

(2017) 03 GUJ CK 0152
In the Gujarat High Court
Case No : 738 of 2009

BECHARBHAI RANCHHODBHAI CHAUDHARY

APPELLANT

Vs

RAKESHBHAI SHARMA & ORS.

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Indian Penal Code, 1860, Section 114,
Section 323, Section 504, Section 506(2) - Abettor present when offence is committed -
Punishment for voluntarily causing hurt - Intentional insult with intent to provoke
breach of the peace - Punishment for criminal ,intimidation

Citation : (2017) 03 GUJ CK 0152

Hon'ble Judges : Biren Vaishnav

Bench : Single Bench

Advocate : AM PAREKH, MAYUR A THAKORE, HK PATEL

Judgement

1. The present criminal application has been filed by the original complainant Becharbhai Ranchhodbhai Chaudhary. He has approached this court on being aggrieved by the order passed by the learned Sessions Judge, Gandhinagar in Criminal Revision Application No. 111 of 2008 dated 20.12.2008. By the aforesaid order, the learned Sessions Judge, Gandhinagar allowed the revision filed by the respondents no. 1 and 2. The revision applicants before the Sessions Court had challenged the order of the Fourth Additional Senior Civil Judge and Judicial Magistrate First Class, Gandhinagar dated 06.09.2008 by which the learned magistrate had dismissed the application of the respondents no. 1 and 2 by which they had prayed for being discharged for the offence on the ground that the complainant had not obtained sanction under section 197 of the Criminal Procedure Code. By the order under challenge before this court, the learned Sessions Judge reversed the order of the Judicial Magistrate, First class and accepted the applications of the respondents no. 1 and 2 by allowing their applications and discharged them from the offences, holding that the respondent

nos. 1 and 2 had acted in discharge of their public duty and since the complainant had not obtained sanction under section 197 of the Criminal Procedure Code, the complaint would not stand.

2. Facts which lead to the filing of the present application are as under: 2.1 The applicant original complainant approached the District Superintendent of Police, Gandhinagar by a letter dated 24.09.2000. In the said letter, the applicant stated that

he was a worker of a political party and in order to find out the voting pattern in the villages, where voting was under progress for the Gandhinagar district panchayat, he along with a few others had gone to find out the voting percentage. While they were proceeding for this, a police vehicle approached them and stopped them. The Police SubInspector of Dehgam police station, Rakesh Sharma, the respondent no. 1 herein and police constable Dehaji Amthaji, respondent no. 2 herein got out of their vehicle and stopped them. The police officials questioned him. Rakesh Sharma, the respondent no. 1 - Police Sub-Inspector had a stick in his hand and both he and the police constable, respondent no. 2 Dehaji started beating the complainant. The complainant had sustained injuries as a result of this incident. Both Shri Sharma and Dehaji had therefore threatened the complainant, pointed a revolver at him and by such acts acted illegally and therefore necessary legal action be taken against them.

2.2 Based on this complaint so lodged by the applicant, a First Information Report being C.R. No. II ? 76 of 2000 was filed before the Dehgam police station by the applicant against respondents no. 1 and 2 accusing them of having committed offences punishable under sections 323, 504, 506(2) and 114 of the Indian Penal Code. This complaint was lodged on 25.09.2000.

2.3 On the lodging of such complaint by the applicant, the respondents no. 1 and 2 filed an application under section 197 of the Criminal Procedure Code and section 159 of the Bombay Police Act requesting the Judicial Magistrate, First Class, Gandhinagar that the concerned applicants -

respondents no. 1 and 2 herein be discharged from the offences particularly in view of the fact that they had not carried out any act/omission as alleged by the complainant ? applicant herein. It was their case before the learned Judicial Magistrate, First Class Gandhinagar that in fact the Police SubInspector Rakesh Sharma, the respondent no. 1 herein together with respondent no. 2 - Police Constable Dehaji Amthaji had received a telephonic message that certain political workers were creating disturbances in the voting that was undergoing. On receiving such information both he together with the police constable left in their government vehicle for general supervision and patrolling at Dehgam Taluka. When they were carrying out such patrolling, about 25-30 political workers in an Eicher loading vehicle were intercepted on 24.09.2000 at around 1650 hours. They were questioned by these police officers. On being specifically asked as to whether they were going towards the Taluka where the voting was under

progress and on reasonably suspecting that these were the persons who caused disturbance, they were taken to the police station. The complainant entered the police station and started abusing the respondent no. 1 and challenged his authority to arrest or detain his political workers and dared the respondent no. 1 as to how he could question such political workers who were loyal to him.

2.4 According to the respondents since the complainant assaulted the officer in the police station, the police officer lodged a complaint on 24.09.2000, a day prior to the complaint of the applicant herein under sections 332, 186, 143, 145 and 147 of the Indian Penal Code. The complaint

has been annexed at page 29. On reading of the complaint, it is apparent that the police officers were constrained to lodge this complaint against the present applicant and other six on account of the fact that he along with several other political workers had entered the police station and abused the officers and challenged the authority of respondent no. 1 to arrest the applicant's workers or even question them.

2.5 Based on the averments so made, the respondents no. 1 and 2 had approached the learned Judicial Magistrate, First Class, contending that they had only acted in discharge of their public duty and therefore the applicant's complaint which was filed on 25.09.2000 was an afterthought. Even otherwise, from the allegations made in the complaint, it is apparent that the police officers ? respondents no. 1 and 2 were performing their public duty and it was an act which was an integral part of performance of their duty and no cognizance of the applicant's complaint could be taken without obtaining prior sanction under section 197 of the Criminal Procedure Code.

2.6 The learned Judicial Magistrate, First Class by his order dated 06.09.2008, after having heard the learned advocates for the respective parties observed that the applicants seeking discharge (the respondents no. 1 and 2 herein) had not produced any documents on record such as the First Information Report or the charge-sheet and therefore on mere pleadings in the application so filed they could not be discharged from the offences and that even otherwise the question of sanction under section 197 could not be decided except by leading evidence and that whether such act or

offence alleged against the officers was in discharge of their public duty or had a reasonable nexus was a matter of evidence and therefore the learned Judicial Magistrate, First Class dismissed the application. While doing so, the learned Judicial Magistrate, First Class relied on a decision of the Hon''ble Supreme Court in the case of Raj Kishor Roy vs Kamleshwar Pandey and another reported in (2002) 6 SCC 543 and held that the question whether these acts were committed and/or whether the officers acted in discharge of duties could not be decided in a summary fashion. Accordingly, the application was dismissed.

3. Learned advocate Mr. A.M Parekh appearing for the original complainant has challenged this order and contended that it was not open for the learned

Sessions Judge to reverse

the order of the learned Judicial Magistrate, First Class. According to Mr. Parekh, the learned Judicial Magistrate, First Class, Gandhinagar had rightly held that whether the act alleged to have been carried out by respondent no. 1 in allegedly assaulting the complainant and thus being guilty of the offences under sections 323, 504, 506(2) and 114 of Indian Penal Code was a subject matter which can be decided only by leading evidence and therefore the Judicial Magistrate was right in rejecting their application for discharge. The learned Judicial Magistrate, in the submission of learned advocate Mr. Parekh, was right in holding that sanction under section 197 was a question of fact which could be decided at the trial which can be at any stage and it was not open for the learned Sessions Judge to reverse the order and hold that sanction was pre-requisite without evidence being led. On the basis of the complaint so lodged by the applicant, Mr. A.M. Parekh, learned advocate for the applicant relied on a decision of this court rendered in Special Criminal Application No. 966 of 2012 dated 30.04.2015. Mr. Parekh has particularly relied on para 31 of the judgement to contend that whether an act of the accused falls within the ambit of "in discharge of official duty" or not is an issue which could be considered best only after the necessary evidence is led by the defence. According to Mr. Parekh therefore the view of the learned Sessions Judge is clearly erroneous and therefore needs to be reversed.

4. It needs to be pointed out that Mr. Mayur A. Thakore, learned advocate for respondents no. 1 and 2 had consistently remained absent and therefore this court has not been able to seek any assistance from the learned counsel appearing for

respondents no. 1 and 2.

5. Mr. Himanshu Patel, learned Additional Public Prosecutor has assisted this court on behalf of respondent no. 3. As is evident from the order of the Judicial Magistrate, First Class, the learned Additional Public Prosecutor also was of the opinion that sanction under section 197 was a pre requisite. According to Mr. Patel, the order of learned Sessions Judge cannot be faulted if the learned Sessions Judge has taken a view that on the facts of the case it was evident that sanction under section 197 of the Code of Criminal Procedure was necessary, in the facts of the case.

6. Based on these submissions, the issue before this court is whether the learned Sessions Judge was right in discharging the respondents no. 1 and 2 on account of an absence of a sanction under section 197 of the Code of Criminal Procedure. The learned Sessions Judge in coming to such a finding had on the basis of the record found that the act of respondents no. 1 and 2 had a reasonable connection with performance of their official duty and therefore sanction was a pre-requisite which was not obtained and therefore respondents no. 1 and 2 deserved to be discharged.

6.1 In the case of Shambhoo Nath Misra vs. State of U.P reported in 1997(5)

SCC 326, the Supreme Court has observed that the essential requirement for a sanction to prosecute a public servant is that the offence alleged against the public servant must have been done while acting or purporting to act in discharge of his official duties. If the act/omission is integral in performance of public duty, the

public servant is entitled to protection under section 197 of the Code of Criminal Procedure. The Supreme Court in para 4 of the said judgement observed as under:

"4. Section 197 (1) postulates that ""when any person who is a public Servant not removable from his office, save by 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 appropriate Government/authority". The essential require-ment postulated for sanction to prosecute the public servant is that the Offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. In such a situation, it postulates that the public servant"s act is in furtherance of the performance of his official duties. If the act/omission is integral to performance of public duty, the public servant is entitled to the protection under Section 197 (1) of Cr, P, C, without previous sanction, the complaint/charge against him for alleged offence cannot be proceeded with in the trial, The sanction of the appropriate Government or competent authority would be necessary to protect a public servant from needless harassment or prosecu-tion. The protection of sanction is an assurance to an honest- and sincere officer to perform his public duty honestly and to the best of his ability. The threat of presecution demoralizes the honest officer. The requirernent of sanction by competent authority of appropriate Government is an assurance and protection to the honest officer who does his official duty to further public interest However, performance of Official duty Under colour of public authority cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The Court to proceed further in the trial or the enquiry, as the case may be, applies its mind and records finding that the crime and the official duty are not integrally

connected.

6.2 In the case of State of Orissa vs Ganesh Chandra Jew reported in (2004) 8 SCC 40 where it was the case of the officers of the forest department that they had been falsely implicated for offences punishable under sections 341, 323, 325, 506 and 386 read with section 114 of the Indian Penal Code (as is the case in the present instance), the Hon"ble Supreme Court categorically opined that the question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before section

197 can be invoked, according to the Hon'ble Supreme Court, it has to be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. An offence may be entirely unconnected with the official duty or it may be committed within the scope of official duty. It is only when it is either within the scope of official duty or in excess of it that the protection is claimable. [Emphasis Supplied]

6.3 The Hon'ble Supreme Court, in the said decision, further held that the provisions of section 197 fell in the chapter dealing with conditions requisite for initiation of proceedings and so therefore cognizance of such an offence by a court is barred by section 197 unless sanction is obtained. The court is precluded from entertaining a complaint or taking notice of it if the servant is accused of an offence committed during discharge of public duties. The

Hon'ble Supreme Court in the aforesaid judgement has held in paras 10 to 12 as under:

"10. Such being the nature of the provision the question is how should the expression, "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", be understood? What does it mean? "Official" according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In *B. Saha and Ors. v. M. S. Kochar* (1979 (4) SCC 177), it was held : (SCC pp. 184-85, para 17)

"The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197 (1), an Act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution and the said provision."

Use of the expression, "official duty" implies that the act or omission must have been done by the public in the course of his service and that it should have been in discharge of his duty. The Section does not extend its 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 omissions which are done by a public servant in discharge of official duty.

11. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in *Matajog Dobey v. H. C. Bhari* (AIR 1956 SC 44) thus :

"The offence alleged to have been committed (by the accused) must have something to do,

or must be related in some manner with the discharge of official duty ...

There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

12. 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 official to which applicability of Section 197 of the Code cannot be disputed. "

6.4 In the case of *State of Maharashtra vs. Devahari Devasingh Pawar and others* reported in (2008) 2 SCC 540, the Supreme Court has observed in para 14 as under:

"14. In *Romesh Lal Jain Vs. Naginder Singh Rana and others* (2006) 1 SCC 294, this Court held and observed as under:

33. The upshot of the aforementioned discussions is that whereas an order of

sanction in terms of Section 197 Cr.P.C. is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained of has nothing to do with the same. A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the accused cannot take the said plea or the court cannot consider the same at a later stage. Each case has to be considered on its own facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be

determined unless some evidence is taken, and in such an event, the said question may have to be considered even after the witnesses are examined.

In light of the above passage, we fail to see how tampering with the entries made in official registers, tearing of pages from different official registers and stowing them away in one's house can be related to the discharge of official duties. We do not have the slightest doubt that the allegations made against the accused related to acts that had no nexus or connection to the discharge of their official duties and, therefore, their prosecution on those allegations had no need of any sanction under Section 197 of the Code. "

Therefore each case has to be considered on its own merits.

6.5 In the case of D.T. Virupakshappa vs. C. Subhash reported in AIR 2015 SC 2022 which is almost similar on the facts of the present case, the Supreme Court held as under in paras 6 & 7:

"6. The question, whether sanction is necessary or not, may arise on any stage of the proceedings, and in a given case, it may arise at the stage of inception as held by this Court in Om Prakash and others v. State of Jharkhand Through The Secretary, Department of Home, Ranchi and another[1]. To quote:

"41. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception.

There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the

Code. It is not possible for us to hold that in such a case, the court cannot look into any documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea. ..."

7. In the case before us, the allegation is that the appellant exceeded in exercising his power during investigation of a criminal case and assaulted the respondent in order to extract some information with regard to the death of one Sannamma, and in that connection, the respondent was detained in the police station for some time. Therefore, the alleged conduct has an essential connection with the discharge of the official duty. Under Section 197 of CrPC, in case, the Government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, the previous sanction is necessary.

7. It is in light of this legal position therefore whether the learned Sessions Judge can be faulted in taking a view that the respondents no. 1 and 2 carried out such acts which had a reasonable connection and were so carried out in discharge of public duty is a question which can be decided on the facts of the case. Evidently, from the facts on hand, it appears that the respondents no. 1 and 2 had intercepted a few workers who according to the information received by these officers were trying to disturb or were going to a place to disturb the voting trend. Evidently, assuming for the sake of argument that the police officers respondents no. 1 and 2 did wield sticks and attack the complainant, such actions have to be appreciated in the facts of the case i.e. in light of the complaint lodged by such officers on the previous day i.e. on 24.09.2000.

8. The police officers were in uniform and were present at a place where they have been alleged to have carried out the assault on the complainant as a result of the message that they received. Apparently, therefore, they were there to carry out an act which was an integral part to the performance of their public duty.

9. As is evident from the case of Ganesh Chandra Jew (supra), section 197 has a mandatory character and no court shall take cognizance of an offence and entertain a complaint in absence of a sanction when such act is carried out by an officer who is acting or purporting to act in discharge of his public duty. Facts in the present case are eloquent enough to suggest that the view taken by the learned Sessions judge cannot be faulted.

10. Even the learned Single Judge of this court in the case of G.S. Vasavada vs. Shankarlal Govindji Joshi in Special Criminal Application No. 966 of 2012, on which reliance has been placed by learned advocate Mr. Parekh for the applicant, has categorically held that though it is considered best only after necessary evidence is led by the defence, it is open for the concerned court to take a view that the facts on record makes it abundantly clear that the act was in discharge of the official duties of the accused. Therefore, when the learned Sessions Judge has taken a view that on the basis of the complaint itself it is possible to take a view that the act was committed by the accused in discharge of his official duties, the court will have no other option but to insist for an appropriate sanction before it proceeds to take cognizance.

11. I do not see any reason, in exercise of powers under Article 227 of the Constitution of India which has been invoked by the petitioner, to take a different view particularly when the view taken by the learned Sessions Judge on the facts of the case was a view which was possible and legal. On the facts of the present case, therefore, interference against the order of the learned Sessions Judge dated 20.12.2008 is not warranted and the petition stands accordingly dismissed. Rule is discharged. Interim relief, if any shall stand vacated.