

(2005) 07 AHC CK 0242

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 2001 of 1987

Amar Deo Singh Yadav

APPELLANT

Vs

Baij Nath Singh and Chandra Bhushan Singh

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 82, 83
Penal Code, 1860 (IPC) — Section 409, 427

Citation : (2005) 07 AHC CK 0242

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : R.C. Yadav, for the Appellant; S.N. Dwivedi and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Poonam Srivastava, J.—Heard learned counsel for the applicant and learned A.G.A. for the State.

2. This application has been filed for quashing the complaint dated 2.1.1985 and subsequent proceedings initiated in pursuance to the said complaint. The complaint was filed against S.I. Ram Babu along with 25-30 constables of Civil Police and of P.AC. under Sections 409 and 427 I.P.C. A copy of the complaint is annexed as Annexure-1 to the affidavit. On perusal of the complaint, it transpires that the applicant Amar Deo Singh is accused No. 1, Ram Babu Singh is accused No. 2 and 25-30 constables of civil police and P.AC. have been mentioned as accused No. 3, The complaint is under Sections 427, 409 I.P.C. The specific allegation has been levelled against the applicant in paragraph 6 that he had damaged personal property of the complainant in the garb of attachment u/s 82, 83 Cr.PC. He had not only taken away household articles which was said to be attached, but had broken the house, damaged the Pumping Set as well as damaged a number of articles with an intention to cause harm whereby the personal property of the complainant suffered considerable damaged The

position at the relevant time of occurrence was also substantiated by photographs which has been mentioned in paragraph 11 of the complaint, when this matter was reported to the higher officers, the applicant along with Ram Babu was transferred to another police station. In the circumstances, the allegation was that the applicant caused damage intentionally committing the offence of mischief and are liable to be punished. The sole argument on behalf of the applicant is that the act alleged in respect of the applicant was in discharge of the official duty and in the circumstances, a valid sanction u/s 197 Cr.P.C. was basic requirement before prosecution could be started in respect of the present applicant. The learned counsel for the applicant cited a number of the- decisions of the Apex Court. The Director of Inspection and Audit and Anr. v. C.L. Subramaniam 1995 (32) A.C.C. 61. Another decision of the Apex Court on behalf of the applicant is State of Maharashtra v. Dr. Budhi Kota Subharao 1994 (31) A.C.C. 81. The third case relied upon by the counsel for the applicant is State of Himanchal Pradesh v. M.P. Gupta 2004 (48) A.C.C, 275. In all these three cases, the emphasis is that since the alleged offence committed by the applicant was while acting or purporting to act in discharge of official duty as such since the act or omission committed by a public servant in discharge of his official duty a prior sanction as contemplated u/s 197 of the Code is condition precedent for launching the prosecution. No doubt it is necessary to protect the public servant if he has acted in discharge of his official duty and with an intention to protect of private citizen but it has to be seen as to whether the public servant has exceeded his limit-only when the court is of definite opinion that the act done was well within the ambit of discharge of his official duty, prior sanction is must.

3. I have gone through all these decision and complaint as well as the statements of the witnesses. The specific allegation is that the house as well as household articles were broken deliberately and consciously with an intention to damage the property in the garb of attachment as such the act alleged can not come within the fold of "discharge of official duty". The trial has been stayed since February, 1997 only because the objection on behalf of the applicant was that sanction u/s 197 Cr.P.C. was not obtained by the State Government and, therefore, the proceedings on the basis of complaint is an abuse of he process of the court. I do not agree with the submission of the learned counsel for the applicant. The Magistrate has taken cognizance on 14.8.1985, being satisfied that the prima facie case is made out against the applicant. The Apex Court in the case of, Raj Kishor Roy Vs. Kamleshwar Pandey and Another, has ruled that the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial. The prosecution must be given an opportunity to establish its case. The Apex Court has ruled that the question whether the sanction u/s 197 Cr.P.C. is essential or not, is a question of fact and differ from case to case. No doubt the Criminal Procedure Code has made Section 197 Cr.P.C. mandatory but it does not mean that the accused, even if he has exceeded his limits while discharging the official duty and that too intentionally and consciously, he can be allowed to take shelter behind the garb

of sanction u/s 197 Cr.P.C. In the instant case, specific allegation is levelled against the public servant and bare reading of the complaint and statements of the witnesses make it clear that mischief was caused and property was damaged by the accused applicant while he had gone for effecting the process u/s 82-83 Cr.P.C, therefore, it is matter of evidence which the court shall conclude at a later stage as to whether the act alleged was specifically within the four walls of discharge of his official duty or he has exceeded either deliberately or to vindicate the resistance. The matter is to be seen during the trial and in view of the principle laid down in Raj Kishor Rai (Supra), it is always open for the Magistrate to form an opinion and come to a conclusion that whether a prior sanction is necessary or not. In the circumstances, I do not find any merit in the instant case and the application is accordingly dismissed.

4. The office is directed to forward a copy of this order to the District Judge, Banda to ensure that the proceedings are started and reach a definite conclusion.