
(1990) 08 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3354-M of 1990

Chaman Lal Sankhla, H.C.S.

APPELLANT

Vs

Narain Datt Vats, Advocate, Hissar

RESPONDENT

Date of Decision : 30-08-1990

Acts Referred:

Citation : (1990) 2 RCR(Criminal) 633

Hon'ble Judges : Jai Singh Sekhon, J

Advocate : Sh. R. N. Sharma, Sh. Baldev Singh, Advocates for appearing Parties

Judgement

J.S. Sekhon, J.

1. The controversy in this petition under section 482 of the Code of Criminal Procedure for quashment of the complaint for Offence Under Sections 351, 384, 500, 511 and 504, Indian Penal Code, is whether the trial Court is debarred from taking cognizance of the offences under section 197 of the Code and whether the general assertions regarding members of the Bar would exfacie amount to defamation.

2. The brief resume of facts relevant for the disposal of this petition is that the petitioner is a member of the Haryana Civil Service and was posted as Officer on Special Duty to the Administrator, C.A.D.A. Hissar. Smt. Neelam Vats wife of the complainant Shri Narain Datt Vats, Advocate, is working as Junior Scale Stenographer in that office. Due to the ailment of her son on 10/5/1989 she sent application for leave through her husband, i.e., Shri Narain Datt Vats. This application was handed over by Shri Narain Datt Vats to Amar Singh peon of that office at 7 a.m. as by then the accused petitioner had not arrived. The peon was requested to put up the application before the accused petitioner. After some time Amar Singh peon contacted the complainant in the Bar Room, Hissar, and apprised him of the accused having not entertained the application besides having called the complainant as bloody bastard and idiot etc. The complainant then took back this application from the peon after getting an endorsement from the latter to the effect that the accused had refused to entertain the application.

Thereafter, on the same day when the accused came to know of this endorsement by the peon, he directed the peon to fetch the complainant from the Bar Room.

3. On this, the complainant along with his colleague Harish Chander Chaudhary, Advocate, went to the office of the accused. On seeing both the lawyers, it is alleged, the accused got up from his seat and shouted as to why they have come to his office as he had called only the complainant. On enquiry by the complainant as to why he was called to the office, the accused threatened that the complainant should hand over the application along with the note of the peon failing which the accused will terminate the services of the complainant's wife and would lodge a complaint against the complainant. On the insistence of the complainant as to why the accused had refused to entertain the application, the accused remarked that he was not answerable to the complainant. He further stated, "You are just the hungry dogs which bite the pockets of villagers coming to the court". The complainant then requested the accused not to behave in that manner being a responsible officer but the accused secured the complainant from the front of his shirt and pushed him out of the office while giving filthy abuses and threatening the complainant to kill. The accused also tried to give slaps to the complainant.

4. The trial Court after recording the preliminary evidence of the complainant and his colleague Shri Harish Chander Chaudhry, Advocate, summoned the accused to face trial for offence under section 500, Indian Penal Code, only, vide order dated 22.5.1989. Both the parties then filed revision petitions before the Sessions Judge, Hissar, against the said order of the trial Court. The learned Sessions Judge, Hissar, dismissed the revision petition of the accused petitioner while the revision petition filed by the complainant was accepted vide order dated 14.8.1989 with the direction that as the statements of the witnesses make out a prima facie case for offences under sections 355, and 504, Indian Penal Code also, the trial Court should summon the accused for these offences also.

5. Still being aggrieved against the abovereferred order of the trial Court as well as of the revisional Court the accused petitioner has filed this petition under section 482 of the Code of Criminal Procedure, 1973, for quashment of the abovereferred orders and the complaint.

6. I have heard the learned counsel for the parties besides perusing the record.

7. The learned counsel for the respondent had raised a preliminary objection questioning the maintainability of this petition under section 482 of the Code, contending that virtually it is a second revision petition which is barred by the provisions of subsection (3) of section 397 of the Code. Reliance in this regard has been placed on the decision of the Apex Court in *Rajan Kumar Manchanda v. State of Karnataka*, 1988(2) Recent Criminal Reports 622: 1989(1) All India Criminal Law Reporter 234. The learned counsel for the petitioner, on the other hand, relying upon the decision of the Division Bench of this Court in *Charanjit*

Singh and others v. Smt. Gursharan Kaur, 1990(2) RCR(Crl.) 584 (P&H) : 1990 Crl. L.J. 1264 , submitted that the inherent jurisdiction of the High Court under section 482 of the Code is altogether different than its revisional powers and the present petition is well maintainable.

8. The decision of the Apex Court in Rajan Kumar Manchanda's case (supra) was noticed and distinguished by the Division Bench of this Court in Charanjit Singh's case (supra) in paragraph 13 of the judgment by holding that the decision was founded on the concession of counsel that the application under section 482 was really one for revision of the order of the Magistrate, which had earlier been examined by the Sessions Judge. Towards the fag end of paragraph 15. the Division Bench of this Court remarked that as a matter of fact in Raj Kapoor's case (1980 Cri. L.J. 202) it was not held that inherent jurisdiction of the High Court under section 482 of the Code is taken away in appropriate cases on the ground of bar under section 397 (3) of the Code, The Division Bench had relied upon an earlier judgment of this Court in Mukhtiar Singh v. Sarwan Singh and another, 1988(2) Vol. 94 P.L.R. 477, wherein it was held that the bar contained in subsection (3) of section 397 of the Code could not bar the High Court from interfering with an order of the lower court where it amounts to an abuse of the process of law by invoking the inherent jurisdiction under section 482 of the Code. Thus, there is no force in the preliminary objection of the learned counsel for the respondent regarding the maintainability of this petition.

9. The question then arises, whether the provisions of section 197 of the Code are attracted to the facts of the case. It is contended that the acts imputed to the accusedpetitioner were done by him in the performance of his official duties. There is no dispute between the parties that Shri Chaman Lal Sankhla is a member of the Haryana Civil Service and was posted as Officer on Special Duty in the office of the Administrator, C.A.D.A., Hissar and Smt. Neelam Vats, wife of the complainant, was working under him as Stenographer. Thus. the accusedpetitioner was working as public servant under the State Government of Haryana as defined in clause Twelfth of section 21 of the Indian Penal Code. According to section 2 (y) of the Code the words and expressions used herein and not defined but defined in the Indian Penal Code shall have the meaning respectively assigned to them in the Penal Code. The term "public servant" having not been defined in the Code of Criminal Procedure, the provisions of section 21, clause Twelfth defining this term shall be applicable while considering the import of section 197 of the Code of Criminal Procedure. The relevant portion of section 197 of the Code reads as under :

197. Prosecution of Judges and public servants. (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. * * * * *

3. The State Government may, by notification, direct that the provisions of subsection (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 subsection will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

4. * * * * *

A bare glance through this section, leaves no doubt that it bars the prosecution of Judges and public servants except with the sanction of the Government concerned regarding any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties.

10. The term "purporting to act in the discharge of his official duty" figuring in subsection (1) of section 197 is of wider import than the term "acting in the discharge of his official duty" because it will embrace all those acts also which strictly speaking would not be covered by the term "acting in the discharge of official duty". The word "purport" being not of legal terminology, its ordinary meaning has to be gathered from the English, Dictionary. The word "purport" has been defined in Chamber 20th Century Dictionary (page 1048) as meaning conveyed, substance, gist, tenor, outward appearance, guise, as conveying an impression." Thus, it can be well said that if a public servant in the performance of his official duty does some thing which strictly speaking does not fall within the ambit of his duty but is so interlinked that it cannot be separated from such duty then the provisions of section 197 of the Code would be attracted because the legislature had. enacted this section in order to save the public servants or judicial officers from facing frivolous litigation at the instance of private aggrieved parties without obtaining the sanction of the concerned Government.

11. The basic authority on the point is the decision of the Apex Court in Matajog Dobey v. H.C. Bhari, A.I.R. 1946 S.C. 44. In that case, the facts were that in certain proceedings pending before the Incometax Investigation Commission, it was found necessary to search two premises.

17. Kalakar Street and 36, Amenian Street for the purpose of taking copies and securing possession of certain books, papers and documents believed to be kept at those places. A warrant was issued by the Commission for this purpose in favour of Shri H.C. Bhari and other officials. The authorised officials went to the Kalakar Street premises on the morning of December 19, 1950. Matajog Dobey

accusedappellant's version was that when he found these officials forcibly breaking open the entrance door of the flat he challenged them and requested them to desist but these officials did not pay any heed to him and broke open the outer door & entered the premises. He further maintained that these officials tied him with a rope and caused injuries. These four officials also raided the Armenian Street premises where Nandram Agarwala was present who found these officials breaking open the lock of the door. He protested saying that these actions were illegal upon which two policemen held Agarwala down and mercilessly beat him. The trial Court summoned all these officials to face trial for offences under sections 323, Indian Penal Code. During the course of the trial, the objection regarding the bar of taking of cognizance under section 197 of the Code was raised by the accusedofficials on the ground that they were acting in the performance of their official duties. The Presidency Magistrate before whom the case was pending upheld this objection and discharged all the accused. The complainant then went up to the High Court in revision. The High Court also affirmed the order of the Presidency Magistrate. However, the trial Court overruled a similar objection of the accused in the complaint filed by Matajog Dobey but the High Court in revision filed by the accused upheld this objection. Under these circumstances, both the complainants approached the Apex Court and the Apex Court upheld the decision of the High Court by observing paragraph 17 of the judgment that 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. In that case, the following observations of the Apex Court in *Shreekantiah Ramayya Munipalli v. State of Bombay*, A.I.R. 1955 S.C. 287 were relied upon :

"Now it is obvious that if section 197 of the Code of Criminal Procedure is construed to narrowly, it can never be applied, for of course, it is no part of an official/s duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning."

Again in *Matajog Dobey's* case (*supra*), the Apex Court relied upon the following observations in *Amrik Singh v. State of Pepsu*, A.I.R. 1955 S.C. 309:

"If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section, 197 (1) would be necessary; but if there was no necessary connection between them and the performance of these duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required."

12. After referring to the abovereferred two earlier judgments, in paragraph 19, the Apex Court observed that 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 his duty.

13. In the case in hand, admittedly, the accusedpetitioner was controlling officer of Smt. Neelam Vats, working as Junior Scale Stenographer in his office. The moment the application for leave was presented in the office of the accused, it became the property of that office and the accused was expected to pass appropriate orders regarding the granting of leave etc. No doubt, the complainant had averred in the complaint that Amar Singh peon of the office of the C. A.D.A. had returned the application to him in the Bar Room saying that the accused had thrown away the said application and rebuked him as to why he took the application and that according to Amar Singh peon, the accused had called the complainant as bloody bastard and idiot etc. From these allegations, it can be well inferred that the accused had directed the peon to return this application to the complainant as he had not appreciated the act of his peon in accepting the application for leave of Smt. Neelam Vats, Stenographer of his office. The allegation regarding the accused having called the complainant as bloody bastard and idiot while returning the application for, leave to Amar Singh peon are conspicuously missing from the endorsement of the peon on this application as in paragraph 5 of the complaint it is stated that the complainant had asked the peon to give a note on the application to the effect that the accused had refused to entertain the application for leave. Thus, even if the application had been returned by Amar Singh peon to the complainant the accused was still within his right to demand the production of that application for passing an appropriate order. So, it can be well said that the accused was doing his official duty when he was demanding the handing over of the application to him from the complainant. The alleged threats given by the accused to the complainant when the latter refused to hand over the application are obviously for enforcing the complainant to hand over the application to the accused and cannot be said to be actual threats in any form but at the most boastful acts in order to enforce the complainant to part with the application. However, the act of the accused in securing the complainant from the front. of his neck and tearing his shirt in the process or pushing him outside, if believed, cannot be said to have been committed during the performance of his official duty.

14. The decision of the Calcutta High Court, relied upon by the learned counsel for the complainantrespondent in Jatin Chakraborty v. V.K. Chakraborty and another, 1989 Cr. L.J. 1802, is aptly applicable to the case in hand as therein the act of a Minister assaulting a certain officer within the precincts of the Secretariat was held to be not in the discharge of his official duty.

15. The decision of the Apex Court in Pukhraj v. State of Rajasthan and another, A.I.R. 1973 S.C. 2591 is also applicable to the case in hand as in that case, a clerk of the Head Post Office was given kicks and abuses by the Post Master General during the inspection when the complainant was submitting his representation for cancellation of his transfer. Under these circumstances, it was held that the acts complained of could not be said to have been done in purported exercise of his duty.

16. Faced with this situation, the learned counsel for the Petitioner contended that these allegations on the face of it being highly improbable are not acceptable. It is too early to hold so as there is nothing on record in coming to this conclusion, especially when the testimony of the complainant Or the other eyewitness, namely, Harish Chander Chaudhary in this regard has. not so far been subjected to the test of touchstone of crossexamination.

17. Under these circumstances at the most it can be said that the accused was required to be summoned by the trial Court for offences under sections 355 and 504 of Indian Penal Code only and the findings of the learned Sessions Judge in revision that the accused should be summoned for offence under Section 384, Indian Penal Code, is not justifiable because, as already discussed, the complainant was not put in fear of any injury to deliver any property or valuable security.

18. The question then arises whether the general allegations against the members of the Bar to the effect that they are just hungry dogs which bite the pockets of the villagers coming to the Court would make exfacie offence under section 500, Indian Penal Code. It appears that the accusedpetitioner had allegedly dubbed the complainant and his colleague Shri Harish Chander Chaudhary as hungry dogs because there is no indication available therefrom that this imputation was attributed to the lawyers as a class or the complainant and his colleague only. Thus, no interference is called for at this stage for summoning the accused under section 500, Indian Penal Code.

19. In view of the above observation, it cannot be said at this stage that the act of the accusedpetitioner in assaulting the complainant or uttering defamatory words referred above was so integrally connected with the duties attaching to the office as to be inseparable from them, no case for quashment of the order of the trial Court summoning the accused for offence under section 500, Indian Penal Code is made out. However, the order of the learned Sessions Judge on revisional side to the extent of summoning the accused for offence under section 384, Indian Penal Code, being not justifiable is hereby quashed by partly accepting this petition.

20. However, as the complainant and the material witness Shri Harish Chander Chaudhry happened to be lawyers practicing in the Courts at Hissar, it would not be in the larger interest of the administration of justice that this complaint, should be tried by the Courts at Hissar as justice should not only be administered but should appear to have been done because otherwise people would lose confidence in the administration of justice. Taking suo moto cognizance of this fact, the case, is therefore, ordered to be withdrawn from the trial Court at Hissar and is entrusted to the Chief Judicial Magistrate, Ambala, who shall either himself try the case or entrust, it to some competent Court for trial.

21. The parties through their counsel are directed to appear before the Chief Judicial Magistrate, Ambala on 17990.