

(1988) 04 AHC CK 0022

In the Allahabad High Court

Case No : Criminal Misc. Application No. 8499 of 1986 & Criminal Miscellaneous Application No. 8499 of 1986

Bhagwan Prasad Saxena and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 21-04-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(2), 200, 397, 401
Penal Code, 1860 (IPC) — Section 120, 120B, 167, 170, 201

Citation : (1988) 12 ACR 515

Hon'ble Judges : A.N. Dikshita, J

Bench : Single Bench

Advocate : G.C. Saxena and T.P. Singh, for the Appellant;

Judgement

A.N. Dikshita, J.—Applicants Bhagwan Prasad Saxena, Chandra Kishore Mehrotra and Vijai Kumar Kapoor have filed this application u/s 482 Code of Criminal Procedure for quashing the proceedings of Case No. 983/9 of 1986 (N.S. Kaushik v. Murari Lal Arya and Ors.) pending in the Court of Addl. Chief Judicial Magistrate, Moradabad and also praying for staying operation of the order dated 14-5-1986 passed in the above case.

2. The above named applicants have also filed a criminal revision No. 1153 of 1986 for setting aside the order dated 14-5-86 passed by Additional Chief Judicial Magistrate, Moradabad in Case No. 983/9 of 1986 (Narottam Saran Kaushik v. Murari Lal Arya and Ors.) and also for staying operation of the said order. In the application u/s 482 Code of Criminal Procedure as well as in the criminal revision the order dated 14-5-86 has been assailed.

3. As common questions of fact and law are involved in the present case both the cases i.e. the application u/s 482 Code of Criminal Procedure and the Criminal Revision are disposed of by this judgment.

4. Facts in brief are that Respondent No. 2 N.S. Kaushik filed a complaint under

Sections 167/170/201/218/427 and 34/120 IPC in the Court of Additional Chief Judicial Magistrate, Moradabad. The learned Magistrate directed the case to be registered and for putting up the record for the statement u/s 200 Code of Criminal Procedure. The statement of the complainant-Respondent No. 2 was recorded by the learned Magistrate on 12-5-86 and the case was listed for orders on 13-5-86. On 14-5-86 the following orders were passed:

"The complainant has argued the case in person. The complaint discloses act of the accused persons in discharge of their official capacity. The question as to whether the proceedings are barred by provisions of 197 Code of Criminal Procedure can be decided at the time when accused persons appear and plead their cause. From perusal of evidence on record although no oral evidence has been produced, what ever documentary evidence has been produced, I find that prima facie a case under Sections 167/170/201/218 read with Section 34 and 120-B IPC is made out.

As such summon the accused persons under Sections above fixing 30-6-1986 for their appearance. Complainant to take steps in a week.

Sd/III. A.C.J.M. 14-5-1986"

The above order gave rise to the application u/s 482 Code of Criminal Procedure and the criminal revision. On 30-6-86 accused Vijai Kumar Kapoor filed an application for exemption of personal attendance which was allowed and he was directed to appear on the next date. On that very day besides the application for exemption of personal attendance accused No. 8 also filed applications for challenging the territorial jurisdiction as well as an application u/s 197 Code of Criminal Procedure. Another application was filed by accused No. 8 to drop the proceedings as the averments in the complaint do not show any criminal liability. The learned Magistrate ordered that all the applications shall be disposed of on 19-8-86 on which date the complainant was directed to either file written objections or argue the case. As summons issued against accused No. 1 to 7 were not received back fresh summons were issued for the date. On 20-8-86 when the case was taken up stay orders passed by this Court were filed and the proceedings were stayed.

5. It may be mentioned here that the complaint was filed against 8 accused persons and appearance was put in only on behalf of accused No. 8 Vijai Kumar Kapoor. The application u/s 482 Code of Criminal Procedure as well as criminal revision under Sections 397/401 Code of Criminal Procedure has been preferred by Bhagwan Prasad Saxena, accused No. 7, Chandra Kishore Mehrotra accused No. 6 and Vijai Kumar Kapoor accused No. 8. The other accused Nos. 1 to 5 are neither parties to the application nor to the revisions.

6. Heard the Counsel for the applicants and N.S. Kaushik, complainant opposite party No. 2.

7. Learned Counsel for the applicants Sri G.C. Saxena has strenuously urged that

the complaint is barred by Section 197 of the Code of Criminal Procedure as no prior sanction for prosecution had been obtained. It has been submitted that all the accused persons are officers or employees of the Allahabad Bank and would thus be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code and hence no cognizance could have been taken by the learned Magistrate, without a prior sanction being obtained.

8. There is no dispute that Allahabad Bank is a Nationalised Bank but it has to be examined whether the applicants will fall within the definition of Public Servant so as to attract Section 197 of the Code. Section 197 of the Code of Criminal Procedure reads as under:

"197. (1) When any person who is or was a Judge or Magistrate or 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-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

(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.

(3) The State Government may, by notification, direct that the provisions of Sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that Sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted

(4) The Central Government or the State Government as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

9. A perusal of the above provision clearly reveals that this provision can be attracted only where the public servant is such who is not removable from his office save or with the sanction of the Government. There appears to be no dispute that the applicants are not holding a post where they could not be removed except by or with the sanction of the Government. Even if the applicants are public servant still the protection afforded u/s 197 of the Code of

Criminal Procedure would not come to their rescue as Section 197 Code of Criminal Procedure is not attracted in the case of the applicants. Moreover, there is not a whisper that the applicants cannot be removed from service except by or with the sanction of the Government. The thrust of the submission of the learned Counsel for the applicants is that they are public servants within the meaning of Section 21 IPC and the act complained thereof was in the discharge of their official duty and as such Section 197 Code of Criminal Procedure would be attracted. The submission is fallacious. In support of this submission the learned Counsel for the applicants has placed reliance on a Single Judge decision in Criminal Revision No. 1328 of 1981 and Criminal Misc. Application No. 5934 of 1981 *Dinkar Rao v. Vijai Kumar Goel* decided on 7-5-85.

10. However, in the case of *K. Chandra Prasad v. Smt. J. Vanalatha Devi*, Criminal Appeal No. 829 of 1985 the Supreme Court took the view as under:

"6. It is very clear from this provision that this section is attracted only in cases where the public servant is such who is not removable from his office save by or with the sanction of the Government. It is not disputed that the Appellant is not holding a post where he could not be removed from service except by or with the sanction of the Government. In this view of the matter even if it is held that Appellant is a public servant still provisions of Section 197 are not attracted at all.

7. It was contended by the learned Counsel that the competent authority who can remove the Appellant from service derives his power under regulations and these regulations ultimately derive their authority from the Act of Parliament and therefore, it was contended that the regulations are framed with the approval of the Central Government but it does not mean that the Appellant cannot be removed from his service by anyone except the Government or with the sanction of the Government. Under these circumstances on plain reading of Section 197 the view taken by the Courts below could not be said to be erroneous. We, therefore, see no reason to entertain this appeal. It is, therefore, dismissed."

11. In view of the above decision of the Supreme Court it is clear that even assuming that an officer of a nationalized bank is a public servant even then no sanction is necessary u/s 197 Code of Criminal Procedure for his prosecution as he is not a public servant removable from his office save by or with the sanction of the Government.

12. In the light of the above submission of the learned Counsel for the applicant that the prosecution is had for want of sanction is rejected.

13. Learned Counsel for the applicants then submitted that the learned Magistrate has illegally summoned the applicants. Again I find no merit in the submission. The learned Magistrate on the basis of the oral testimony as well as the documentary evidence has come to a conclusion after applying his mind that a case has been made out for summoning the applicants. On a perusal of the complaint, the oral testimony as well as the record I do not find that the learned Magistrate committed any illegality or impropriety while summoning the

applicants.

14. Learned Counsel for the applicants has very studiously urged that no offence has been made out against the applicants. It is on the basis of the material before the learned Magistrate that the applicants were summoned. At this stage it is not possible to preempt the issue nor would it be expedient to throttle the case of opposite party No. 2 Who may bring necessary evidence oral as well as documentary on record to substantiate the allegations against the applicants.

15. The learned Counsel for the applicants lastly submitted that the learned Magistrate has no jurisdiction to entertain the complaint at Moradabad. The submission is ill-merited as the learned Magistrate on the basis of the allegations in the complaint, oral testimony as well as the documentary evidence assumed jurisdiction rightly in proceedings to dispose of the complaint. It cannot be said that the jurisdiction has been wrongfully or illegally usurped. However, if on the basis of the evidence oral as well as the documentary it is found at a later stage that the learned Magistrate had no jurisdiction, it would be open to him to pass appropriate orders.

16. This Court would not exercise its powers u/s 482 Code of Criminal Procedure as neither any abuse of the process of Court is found nor it is otherwise necessary to pass any order to secure the ends of justice. Further there is no illegality in issuing summons to the accused persons.

17. In view of the above, the application u/s 482 Code of Criminal Procedure is hereby rejected and the revision also fails and is hereby dismissed.