

(2000) 01 AHC CK 0181

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 2558 of 1996

Brij Raj Meena

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 05-01-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(1), 482
Penal Code, 1860 (IPC) — Section 100, 120B, 147, 148, 176
Prevention of Corruption Act, 1988 — Section 5(2), 5(A)
Uttar Pradesh Police Regulations, 1948 — Regulation 486(1)(3)

Citation : (2000) 2 CompLJ 1678

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Prem Prakash, for the Appellant; Satish Trivedi and A.D. Giri, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

B.K. Rathi, J.—This is a petition u/s 482, Cr.P.C. to quash the chargesheet and the proceedings of Criminal Case No. 2218 of 1996 State v. Brij Raj Meena and Ors. under Sections 147, 148, 504, 506, 323, 343, 395, 100, 217, 384, 297, 320, 193, 176, 177, 302/120B and 201/34, I.P.C. P.S. Bheempura, District Ballia, pending in the Court of Chief Judicial Magistrate, Ballia.

2. The relevant facts are that the petitioner is at present working as Superintendent of Police. Azamgarh and at the time of incident he was posted as Superintendent of Police, Ballia. The Station Officer, Bheempura Sri Ram Barai Yadav on 7-4-1995 at 1.00 a.m. lodged an F.I.R. at Crime No. 47 of 1995, in which it was mentioned that he along with the police party was on patrol duty when bomb were hurled upon their jeep, in which the Station Officer and the driver of the jeep received injuries. That in this crime one Atal Behari Misra, was over powered by the villagers and during the arrest he also received injuries. He was admitted in the police lock-up at 2.15 a.m. on 7-4-1995. He was examined at P.H.C., Kiraharapur and was also referred to District Hospital, Ballia. He was

transported to Ballin District Hospital where he died.

3. Later on Umesh Chandra Misra, brother of Atal Behari Misra sent an application on 13-4-1995 to the Inspector General of Police, Gorakhpur Zone and also addressed to the Governor. According to this application, Umesh Chandra Misra and his brother Atal Behari Misra were coming by train. They were both taken into custody by the Station House Officer, Bheempura and the other police personnel assaulted Atal Behari Misra. who died due to injuries in police custody. On this application, the case was entrusted for investigation to C.B. C.I.D. That the case was investigated by three Inspectors of C.B. C.I.D. and one Dy. S.P. Sri Jagdish Pandey and they have submitted that chargesheet for the above offences against the petitioner.

4. There are two contentions of the petitioner in this petition. The first is that the Officers, who investigated the case, are much junior to the petitioner and the provisions of paragraph 486 of the U.P. Police Regulations have not been followed and therefore, the investigation is liable to be quashed. The second contention is that there is no sanction for prosecution u/s 197, Cr. P.C. and therefore, the prosecution is barred.

5. The State of U.P. has filed counter affidavit of Sri Teerath Raj Pandey, Inspector C.B. C.I.D., who alleged that the allegations were manufactured by the Station Officer Bheempura Sri Ram Barai Yadav in Case Crime No. 47 of 1995. They were totally false and concocted. The petitioner as Superintendent of Police without examining the facts put the seal of authenticity over the false and concocted facts. That during investigation it was found that the murder of Atal Behari Misra was committed in the police custody. He was assaulted by the Station Officer and other police Officers. That therefore, the chargesheet has been submitted. It is further alleged that in paragraph 486 of the U.P. Police Regulations there is no bar for investigation of the case of the nature like this. It is further alleged that the Act of the petitioner has no nexus with his official duties and therefore, Section 197, Cr.P.C. has no application.

6. National Human Rights Commission also intervened in this petition and made a request that he may also be heard. The permission has been granted. National Human Rights Commission has filed counter affidavit of Sri K.L. Gandhi, which it was further pleaded that the victim Atal Behari Misra was a student of final year of M.A. of Banaras Hindu University. That there was a land dispute between Yogendra Yadav, one of the candidates of Panchayat election and the father of the deceased Atal Bihari Misra. The other candidate in the Panchayat election was Babban Yadav to whom the father of the deceased, the deceased himself and his family members were supporting. That the Panchayat election was going on, in which the Station House Officer was on patrol duty and Umesh Chandra Misra wrote a letter to Atal Behari Misra to reach on 7-4-1995 i.e. day of Panchayat elections to support Babban Yadav. That S.H.O. Bheempura Sri Ram Barai Yadav was supporting Yogendra Yadav and therefore, Atal Behari Misra and his brother were taken into custody and were assaulted. The condition of Atal Behari Misra

became serious and therefore, he was taken to the hospital, where he died and his dead body was burnt by the police itself. That the medical-examination of Atal Behari Misra shows that he received injuries due to police assault. It is, therefore, contended that the petitioner is being rightly prosecuted and the petition is liable to be dismissed.

7. I have heard Sri Prem Prakash, learned counsel for the petitioner, A.G.A. for the State and Sri A.D. Giri, Senior Advocate and Sri Satish Trivedi, learned counsel for National Human Rights Commission.

8. The fact resulting in the death of Atal Behari Misra cannot be decided in this petition and can be decided only after the evidence. Therefore, presuming the correctness of the prosecution case against the petitioner and the other police officials, it is to be seen whether the prosecution is liable to be quashed. Learned counsel for the petitioner has not challenged the facts and the same cannot be decided in the petition u/s 482, Cr.P.C. He has confined his arguments on the following two points :-

1. That the investigation of the case has not been done in accordance with the mandatory provisions of Paragraph 486 of the U.P. Police Regulations.

2. That the prosecution is barred for want of sanction u/s 197, Cr.P.C.

9. Regarding first point it is contended that Paragraph 486(I)(3) of the U.P. Police Regulations provides for investigation by an Officer of the Police higher in rank than the Officer charged. It is not disputed that at the time of incident the petitioner was the Superintendent of Police and the investigation in this case has been done by three Inspectors of C.B. C.I.D. and one Dy. S.P., who are admittedly lower in rank to the petitioner. The question, therefore, is whether the prosecution can be quashed on this ground. Learned counsel for the petitioner on this point has relied on the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, This was a case u/s 5(2) of the Prevention of Corruption Act. Section 5A of the Act provides that the Officers below the rank mentioned in Clauses (a) to (d) of the Act shall not investigate the offence. However, in that case the investigation was made by the S.H.O., who was below the said rank. After considering the various authorities, the Hon''ble Supreme Court has held that the prosecution did not satisfactorily explained the circumstances, which impelled the Superintendent of Police to pass an order directing the S.H.O. to investigate the case. Therefore, the Hon''ble Supreme Court quashed the direction of investigation passed by the Superintendent of Police and the proceedings were also quashed.

10. The next authority referred to is The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, in which it was held that U.P. Police Regulations para 486 Rule 1 is mandatory.

11. The last case referred to is the Division Bench decision of this High Court in Surendra Pal Singh v. State of U.P. 1987 Cri LJ 1188, in which it was held that

the only effect of Regulation 486(1)(3) is that a particular type of offences need to be investigated by an Officer of a specified rank. It was further held that it will supersede the provisions of Criminal Procedure Code. On this basis the argument of the learned counsel is that the investigation is liable to be quashed.

12. As against this, learned counsel Sri. A.D. Giri, Senior Advocate has referred to the case of A.C. Sharma Vs. Delhi Administration, . In this case it was observed that the function of investigation is merely to collect the evidence and any irregularity or even illegality in the course of collection of evidence can scarcely be considered by itself to affect the legality of the trial by an otherwise competent Court. The observation of the case H.N. Rishbud and Inder Singh Vs. The State of Delhi, was pointed out, in which it was held that an illegality committed in the course of investigation does not affect the competence and jurisdiction of the Court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused. It was further held that when any breach of the mandatory provisions relating to investigation is brought to the notice of the Court at an early stage of the trial, the Court will have to consider the nature and extent of the violation and pass appropriate orders for such investigation as may be called for, wholly or partly, and by such Officer as it considers appropriate.

13. The other authority referred to is Khandu Sonu Dhobi and Another Vs. State of Maharashtra, in which it was observed that an illegality committed in the course of investigation does not affect the competence and jurisdiction of the Court to try the accused. Where therefore, the trial of the case has proceeded to termination, the invalidity of the preceding investigation would not vitiate the conviction of the accused as a result of trial unless the illegality in the investigation has caused prejudice to the accused.

14. On the basis of these authorities, it has been argued by the learned counsel that technical mistakes in the investigation are immaterial. That it is only an irregularity in the investigation and not an illegality. It has not resulted in miscarriage of justice and it is not at all material for the trial. It is further contended that the illegality in the investigation cannot be a ground for quashing the trial u/s 482 Cr.P.C.

15. I have considered the arguments. There is no need to discuss in detail the two cases referred to by the learned counsel for the opposite party. Both these cases were considered in paragraphs 121 and 125 respectively in the case of State of Haryana v. Ch. Bhajan Lal (Supra). After considering the above cases and other cases, the above principle has been laid down by the Hon'ble Supreme Court in the case of "State of Haryana v. Ch. Bhajan Lal". The objection has been taken at the preliminary stage of the case. Admittedly the cognizance of the case has been taken by the C.J.M. but the trial has not yet proceeded and even the charges have not been framed. Therefore, this a preliminary stage of the case and illegality in the investigation and breach of mandatory provisions of

paragraph 486 of U.P. Police Regulations in this case should result in quashing of the prosecution.

16. Now coming to the second point regarding sanction u/s 197, Cr.P.C., admittedly, no sanction has been obtained. The contention of the learned counsel for opposite party is that the Act, which is ab initio without jurisdiction of the officer; and there is no reasonable nexus between the official work and the Act, no sanction u/s 197, Cr. P.C. is required. It is contended that the act has not been committed by the petitioner while acting or purporting to act in the discharge of his official duty. The learned counsel for the opposite party in support of the arguments has referred to the following cases:-

17. The first is B.S. Sambhu Vs. T.S. Krishnaswamy, . In this case the Munsif Magistrate made certain allegations against the Advocate in his remarks sent to the District Judge in the comments called by the District Judge in transfer application. The District Judge read those remarks in open Court. Therefore, he was being prosecuted u/s 499, I.P.C. It was held by the Hon''ble Supreme Court that there is no reasonable nexus between the Act complained of and the discharge of official-duty and therefore, the provision of Section 197 Cr. P.C. was not attracted.

18. The second case referred to is Shambhoo Nath Misra Vs. State of U.P. and others, In this case the allegation was that the petitioner, who is Cashier has fabricated the signatures of the complainant and drawn and misappropriated the amount of Rs. 44390 payable to the complainant. It was held that where the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public funds, he can be said to have acted in discharge of his official duties. Therefore, the plea of bar u/s 197, Cr.P.C. was overruled.

19. The third case referred to is Manohar Nath Kaul Vs. State of Jammu and Kashmir, . In this case the petitioner was a Regional Officer in the Directorate of Field Publicity, Government of India. He submitted wrong bills of air fare and received payment for the same. He was, therefore, being tried u/s 420, I.P.C. It was observed that it is not every offence committed by a public servant that requires sanction for prosecution u/s 197(1) Cr.P.C., nor even every act done by him while he is actually engaged in the performance of his official duties, but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It was further observed that an act constituting an offence, directly and reasonably connected with his official duty, will require sanction for prosecution u/s 197(1) Cr.P.C. It was, therefore, held that the petitioner is not entitled to protection u/s 197, Cr.P.C.

20. The last case referred to is Bakhshish Singh Brar Vs. Gurmej Kaur and Another, This was also a case of encounter death. It was observed that the question is while investigating and performing the duties as police officer was it necessary for the petitioner to conduct himself in such a manner which would

result in such consequences. However, in this case no finding of applicability of Section 197 Cr. P.C. was given. On the other hand, it was directed that it may be agitated after some evidence have been noted in the trial.

21. It is contended that the gist of these authorities that there should be a reasonable nexus between the act complained of and the official duties. That this is a cold blooded murder which has no nexus between the act and the official duties and therefore, sanction u/s 197 Cr.P.C. is not required. As against this, the learned counsel for the petitioner has referred to the Notification No. 1841/VI-538-71, dated January 30, 1975 published in U.P. Gazette Part 1, dated 15th February, 1975 of Grah Anubhag (Police) Anubhag-9, according to which the provision of Sub-section (2) of the said Section has been made applicable to the officers of the U.P. Police force charged with the maintenance of public order wherever they may be serving. Therefore, there is no dispute that Section 197 Cr.P.C. applies to the petitioner.

22. Now the question is whether there is any nexus between the act and the official duties. In this regard it is contended by the learned counsel for the petitioner that there is no allegation that the petitioner participated in the assault. On the other hand, the allegation is that the petitioner put his seal of the authenticity over the false and illegal acts of the S.O. and the other subordinate Officers. It is alleged that there is no iota of evidence that the petitioner has committed any offence. That the Investigating Officer recorded the statements of several witnesses, but they have not stated that the petitioner was present at the time of the incident. The act of the petitioner, therefore, was done in the official duties. The learned counsel for the petitioner has also referred to several cases. The first is Matajog Dobey Vs. H.C. Bhari, There were two complaints in this case. The Income Tax Investigation Commission raided the house of the petitioners. On objection by the petitioners it was alleged that one of the petitioners was tied with rope and was assaulted. The other petitioner was held by two police personnel and was mercilessly kicked and taken in police Van to the police station, where he was assaulted ? again before being sent to the hospital. In the circumstances, it was observed 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. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty. It was held that the sanction u/s 197 Cr.P.C. was necessary. The other authority referred to is Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others, . In this case the appellant was a President of the Jalgaon Municipality. The Municipality ordered for demolition of certain unauthorised constructions which the opposite parties resisted. They also physically assaulted the appellant, his driver and some others including the councillors. In the prosecution it was found by the Hon''ble Supreme Court that the acts were purported to have been done in the exercise of their official duty by the respondents. Therefore, a case for sanction u/s 197 Cr.P.C. is made out. The third case referred to is The Trustees of

Port of Bombay Vs. The Premier Automobiles Ltd. and Another, . It was a civil suit. However, reliance has been placed on the observation made in paragraph 10 as follows :-

A policeman acts or purports to act not only when he uses his lathi but also when he omits to open the lockup to set the arrested free or omits to produce him before a Magistrate. The ostensible basis of the whole conduct colours both doings and defaults and the use of the words "purporting to have been done", in their natural sweep, cover the commission-omission complex.

23. The next authority referred to is Costao Fernandes v. State at the instance of D.S.P., CBI, Bombay : 1996 (2) JT SC 519 : AIR 1996 SC 1383 : 1996 Cri LJ 1723. In this case a Custom Officer chased a smuggler carrying gold worth Rs. 8 lakh. Injuries were caused to him, and he committed murder. It was held that the act was done in discharge of his official duties and the sanction u/s 197 Cr.P.C. is necessary.

24. The last authority referred to is a Division Bench case of this High Court Harish Chandra Singh v. State of U.P., 1999 (38) ACC 224. In this case the petitioner was the Senior Superintendent of Police at Saharanpur. He had chased the deceased persons and the gunner of the Senior Superintendent of Police had opened fire causing death of several persons. In this case after considering the law on this point the Division Bench has held that the sanction is required u/s 197(1) Cr.P.C. for the prosecution of the petitioner.

25. I have carefully gone through the above authorities. As already said that the allegation of the prosecution is not that the petitioner participated in the actual assault. On the other hand, the allegation is that he put his seal of authenticity upon those false and fictitious facts as alleged in paragraph 6 of the counter affidavit of Sri Teerath Raj Pandey. This seal has been put purporting to act in discharge of his official duties. Therefore, it cannot be said that there is no reasonable nexus between the act complained of and the official duties of the petitioner. The petitioner put the seal in the discharge of his official duties. Therefore, in this case sanction for prosecution u/s 197 Cr.P.C. is also required for the prosecution of the petitioner.

26. In the result, the petition succeeds and is allowed and the prosecution of the petitioner in the above criminal Case No. 2218 of 1996 pending before the Chief Judicial Magistrate, Ballia is quashed. However, it may be clarified that the prosecution is free to again institute the prosecution against the petitioner after curing the illegalities as mentioned above.