

(2009) 01 SC CK 0004

In the Supreme Court Of India

Case No : Criminal Appeal No. 8 of 2009 (Arising out of S.L.P. (Criminal) No. 2864 of 2007)

Choudhury Parveen Sultana

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 197, 397, 401, 482
Penal Code, 1860 (IPC) — Section 120B, 307, 326, 34, 384

Citation : (2009) 1 ACR 490 : AIR 2009 SC 1404 : (2009) AIRSCW 861 : (2010) AIRSCW 232 : (2009) 1 ALT(Cri) 302 : (2009) 2 CALLT 68 : (2009) CLT 563 : (2009) CriLJ 1318 : (2009) 234 ELT 196 : (2008) 3 GLR 2082 : (2009) 1 JT 347 : (2009) 4 RLW 3082 : (2009) 1 SCALE 37

Hon'ble Judges : Markandey Katju, J;Altamas kabir, J

Bench : Division Bench

Advocate : Pijush K. Roy and Sunil Kumar Verma, for the Appellant; Suchit Mohanta, Amit Sharma, Anupam Lal Das, Avijit Bhattacharjee and Saumya Kundu, for the Respondent

Final Decision : Allowed

Judgement

Altamas Kabir, J.—Leave granted.

2. The short point involved in this appeal is whether in view of Section 197 of the Code of Criminal Procedure, previous sanction of the State Government was necessary for prosecuting the respondent No. 2, Sahabul Hussain, u/s 384/506 of the Indian Penal Code.

3. The respondent No. 2 belongs to the West Bengal Police Service and was posted as Deputy Superintendent of Police (D.N.T.) at Behrampore, District Murshidabad, West Bengal. On 9th September, 2005, at about 9.15/9.30 in the morning one Samiul Choudhury, the husband of the appellant herein, was shot at and suffered grievous injury to his right eye. Thereafter, in a statement given by him to the Inspector in-charge of Behrampore Police Station, he claimed that the

assailants were the associates of Mohan Lal, Jalal, Kamal, Babul and Kabir of Zamindar para. On the basis of the said statement Behrampur Police Station Case No. 348 dated 9.11.2005 was registered under Sections 326/307/120B/34 IPC read with Sections 25/27 of the Arms Act. Subsequently, the appellant herein filed an application before the Chief Judicial Magistrate, Murshidabad, alleging commission of offences by the respondent No. 2 and another punishable under Sections 387/504/34 IPC and the said complaint was registered as C.R.Case No. 543 of 2005.

4. In the aforesaid complaint it was alleged that on 9.11.2005 Samiul Choudhury was shot at near his house and thereafter he was admitted to the Behrampur New General Hospital and police investigation was started. It was also alleged that on the pretext of conducting investigation the respondent No. 2 and his co-accused used to come to the house of the appellant and on 18th December, 2005 and also on 19th December, 2005, the respondent No. 2 and the other accused came to the house of the appellant and threatened her husband and wanted the husband of the appellant to make a tutored statement and under threat even tried to obtain his signature on a blank paper. It was also claimed that the appellant's husband lodged a complaint with the local police authorities and higher authorities also but no action was taken and the appellant was, therefore, compelled to move the Chief Judicial Magistrate Murshidabad by way of the said complaint. The learned Magistrate took cognizance of the offence by his order dated 26.9.2004 and transferred the case to the 2nd Court of Judicial Magistrate, Behrampur, for inquiry and trial. After transfer of the case the appellant and her husband were examined on solemn affirmation by the learned Magistrate on 14.2.2006 and summons were directed to be issued under Sections 384/506 IPC.

5. Being aggrieved by the cognizance taken and the issuance of process the respondent No. 2 moved the High Court under Sections 397/401 read with Section 482 Cr.P.C. for quashing the cognizance taken and also the issue of process. The main ground of challenge was that being in the employment of the State Government the respondent No. 2 enjoyed the protection of Section 197 Cr.P.C. and that no Court could take cognizance of the offence alleged to have been committed by the respondent No. 2 except with the previous sanction of the State Government. It was also contended that the complaint disclosed that the offence was alleged to have been committed by the respondent No. 2 during the course of investigation in connection with Behrampur Police Station Case No. 348 dated 9.11.2005, and, accordingly, such offence, if at all committed, had been committed by the respondent No. 2 while discharging official duties which brought him within the protective umbrella of Section 197 Cr.P.C. In support of the aforesaid contention made on behalf of the respondent No. 2 reliance was placed on the decision of this Court in Sankaran Moitra Vs. Sadhna Das and Another, wherein after considering various case law on the subject the majority view was that the important criteria to be applied with regard to the invocation of Section 197 of the Code was that the act complained of must have been performed in discharge of or in the purported discharge of duty. This Court

ultimately, came to the conclusion that dispensing with jurisdictional or statutory requirements could ultimately affect the adjudication itself and could result in loss of public confidence in the institution. The High Court was, therefore, of the view that in the facts of the case it was quite clear that the proceedings before the Magistrate had been vitiated in the absence of sanction having been obtained for prosecution of the respondent No. 2 in terms of Section 197 Cr.P.C. The High Court, accordingly, quashed the proceedings and the cognizance taken on the basis thereof. The appellant is before us against the said order of the High Court.

6. Mr. Pijush K. Roy, learned advocate who appeared for the appellant, submitted that even in Sankaran Moitra's case (*supra*) this Court had held that committing a criminal offence, which was not part of the duties of the officer concerned, could not be said to be an act performed in the course of discharge of official duties. Mr. Roy submitted that in the instant case the acts complained of against the respondent No. 2 could never be said to have been part of his official duties. In other words, even if the acts complained of were done during investigation, it could not be said that the same were part of the respondent's official duties and hence the protection of Section 197 Cr.P.C. was not available to the respondent No. 2.

7. In support of his submissions Mr. Roy firstly referred to the decision of this Court in *Pukhraj Vs. State of Rajasthan and Another*, where the same question was dealt with and it was held that assaulting the complainant and abusing him when the complainant came to submit his representation for cancellation of his transfer could not by any standard be said to be part of the official duties to be exercised by the authority concerned.

8. A similar view was taken in *Bhagwan Prasad Srivastava Vs. N.P. Mishra*, where a complaint had been filed that the accused, who was a civil surgeon, used defamatory and abusive words and got the complainant pushed out by the cook of the hospital. The question posed was whether the case was covered by Section 197 Cr.P.C. and whether previous sanction of the superior authority was necessary before the trial Court could take cognizance of the case. In the facts of the case, this Court was of the view that the case was not covered by Section 197 Cr.P.C. and that the object and purpose underlying Section 197 Cr.P.C. to afford protection to public servant against frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. It was also observed that the Section 197 has been designed to facilitate effective and unhampered performance of their official duty by public servants by providing for scrutiny into the allegations of commission of offence by them by their superior authorities and prior sanction for their prosecution was a condition precedent to the taking of cognizance of the cases against them by the Courts. It was finally observed that the question whether a particular act is done by a public servant in the discharge of his official duties is substantially one of fact to be determined in the circumstances of each case.

9. Reference was also made to the decision of this Court in the case of Parkash Singh Badal and Another Vs. State of Punjab and Others, where the same question was considered and similar observations were made.

10. Mr. Roy submitted that in the facts of this case also, since the acts complained of were not part of the official duties of the respondent No. 2, they did not attract the bar of Section 197 Cr.P.C. and the Magistrate had quite lawfully taken cognizance of the offence and had issued process.

11. Mr. Suchit Mohanta, who appeared for the respondent No. 2 supported the judgment of the High Court and submitted that since the acts complained of were alleged to have been committed during investigation it had been rightly held by the High Court that the same had been done in the discharge of official duties by the respondent No. 2.

12. The same stand was taken by Mr. Avijit Bhattacharjee, appearing for the State of West Bengal. He urged that in view of the decision in Sankaran Moitra's case there was no scope to contend that the bar u/s 197 Cr.P.C. did not apply to the facts of the case. Mr. Bhattacharjee submitted that the acts complained of had been performed by the respondent No. 2 during the course of investigation, which was part of the official duties required to be discharged by him and hence his case came squarely within the protective umbrella of Section 197 Cr.P.C.

13. Having considered the submissions made on behalf of the respective parties, we are inclined to agree with the submissions made by Mr. Pijush K. Roy on behalf of the appellant.

14. The direction which had been given by this Court, as far back as in 1971 in Bhagwan Prasad Prasad Srivastava's case (supra) holds good even today. All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 Cr.P.C. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. As mentioned in Bhagwan Prasad Srivastava's case (supra), the underlying object of Section 197 Cr.P.C is to enable the authorities to scrutinize the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 Cr.P.C. and have to be considered de hors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.

15. In the instant case, certain deeds and acts have been attributed to the respondent No. 2 and another accused, which cannot be said to have been part of the official duties to be performed by respondent No. 2. Hence, in our view,

the respondent No. 2 was not entitled to the protection of Section 197 Cr.P.C. in respect of such acts.

16. While dealing with the aforesaid question, the High Court appears to have been swayed by the submissions made on behalf of the respondent No. 2 that since in the complaint the acts of extortion and criminal intimidation were alleged to have been committed by the respondent No. 2 and co-accused while conducting investigation in connection with Behrampore Police Station Case No. 348 dated 9.11.2005, such offences were purported to have been committed by the respondent No. 2 while discharging official duties.

17. We have already indicated that we are unable to accept such a view. In our view, the offences complained of cannot be said to part of the duties of the Investigating Officer while investigating an offence alleged to have been committed. It was no part of his duties to threaten the complainant or her husband to withdraw the complaint. In order to apply the bar of Section 197 Cr.P.C. each case has to be considered in its own fact situation in order to arrive at a finding as to whether the protection of Section 197 Cr.P.C. could be given to the public servant. The fact situation in the complaint in this case is such that it does not bring the case within the ambit of Section 197 and the High Court erred in quashing the same as far as the respondent No. 2 is concerned. The complaint prima facie makes out offences alleged to have been committed by the respondent No. 2 which were not part of his official duties.

18. We, accordingly, allow the appeal and set aside the judgment and order of the High Court. The trial Court shall proceed with the trial of all the accused, including the respondent No. 2 herein.