
(1972) 07 AP CK 0009
In the Andhra Pradesh High Court

C. Sambasiva Raju	Vs	APPELLANT
S. Shiva Raj Reddy and Another		RESPONDENT

Date of Decision : 04-07-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 190, 197
Penal Code, 1860 (IPC) — Section 19, 499, 500

Citation : (1973) CriLJ 945

Hon'ble Judges : A.V. Krishna Rao, J

Bench : Single Bench

Judgement

A.V. Krishna Rao, J.—In this petition the petitioner seeks the relief of quashing the proceedings in C.C. No. 126 of 1972 on the file of the IV City Magistrate, Hyderabad.

2. Having regard to the arguments advanced before me, it is not necessary to state the facts in any great detail. The petitioner is an Executive Engineer, Zilla Parishad, Hyderabad. The 1st respondent is a contractor, P.W.D. (R & B). He belongs to a firm called Constructional Engineers and Builders. The firm to which - the 1st respondent belongs is on the list of approved contractors of the Zilla Pari-shad, Hyderabad. By and under his proceedings dated 9-11-1971. the petitioner had made an order to the following effect:

Sri Shiv Raj Reddy, Contractor of Zilla Parishad is hereby black-listed. He is debarred from undertaking any work relating to the Panchayat Raj Department for an indefinite period in the District of Hyderabad with immediate effect.

3. A copy of this order was sent to the 1st respondent and to all the concerned authorities in the Zilla Parishad and the Panchayat Rai Department and also the other offices in P.W.D. (R & B) and Electricity Department. The 1st Respondent had complained to the Superintending Engineer, Panchayat Raj, about his black-listing and the Superintending Engineer had on 5-1.1-71 wrote a D, O. letter to the petitioner requesting him to submit a detailed report in the matter. Thereafter on 17-11-1971. the Superintending Engineer issued proceedings

wherein he stated that the black-listing of the firm M/s. Allied Industries has been examined and it is found that the Executive Engineer, Zilla Parishad, Hyderabad, was not empowered to black-list any firm or contractors and that as such the orders issued by the Executive Engineer, Zilla Parishad, black-listing the 1st respondent stood cancelled. Thereafter on 23-11-1971 the 1st respondent had issued a legal notice to the petitioner stating that he was defamed and claiming Rs, 5000/- as liquidated damages for the monetary loss and harm to his prestige and reputation, consequent upon his being black-listed. On 6-1-1972, the 1st respondent filed the present complaint. C.C. No. 126 of 1972, charging the petitioner with an offence u/s 499, I.P.C. punishable u/s 500, IPC

4. The only question debated before me was whether the proceedings in C.C. No. 126 of 1972. Criminal Procedure Code, required sanction of the appropriate authority of the State Government for its cognizance.

5. What falls for determination by me, therefore, is whether on the facts of the alleged offence, the Magistrate could take cognizance of C.C. No. 126 of 1972.

6. The answer to the question turns upon the provisions of Section 197(1) of the Code of Criminal Procedure, which may usefully be extracted:

When any person who is a Judge within the meaning of Section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a State Government or the Central 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 employed in connection with the affairs of the Union of the Central Government; and

(b) In the case of a person employed in connection with the affairs of a State of the State Government.

7. The right to prosecute a person or persons who commit an alleged offence is a common right which is inherent in every citizen and that right can only be limited by legislation, either by express words or by necessary implication.

8. Section 190 of the Criminal Procedure Code empowers the Magistrates specified therein to take cognizance of any offence in the manner indicated in that section. Section 197 of the Code embodies an exception to Section 190. The object of the section is to prevent the commencement of vexatious proceedings against public servants regarding their acts which may be offences under the law. The language employed in Section 197 of the Code, however makes it clear that it is only a qualified protection and does not apply to all public servants and to all offences. Before the Section could be invoked, two conditions must be satisfied.

(1) That the accused must be a public servant of the kind mentioned in the Section, i.e. he must be a Judge or Magistrate or a public servant not removable from his office, save by or with the sanction of the State Government or Central Government; and

(2) The offence must be committed by the accused while acting or purporting to act in the discharge of his official duty.

9. As Section 197 of the Code is in the nature of an exception to the General rule contained in Section 190, Cr.PC the accused who invokes the Section as a bar to the prosecution must establish all the facts which brings the section into play.

10. By the Amending Act XVIII of 1923, the words "as such Judge or public servant" were replaced by the words "while acting or purporting to act in the discharge of his official duty. This apparently was done to amplify the words to make the sense clear. Even so, there has been some conflict in the decisions as to the proper interpretation of these words. It is not, however, necessary to refer to this conflict, as none can be said to exist now in view of a number of decisions of the Supreme Court interpreting Section 197. Cr.PC The scope and effect of Section 197(1), Cr.PC can no longer be said to be in doubt. I shall now make a reference to the cases which have interpreted Section 197(1). Cr.PC

11. In AIR 1948 128 (Privy Council) Lord Simonds observed:

A public servant can only be said to act or to purport to act in the discharge of his official duty if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the Judgment which he believes may be such an act: nor does a Government Medical Officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.

12. In Amrik Singh Vs. The State of Pepsu, Venkatarama Ayyar. J. observed-

... 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 from 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 required.

13. The test after considering the various authorities was put thus (at p. 311 of the report:

The result of the authorities may thus be summed up: It is not every offence committed by a public servant that requires sanction for prosecution u/s 197(1), Criminal 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, 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.

14. In *Shreekantiah Ramayya Munipalli Vs. The State of Bombay*, Bose, J, observed that Section 197 Criminal Procedure Code if it is to be constructed too narrowly, it can never be applied, because obviously it is no part of an official's duty to commit an offence and never can be. Then after examining the content of the language of the section, the learned Judge went on to say:

Therefore, the act complained of, namely, the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because accused 2 could not dispose of the goods save by the doing of an official act, namely, officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered so if it was official in the one case it was equally official in the other and the only difference would lie in the intention with which it was done; in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it.

15. In *Prabhakar V. Sinari Vs. Shanker Anant Verlekar*, the Supreme Court observed that there was no difficulty in finding the true rule which has been laid down by numerous decisions including those of the Privy Council, Federal Court and this Court and that it was only in the application of the said rule that certain amount of difficulty may be experienced owing to the peculiar facts of a particular case. They quoted from an earlier decision of the Supreme Court reported in *Matajog Dobey Vs. H.C. Bhari*, to the effect:

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, but not a pretended or fanciful claim, that he did it in the course of the performance of, his duty.

16. According to the Court what had to be found out was whether the act and the official duty were so interrelated that one could postulate reasonably that it was done by the accused in the performance of the official duty, though in excess of the needs and requirements of the situation.

17. In a recent case reported in , *Bhagwan Prasad Srivastava Vs. N.P. Mishra*, their Lordships observed that Section 197. Cr P. C. was designated to facilitate effective and unhampered performance of their official duty by public servants by providing for scrutiny of the allegations of commission of offence by them by

their superior authority and prior sanction for prosecution was a condition precedent to the cognizance of the case against them by the Court and that it was neither to be too narrowly construed nor too widely. A reference was made to earlier decisions of the Supreme Court and the principle that was approved was that it was not the "duty" which required examination so much as the "act" because an official act could be performed both in the discharge of the official duty as well as in dereliction of it. It was emphasised that there must be a reasonable connection between the two and the discharge of official duty and that the act should fall within the range of the official duties of the public servant concerned.

18. From the above pronouncements of the highest courts, the scope and interpretation of Section 197 (D. Cr.PC is no longer in doubt, but sometimes difficulties may arise in the application of the principles to the facts of a particular case.

19. What are the facts of the case? Is sanction for prosecution required on the facts of this case, bearing in mind above authoritative pronouncements? The accused is indisputably a public servant, who is an Executive Engineer in the Zilla Parishad, Hyderabad. He was entitled to call for tenders from approved contractors, and consider them. The complainant is one of the contractors of the Zilla Parishad. The complainant was black-listed by an order of the accused dated 9-11-1971. He felt that he was defamed by the order of the accused. He filed a complaint u/s 499 IPC which is punishable u/s 500, IPC. The impugned order shows that there were proceedings of the Executive Engineer, Zilla Parishad, Hyderabad, and that he was acting as such in his official capacity. A point was raised before me that the Executive Engineer was not competent to act by black-listing the complainant. In support of this contention, reference was made to the proceedings of the Superintending Engineer, Zilla Parishad, dated 17-11-1971 wherein the said officer observed that the Executive Engineer, Zilla Parishad, Hyderabad was not empowered to black-list any firm or contractors. But my attention was drawn to an earlier letter of the Superintending Engineer dated 5-11-1971 wherein he referred to a copy of the letter received from the firm of the complainant and the accused was merely requested a detailed report in the matter.

It is significant that if the Executive Engineer really was not empowered to black-list any one, the Superintending Engineer would certainly have stated so instead of merely calling for a report. The calling for a report was only to satisfy himself as to whether the action was justified. But it did not mean that the accused had not the competence to black-list any contractor. In the circumstances, I am inclined to think that the accused who was empowered to consider tenders and accept offers from contractors, possesses the power to black-list a contractor. No material is placed before me to take a different view. Even assuming that the accused had not the power to black-list still undeniably he purported to act in his capacity as a public servant in the discharge of his duties. In this case, the act

complained of is directly concerned with the official duties of the accused and he could claim that it was done by virtue of his office. The question whether he had acted in the proper discharge of his duties may have a bearing on the merits during the trial but cannot affect the question of sanction which should precede the institution of ,the prosecution. The quality of the act is complained of in the instant case is one which, in my opinion, falls within the scope and range of the official duties of the accused. Once that conclusion is come to, the restriction imposed by Section 197 t3r. P. C. regarding the initiation or commencement of prosecution against the accused is attracted and sanction of the concerned authority is a condition precedent for prosecution.

20. The act complained of in the Instant case is integrally connected with the duties attached to the office of the accused so as to be inseparable from them. The accused can reasonably claim that what he did was done by virtue of his office as an Executive Engineer. It was argued before me that the accused was actuated by malicious and dishonest motives in black-listing the complainant. Whatever the motive or intention of the accused may be, even if it was not done in the discharge of an official duty, still undeniably it must be held that he acted in the purported discharge of an official duty. The question of the motive or intention of the accused in black-listing the complainant will legitimately be the subject matter of investigation during the trial. To hold on the facts of this case that Section 197(1) of the Criminal Procedure Code is not attracted is to construe Section 197 too narrowly, a too narrow construction to be avoided as much as too wide construction.

21. The discussion above leads me to the only conclusion possible on the facts of this case viz., the sanction for prosecution of the accused contemplated by Section 197(1) Cr.PC was a prerequisite to the commencement of the proceedings in C.C. No. 126 of 1972 on the file of the IV City Magistrate, Hyderabad. The proceedings in the said case are, therefore, liable to be quashed, as the Court would have no jurisdiction to take cognizance of the complaint. The proceedings in C.C. No. 126 of 1972 on the file of the IV City Magistrate. Hyderabad, are therefore quashed.