
(1993) 03 MP CK 0012

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 169 of 1992

Awatar Singh Dharam Singh (Dr.)

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 16-03-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 201

Citation : (1993) ILR (MP) 320 : (1993) 2 MPJR 57 : (1993) 38 MPLJ 492 :
(1993) MPLJ 492

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

Bench : Single Bench

Advocate : J.P. Gupta, for the Appellant; V.G. Khot, Deputy Government
Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chawla, J.

This revision is directed against an order of Additional Sessions Judge. Bhind, rejecting an accused's application that criminal proceedings against him be dropped in the absence of sanction by the State Government u/s 197, Criminal Procedure Code.

It is said that on 28-6-1991 at village Parrawan P. S. Mehgaon in Bhind district (M. P.) three accused named, Mahadeo Singh, Avilakh Singh and Nihal Singh (non-applicants 2 to 4 in this revision petition) committed criminal trespass in the house of one Balwan Singh at about 7 A.M. They were armed with axes and lohengi. They assaulted the inmates of that house with those weapons. Balwan Singh, his father Bishan Singh and brother Dhyan Singh were injured in the incident. Bishan Singh has sustained an injury at the back of his head and succumbed to that injury on 2-7-1991 while admitted in J.A. Group of Hospitals, Gwalior. The F.I.R. of the incident was lodged at 8.30 A.M. on the very day of the incident by Balwan Singh. The injured persons, including deceased Bishan Singh,

were medically examined at 9.15 A.M. on that day by Assistant Surgeon of Mehgaon P.H.C. Dr. Awtar Singh (petitioner in this revision petition). In injury report given with respect to deceased Bishan Singh, Dr. Awtar Singh inter alia stated that the deceased had a tri-armed star shaped lacerated wound on the back of his skull. Which was caused by hard and blunt object. After the death of deceased Bishan Singh, Dr. J. N. Soni of J.A. Group of Hospitals, Gwalior performed post mortem examination and he gave opinion in the post mortem report that injury on the head of the deceased had been caused by hard, sharp cutting object. The prosecution case is that injury to the deceased on his head was caused by means of an axe by one of the three assailants. Dr. Awtar Singh, however, gave a false report, already referred to, that the deceased had sustained on his head a lacerated wound caused by hard and blunt object. He had given that false report with the intention of screening the assailants from legal punishment. On these allegations, prosecution was launched against the three assailants for offences under Sections 452, 302 and 324, Indian Penal Code and against Dr. Awtar Singh for the offence u/s 201, Indian Penal Code.

Dr. Awtar Singh made an application on 23-3-1992 to the Third Additional Sessions Judge, Bhind, that criminal proceedings against him be dropped in the absence of sanction from the State Government u/s 197, Criminal Procedure Code. The learned Judge however, rejected that application and also finding that prima facie case against all the four accused persons, including Dr. Awtar Singh u/s 201, Indian Penal Code, was disclosed, framed charges against them by order dated 15-6-1992. Aggrieved by that order, Dr. Awtar Singh has come in revision to this Court.

In the impugned order, the learned Additional Sessions Judge has observed that in his view Dr. Awtar Singh had given a false injury report "Knowingly and with some ulterior motive." He further observed that it was only if a public servant had committed a bona fide mistake in the discharge of his public functions, that he was entitled to protection u/s 197, Criminal Procedure Code requiring previous sanction of the Government. But if the act of the public servant was, what the learned Judge observed, "deliberate and with malafide intention", as was the act of Dr. Awtar Singh, he was not entitled to any protection u/s 197, Criminal Procedure Code. It is the correctness of this view which falls to be considered in this revision petition.

It must be said at the outset that the learned Additional Sessions Judge should not have expressed so strongly and categorically in the impugned order, as to give a finding that accused Dr. Awtar Singh had given a false injury report. Such a finding at the stage of framing charges was not called for. That could be criticised as prejudging of the case on merits against Dr. Awtar Singh u/s 201, Indian Penal Code. The argument advanced on behalf of Dr. Awtar Singh in this revision to the effect that the injury report given by him was correct is quite understandable, though does not require to be immediately commented upon. In this regard, a reference was made by learned counsel for the petitioner to page 6

of Bailey and Love's Short Practice of Surgery, 19th Edition, wherein it has been observed that while surgically treating a lacerated wound, the edges of the wound are so cut as to convert it into a wound approximating to an incised wound. The learned counsel argued that after Dr. Awtar Singh had examined the head injury of the deceased, which was really a lacerated wound, it was surgically treated making it to look like an incised wound. The doctor performing post mortem examination of the deceased had examined that surgical wound and was naturally led to believe that the injury was an incised one caused by hard and sharp cutting object. It was sought to be emphasized that opinion of the doctor performing post mortem examination did not go to prove the falsity of the report of Dr. Awtar Singh, who had examined the injury before it was surgically treated. This Court's attention was also drawn to the fact that while the alleged incident of house trespass and assault had taken place at about 7 A. M. in a village, the petitioner Dr. Awtar Singh had medically examined the injured persons, including the deceased, in a hospital 12 km. away from the place of the incident at 9.15 A.M. i.e., within just two hours. There was absolutely no evidence that the alleged assailants were seen hovering about the hospital, to have any contact with the doctor. In such a situation, considering the time and the place at which injury report in question was prepared by Dr. Awtar Singh, there was no possibility that it was prepared under any kind of influence. The injury report in question was correct. Suffice to say that the controversy whether the injury report concerning deceased Bishan Singh was or was not correct may best be left for decision at the trial of Dr. Awtar Singh, if that takes place. There was no need to give any positive finding in this regard, as the learned Additional Sessions Judge wrongly did. The premise of the prosecution case should have been accepted that Dr. Awtar Singh gave a wrong or false report with regard to injury sustained by deceased Bishan Singh.

The question is, if the act of giving false injury report on the part of Dr. Awtar Singh could be said to be an act done by him, to use the language of Section 197, Criminal Procedure Code, "while acting or purporting to act in the discharge of his official duty". If it was that kind of act, Dr. Awtar Singh is entitled to protection mentioned in Section 197, Criminal Procedure Code; namely, that cognizance cannot be taken against him for the alleged offence of giving false injury report, except after previous sanction by the State Government.

The expression "while acting or purporting to act in the discharge of his official duty" has been subject matter of interpretation in several decisions. The observations of Bose J. in *Shreekantiah Ramayya Munipalli Vs. The State of Bombay*, have become locus classicus. His Lordship observed :

"Now it is obvious that if Section 197, Criminal Procedure Code is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The Section has content and its

language must be given meaning."

In my view, the act of the public servant said to constitute an offence, may in the first place be such as to be itself a part of the official duty of the public servant. In the second place, the act, though not itself a part of the official duty, may be connected to the official duty. In the first situation, where the act is itself a part of the official duty, it may be said without any hesitation and without any further probe that the act was done "while purporting to act in the discharge of official duty" and the public servant concerned is entitled to protection u/s 197, Criminal Procedure Code. In the second situation, where the act though not itself a part of official duty, is only connected with the official duty, the public servant would be entitled to protection, if the connection between the two is such that the public servant, if challenged, can lay a reasonable, but not a pretended or fanciful claim, that what he did, he did it in the course of performance of his duty. Some instances may be given. Acts of alleged assault and use of criminal force in effecting search and seizure of documents in certain premises under a search warrant by authorised officials in *Matajog Dobey Vs. H.C. Bhari*, utterances of a Civil Judge to a witness under examination to the effect "Nalayak, you will be turned out of Court room after beating with shoes" in *Mewalal Vs. Totalal*, and the act of an Executive Engineer in rescinding a works contract and in forcibly entering upon the site of the work in possession of the contractor and in breaking open the locks of contractor's office, store room and almirahs in *Darshan Kumar Vs. Sushil Kumar Malhotra and Others*, (Himachal Pradesh), were held to be such acts, so closely connected with official duty, as to be acts done "in purported discharge of official duty" and entitled to protection u/s 197, Criminal Procedure Code. But if a public servant was charged u/s 161, Indian Penal Code with taking bribes and u/s 120B, Indian Penal Code with conspiracy, no sanction u/s 197, Criminal Procedure Code was necessary, for the act of taking bribe was not connected with official duty except that the official status provided opportunity or occasion to take the bribe. Such a connection between the act and the official duty would not suffice. See AIR 1948 128 (Privy Council) More instances may be multiplied. Thus, if a Government doctor while medically examining a patient happens to pick the pocket of the patient, or a police official tortures a person in his custody, the acts of picking pocket or torture are not entitled to protection, the public office providing only opportunity to commit such acts.

Coming back to present case, the act of giving a false injury report by the doctor, is an act of the first category, where the act is itself a part of the official duty of the public servant. It is official duty of a doctor to give injury report. If the injury report is true and honest, no question of any offence arises. If the injury report is wrong or false, it may amount to an offence but even then the act of giving injury report would remain the same. It would not become an act done outside his duty. If giving of correct and honest injury report may be said to be an act in the discharge of official duty, the giving of wrong or false injury report may at the worst be said to be an act in purported discharge of official duty. In the latter case also, the public servant is entitled to protection u/s 197, Criminal Procedure

Code. My conclusion is fortified by the decision in P. Surya Rao Vs. Hanumanthu Annapurnamma and Others, (A. P. High Court) in which it was held that act of an Assistant Surgeon in giving a false and dishonest post mortem certificate constituted an act done by him in purported discharge of official duty and the doctor was therefore entitled to protection u/s 197, Criminal Procedure Code.

The learned Additional Sessions Judge has given a wrong test. He has observed that if a public servant had committed a bona fide mistake in the discharge of his public functions, he was entitled to protection u/s 197, Criminal Procedure Code requiring previous sanction of Government. But if the act of the public servant was, what he calls, "deliberate and with mala fide intention", he was not entitled to any protection u/s 197, Criminal Procedure Code. In my view, these are considerations which the Government may keep in mind while considering the question whether to grant sanction or not. Whether sanction is to be accorded or not, is the exclusive province of the Government. That power is foreign to the duty of the Court, which is the ascertainment of the true nature of the act. If on ascertainment of the true nature of the act, the Court finds that the act was committed "while acting or purporting to be an act in the discharge of official duty" by a public servant, he is entitled to protection u/s 197, Criminal Procedure Code. It would not then matter whether the said act was bona fide or mala fide. It may be mentioned here that the object of Section 197, Criminal Procedure Code is to guard public servants against vexatious or improper or reckless prosecutions. The protection afforded by Section 197, Criminal Procedure Code to a public servant is a qualified kind of protection. That protection is that it should be left to the Government to determine from the point of view of expediency whether a public servant should be made to face a prosecution. The Court would not arrogate to itself that function of the Government and decide whether the act of the public servant was bona fide or mala fide and if so, whether sanction to prosecute him may or may not be given.

As the act of petitioner Dr. Awtar Singh, admittedly not removable except by or with the sanction of the State Government, in giving the injury report, said to be wrong and false, was an act done by him while purporting to act in the discharge of his official duty, it was not open to the Court to take cognizance against him for the offence constituting that act except upon previous sanction of the State Government u/s 197, Criminal Procedure Code. Since admittedly sanction of the State Government was not obtained, the petitioner's application for dropping the proceedings against him deserved to be allowed. The impugned order dated 15-6-1992 of the Additional Sessions Judge in so far as rejecting that application and further framing charge against the petitioner deserves to be set aside.

For the foregoing reasons, this revision is allowed. The impugned order dated 15-6-1992 of Additional Sessions Judge, Bhind in so far as it rejected the petitioner's application for dropping proceedings against him and framed charge against him, is set aside. The proceedings against the petitioner are dropped.