

(1991) 07 GAU CK 0015
In the Gauhati High Court
Case No : C.R. No. 5 (K) of 1991

B. Purchiba Ao

APPELLANT

Vs

R.K. Atoshe Sema and Others

RESPONDENT

Date of Decision : 15-07-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(1), 208, 482
Penal Code, 1860 (IPC) — Section 408, 409, 420, 467

Citation : (1992) CriLJ 1420

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : C. Jajo and L.S. Jamir, for the Appellant; E.Y. Renthungo, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

B.P. Saraf, J.—The petitioner Shri B. Purchiba Ao is a Sub-Divisional Officer (T.C.), M&B and is attached to the office of the Chief Engineer, K & B, Kohima, Public Works Department.

2. A complaint was filed against him by two persons, namely, R.K. Atoshe Sema and I. Kiyelho Sema in the Court of the Judicial Magistrate, Zunhebote alleging use of forged signatures in drawing the money and misuse of funds (Corruptions). The complaint is quoted below :

IN THE COURT OF JUDICIAL MAGIS-TRATE, ZUNHEBOIO.

SUB : FILLING THE CASE AGAINST SHRI B. PURCHIBA AO, DRAWING THE MONEY AND MISUSE OF FUNDS (CORRUPTIONS)

Sir,

The humble petitioners, we the undersigned have the honour to state the facts which is cited above in the subject for favour of your earlier judgment to save the public and Governments fund.

The facts of records are giving in separate sheets. Issue the warrant on I.P.C. 408 and 467 Sections.

Encl :-- -- Sheets. Yours faithfully ...

3. Some sheets were annexed to the said complaint showing the names of persons who did the soiling and metalling works, etc. on different roads and payments made to them. The Additional Deputy Commissioner (Judicial) Zunhebete registered the complaint as Criminal Complaint No. 11 of 1990 and passed the following orders :

6-8-90

Shri Atoshe Sema of Akulute Town,

Shri I. Kiyolhe Sema filed a complaint against B. Purchiba Ao alleging that the above officer has misappropriated Govt. money amounting to Rs. 70,380/- by falsely issuing appointing letter to unknown persons as labourers between Deyang to V.K. and he used to draw pay on behalf of the labourers and appropriated Govt. money by himself from 21-9-88 to 2-3-90,

Issue summon to Complaints to produce witnesses and relevant documents fix 24-8-90 for examination of complainants and witnesses.

4. It appears that on 24-8-90 the two complaints were examined. Shri Atoshe Sema in his deposition stated that the petitioner who was working as the S.D.O. did all the office duty himself and executed his office work secretly without the knowledge of Head Clerk and other staff and that he never utilised even the services of Government driver. It was also alleged that he had taken all the documents pertaining to S.O.O. (PWD) office Aulute to Mokokchung and that he did not allow his Sectional officers to maintain Master roll, M.B. Books, bill vouchers, Labour Pay registers, etc. He further stated that the Overseers Shri Pukhahe Sema, V.K. State Highway and Vikate Sema for Aulute Town reported to public leaders about the S.D.O. (the petitioner herein) not allowing them to exercise the powers delegated to them and, accordingly, after ascertaining the facts and documentary proof he had approached the Court. It was stated that the activities which amounted to corruption were committed by the petitioner who was S.D.O., P.W.D. He requested the Court to enquire into the matter and take necessary legal action.

5. The other complainant Shri I. Kiyelhe Sema, who described himself a subject leader of Aulute Town, stated that as public leader he was acquainted with all the Government officers posted at his town. It was further stated by him that he had detected forgery, corruption, non-cooperation and disunity amongst the staff of the S.D.O. He informed that he also called upon the Head Clerk, two Overseers and Muhories and all of them expressed their discontentment on account of running of the office by S.D.O. P.W.E. from Mokokchuns. He further stated that the new Engineer Shri Yehavi Sema, who had taken charge, also informed him that there was shortage of Rs. 3 lacs as a result of which the staff might go

without pay after November 1990.

6. On the aforesaid statements made by the two complainants, an order was passed by the A.D.C. (Judl.) on 24-8-90 wherein it was observed, inter alia,--

...It is stated that S.D.O. P.W.D. Aulute Shri B. Purchiba had misappropriated Govt. money amounting to Rs. 14,36,357 under the Salary head by making or entering false documents, entering fictitious names of labourers.

It is further reported that he has concealed the following M.Bs.

ATZ -- 32, 16, 12, 31, 13, 943, 14 and 7 where huge bills has been entered....

7. It was further observed that the complainants had prayed to summon the accused and to submit the above noted measurement books to the Court so that the whole things could be revealed. The A.D.C. (J) thereafter passed the following orders :

...Issue summon to Shri Purchiba S.D.O. P.W.D., Aulute to produce M.B. No. ATZ 32, 16, 12, 31, 13, 943, 14 and 7 to this Court on 28-8-90 without fail. Issue summon to Nikhuhe Sema H.A., S.D.O. P.W.D. office Aulute to appear on the same day 28-8-90 at 11 a.m.

Send one signal to O.C. P.S.-- I Mokokchung to inform Shri B. Purchiba S.D.O. P.W.D. Akulute who resides near P.S. -- I Mokokchung to appear before this Court with above noted M.Bs.

Fix 28-8-90 for hearing the accused and for production of M.Bs. The Complainants has been informed".

8. Summons and signals were accordingly issued. The petitioner in compliance with the aforesaid direction appeared before the A.D.C. (Judicial) on 28-8-90 and produced the measurement books which were available with him. He also filed an application for furnishing him the copies of the complaints etc. to enable him to prepare his defence. The A.D.C. (J) did not give the copies of the complaint and statements of the complainants, but on the other hand examining the petitioner himself who was the accused and made him answer all the questions put up by him. He also seized the measurement books, which according to the complainants, were incriminating documents. The A.D.C. (J) also examined the Head Clerk of the office of the S.D.O. and recorded his statement in question and answer form. The A.D.C. (J) even at that stage, issued a signal to the Executive Engineer, P.W.D. Atoizu directing him to draw staff pay for S.D.O. Akulute Division and to pay to staff by himself in presence of E.A.C. V.K. and one of the complainants Kiyelho Sema who according to the A.D.C. (J) was a public leader. A signal was also sent by the A.D.C. (J) to the Additional Chief Engineer, Mokokchung Zone to strip off the petitioner of his powers of S.D.O. On 30-8-90 the A.D.C. (J) examined Sectional Officers and recorded their statements. The A.D.C. (J) also sent a signal to E.A.C. V.K. and O.C. P.S. Akulote to submit verification report. On 11-9-90 he considered the verification report received

from the police and passed the following orders :

Seen the verification report submitted by O.C. PS Akulte concerning labourers at V.K. Deyang State High way and Akulte V.K. P.W.D. Road. S.D.O. P.W.D. Akulte Shri B. Purchiba has drawn excess labour pay from January 1990 to July 1990 against 106 labourers. He has drawn the money and misappropriated by himself for his own use.

Between V.K. Akulte Road he has misappropriated Rs. 55,300/- within 7 months and between V.K. Deyans State High way he has misappropriated Rs. 49,560/- total amount of Rs. 1,04,860.00.

I am satisfied that Shri B. Purchiba S.D.O. P.W.D. has misappropriated Govt. money from work charge pay alone of Rs. 1,04,860 and Rs. 34,917.00 from other false bills prepared by him with total mounting to Rs. 1,39,777-00.

Issue non-bailable W/A against B. Purchiba SDO PWD Akulte. W/A be sent to O.C. P.S. Akulte for execution.

9. The petitioner, thereafter, approached this Court and obtained an order of anticipatory bail. On 24-9-90, the A.D.C. (J) took note of the anticipatory bail granted by the High Court and directed that the petitioner be given relevant documents as per Section 208 of the Cr. P.C. By the said order the A.D.C. (J) also directed that one signal be sent to the Addl. Chief Engineer, P.W.D. Mokokchung Zone and Superintending Engineer, P.W.D. Mokokchung Zone to appear before the Court on 3-10-90 for necessary discussion. Being aggrieved by the different orders passed by the A.D.C. (J), more particularly the way in which he was proceeding with a criminal trial, the petitioner moved an application before this Court for transfer of the case from the Court of the said A.D.C. (J) to some other Court. That application was moved before this Court on 22-10-90. This Court issued a notice of motion and in the interim, stayed further proceeding in the Criminal Complaint Case No. 11/90 pending before the A.D.C. By order dated 5-11-90 rule was issued and the interim order staying further proceeding was made absolute.

10. It may be stated that the main grievance of the petitioner in the aforesaid petition for transfer of the case from the A.D.C. (J) was that even before trial he had already come to a conclusion holding the petitioner guilty of the charges alleged against him. He examined him as a witness against himself, seized documents from him which according to him were incriminating. He suo motu called a number of persons from the department as witnesses and examined them without even giving any opportunity to the petitioner to cross-examine them. He, more or less, arrived at a finding that the petitioner was guilty of misappropriation of Government money. He even sent signal to the Chief Engineer, etc. to appear before him for discussion and also went to the extent of issuing directions to his higher ups to strip him off his powers. All these acts of the A.D.C. (J), according to the petitioner, are not only against the law and highly atrocious, but unknown to criminal jurisprudence. The petitioner apprehending

that the so-called trial, under the circumstances, will be no trial at all if the case is dealt with by the A.D.C. (J) who had conducted the case in such a manner, moved the petition before this Court for transfer of the case.

11. The petitioner, in the meantime, also filed another application u/s 482 of the Code of Criminal Procedure praying for quashing of the proceeding in main case -- Criminal Complaint No. 11 of 1990 pending in the Court of the A.D.C. (Judicial). Two grounds were mainly advanced by the petitioner in support of his prayer for quashing. Firstly, that no prima facie case had been made out of any offence u/s 409/ 467/420 of the Indian Penal Code against the petitioner. Secondly, the A.D.C. (Judl.) had no power in the instant case to take cognizance of the offence against the petitioner who was a public servant within the meaning of expressions used in Section 197 of the Cr.P.C. All the acts alleged, even according to the complainants themselves, were committed by the petitioner while acting or purporting to act in the discharge of his official duty as a public servant that is Sub-divisional Officer. There is no dispute that no sanction was obtained by the complainants from the competent authority for prosecution of the petitioner, nor this important aspect was examined by the A.D.C. (Judicial) while taking cognizance of the case.

12. I have perused the petition both for transfer of the case as well as for quashing of the proceedings. I have also gone through the complaint, the deposition of the complainants and the various orders passed by the A.D.C.(J). I have also heard the submissions of Miss C. Jajo, learned counsel for the petitioner and Mr. E.Y. Renthunge, learned Public Prosecutor.

13. Miss Jajo has strenuously urged that it is evident from a perusal of the proceedings of this case that the A.D.C.(J) proceeded with the case as if it was a departmental enquiry conducted by him against an officer subordinate to him and not a criminal trial. According to her all his actions beginning from taking cognizance of the case are patently illegal and without jurisdiction. The counsel further submits that even on the ground of lack of sanction the entire prosecution has to fail in the instant case because the admitted position is that the petitioner is a public servant and the acts alleged against him are acts admittedly done by him while acting or purporting to act in the discharge of his official duties.

14. I have carefully considered the submission. Though the submissions made by the learned counsel in regard to the manner in which the case has been conducted by the learned A.D.C.(J) are no less serious in nature, I propose to examine first the question of sanction for prosecution and the effect of its absence on the prosecution. Section 197 of the Cr.P.C. clearly provides that when a public servant, who is not removable from his office save or with the sanction of the Government, 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, no Court shall take cognizance of such offence except with the previous sanction of the State Government in case the person concerned is employed in connection with

the affairs of the State. The undisputed position is that the petitioner, who is working as S.D.O. with the State of Nagaland, is a public servant, not removable from the office save by the sanction of the State Government.

15. The only question that, therefore, remains to be examined is whether in the instant case the alleged acts, which according to the complainants constituted the offence, were committed by him while acting or purporting to act in the discharge of his official duties.

16. Now let us see what is the act alleged. The act alleged is misappropriation of Government money by falsely issuing appointment letters to unknown persons as labourers and the drawing of money on their behalf and appropriating the same to himself. The other acts alleged, namely, not delegating the powers to his officers and/ or not maintaining proper unity amongst the office staff, etc. have nothing to do with the criminal offence. These are all administrative matters which may be looked into by any superior officer of the department but not by Criminal Court.

17. So far as the alleged misappropriation of Government money is concerned, what is to be seen is whether the act as a result of which such misappropriation is alleged to have taken place was done in performance of the official duties or not. One of the well-recognised tests to find out whether an offence was committed by the public servant while acting or purporting to act in his official duty is to ascertain whether there is something in the nature of "the act" complained against that attaches it to the official character of the person doing it. The crucial question is whether the acts constituting the offence were committed by the accused "in his capacity as a public servant". One should examine "the acts or omissions" more than "the duty". If the acts were done or permitted to be done or omitted to be done "in his capacity as a public servant", sanction u/s 197 is necessary. In fact, the true test is that the offence alleged to have been committed must have something to do or must be related in some manner with the discharge of official duty. As observed by the Supreme Court in *Matajog Dobey Vs. H.C. Bhari*, no question of sanction can arise u/s 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. What the Court must find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty.

18. Reference may also be made to the decision of the Supreme Court in *Amrik Singh Vs. The State of Pepsu*, where it was held that if the act complained of is directly concerned with the official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial and could not arise at the stage of the grant of sanction, which must precede the institution of the

prosecution.

19. The facts of the case of Amrik Singh (*supra*) are also very much similar to the present case. It was also a case where the appellant, a public servant, was charged u/s 409 of the I.P.C. He was also a Sub-divisional Officer in the Public Works Department, Pepsu and at the material time was in charge of certain works at a place called Karhali. It was part of his duties to disburse the wage to the workmen employed in the works, and the procedure usually followed was that he drew the amount required from the treasury and paid the same to the employees against their signatures or thumb-impressions in the monthly acquittance roll. A complaint was lodged against the petitioner u/s 409, I.P.C. alleging that in the roll for April, 1951, one Parma was mentioned as a Khalasi and a sum of Rs. 51/- shown as paid to him for his wages, the payment being vouched by thumb-impression. The case of the prosecution was that there was, in fact, no person of the name of Parma and that the thumb-impression found in the acquittance roll was that of the appellant and that he had included a fictitious name in the acquittance roll with intent to himself draw the amount and that by this expedient he had received Rs. 51/- and misappropriated the same. In this factual matrix, the question of requirement of sanction u/s 197 Cr.P.C. was examined by the Supreme Court. It was held--

... In our judgment, even when the charge is one of misappropriation by a public servant, whether sanction is required u/s 197(1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable for them, then sanction u/s 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be acquired.

20. The Court examined the facts of case before it in the light of the aforesaid legal proposition and observed

In this view, we have to examine whether the acts with which the appellant is charged directly bear on the duties which he has got to discharge as a public servant. The appellant received the sum of Rs. 51/- alleged to have been misappropriated, as Sub-divisional Officer, and he admits receipt of the same. Then it was his duty to pay that amount to the Khalasi Parma, and take his signature or thumb-impression in acknowledgement thereof. The accused does claim to have paid the amount to Parma, and the acquittance roll records the payment, and there is in acknowledgement thereof a thumb-impression as against his name.

If what appears on the face of the roll is true and whether it is true or not is not a matter relevant at the stage of sanction -- then the acts with which the appellant is charged fall within the scope of his duties, and can be justified by him as done by virtue of his office. Clearly, therefore, sanction was required u/s 197(1), Cr.P.C. before the appellant could be prosecuted u/s 409, and the

absence of such sanction is fatal to the maintainability of the prosecution. The conviction should, therefore, be quashed.

21. The ratio of the aforesaid decision of the Supreme Court, in my opinion, clearly governs the present case. The allegations in this case are also identical to those in the case before the Supreme Court. Here also the petitioner against whom the complaint was filed was a Sub-divisional Officer in the P.W.D. The allegation against him also is that he misappropriated Government money by falsely issuing appointment letters to unknown persons as labourers, drawing pay on their behalf and appropriations the same to himself. Evidently all those acts were integrally connected with the duties attaching to his office as S.D.O. It was his duty to appoint labourers, draw their pay and disburse the same to them. All these acts were done in performance of his duties as S.D.O. They are inseparable from his office. While doing so, if he committed an offence, it was undoubtedly an offence committed in performance of his duties as a public servant and, as such, sanction u/s 197(1) of the Cr.P.C. was mandatory for his prosecution.

22. I am, therefore, of the clear opinion that sanction was required in this case u/s 197 of the Cr.P.C. before the petitioner could be prosecuted for the offences allegedly committed by him and absence of such sanction was fatal to the prosecution. The same has, therefore, to be quashed which I hereby do.

23. In view of the aforesaid conclusion arrived at by me in regard to maintainability of the prosecution for lack of sanction, I do not think it necessary to go into other submissions of the learned counsel in regard to the manner of conduct of the case by the Addl. Deputy Commissioner (Judicial). Suffice it to say that if this is the way justice is being administered in the State of Nagaland, as has been pointed out by Miss. Jajo, counsel for the petitioner, it is high time to review the entire system and if necessary to reorganise and revitalise the same. I may also like to observe, as I have observed earlier also in some other cases, that those entrusted with the administration of laws affecting the rights, properties or lives of the citizens should properly acquaint themselves with such laws. It must be remembered that those administering laws are also creatures of law and equally subject to them. They are bound to work within the parameters laid down in the laws. If they exceed their limits, they do so at their own risk and peril. Judicial Officers are no exception to it.

24. With the aforesaid observations, this Civil Revision is allowed. The proceedings in Criminal Complaint No. 11 of 1990 pending in the Court of the Additional Deputy Commissioner (Judicial), Zunhebete, Nagaland, are quashed.