SUPREME COURT OF INDIA

State of U.P.

Vs.

Paras Nath Singh

Crl.A.No.499 of 2004

(Dr. Arijit Pasayat, D. K. Jain and Dr.Mukundakam Sharma JJ.)

05.05.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court dismissing the appeal filed by the appellant-State. The Criminal Misc. Case was filed seeking grant of leave to prefer an appeal against the judgment and order dated 19.4.2007 passed by V Additional Sessions Judge, Sitapur, whereby the accused- respondent was directed to be acquitted of the charges relatable to Sections 409 and 468 of the *Indian, Penal Code, 1860* (in short `IPC'). The only factor which weighed with the High Court in refusing grant of leave to appeal was that the person who granted sanction for initiation of the criminal proceedings was not the authority to do so. It is to be noted that the trial in this case was held by learned Chief Judicial Magistrate, Sitapur. The accused faced trial for alleged commission of offence punishable under Sections 409, 420, 461 and 468 IPC. The trial court held that the accused was guilty of offence punishable under Sections 409 and 468 IPC. In appeal, learned V Additional Sessions Judge, Sitapur, allowed the appeal primarily on three grounds. Firstly, it was held that the person who accorded sanction was not authorised to do so. Secondly, it was observed that in view of the provisions contained under Sections 218, 219 and 220 of the *Code of Criminal Procedure, 1973* (in short 'Code') charges could not have been framed in respect of the transaction for more than one year and, therefore, because of the framing of wrong charges the accused was entitled to acquittal. Finally, it was observed that appropriate questions were not put while the accused was examined under Section 313 of the Code. In this context the Appellate Court referred to the question of sanction by the inappropriate authority. As noted above, the High Court referred to only the question of authority of the person granting sanction.

2. Learned counsel for the appellant submitted that no part of the alleged offence is protected under Section 197 of the Code, and the effect of Section 464 of the Code has to be seen.

3. Prior to examining whether the Courts below committed any error of law in discharging the accused it may not be out of place to examine the nature of power exercised by the Court

under Section 197 of the Code and the extent of protection it affords to public servant, who apart, from various hazards in discharge of their duties, in absence of a provision like the one may be exposed to vexatious prosecutions. 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. xxx xxx xxx (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."

4. 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 into motion. For instance no prosecution can be initiated in a Court 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 as 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 of 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.

5. 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*[1] 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.”

6. 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 mission 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.

7. 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 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*[2] 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."

8. 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 the act must be held as official to which applicability of Section 197 of the Code cannot be disputed.

9. In *S.A. Venkataraman v. The State*[3] and in *C. R. Bansi v. The State of Maharashtra*[4] this Court has held that:

> "There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in-the case of a person who had ceased to be a public servant at the time the court was asked to take cognizance, although he had been such a person at the time the offence was committed."

10. That apart, the contention of the respondent that for offences under Sections 406 and 409 read with Section 120-B of IPC sanction under Section 197 of the Code is a condition precedent for launching the prosecution is equally fallacious. This Court has stated the legal position in *S.R. Munnipalli v. Bombay*[5] *and in Amrik Singh v. State Pepsu*[6] that it is not every offence committed by a public servant, which requires sanction for prosecution under Section 197 of the Code, nor even every act done by him while he is actually engaged in the performance of his official duties. Following theabove legal position it was held in *Harihar Prasad, etc. v. State of Bihar*[7] as follows:

> "As far as the offence of criminal conspiracy punishable under Section 120-8, read with Section 409, Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act is concerned, they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar."

11. Above views are reiterated in *State of Kerala v. Padmanabhan Nair*[8]. Both Amrik Singh (supra) and S.R. Munnipalli (supra) were noted in that case. Sections 467, 468 and 471 IPC

relate to forgery of valuable security, Will etc; forgery for purpose of cheating and using as genuine a forged document respectively. It is no part of the duty of a public servant while discharging his official duties to commit forgery of the type covered by the aforesaid offences. Want of sanction under Section 197 of the Code is, therefore, no bar.

12. This position was highlighted in *State of H.P. v. M.P. Gupta*[9].

13. The error in charge also does not vitiate the order. Finally, it is submitted that the question relating to Section 313 of the Code loses significance when considered in the background as to whether there was any need for sanction.

14. Apparently the first Appellate Court and the High Court have not kept this aspect in view.

15. Further so far as the alleged error in framing the charge is concerned the effect, of Section 464 of the Code has not been considered. The same reads as follows:

> " (1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.
>
> (2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may –
>
> (a) in the case of an omission to frame a charge order that a charge be framed and that the trial be recommended from the point immediately after the framing of the charge.
>
> (b) in the case of an error, omission of irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:
>
> Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

16. As the provision itself mandates that no finding sanction or order by a court of competent jurisdiction becomes invalid unless it is so that a failure of justice has in fact been occasioned because of any error omission or irregularlity in the charge including in misjoinder of charge.

17. Obviously, the burden is on the accused to show that in fact failure of justice has been occasioned. We set aside the impugned order of the High Court and direct that leave to appeal shall be granted and the appeal shall be heard on merits. We make it clear that we

have not expressed any opinion on the merits of the case which shall be decided in the appeal before the High Court.

18. The appeal is allowed.

[1]*(1979 (4) SCC 177)* [2]*(AIR 1956 SC 44)* [3]*(AIR 1958 SC 107)* [4]*(1970 (3) SCC 537)*
[5]*(1955 (1) SCR 1177)* [6]*(1955 RD-SC 9)* [7]*(1972 (3) SCC 89)* [8]*(1999 (5) SCC 690)*
[9]*(2004 (2) SCC 349)*