
(1952) 08 MP CK 0011
In the Madhya Pradesh High Court

Chaturbhuj

APPELLANT

Vs

Bhojamal

RESPONDENT

Date of Decision : 23-08-1952

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 197
Madhya Pradesh Municipalities Act, 1961 — Section 267

Citation : (1953) CriLJ 596

Hon'ble Judges : Krishnan, J.C.

Bench : Single Bench

Judgement

Krishnan, J.C.

1. On a revision application before him the learned S.J., Datia has made this reference recommending that the criminal proceedings against the applicant Chaturbhuj "alias" Chaturesh, Executive Officer of the Datia Municipality, should be quashed as they have been started without government sanction u/s 197 of the Cr.P.C. We have the usual questions, firstly, whether the executive officer of the Datia Municipality is a public servant of the class denoted in Section 197 of the Cr.P.C. secondly, whether the alleged act in question for which the complaint has been filed was one done by the executive officer in discharge of his duties or while purporting to act as such public servant. A third point has been introduced on behalf of the executive officer, that even if he is not entitled to the benefit of Section 197, Cr.P.C. still he should not be prosecuted for this offence without the sanction of government, because there is a Rewa law now applicable to the entire V.P. providing that no public servant should be prosecuted without government sanction for an act done in the discharge of his duties or while purporting to act as such public servant. That Rewa law (Rewa State Public Servants Prosecution Act of 1827) it is contended, is supplementary to and not contradictory with the central enactment in Section 197 of the Cr.P.C. and is, therefore, not abrogated by, but continues to be in force side by side with that law.

2. Since 1948 the Datia Municipality is governed by the Rewa State Municipalities Act of 1946 which is now the law in regard to Municipalities all over the V.P. This Rewa Act itself is in its general scheme similar to the U.P. Act on the same subject; but the Secretary to the Municipality under it is in a much stronger position than the Executive Officers under the U.P. Act, a point to which we shall come again. The Secretary to the Municipality is empowered by Section 232, C.J. (2) of the Rewa State Municipalities Act to remove from a public street any obstructions, or articles exposed for sale, or structures or booths, placed there without the written permission of the Board; a public street including foot-paths and lanes, Bhoja Mal the opposite party had put up a sort of booth on a foot-path and public street at Datia in which he was selling iron utensils. The Secretary went and removed the structure. Either during the removal or immediately after it, the owner Bhoja Mal and the Secretary had a quarrel. Both of them had injuries some received by the accidental fall of the thatch of the structure, and some probably by lathi blows; each alleged that the other took the pole that had been supporting the thatch and beat him with it. Accordingly, there were two cases, both being taken up by the Magistrate at about the same time. However, the case by the Secretary against Bhoja Mal proceeded while in the present one by Bhoja Mal against the Secretary, the Magistrate was invited to give a decision on whether the case could proceed without the sanction of the State Government. The Magistrate held that it could; whereupon an application was made before the S.J. who formed the opinion that sanction was necessary, and made this reference.

3. POINT No. 1. Sections 63 and 64 of the Rewa State Municipalities Act contain the law regarding the appointment of the Secretary. Section 63 enacts that every board shall appoint a Secretary within two months of its formation or the occurrence of the vacancy as the case may be unless Government otherwise orders. The salary and the conditions of service of the Secretary shall be subject to the approval of Government. Section 64 is in regard to the punishment and dismissal of the Secretary. Section 64, Clause (1) which materially differs from the corresponding section in some of the other Municipal Acts runs thus:

A Board may dismiss or remove its Secretary by a special resolution supported by not less than one half of the members of the Board for the time being with the previous approval of Government.

This is similar but not literally identical with the words "any public servant who is not removable from his office save by or with the sanction of State Government." By approval is meant ratification of an act or proposal, arrived at after a process of mental application to the circumstances that gave rise to it. u/s 64, the Board having resolved that the Secretary must be dismissed, should communicate to Government which will consider the matter and approve or disapprove as the case may be but the resolution to remove can take effect and the officer actually removed only after the approval is given by Government. In case of sanction also the removing authority makes a report to the Government and invites it to say

that the man may be dismissed. Thus "previous approval" and "sanction" have the same purport. Thus I hold that the Secretary of the Municipality is one who can be removed only with the previous approval or sanction of the Government. That he is a public servant is obvious; in fact Section 267 of the Rewa Municipalities Act expressly enacts so.

4. POINT No. 2. The next question is whether this alleged act of causing hurt to the owner of an unauthorised structure was one committed by the Secretary while acting or purporting to act in discharge of his official duties. If the "duties as such public servant" are narrowly interpreted, every act for which a public servant is charged in a criminal case would naturally be outside the strict scope of his authority. It is obviously not a part of the duties of a Secretary to beat any shop-keeper who refuses to remove an unauthorised structure. But in day-to-day conduct of business this narrow and pedantic interpretation may cause serious difficulties; that is why Section 197 Cr.P.C. adds "purporting to act", in other words, the strict scope and authority of public office might be exceeded, but it might not be so far exceeded, as to be without the colour of the office exercised in good faith. The line has to be drawn somewhere between the very narrow inner circle of official duties strictly so called, and the very large number of acts altogether outside the scope of official duties which no reasonable man would deem to be committed under the colour of that office. Where exactly that line is to be drawn is a problem not of principle but of prudence and reasonableness varying with circumstances of each case. The reported cases differ in the application of this principle to the circumstances of each case no two of which can be similar. The vast majority of the reported cases are of criminal misappropriation, or extortion, or bribe taking, all of which lie so far outside the scope of official duties that they cannot at all be deemed to have been done while the servant was purporting to act in official capacity or was acting in the colour of his office. That is why many of the rulings cited by the parties here are not of much assistance.

5. However, there are a few reported cases which are similar to the present one. In the case reported in *Ram Singh v. S.A. Rizvi* AIR 1935 Pat 52 it was held that the alleged act though not strictly part of the public servants' duties was so connected with their performance that it was impossible to say that it was an independent and unconnected act. The act was intimately connected with the discharge of official duties and sanction was considered necessary. Another case very similar to the present one is reported in *Re: Tentu Appalaswamy*, . A Municipal Health Officer was objecting to a cow-herd tying a cow to a tree in the Municipal area. He had no doubt the authority to remove the cow and punish the cowherd; but he slapped him. It was held:

Certainly it was no part of the duty of the petitioner to strike the complainant on his neck and face; but the question is whether, in the words of Section 197, Criminal P.C., the Health Officer purported to act in the discharge of in official duty. It was not the case of the complainant that the Health Officer bore any

personal animosity against him; it was because the complaint had done something which the Health Officer thought he ought not to have done, that the Health Officer interfered; although if the complainant's story is true, he exceeded his duty. It is of course no part of the duty of any person to commit an offence, but it is clear that Section 197, Criminal P.C. is intended to protect public servants from frivolous complaints made while they are doing their duty as public servants. The petitioner was undoubtedly acting as a public servant when he interfered with the complainant and struck him. I, therefore, find that the sanction of the local government was necessary before this complaint could be filed. The petition is therefore allowed; the proceedings in the Sub-Magistrate's Court are set aside and the Sub-Magistrate is ordered to return the complaint to the complainant. It is of course open to the complainant to represent the complaint after he has obtained sanction.

In the present case the Secretary of the Municipality here was not authorised to assault the shopkeeper who had put up the obstruction; but the alleged hurt even according to the complainant, was caused during a quarrel that was not the seeking of the public servant, but one which he was dragged into, while discharging his public duties. Even if I draw the line much nearer to the inner circle of public duties proper than in the Madras case, still it would be an act committed while purporting to act in discharge of the public duties.

6. "Point No. 3," It is unnecessary in this case to decide if the Rewa State Public Servants Prosecution Act of 1927 is still in force here after the coming into force of the Criminal P.C. as in force in the rest of India.

7. I hold that sanction is necessary and accepted the reference. The proceedings subsequent to the filing of the complaint and the examination u/s 200, Criminal P.C. are quashed. The Magistrate should give reasonable time to the complainant to bring the sanction. If it is brought, the case should start from that stage; else the complaint should be dismissed.