
(2015) 10 MP CK 0035
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 7689 of 2014

Ashok Singh Kushwah

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 202, 203, 204, 482
Penal Code, 1860 (IPC) — Section 294, 323, 327, 341, 342

Citation : (2015) 10 MP CK 0035

Hon'ble Judges : S.K. Palo, J

Bench : Single Bench

Advocate : A.S. Bhadoriya, for the Appellant; Vinod Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.K. Palo, J—Heard.

This petition under Section 482 of Criminal Procedure of Code has been filed for invoking the inherent jurisdiction of this Court and to set aside the order dated 21.4.2014 passed by the learned JMFC in Case No. 5517/2014 and the order dated 16.12.2013 of learned ASJ, Gwalior passed in Criminal Revision No. 383/2013, whereby cognizance has been taken against the petitioner for the offences punishable under Section 323, 294, 506B, 341, 342, 327 and 392 of IPC, on the complaint of respondent No. 1.

2. Brief facts just necessary for disposal of this petition are:--

"That the respondent No. 1 has filed the criminal complaint before the learned JMFC, stating that he is residing in Village Gorai Police Station, Raun, District Bhind. On 28.7.2013 he left his village to the house of his friend Vikas at Deendayal Nagar. From there he took his vehicle bearing registration No. M.P.07-M.B7000. He reached his in-laws at Nibuapura; where he was preparing to go to Delhi for treatment of his father-in-law Kok Singh at Sir Gangaram Hospital."

3. As and when, he was leaving for Delhi, the petitioner and other Police Officers came to the house and abused him by obscene words. He informed them that he is not living with his parents since last two years and he has been disowned from the property of his father and is going with his father-in-law for his treatment. But the petitioner and his associates beaten him and took him in a Tata Safari and Rs. 20,000/- kept on his pocket was also snatched. He was beaten ruthlessly and was kept at the Police Station and was harassed.

4. The learned JMFC passed order dated 30.9.2013 and directed the Police Authority to make an enquiry under Sections 202 of Cr.P.C. The same was challenged before the 10th A.S.J, in Criminal Revision No. 383/2013.

5. The 10th A.S.J while disposing of the aforesaid Cr. Revision, vide order dated 16.12.2013 set aside the order dated 30.9.2013 and directed the trial Court to observe the provisions of Sections 203 and 204 of Cr.P.C. and after filing of the affidavit of the complainant if necessary may issue process to the proposed accused persons.

6. The trial Court pursuant to the order dated 16.12.2013 passed the impugned order 21.4.2014 and took cognizance against the accused persons, including the petitioner for the offences punishable under Sections 323, 294, 506-B, 341, 342, 327 and 392 of IPC. This present petition has been filed for quashing the order dated 21.4.2014 on the ground that the petitioner is an Assistant Sub Inspector of Police and the complainant/respondent No. 1 is relative of Chhotu Chouhan against whom several cases have been registered at the police stations and perpetual warrant has also been issued against Chhotu Chouhan. Aggrieved by this, being relative of Chotu @ Arvind Singh Chouhan, the respondent No. 1 deliberately initiated the complaint case against the petitioner. It is also argued that no sanction has been obtained under Section 197 of Cr.P.C. before the initiation of proceedings. Therefore, prayed to quash the impugned order dated 16.12.2013 passed by the learned 10th ASJ, Gwalior and order dated 21.4.2014 passed by the learned JMFC.

7. Further in the case of Rajib Ranjan Vs. R. Vijaykumar, (2014) 4 CCR 409 : (2014) 4 Crimes 328 : (2015) 1 JCC 42 : (2014) 4 RCR(Criminal) 723 : (2014) 10 SCJ 153 , the Hon"ble Supreme Court as held that-

"Criminal Procedure Code, 1973 - S. 482 - Abuse of process of law-Converting civil case into criminal proceedings - Filing of criminal complaint by party after losing battle in civil litigation in present case, held, amounted to misuse and abuse of process of law - Hence, complaint in present case liable to be quashed."

8. Learned counsel while arguing the matter, placed reliance on Dadamchand Vs. Ramcharan Singh Rathode and Others, (1988) CriLJ 1506 : (1991) ILR (MP) 413 , D.T. Virupakshappa Vs. C. Subash(2015) 5 AD (SC) 462 : AIR 2015 SC 2022 : (2015) 2 AKR 755 : (2015) ALLMR(Cri) 2434 : (2015) 2 CCR 350 : (2015) CriLJ 2589 : (2015) GLH 2359 : (2015) 3 JLJR 123 : (2015) 2 MLJ(Cri) 637 : (2015) 2 NCC 243 : (2015) 2 OLR 409 : (2015) 3 PLJR 204 : (2015) 2

RCR(Criminal) 1001 : (2015) 5 SCALE 573 : (2015) 2 UC 867 . It is appropriate to discuss the provision of Section 197 of Cr.P.C. which has been enacted for the protection of public servants, officer of higher rank. Sub Section 2 of Section 197 reads as under:

"(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."

9. In the case of Dadamchand (supra) protection of Section 197 of Cr.P.C. has been discussed with regard to Class-III and VI employees of Armed Forces. In the case of D.T. Virupakshapp (supra), it is held by the Hon"ble Supreme Court that:

"If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection."

10. In the present context, if examine the conduct of the petitioner, it can be easily asserted that the complainant has nothing to do with the crime registered against Chhotu @ Arvind Singh. May be Chhotu @ Arvind Singh Chouhan was wanted in different cases, but the complainant is not the Chhotu @ Arvind Singh Chouhan. Any action taken by the Police against the complainant against whom no criminal case is registered may be termed as "police excess".

11. In the case of Choudhury Parveen Sultana Vs. State of West Bengal and Another, AIR 2009 SC 1404 : (2009) CLT 563 : (2009) CriLJ 1318 : (2009) 234 ELT 196 : (2009) 1 JT 347 : (2009) 1 SCALE 374 : (2009) 3 SCC 398 : (2009) 1 SCR 99 : (2009) 2 UJ 658 : (2009) AIRSCW 861 : (2010) AIRSCW 232 : (2009) 1 Supreme 666 : (2009) 7 Supreme 107 , it is held as under:

"Criminal P.C. (2 of 1974) S. 197 Sanction to prosecute - Act done in discharge of official duty - does not include cases of abuse of power"

Similarly in the case of General Officer Commanding Vs. CBI and Another, AIR 2012 SC 1890 : (2012) 2 Crimes 178 : (2012) 2 RCR(Criminal) 818 : (2012) 5 SCALE 58 : (2012) 6 SCC 228 , the Hon"ble Supreme Court has held that protection of Cr.P.C. to protect responsible person and held that the protection is given under Section 197 as under:

"The protection given under Section 197 of Cr.P.C. is to protect responsible public servants against the institution of possible vexatious, criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not persecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to

exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonable, connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been done in discharge of his duty. The section does not extend his protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omission which are done by a public servant in discharge of official duty. 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 it must be held to be official to which applicability of Section 197 Cr.P.C. cannot be disputed. "

12. Further in the case of Rajib Ranjan Vs. R. Vijaykumar, (2014) 4 CCR 409 : (2014) 4 Crimes 328 : (2015) 1 JCC 42 : (2014) 4 RCR(Criminal) 723 : (2014) 10 SCJ 153 , the Hon"ble Supreme Court as held that-

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13. In the light of the above discussion and looking to the legal preposition, this Court is of the considered opinion that, the impugned order dated 21.4.2014 and the order of the learned 10th ASJ dated 16.12.2013 do not suffer from any illegality and perversity. Accordingly, petition sans merit and the same is hereby dismissed.