not be confined only to offences committed under the Act but was applicable to offences under the Penal Code and for both these propositions, the learned counsel has placed reliance on judgment of this Court in *Virupaxappa Veerappa Kadampur vs. State of Mysore*[2] The cited case pertains to sub section (1) of Section 161 of the Bombay Police Act which is a provision analogous to Section 140 (1) of the Act and while explaining this provision in the context of the facts of the case, this Court observed that the Head Constable concerned had been found remiss in recording a false panchnama with regard to the recovery of ganja and as the preparation of panchnama was within the exclusive purview of a police officer, the recording of such panchnama could be said to be under the colour of duty and as such covered by the limitation laid down in Section 161 of the Bombay Police Act. This is what the Court had to say:

8. In view of these provisions of law it has been seriously disputed before us that the preparation of a correct panchnama and a correct report as regards the seizure of ganja was the duty of the appellant. This duty was, on the prosecution allegation, not performed. The act alleged to have been done, as already stated, was the preparation of a false panchnama and a false report. The question still to be considered therefore is whether when the preparation of a correct panchnama and a true report as regards the seizure is the duty of the police officer concerned, he prepares instead a false panchnama and a false report, that act is done by him under coloured in excess of that duty.

9. The expression under colour of something or under colour of duty, or under colour of office, is not infrequently used in law as well as in common parlance. Thus in common parlance when a person is entrusted with the duty of collecting funds for, say, some charity and he uses that opportunity to get money for himself, we say of him that he is collecting money for himself under colour of making collections for a charity. Whether or not when the

act bears the true colour of the office or duty or right, the act may be said to be done under colour of that right, office or duty, it is clear that when the colour is assumed as a cover or a cloak for something which cannot properly be done in performance of the duty or in exercise of the right or office, the act is said to be done under colour of the office or duty or right. It is reasonable to think that the legislature used the words under colour in Section 161(1) to include this sense. It is helpful to remember in this connection that the words colour of office has been stated in many law lexicons to have the meaning just indicated above. Thus in Whartons Law Lexicon, 14th Edn., we find at p. 214 the following: Colour of office when an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour. In Strouds Judicial Dictionary, 3rd Edn., we find the following at p. 521. Colour: Colour of office is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office is but a veil to the falsehood, and the thing is grounded upon vice, and the Office is as a shadow to it. But by reason of the office and by virtue of the officeare taken always in the best part.

10. It appears to us that the words under colour of duty have been used in section l61(1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in Strouds Dictionary as a veil to his falsehood. The acts thus done in dereliction of his duty must be held to have been done under colour of the duty.

11. It is therefore evident that what has to be seen on the facts of the case is the nature of act and as to whether it fell within the protection available to the appellant. The facts of the present case show that the appellant, a Head Constable Driver, was posted at Kashmere Gate Police Station had been entrusted with the task of delivering a wireless message to the Police Head Quarters at the ITO in New Delhi and while on his way he had suddenly gone over the road divider which separated the lanes and had hit the scooter which was oncoming in the opposite lane. It is this act, the appellant had caused the death of one person and injuries to the other. Undoubtedly the duty entrusted to the appellant to deliver the message to the Police Head Quarters was in his capacity as a police officer and to that extent and prima facie he would be protected by Section 140 of the Act. We find however that by jumping road divider and coming- face on the incoming traffic was the factor which had caused the accident and was clearly not a matter within the colour of duty. We are, therefore, of the opinion that the case of the appellant would not be covered by Section 140 and that the initiation of proceedings and the prosecution beyond three months from the date of accident was not beyond limitation. It is also evident from the above discussion that the appellants counsel in the various litigation that had come up the hierarchy right up to the Supreme Court had taken an ambivalent stand with regard to the sanction required under Section 197 of the Code and to the limitation imposed by sub-section (1) of Section 140 of the Act. We now come up to the sentence of the appellant.

12. This litigation has been going on for the last 20 years and has been fought tenaciously through various courts, we are also told that the appellant who has had a good career

throughout but for this one aberration has since been dismissed from service on account of his conviction. We, therefore, while dismissing the appeal, feel that the ends of justice would be met if we direct that the appellant be released on probation under Section 4 of the Probation of Offenders Act, 1958 on conditions to be imposed by the Trial Court. The appeal is disposed of in the above terms.

Judgment Referred.

[1]*(2006) 3 SCALE 0141*
[2]*AIR 1963 SC 0849*