

(1975) 01 RAJ CK 0003

In the Rajasthan High Court

Case No : Criminal Miscellaneous Application No. 1060 of 1974

Anand Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 16-01-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Criminal Procedure Code, 1973 (CrPC) — Section 187, 197, 482
Electricity (Supply) Act, 1948 — Section 56, 81, 82
Electricity Act, 1910 — Section 56
General Clauses Act, 1897 — Section 3
Penal Code, 1860 (IPC) — Section 21, 304A, 52

Citation : (1975) WLN 514

Hon'ble Judges : K.D. Sharma, J

Bench : Single Bench

Judgement

Kalyan Dutta Sharma, J.—Anand Singh, accused-petitioner, has invoked the inherent jurisdiction of this Court by way of an application u/s 482 of the Code of Criminal Procedure for quashing the criminal proceedings instituted against him in the Court of the Munsiff and Judicial Magistrate Sojat City for an offence punishable u/s 304A I.P.C.

2 The facts leading to the presentation of this application may be stated as follows, On 31.1.1970, Anand Singh, petitioner, was working as incharge, Sojat City Sub Station, in the capacity of a Junior Engineer Under him about 15 persons were working including Surja Ram deceased, who was helper to Line man and C.C.A On that day a defect was discovered in 11 K.V. line coming from Bilara to Sojat. On this line there was a drop out fuse set provided near Ram Naca. As the line feeding Sojat City was faulty, Shri Anand Singh, Junior Engineer, accompanied by Laxman Ram. Line-man Surja Ram WC Bora Ram, Sheo Lal and Chunnilal casual labourers had gone to Ram Nada by a bus of Shri Ghewar Chand one of the consumers. Upon reacting there, Anand Singh, Junior Engineer, save instructions to Surja Ram deceased for cutting off one of the drop

out fuses having barrel Surja Ram tried to cut off the barrel from the ground but he could not cut off drop out-fuse on account of cutting rod being small in size. He, therefore, climbed up the pole near barbed wire, which was wrapped on the pole and then cut off the drop out fuse After the drop-out fuse was cut off the Junior Engineer told Surja Ram that as one fuse had already been blown off and one drop-out fuse had been cut, there would be no electric current. He directed Surja Ram to remove the barrel from the bolder to replace the barrel of the higher capacity. Surja Ram did accordingly. As soon as he touched the barrel, he got an electric shock and met with a fatal accident, After Surja Ram's death, his dead body was taken to police at police station, Sojat City, where a report of this incident was "recorded in the daily diary of the police station by Head Constable Azim Khan. ON the basis of the report an inquiry was started u/s 174 of the old Criminal Procedure Code. During the course of the inquiry it was found that Surja Ram would not have died if Anand Singh, Junior Engineer and Laxman. Line man, had not been guilty of rash and negligent act Hence a criminal case was registered u/s 304A. I.P.C. against Laxman and Anand Singh and thereafter was investigated into by the police After usual investigation into the case, the police submitted a charge sheet against Anand Singh petitioner only for the offence punishable u/s 304A. I.P.C in the court of the Munsiff Magistrate, Sojat The learned Magistrate proceeded to try Anand Singh petitioner, for the afore said offence The petitioner however, raised an objection that he cannot be prosecuted u/s 304A. I.P.C. without the sanction of the State of Rajasthan His objection was over ruled by the then learned Magistrate on 17.3.1972 Thereafter the trial proceeded further The petitioner again raised an objection that his prosecution is barred and illegal in the absence of a valid sanction of the Rajasthan State to prosecute him The learned Magistrate considered the above objection & was of the view that no sanction of the State Government to prosecute Anand Singh accused is required either u/s 197 of the Criminal Procedure Code or under Sub-section (2) of Section 56 of the Electricity Act. He consequently turned down the objection raised by the accused by his order dated 19.6.1974 Aggrieved by this order, Anand Singh, petitioner, has invoked the inherent jurisdiction of this Court for quashing the proceedings on the around of absence of valid sanction of the State Government for his prosecution.

3. I have carefully gone through the record and heard the arguments advanced by Shri N.N. Mathur, for the petitioner and Shri G.A. Khan, appearing on behalf of the State. It may be observed at the outset that the petitioner was a public servant as defined in Section 21 of the Indian Penal Code on the date of commencement of the proceedings against him and at the time when the offence had been committed. The nature of the act which he did was such as to lie within the purview of his official duties. There was a defect in 11 K.V. electricity line coming from Bilara to Sojat. In order to put the said electric line in order, Anand Singh petitioner had gone to Ram Nada along with Surja Ram deceased Laxman, Line man, and some labourers. The facts alleged by the prosecution disclose that the act constituting the offence was done or purported to be done by the

petitioner in the discharge of his official functions Under the provisions of Section 81 of the Electricity (Supply) Act, all members, officers and servants of the Electricity Board are public servants within the meaning of Section 21 of the Indian Penal Code, while acting or purporting to act in pursuance of any provisions of the aid Act Reliance in this connection may be made on an authority of this Court in Nand Lal v. Prithvi Singh 1965 RLW 481, wherein Hon"ble Chhangani J has made the following observations on this point:

An Advisory Board was Constituted in 1953 to suggest amendments. The Board consulted various State Governments and made of commendations in consequence of which the Electricity Amendment Act of 1959 (33 of 1969) was enacted. It was this Act which amended Section 56. The original section was renumbered as Sub-section (1) and Sub-section (2) was newly Added reading as follows:

56 (2) - No court shall take cognizance of an offence under this Act, by a public officer except with the sanction.

(a) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and

(b) in any other Case, of the State Government.

The newly added Sub-section used the expression, "public officer" but the amending Act did not define the expression. It appears reasonable to infer that the legislature had in its mind (1) the provisions of Section 81 of the Electricity (Supply) Act-declaring that all members, officers and servants of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of the Act to be public servants within the meaning of Section 21 of the Indian Penal Code (ii) the provision of Section 2(17) of the CPC defining "public officers" in terms more or less similar to those in which the expression "public servant" has been defined in Section 21 of the Act.

Hence, there is no force in the contention of Shri G.A . Khan appearing on behalf of the State that the employees of an autonomous bodies like State Electricity Board cannot be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

4. As stated earlier, the facts and the circumstances established by the prosecution in this case clearly reveal that the offence, if any was committed by the petitioner while acting or purporting to act in the discharge of his official duty. It is the case of the prosecution itself that the petitioner gave directions to Surja Ram deceased to set the line in order by cutting off one of the drop out fuses having barrel. Surja Ram made an attempt to cut off the barrel from the ground but he could not cut it off on account of toe cutting rod being small in size He, therefore climbed on the pole near barbed wire and cut off drop out fuse. Anand Singh then told Surja Ram that as one fuse was already blown off at d the drop out fuse also was cut off there would not be passing any electric

current in the line He directed Surja Ram to remove the barrel from the holder to replace the fuse of the higher capacity. As soon as Surja Ram touched the barrel, he got the electric shock and met an instantaneous death. The directions were given by the petitioner to Surja Ram deceased in the performance of his official duty The short question that arises for determination, therefore, is whether Anand Singh cannot be prosecuted for an offence u/s 304A I.P.C without the sanction of the Rajasthan State either u/s 197 of the Code of Criminal Procedure or Sub-section (2) of Section 56 of the Electricity Act. In my humble opinion, sanction was required for the prosecution of the petitioner u/s 56 of the Electricity Act but not u/s 187, Cr.P.C., because the provisions of Section 197 of the Code are applicable only to such public servants as are removable from office by or with the sanction of the State Government or the Central Government. It is not disputed before me that Anand Singh is removable from office by the Chief Engineer, who is his appointing authority. He is not removable from his office, save by or with the sanction of the State Government nor the Central Government. Hence the qualified prosecution provided in Section 197 of the old Code Criminal Procedure does not apply to his case.

5. The contention of the learned Counsel for the petitioner is that the accused petitioner is entitled to claim protection under Sub-section (2) of Section 56 of the Electricity Act, because the act done by him under the Electricity Act was done in good faith which term, according to the General Clauses Act, has been defined in the following manner.

A thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not.

Shri G.A, Khan appearing on behalf of the State, on the other hand, contended that the petitioner acted without such care and skill as the duty reasonably demanded for its due discharge and, therefore, he could not be said to have acted in good faith. According to him, the petitioner must have been sure that electric current had not been passing in wires before directing Suraja Ram deceased to remove the barrel.

6. I have carefully considered the rival contention. To my mind, the definition of "good faith" given in Section 52 of the Indian Penal Code differs materially from the definition of this term contained in the General Clauses Act. The element of honesty, which is found in the definition of "good faith" given by the General Clauses Act, is not contained in the definition given in the Indian Penal Code. u/s 52 of the Indian Penal Code, an act is done only in "good faith" if it is done with due care and attention, while according to the definition of "good faith" in the General Clauses Act, an act shall be deemed to be done in "good faith" if there is no doubt as regards the honesty and bonafide of its doer, although there may not be negligence on his part in doing the act. The expression "good faith" used in Sub-section (1) of Section 56 of the Electricity Act will be construed in the light of the definition given in the General Clauses Act and not in the light of the definition given in the Indian Penal Code, because Section 3 of the General

Clauses Act clearly provides that the definition therein shall apply to the General Clauses Act and all Central Acts and regulations made after the commencement of this Act. The Electricity Act came into force in 1st January, 1911, i.e. after the coming in the force of the General Clauses Act. Hence if from the facts established in a case it appears that public officer acted honestly without malicious motive under the Electricity Act, it must be held that he acted in good faith within the meaning of Sub-section (1) of Section 56 which reads as follows:

No suit, prosecution or other proceeding shall lie against any public officer or any servant of a local authority, for anything done, or in good faith purporting to be done under this Act.

Apart from this, the petitioner can claim protection u/s 82 of the Electricity (Supply) Act, 1948, also which reads as follows:

82 Protection to persons acting under this Act No suit, prosecution or other legal proceeding shall lie against any person for any thing which is done in good faith or intended to be done under this Act.

The provisions of Section 56 of the Electricity Act and Section 82 of the Electricity (Supply) Act, clearly indicate that a special protection is provided to public officers under these Acts while acting or purporting to act in the performance of their official duties. The special protection appears to be that before a criminal court can take cognizance of any offence committed by them while acting or purporting to act in the discharge of their official duties, a sanction should have been granted by the appropriate Government. A similar view was taken on almost similar facts by Hon"ble Chhangani J. in the referred to above case and thereafter by Hon"ble Mehta J. in S.B. Criminal Revision No. 297 of 1972, S.V. Mahajani v. State of Rajasthan, decided on 5th December, 1972, in the following words:

From the facts and circumstances of the case, there is no manner of doubt that in this case S.V. Mahajani Foreman, Rajasthan State Electricity Board, directed Mannu Swami and Sheo Dayal to remedy the electricity line in the discharge of the official duty. That being the position Sub-section (2) of Section 56 of the Indian Electricity Act, 1910, will come into operation and the officer of the Rajasthan State Electricity Board unless proper sanction from the authority concerned is forthcoming....

Consequently, I feel persuaded to hold that the petitioner cannot be prosecuted for an offence u/s 304A. I.P.C. except with the sanction of the State of Rajasthan The learned Judicial Magistrate. Sojat, committed an error in taking cognizance against the petitioner in the absence of a sanction of the Rajasthan Government to prosecute the petitioner for this offence. The impugned order passed by the learned Magistrate on 19.6.1974 is, therefore, set aside and the proceedings against the petitioner are quashed for want of sanction of the Rajasthan Government to prosecute him. He shall stand discharged.