BOMBAY HIGH COURT

Namdeo Kashinath Aher

Vs.

H.G. Vartak

Criminal Ref. No. 151 of 1968

(V.S. Deshpande, J.)

03.03.1969

ORDER

V.S. Deshpande, J.

1. The short point that arises for consideration in this Reference is as to the precise scope of Section 197 of the Code of Criminal Procedure and whether in the circumstances of this case cognizance of the complaint under Section 500, Indian Penal Code, could have been taken by the Magistrate in the absence of sanction by the State Government. The learned Magistrate held that he could. The II Addl. Sess. Judge, Thana, however, ruled otherwise and has made this Reference under Section 438, Criminal Procedure Code.

2. The brief facts giving rise to the present Reference are as follows: The Complainant claims to be an advocate end a member of the Kalyan Municipality and a social worker. On 3-1-1968 he filed the present complaint against the two accused alleging that they committed an offence under Section 500, Indian Penal Code, on 2-1-1968 at about 6-30 p.m., when accused No. 1 performed the opening ceremony of a centre of distributing milk powder at Kalyan, at the instance of the local Rotary Club. Accused No. 1 is a Minister of the Maharashtra Cabinet while accused No. 2 is the President of the Zilla Parishad, Thana. According to the complaint, after accused No. 1 declared the Centre as opened and proceeded to make a speech, the complainant stood up and showed a sample of Mexican Punjab wheat mixed with D.D.T. powder, which according to the complainant was distributed to the ration-card-holders of Kalyan in the first fortnight of December, 1967. The complainant then asked if such wheat was fit for human consumption. On this question being asked, accused No. 1 got angry and called him a 'goonda'. So saying accused No. 1 asked the Dy. S. P. and the Inspector of Police to take his care. Accused No. 2 is also alleged to have called him 'badmash' and asked the Police officers to drive him out. The two police officers came and stood by his side. The complainant then asked as to when his question would be answered and on that accused No. 1 is alleged to have told him that he would

answer the questions after the speech was over. It appears that passions had cooled down by the time the speech was over and there was some talk and it was agreed that the matter be pursued by contacting the Secretariat. Next day, however, the complainant filed this complaint and on that very day the learned Magistrate ordered the issue of process for offence under Section 500, Indian Penal Code against both the accused.

3. In due course the accused appeared and on 27-2-1968 an objection was raised on behalf of accused No. 1 that he was a public servant within the meaning of Section 197, Criminal Procedure Code and the Court cannot take cognisance of any complaint against him without the sanction of the State Government. After hearing the arguments, the learned Magistrate overruled the objection by his order dated 27-3-1967, holding that accused No. 1 was neither a public servant nor could he be said to have acted or purported to have acted in the discharge of his official duty when he became angry and called complainant a 'goonda'. Accused No. 1 then preferred a revision application to the Sessions Court, Thana, and the same was disposed of by the II Addl. Sess. Judge, Thana, who by his judgment dated 31-10-1968, taking a different view on both the points, has made this Reference.

4. Before the protection under Section 197, Criminal Procedure Code claimed by any accused he shall have to satisfy three conditions: Firstly, that he is a public servant; secondly, that he is not removable from his office save by or with the sanction of a State Government or the Central Government, and, thirdly, that he 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. It is not disputed by Mr. Rajani Patel, the learned advocate appearing for the complainant before me, that accused No. 1 is a public servant. He, however, disputed the second claim of accused No. 1 that he was only removable by or with the sanction of the State Government. According to Mr. Patel, under Article 164(2) of the Constitution, the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State, and the implication of this constitutional provision is that adverse vote in the Assembly also results in the fall of the Ministry, including the Minister, even though under sub-Art. (1) of Article 164, the Chief Minister and the Ministers shall hold office during the pleasure of the Governor. In view of this constitutional position, Mr. Patel says that, the Minister does not satisfy the second test, as required under Section 197, Criminal Procedure Code to claim the protection of the section, as he is also removable by adverse vote in the Assembly. I do not think there is much substance in this contention of the learned advocate. Whatever be the practical and actual position, the fact remains that it is the Governor who can accept the resignation of the Ministry or Minister and it is the Governor again who can dismiss or remove the Minister from office. Under Section 3(60) of the General Clauses Act, 1897, the word "State Government" has been defined. Clause (c) of Section 3(60) is applicable to the present case and therefore the State Government is to mean the Governor for the purpose of the present case. The result therefore is that accused No. 1 is a public servant who can be said to be removable only by the State Government, meaning thereby the Governor, and I do not find any difficulty in coming to the conclusion that the second requirement of Section 197, Criminal

Procedure Code also is fully satisfied as far as accused No. 1 is concerned. Mr. Patel very fairly drew my attention to the judgment of the Privy Council in *Emperor v. Sibnath Banerj*[1]*i* in which a Minister is held to be subordinate to the Governor. To the same effect is the judgment of the Punjab High Court in *Tara Singh v. Director, Consolidation of Holdings*[2].

5. The real question that requires consideration and decision in this case is whether

[1] AIR 1945 PC 156, at p. 163

[2] AIR 1958 Pun 302

accused No. 1 can be said to have uttered the impugned words and committed the offence, while acting or purporting to act in the discharge of his official duty; and the answer to this question depends upon the true interpretation of the words "while acting or purporting to act in the discharge of his official duty" occurring in Section 197, Criminal Procedure Code. This section has been interpreted by several High Courts, but the tests formulated do not appear to be uniform. Even after the law on this point was laid down authoritatively by the Federal Court in the case in *Hori Ram Singh v. Emperor*[3], the actual application of the principles has not been uniform and where precisely to draw a line between the acts of any public servant coming within the four corners of his official duty and the acts lying outside its scope does not admit of easy solution.

6. None appeared for any of the accused before me. The submissions of Mr. R. Jethmalani, the learned Special Public Prosecutor for the State, in support of this reference, may be summarised as follows: (a) Assuming without admitting that opening of the Centre for distribution of milk powder, at the instance of a private institution like the local Rotary Club, was no part of the official duty of the Minister, the Minister continues to be a public servant for all the 24 hours of the day and the complainant himself must be deemed to have invoked his Ministerial capacity when he posed the question to him in regard to the supply of dirty wheat. Any answer given or any reaction to this question cannot be divorced from the Ministerial capacity so invoked by the questioner himself. (b) In deciding whether in reacting to the question the Minister acted or purported to act in the discharge of his official duty, the occasion, and the timing, chosen and the mode and the manner adopted by the complainant for putting the question cannot altogether be ignored. The demonstration of the dirty wheat allegedly supplied on ration-cards, in the presence of a huge gathering, on the face of it, was wholly irrelevant to the occasion. The Minister might well have considered this to be a mischievous insinuation against the working of his department from a reckless heckler arrived at the meeting with a determination to create disorder and break the meeting and might have as well considered it necessary to wipe out its effect from the minds of the audience by reacting sharply and snubbing the questioner forthwith in the manner in which he did. (c) True the complaint discloses his reaction as one of indignation and abuses. But this must be deemed to have been invited by the questioner himself. If a polite and considered answer to the question could have been an act in the discharge of his official duty, indignant and abusive reaction also cannot cease to be such an act. At the most, the Minister can be said to have acted - negligent or - in excess of the requirements of the situation and still must be deemed to have acted or purported to act in the discharge of his official duty.

7. It will be convenient at this stage to quote the relevant extract of the complaint. It is as follows :-

> Then while he (accused No">. 1) stood up to begin his speech I stood up at the beginning and asked: "I brought sample of Mexican Punjab wheat which was distributed to the card-holders in Kalyan in first fortnight of the last month: in that D.D.T. powder is mixed and that is rotten and whether it is fit for human consumption". When the question was asked Hon'ble Shri Vartak got angry and pointing a finger at me said "I know you very well, you are Goonda. I will not

[3] AIR 1939 FC 43

> allow your goondaism". Then I asked "why am I called Goonda? I as a respectable and responsible citizen asked the question, answer that". Then Hon'ble Vartak angrily said to me "I will call you a goonda not only that but I will make bandobast of your goondaism". So saying he ordered the Dy. S. P. Chande and Inspector Lone who were present at the function at that time."

It is not necessary to refer to the remaining part of the complaint concerning accused No. 2.

8. I find it very difficult to accede to the contention of Mr. R. Jethmalani. In the first instance there is no material to infer that the complainant was a reckless heckler or that he had come to the meeting with the determination to break the same. There is also no material to assume that the complainant wanted to ridicule the entire administration of the Civil Supplies Department held by accused No. 1 so as to cause any provocation directly to him. It is however true that the question raised can be said to be wholly irrelevant to the occasion for which accused No. 1 was invited and it also can be said that the complainant did invoke the Ministerial capacity of accused No. 1 when he asked a pertinent question pertaining to his Department. It is impossible however to hold, in the absence of something more, that the complainant gave any provocation whatsoever to the accused merely by demonstrating the wheat in the presence of the public: and it is equally difficult to hold, in the absence of something more, that this question alone could have legitimately impelled the accused No. 1 to utter the words attributed to him. At this stage, for the purpose of deciding this preliminary point I must proceed on the basis that the averments in the complaint are true. The complaint cannot be thrown out by anticipating, any defenses to the case, or what accused No. 1 will succeed in eliciting in cross-examining, or proving at the trial. The reaction of accused No. 1 at the question, as appears from the complaint, was one of anger and resentment and what he is alleged to have said is nothing short of a naked exhibition of tempers. The first implication of this reaction is that accused No. 1 must be deemed to have refused to answer the question. Accused No. 1 may not be under any obligation to answer at all, but this aspect is altogether irrelevant. Suffice it to observe that refusal to answer the question, invoking his Ministerial capacity and status, put an end to the said capacity and status, and the naked exhibition of the anger and temper cannot, by any stretch of imagination, be attributed to

the discharge or purported discharge of the official duty. . It is no part of a public servant to exhibit tempers or be angry with those with whom he comes into contact as such public servant. It is no part of the official duty of any public servant to call anybody a Goonda. I therefore find it extremely difficult to agree with Mr. R. Jethmalani, and hold that on the averments in the complaint itself accused No. 1 can be said to have merely acted negligently in the discharge or purported discharge of his duty or that he merely exceeded the requirements of the situation. Even if I were persuaded to hold that this was a case of merely exceeding the limits of official duty, I would say that the excess is so blatant that it loses the colour of the office altogether, and as such also the protection available to any public servant under Section 197, Criminal Procedure Code.

9. Mr. Jethmalani placed strong reliance on the judgments of the Federal Court in *Ramayya v. State of Bombay*[4], *Amrik Singh v. State of Pepsu*[5], *Matajog Dobey v. H. C*[6].

[4] AIR 1939 FC 43, AIR 1955 SC 287 [6] AIR 1956 SC 44

[5] AIR 1955 SC 309

Bhari and also *Virupaxappa v. State of Mysore*[7]. In *Hori Ram Singh's case*[8], the Federal Court was dealing with a situation where a medical officer had surreptiously removed certain medicines belonging to the hospital without making any entries in the stock-books of medicines, as required under the rules. He was prosecuted for offences under Section 409 and Section 477-A, Indian Penal Code. The Federal Court held that the offence under Section 409, Indian Penal Code could be tried without the sanction under Section 197, Criminal Procedure Code, as his official capacity or status was not involved at the time when the medicine packets were removed by him, but his official capacity was directly involved in falsification of the accounts and as such, without the sanction of the State Government under Section 270 (1) of the Government of India Act, 1935, corresponding to Section 197, Criminal Procedure Code, the trial for offence under Section 477-A, was bad. In the judgment of the Supreme Court in the case of AIR 1955 Supreme Court 287, cited above, the military officers and clerks were prosecuted for offence under Section 409, Indian Penal Code on allegations that they disposed of Military stores under their custody and pocketed the proceeds thereof and the Supreme Court held that as the official status of the accused came into the picture in the disposal of Government property in their custody, their prosecution for offence under Section 409, Indian Penal Code without the sanction under Section 197, Criminal Procedure Code was bad. In the judgment of the Supreme Court in the third case of AIR 1955 Supreme Court 309, the accused was the cashier entrusted with Government funds and it was his duty to disburse the said Government money to the labourers and obtain their thumb-marks or signatures on the acquittance rolls. The accused did pocket the money so entrusted to. him and showed the same to have been paid to the labourers by filling in forged signatures of fictitious recipients in the acquittance rolls. The Supreme Court held that the trial of the accused for offence under Section 409, Indian Penal Code in the above circumstances without sanction under Section 197, Criminal Procedure Code, was bad inasmuch as his official status was directly concerned in the disposal of the funds in regard to which criminal breach of trust was alleged to have been committed by him. In the case of AIR 1956 Supreme Court 44, the Supreme Court was dealing with two complaints against the officers of the Income-tax

Department and the Police Department, who were deputed to effect the search of the premises of the complainant and were armed with warrants of authority to do the needful for effecting search and seizure of the account books wanted. In the course of the search, resistance was offered by the servants and relatives of the persons whose premises were searched and the officers of the Income-tax Department and assisting police officers were required to use force and assault and also to do certain acts with a view to meet the resistance and carry out the requirements of the warrants. When prosecuted for these acts, the Income-tax Officers and the Police Officers claimed protection under Section 197, Criminal Procedure Code and the Supreme Court upheld their claim and held that in the circumstances of the case whatever offences they were alleged to have committed were committed by them while executing the warrants, in the discharge of the duties attached to their office. In AIR 1963 Supreme Court 849 the Court was dealing with the prosecution of a Head Constable who had forged a panchnama and substituted it in place of the original one with a view to save the culprit, and question arose as to whether such officer could be prosecuted for such offence beyond the period of limitation prescribed under Section 161 of the Bombay Police Act, 1951. The answer depended upon the true interpretation and scope of the words "act done under colour or in

[7] AIR 1963 SC 849

[8] AIR 1939 FC 43

excess of any such duty or authority as aforesaid" occurring in Section 161 of the said Act. The said words have been found to have the same purport as the words in Section 197, Criminal Procedure Code, viz., "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty." See *66 Gorakh Fulji v. State of Maharashtra*[9]. The Supreme Court held that limitation prescribed under Section 161 of the Bombay Police Act was clearly attracted inasmuch as the acts alleged to have been done by the accused could only have been done under colour of his office and not otherwise.

10. It is not possible for me to see how anything decided in the above cases can be of any assistance to the present case. All these cases emphasise in unmistakable terms that the acts alleged to have been committedld that the manner in which accused No. 1 is alleged to have reacted to the question can be reasonably connected with the duties of the office which was held by him. Mr. Jethmalani says that if grave offences like criminal breach of trust and falsification of public records and assault on the citizens by public servants can be protected by recourse to Section 197, Criminal Procedure Code, there is no reason why trivial offences like the one under Sections 504 and 506 Indian Penal Code should be excluded from the operation of this protection, where higher public servants of the status of Ministers are involved. This argument assumes that the gravity of the offence also is relevant for claiming the protection under Section 197. Criminal Procedure Code. There is no warrant or basis for such assumption. What is required for claiming the protection of the Section is that the public servant should be accused of an offence alleged to nave been committed by him while acting or purporting to act in the discharge of his official duty. The offence may be minor or it may be graver. Gravity of the offence is absolutely irrelevant for claiming protection under the section.

11. As against the cases relied on by Mr. Jethmalani, there are several other cases which clearly show that protection under Section 197, Criminal Procedure Code cannot be claimed unless the impugned act falls within the scope of the duties attached to the office of the said public servant. In *H. H. B. Gill v. King*[10] and in *Ronald v. State of West Bengal* [11]as also in *State of Maharashtra v. Narhar Rao*[12] and 66 Bom LR 799 : (AIR 1965 Bombay 124) it has been held that a public servant does not act in the discharge or purported discharge of his official duty when he accepts bribe for showing some favour to the person offering the bribe. In AIR 1960 Supreme Court 266 it is held that a Government servant does not act in the discharge or purported discharge of his official duty when he abets the offence of cheating by the contractor by certifying his false bills as true. In the judgment of this Court in *Parbat Gopal v. Dinkar* [13]and approved by the Supreme Court in AIR 1963 Supreme Court 849 at p. 852, para 13, it has been held that a Government servant engaged for driving a police jeep does not act or purport to act in the discharge of his duties when he drives the said jeep rashly and negligently and causes injuries to pedestrians, even though at the relevant time he is carrying the police officers on duty in the jeep. Very recently, in *Arulswami v. State of Madras*[14] the Supreme Court has held that a public servant does not act in the discharge of his duty when he commits criminal breach of trust in regard to public funds. In cases reported in *State of Andhra Pradesh v. Venugopal*[15] and *State of Maharashtra V. Atma Ram*[16] it

[9] Bom LR 799 at p. 806 : (AIR 1965 Bom 124 at p. 128) [11] AIR 1954 SC 455 [13](1961) 63 Bom LR 189

[10] AIR 1948 PC 128 [12] AIR 1966 SC 1783 [14] AIR 1967 SC 776

[15] AIR 1964 SC 33

[16] AIR 1966 SC 1786

is held that a police officer does not act in the discharge or purported discharge of his duty when he assaults the accused in his custody during the course of investigation and as such he is not entitled to the protection under Section 161 of the Bombay Police Act or the corresponding Section 53 of the Madras Police Act.

12. There are thus cases and cases decided on the peculiar facts obtaining therein. There is no difficulty in ascertaining the precise principles determining the scope of Section 197, Criminal Procedure Code. The difficulty arises when one is called upon to apply the same to the facts arising in a given case. There cannot be any inflexible and universal test to meet every kind of eventuality. Some of the tests laid down in the reported cases and the observations made by the learned Judges have got to be understood in the context of the peculiar circumstances and facts of the said cases. Reliance on even strong observations of the highest Courts, without reference to the context, is likely to create a misleading impression. As stated earlier, it is by no means easy to draw a line between the acts of a public servant having connection with the official duties attached to his office and the acts falling outside its scope. That the person was a public servant is wholly irrelevant, or that he was a public servant at the relevant time may not necessarily be relevant. So also, that the impugned act was committed by him while he was actually engaged in the performance of his official duties also does not afford any decisive test. What requires close

scrutiny is not so much the duty attached to the office as the impugned act itself. The following test laid down by the Supreme Court in AIR 1956 Supreme Court 44 at p. 49, para 19, may however be of immense assistance :- The result of the foregoing discussion is this ">: There must be a reasonable connection between the act and the dischary and causes injuries to pedestrians, even though at the relevant time he is carrying the police officers on duty in the jeep. Very recently, in *Arulswami v. State of Madras*[17] the Supreme Court has held that a public servant does not act in the discharge of his duty when he commits criminal breach of trust in regard to public funds. In cases reported in *State of Andhra Pradesh v. Venugopal*[18] and *State of Maharashtra V. Atma Ram*[19] it is held that a police officer does not act in the discharge or purported discharge of his duty when he assaults the accused in his custody during the course of investigation and as such he is not entitled to the protection under Section 161 of the Bombay Police Act or the corresponding Section 53 of the Madras Police Act.

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[17] AIR 1967 SC 776 [19] AIR 1966 SC 1786

[18] AIR 1964 SC 33

relevant. So also, that the impugned act was committed by him while he was actually engaged in the performance of his official duties also does not afford any decisive test. What requires close scrutiny is not so much the duty attached to the office as the impugned act itself. The following test laid down by the Supreme Court in AIR 1956 Supreme Court 44 at p. 49, para 19, may however be of immense assistance :- The result of the foregoing discussion is this ">: 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, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty." Judged by this test, the present impugned acts of the accused, to my mind, do not fall within the scope of Section 197, Criminal Procedure Code as (a) it could be no part of his official duty to fly in rage and abuse or threaten others; (b) and the reaction displayed by him cannot be said to be an answer to the question asked; (c) and in fact by impliedly refusing to answer, he must be deemed to have discontinued to act as Minister; and (d) and the said acts cannot even be claimed to have been in excess of the requirements of the duties of the office, as hardly anything can be left as residue after these excesses of indignation and abuses are excluded from the reaction.

13. It is true that Section 197, Criminal Procedure Code cannot be so he exception engrafted in Section 79, Indian Penal Code. However, in practical life even honest officers may commit mistakes while diligently discharging their official duties. Honestly also they may err and expose themselves to prosecution. This section seems to have been primarily and essentially enacted to protect such public servants. However, the protection also is extended to the acts of public servants where they may purport to act in the discharge of their duty to meet the administrative exigencies of the situation and may require such protection, even though departure from the normal course of official duties was deliberate. But in this category also may fall some instances where public servants may deliberately assume the colour of office to serve their own ends. Such acts also get protected automatically, as in view of the cloak, these do not cease to have been done in purported discharge of the duties: and it is therefore left to the Government concerned ultimately to decide whether to extend the protection to such public servants or not. It is therefore necessary that the section should be so broadly construed as to cover not only the acts done by a public servant in the discharge of his official duty but also the acts purported to have been done by him in the discharge of his official duty. But the scope of this section, however, cannot be widened beyond these limits so as to cover all offences committed by a public servant without regard to the limits implicit in the phraseology of the section.

14. Strong reliance also is placed by Mr. Jethmalani on certain iudgments of other High Courts dealing directly with the utterances of public servants on different occasions where the accused succeeded in claiming the protection of Section 197, Criminal Procedure Code. He relied on *Harumal v. Imambux*[20], *Govindaswami v. Kandaswami*[21], *Balum Dei v. State*[22]. *Hariram v. B. P. Sood*[23], *Mewalal v. Totalal*[24] and *Prabhu Dayal v. Milap Chand*[25]. The facts of the case in AIR 1933 Sind 165 are clearly distinguishable. The abusive word used by the accused was a part and parcel of the reply given by him to the complainant in regard to the demand for supply of water.

[20] AIR 1933 Sind 165 [22] AIR 1957 Orissa 69 [24] AIR 1957 Mad Prad 230
[21] AIR 1939 Mad 604 [23] AIR 1957 Raj 51 [25] AIR 1959 Raj 12

The facts in AIR 1959 Rajasthan 12 are by no means clear. The Presiding Officer of the Panchayat Court wanted the complainant to leave the Court and the Presiding Officer seems to have abused the complainant when the complainant was refusing to leave the Court. In the absence of an indication as to what precisely he said, it is not possible to draw any assistance from this judgment. The conclusion of the learned Judge in the case reported in AIR 1957 Orissa 69 is based on the premise that the assault on the patient as also the abuses alleged to have been given by the doctor and the twisting of testicles of the patient were part and parcel of the handling of the patient by the doctor in the course of the operation for which the patient was admitted to the hospital. On this premise, it is even possible to say that the doctor had not committed any offence. However, it is not clear as to how this premise could be reconciled with the facts and discussion in the earlier part of the judgment and, therefore, this judgment also cannot be of any assistance for the purpose of the present case.

15. The cases in AIR 1939 Madras 604, AIR 1957 Madhya Pradesh 230 and AIR 1957 Rajasthan 51, cited above, go a long way to support the contention of Mr. Jethmalani, even

though one distinguishing feature of these cases is that the presiding officers of the Court there were admittedly discharging their official duties in the Courts. It is by no means easy in the present case to draw a line and say when precisely the official functions of the Minister came to an end. The report in AIR 1939 Madras 604 shows that when the complainant protested against the dictation of the judgment by the Court to its clerk, the Presiding Officer not only abused him, but slapped him on the cheek, unlaced his shoe and raised it, saying "I will beat you with my shoe". The learned Judge seems to have thought that the Presiding Officer was acting in the capacity of the judge till he started dictating the judgment and cannot be said to have ceased to have acted as such when he started abusing and assaulting and showed that shoe to the complainant. In AIR 1957 Rajasthan 51, the complainant had led a deputation to the Commissioner, Bikaner Division, to complain against the behaviour of one Sub-Divisional Magistrate Mr. B. P. Sood. When the complainant and the members of the delegation actually saw the Commissioner, Mr. Sood also happened to be there. While the complainant was reporting his grievances to the Commissioner against Mr. Sood. Mr. Sood angrily said that the petitioner was a Goonda and that he would set him right. The Commissioner immediately intervened and the meeting was dispursed. The Sub-Divisional Magistrate was prosecuted for offence under Section 504, Indian Penal Code but the complaint was dismissed for want of sanction. The learned Judge upheld this order holding that when the accused uttered these words addressing his superior Commissioner, the said words cannot be entirely divorced from or unconnected with the discharge of the duty of the Sub-Divisional Magistrate and that the Sub-Divisional Magistrate could reasonably claim that what he did was virtually in the discharge of his official duty, namely, to explain his conduct to his superior and expose the conduct of the complainant to his superior. In AIR 1957 Madhya Pradesh 230, the complaint was against a Civil Judge and the complainant was a witness before him. In the course of his deposition before the Civil Judge, the accused, the Civil Judge is alleged to have called the witness "Naalayak" (unfit) and ultimately was alleged to have expressed that the witness should be turned out after giving a shoe-beating. The learned Judge held that these expressions by the Civil Judge had a reasonable relation with the performance of the official duty of the Judge.

16. With greatest respect to the learned Judges who have decided these cases, I find it difficult to persuade myself to agree that these cases have laid down the law correctly and hold that these utterances and acts could reasonably, in any manner, be connected with the official duties attached to the offices held by these Presiding Officers of the Court. When the Madras case was decided, the attention of the learned Judge could not have been drawn to the decision of the Federal Court in AIR 1939 FC 43 and AIR 1948 PC 128, cited above, and the subsequent judgments, in which the scope of Section 197, Criminal Procedure Code has been discussed. However, the learned Judges, who decided the cases reported in AIR 1957 Rajasthan 51 and AIR 1957 Madhya Pradesh 230, have undoubtedly referred to the above two cases. Even so, the attention of the learned Judges does not seem to have been pointedly drawn to the following passage in the judgment of the Federal Court in AIR 1939 FC 43 at p. 56, col. 2 : While I do not wish to ignore the significance of the time factor, it does not seem to me right to make it the test.

To take an illustration suggested in the course of the argument, if a medical officer, while on duty in the hospital, is alleged to have committed rape on one of the patients or to have stolen a jewel from the patient's person, it is difficult to believe that it was the intention of the Legislature that he could not be prosecuted for such offences except with the previous sanction of the Local Government" and also to another passage from the judgment of the Privy Council reported in AIR 1948 PC 128 at p. 133, col. 1 :-

> "A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act: nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act."

17. If the medical officer cannot claim to have acted in discharge or purported discharge of his official duty while committing a rape on the patient or committing a theft of the jewel from the patient's pocket or picking the patient's pocket, and if the Judge cannot claim to have acted in the discharge or purported discharge of his official duty while accepting a bribe, I find it extremely difficult to appreciate how any Magistrate or Judge can be said to be acting or purporting to act in the discharge of his official duty when he threatens the witness in the Court with beating him with a shoe, or slaps the complainant, merely because he protests, and also unlaces his shoe and raises it with a view to beat him. I also fail to understand how the Sub-Divisional Magistrate's calling a person a 'Goonda' in the presence of the Commissioner in the circumstances can also have any reasonable relation with the discharge of his official duty. I should think that these utterances as also the acts on the part of the Magistrate and the Judge are unbecoming and unworthy of the posts they hold and can never be claimed to have any relation whatsoever with the duties and functions attached to their offices notwithstanding their wide powers to comment on litigants and witnesses before them in the course of their judgments. The above observations of the Federal Court and the Privy Council should leave no manner of doubt that the alleged utterances and exhibition of temper by accused No. 1 in the present case, addressing the complainant, also cannot, by any stretch of imagination, be claimed to have been included in the official duties of accused No. 1 nor can this be claimed to have been done in purported exercise of such duties. This view of mine gets support from some observations in the judgment of the Federal Court in *AIR 1946 FC 25, Sarjoo Prasad v. Emperor*[26], *Narayan v. Yeshwant*, *Dattatraya v. Bannappa*[27] *and* In re Narayan Mahajan, though the facts in these cases are slightly different. I may add that the judgment of this Court in 30 Bom LR 1018 : (AIR 1928 Bombay 352) has been recently approved by the Supreme Court in its judgment in AIR 1966 Supreme Court 1786.

18. I may however, hasten to add that as far as the offence under Section 500, Indian Penal Code is concerned, I do not propose to lay down that this offence can never be claimed to have been committed by any public servant in the discharge or purported discharge of his official duty,

particularly when the public servant happens to be a Minister. In conceivable cases, a Minister may claim to have exceeded the limits of decency and propriety as also the requirements of the situation while addressing a meeting, required by the functions attached to his office, and in that case he may well be in a position to claim the protection of Section 197, Criminal Procedure Code. In what circumstances and conditions this may happen is not for me to speculate. Questions like these shall have after all to be decided on the facts and attendant circumstances of each case and cannot be decided in the abstract by reference to hypothetical facts. Even in the present case, it is too premature to venture to anticipate what picture may ultimately emerge out as a result of the trial of the accused. I am only deciding it at present on the basis of the averments made in the complaint.

19. Mr. Jethmalani lastly urged that the provisions of Section 197, Criminal Procedure Code, should not be so narrowly construed, ignoring the practical difficulties created by the present unhealthy political climate; and in that event the very object of the section will get frustrated. Mr. Jethmalani says that it will be easy for a few miscreants to drag any Minister or public servant in frivolous and vexatious cases in different parts of the State by so cleverly drafting their complaints that the protection available under Section 197, Criminal Procedure Code may ultimately be rendered as illusory. I do not find it possible to agree with this contention of the learned advocate. In the first instance, inconvenience and practical difficulties cannot be an answer to the natural, plain and obvious interpretation of any section. Secondly, the interests of democracy and orderly society can be better served, not by stifling such prosecution, even if they be frivolous and vexatious, but by allowing them to have their natural course. Thirdly, the scope of Section 197, Criminal Procedure Code cannot be widened without bearing in mind the limits and restrictions imposed by the provisions of the Constitution. The right of a citizen to have his grievances adjudicated by a competent Civil or Criminal Court is a part of the fundamental right of equality before law guaranteed by Article 14 of the Constitution. Any fetters and restrictions on these rights shall have necessarily to be construed strictly, and when a class of officers is sought to be protected in derogation of these rights, the restrictions shall be required to stand the test of reasonably being connected with the object for which Section 197, Criminal Procedure Code is intended and enacted. The scope of this section cannot be unduly widened, without invading this fundamental right of a citizen. The last contention of Mr. Jethmalani, the learned advocate, therefore, also fails.

20. The result is that this Reference stands rejected. The case papers will be sent back to the learned trial Magistrate, who will proceed with the case in accordance with law.

[26]30 Bom LR 1018 : (AIR 1928 Bom 352)

[27]32 Bom LR 1493 : (AIR 1931 Bom 192)

Reference rejected.