
(2018) 06 GAU CK 0064
In the Gauhati High Court
Case No : Criminal Petition. 302 of 2012

Dinesh Nath

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 14-06-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 97, 197, 197(1), 397, 401, 482
Indian Penal Code, 1860 — Section 21, 406, 409, 420, 468

Citation : (2018) 06 GAU CK 0064

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : A.S. Bhattacharjee, J C Chaudhury, C Phukan

Judgement

1. Heard Mr. A.S. Bhattacharjee, learned senior counsel assisted by Mr. J.C. Choudhury, learned counsel for the petitioner and learned Addl. PP,

Assam.

2. By this application under Section 482 Cr.P.C. read with Section 97/401 Cr.P.C., the petitioner has prayed for quashing the proceeding in GR Case

No.568/2010.

3. The brief facts of the case are that the petitioner at the relevant time was working as Addl. Deputy Commissioner in the district of Nalbari.Â

Some land valuation certificates prepared by one Shri Gopal Bhuyan, Senior Assistant Zila Sainik Board Branch, Nalbari were issued under his

signature in his official capacity as Addl. Deputy Commissioner.Â Having noticed certain irregularities and illegality in issuing those certificates, an

enquiry was conducted and eventually an FIR was lodged by one Smti. Ranu Mahanta, Addl. Deputy Commissioner, Nalbari.Â It was alleged in the

FIR, that Shri Gopal Bhuyan, Senior Asstt. Zila Sainik Board Branch D.C.â??s

Office, Nalbari, issued some illegal and unauthorized land valuation

certificates to the public.Â Relevant records were verified and it was found that said Gopal Bhuyan maliciously issued the said certificates cheating

the office concerned and violating the official procedure.Â On the basis of the said FIR, police registered a case being Nalbari PS Case No.269/2010

under Section 406/409/468/420 IPC and on completion of investigation, submitted charge-sheet against the present petitioner as well as the said Gopal

Bhuyan.Â

4. On receipt of the charge-sheet, learned CJM, Nalbari took cognizance of offence under Section 406/409/468/420 IPC against both the accused

persons and issued process.Â Upon receipt of summons from the Court, the petitioner filed an application before the learned CJM, praying for

discharge/release from the prosecution, on the ground that the petitioner was a public servant and enjoys immunity from prosecution without sanction

as mandated by Section 197(1) of the Cr.P.C.

5. After hearing the parties, learned CJM kept the question of sanction under Section 197 (1) Cr.P.C. open to be decided at the time of final hearing

of the case.

6. Aggrieved by the said order and also the order of taking cognizance, the petitioner approached this Court under Section 482 Cr.P.C read with

Section 397/401 Cr.P.C for quashing the proceeding.

7. Learned senior counsel Mr. Bhattacharjee submits that the petitioner being an Addl. Deputy Commissioner and a public servant, not removable

from his office except with the sanction of the Government and the prosecution being in respect of the act in discharge of his official function, the

Court had no jurisdiction to take cognizance without the sanction under Section 197(1) Cr.P.C.Â It is also contended by the learned counsel that no

sanction was accorded by the Government for prosecution of the petitioner.

8. Learned Addl. PP submits, that since learned CJM did not decide the question of sanction finally, and kept the issue open, to be decided at the time

of final hearing, there was no reason for the petitioner to be aggrieved by such order of the learned CJM.Â The prosecution case is that the accused

issued land valuation certificate unauthorisedly and illegally prepared by the co-accused Gopal Bhuyan. The point to be determined in this respect is as

to whether the accused issued the said land valuation certificate on being placed the matter before him by the concerned Dealing Assistant, as claimed

by the accused.Â Thus, that point cannot be decided effectively without giving opportunity to the accused to establish that what he did was in

discharge of his official duty.

9. Learned CJM while disposing the petition filed by the petitioner, by the impugned order, taking cue from the decision of the Apex Court in R.K

Pradhan Vs. State of Sikkim AIR 2001 SC 2547 observed as under:

Â â??There may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the accused to

establish that what he did was in discharge of official duty.Â In order to come to conclusion whether the claim of the accused that the act that he did

was in course of the performance of his duty was reasonable and neither pretended nor forceful, this question can be examined during the course of

trial by giving opportunity to the accused to establish it.Â In such an eventuality, the question of sanction should be left open to be decided in the main

judgment which may be delivered upon conclusion of the trial.â??

10. Section 197 (1) Cr.P.C 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.

11. A plain reading of the above provision would show, that in order to get the privilege of immunity from the prosecution without sanction, the

following two basic criteria must be satisfied:

i. The accused is or was a Judge or Magistrate or a public servant as defined under Section 21 IPC and not removable from his office save by or

without the sanction of the government.

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

12. The accused in the instant case, is/was Addl. Deputy Commissioner and an officer of Assam Civil Service and there is no dispute, that he is a

public servant as defined under Section 21 IPC and not removable from his office save by or with the sanction of the Government.Â So far the

second requirement, as to the act, constituting the offence, whether committed in discharge of his official duty or in purported discharge of the official

duty is concerned, the materials brought on record shows, that the accused petitioner was an Addl. Deputy Commissioner and the irregularity or

illegality attributed to him was in respect of issuing land valuation certificate.Â Records shows that the alleged certificates, prepared by the co-

accused being a dealing Assistant, were issued under the signature of the petitioner as an authorised officer for issuing such certificate.Â Therefore,

issuing of land valuation certificate was evidently within the competence of the petitioner as Addl. Deputy Commissioner.Â The enquiry report on the

basis of which, the FIR was lodged, demonstrates that 104 numbers of land valuation certificates were issued under the signature of the petitioner

Dinesh Chandra Nath, which were prepared by the co accused Gopal Bhuyan. Out of the 104 certificates, the valuation fixed in 57 certificates

exceeded the maximum zonal valuation, in 22 certificates the valuation was less than the maximum fixed zonal valuation, in 5 certificates, the valuation

was equal to the maximum fixed zonal valuation and in respect of other 5 certificates, there was no fixed zonal valuation. 15 certificates were issued

where the lands were situated within the BTAD area.

13. Apparently the Addl. Deputy Commissioner issued the land valuation certificate in his official capacity.Â The allegation against the petitioner was

that while issuing such certificate, he committed irregularity or illegality by fixing the valuation of land in some cases exorbitantly on higher side.Â

Therefore, the act of the accused/petitioner, in the instant case in issuing land valuation certificate cannot be separated from his official duties.Â

Evidently, the certificates, which were issued under his signature were prepared by the co-accused.Â Be that as it may, since the land valuation

certificates were issued under his signature, he cannot escape the liability of any irregularity or illegality committed therein.

14. From the materials available on record, it appears that in some cases the land valuation were fixed in-conformity with the zonal valuation fixed by

the Government, but in some cases it was even less than the zonal valuation and in some cases the valuation was fixed above the fixed zonal

valuation.Â It is also apparent that in some cases, where land valuation certificate were issued in respect of lands, for which no zonal valuation was fixed by the Government, meaning thereby, while issuing such land valuation certificate, a Deputy Commissioner or Addl. Deputy Commissioner was expected to apply his mind to fix the valuation, following the rules and procedures.Â Even if it is assumed for the sake of argument, that in cases of some land valuation certificate, issued by the petitioner, illegality or irregularity was committed in fixing the valuation of land, such illegality was obviously committed in the discharge of his official duty to issue land valuation certificate, inasmuch as, the illegality or irregularity if any committed by the petitioner, cannot be separated from his official duty.Â What is most important to note is that, there has to be a nexus between the alleged act done by the officer concerned and his official duty, which is demonstratively present in the instant case.

15. In the instant case, in my considered view there was even no semblance of doubt that the act of issuing land valuation certificate was palpably in discharge of his official function and such act could not be separated from his official function and therefore, apparently both the criteria to invoke the immunity under Section 197 (1) was palpably present.Â Since by the legislative mandate engrafted in Section 197 Cr.P.C, a prohibition is imposed by the statute, from taking cognizance, the question, whether a public servant is entitled to the protection provided under Section 197 Cr.P.C or not, as far as practicable, should be decided at the earliest.Â The reason being that, if from the materials on record it is prima-facie found that the act complained of was done by the accused in discharge of his official capacity, there is no point for keeping such issue open, till conclusion of the trial and thereby compelling a public servant to face unnecessary harassment in facing the trial.

16. The settled position of law is that, when it is apparent from the complaint and the materials before the Court, that the act is or was done by the public officer in discharge of his duty as such public officer, question of sanction normally has to be determined at the time of taking cognizance.Â

However, if there is any doubt or if any enquiry is felt necessary to ascertain, as to whether the act complained of, had any nexus with the official

duty of the accused, then the matter may be left to be decided at a later stage of the case.Â But if it is clear from the complaint and other materials,

that the accused is a public servant and the act, complained of is done in his official capacity, there is no question of pushing the public servant

concerned into trial keeping the issue of sanction open.Â The object underlying the provision of Section 197 Cr.P.C. is to protect the innocent public

servant from frivolous prosecution.Â Therefore, as far as practicable, the question of sanction should be decided at the time of taking cognizance.

17. The present case is one, where admittedly there was no dispute, that the petitioner was a public servant within the meaning of section 21 IPC, and

not removable without the sanction of the Government. The act complained of, was also apparently in the discharge of his official duty.Â Therefore,

this is not a case, where it is not possible to decide the question of nexus between the act complained of and the official duty, effectively, without

giving opportunity to the defence to establish that the act done was in discharge of official duty.Â When evidently and admittedly the accused was a

public servant and the act for which he is sought to be prosecuted was also done palpably in discharge of his official duty, the ratio of R.K.

Pradhan's case could not be invoked, in the factual matrix of the present case.

18. Having regard to the entire facts and circumstances of the case, I have no hesitation in my mind to hold, that the accused is/was a public servant

and the act in respect of which he was sought to be prosecuted was palpably an act, done in discharge of his official duty, and as such, the petitioner

was entitled to the protection available under Section 197(1) Cr.P.C.

19. In the teeth of the foregoing discussions, it is held that the Magistrate was barred from taking cognizance against the present petitioner in the

instant case, for want of sanction under Section 197(1) Cr.P.C. and therefore, the proceeding deserves to be quashed.Â Accordingly, the proceeding

in GR Case No.568/2010 so far as this petitioner is concerned, is quashed.Â Needless to say that this order shall not debar the prosecution in future

for the same offence with due sanction from the appropriate authority.

20. Send down the LCR.