

(1984) 01 GUJ CK 0008
In the Gujarat High Court

Dr. Lakshmansinh Himatsinhji Vaghela

APPELLANT

Vs

Nareshkumar Chandrashanker Zala and Another

RESPONDENT

Date of Decision : 12-01-1984

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 3
Criminal Procedure Code, 1973 (CrPC) — Section 197, 197
Penal Code, 1860 (IPC) — Section 201, 201, 465, 468
Prevention of Food Adulteration Act, 1954 — Section 8

Citation : (1984) 2 GLR 850

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—The petitioner-original accused, has challenged the issuance of process u/s 465, 468 and 201, I.P.C. on the ground that the requisite sanction u/s 197, Cri. P. C. 1973, is not obtained and, therefore, the Court could not have taken cognizance and issued the process. The Learned Counsel for the petitioner has stated that the petitioner does not want to lead any evidence for a decision on the question of necessity of sanction.

2. The facts are simple and not in dispute for the purpose of deciding the preseat question. The petitioner has been in the pay and service of Ahmedabad Municipal Corporation, a Local authority. He is Laboratory Officer in Ahmedabad Municipal Corporation and, therefore, he is a public servant as defined in Section 21 (twelfth) (b), I.P.C, which reads as under:

The words public servant" denote a person falling under any of the descriptions hereinafter following, namely:

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Twelfth : Every person:

(a) in the service or pay of the Government or remunerated by fees or

commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a Corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).

Thus he is a "public servant" as defined in Clause (b). It is not his case that he is a public servant falling under any other clause of Section 21.

3. u/s 8 of the Prevention of Food Adulteration Act, 1954, the State Government by a notification dt. 21st December 1966 in the Official Gazette appointed the petitioner to be Public Analyst for the local area comprised within the limits of Ahmedabad Municipal Corporation. There is no dispute that thereby he is not in the service or pay of the Government or remunerated by fees or commission by Government.

4. u/s 8 or under any other provision of the Prevention of Food Adulteration Act, 1954, he is not deemed to be a "public servant", unlike Food Inspectors appointed u/s 9 of the Prevention of Food Adulteration Act, where every Food Inspector is deemed to be a public servant within the meaning of Section 21, I.P.C. Since the State Government has the power to appoint person to be Public Analyst, such person cannot be removed from the office of the Public Analyst save by the State Government, because the power to appoint includes the power to dismiss u/s 16 of the General Clauses Act. The allegations in the complaint are that while acting as the Public Analyst the petitioner had committed certain acts which amounted to offences under Sections 465, 468 and 201, I.P.C. On these facts, it is contended that sanction is required u/s 197, Cri. P.C.

5. Section 197(1) of Cri. 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:

(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.

The Learned Counsel for the petitioner has argued that since:

(i) the petitioner as a Municipal servant is a public servant (Section 21-Twelfth (b)); and

(ii) he is not removable from his office (of Public Analyst) save by the Government; and

(iii) he is accused of offences alleged to have been committed by him while acting as Public Analyst.

The cognizance of the offences could not have been taken without the previous sanction of the State Government as required under that section.

6. It is clear that the petitioner is a public servant (as an employee of the local authority) and as such public servant he is removable by the local authority, namely, the Ahmedabad Municipal Corporation and he is not removable by the State Government. The State Government being the appointing authority is competent to remove him from the office of the Public Analyst but the State Government cannot remove him from his office of Public servant as an employee of the Municipal Corporation. Even by virtue of his appointment by the State Government as Public Analyst, he is not in Government service or pay and, therefore, he is not covered by Section 21-Twelfth (a) and, therefore, as a Public Analyst, he is not a Public servant.

7. If a public servant is not removable from his office as such public servant by the Government, there is no question of the Government considering and granting the sanction for prosecution of such public servant. The Government is admittedly not competent to remove the petitioner from his office as public servant. The competence of the Government to remove the petitioner is only with regard to his office as Public Analyst and in such office he is admittedly not a public servant. In the present case, in fact, even though the Government has cancelled the notification of the appointment of the petitioner as Public Analyst on 23rd March 1982 and he ceased to be Public Analyst, he continues to be a Municipal employee and a public servant till today. The requirement of sanction of the Government would be attracted only if the Government were competent to remove the concerned public servant from his office as such public servant. The protection intended to be given by the section is to public servants in office as public servants and not to any other office or capacity which he might be holding. Thus, the first condition of being a public servant is satisfied but the second condition of the State Government being competent to remove him from his office of public servant is not satisfied unless both the conditions are satisfied; sanction of the Government is not necessary.

8. It is argued on behalf of the respondent that the sanction of the State Government, if at all, would be required only if such person is employed in connection with the affairs with the State and since in the present case the petitioner was not employed in connection with the affairs of the State or of the Union, there was no question of sanction. In the case of R.R. Chari Vs. State of U.P., the question of "affairs" u/s 197 is considered and on the basis of the observations made therein it is argued by the respondents that unless a person is employed in connection with the affairs of the Union or of the State, there is

no question of any sanction, because the State Government can grant sanction only if he is employed in connection with the affairs of the State or Central Government can grant the sanction only if he is employed in connection with the affairs of the Union, and in the present case, according to the respondents, the petitioner was not employed in connection with the affairs of the State or of the Union and, therefore, neither the sanction of the State Government nor of the Central Government is required. Unlike Section 6 of Prevention of Corruption Act, Section 197 does not provide for residuary third category of "any other person". Unless it is shown that the petitioner was employed in connection with the affairs of the Union or of the State Government, neither of them could grant any sanction and, therefore, Section 197 will have no application. It appears that in a local area the administration of the Prevention of Food Adulteration Act is with the local authority and Local (Health) Authority as defined in Section 2(vii), (viii) and (viii-a). Appointments of Public Analyst and Food Inspectors are for the local areas and they are in service and pay of the local authority. Rule 4 of Gujarat Prevention of Food Adulteration Rules, 1961, provides that the local authority shall be responsible for the proper day-to-day administration and enforcement of the Act within its jurisdiction subject to the provisions of Rule 3 regarding the powers of Food (Health) Authority. Under Rule 4(5) a Municipal Corporation in the State which maintains its own laboratory is also entitled to appoint qualified persons as Public Analysts. In view of all these, it is argued by the Learned Counsel for the respondents that the petitioner is employed in connection with the affairs of the Municipal Corporation and not in connection with the affairs of the State or of Union. It is clear that he is employed as a public servant by the Municipal Corporation in connection with the affairs of the Municipal Corporation, which is also a local authority under the Prevention of Food Adulteration Act. By appointing him as a Public Analyst u/s 8, the State Government has not employed him in connection with the affairs of the State but the appointment is in connection with the affairs of the local authority and only a power or function is conferred on him by that appointment. It would not be correct to describe this appointment as employment in connection with the affairs of the State. The petitioner had challenged the notification cancelling his appointment as Public Analyst by Special Civil Application No. 1534 of 1982 wherein it was contended that his removal from the office of the Public Analyst was violative of Article 311 of the Constitution. The learned single Judge by his judgment and order dt. 12th July 1982 has observed as follows:

I do not find any substance in this petition. Petitioner has been found guilty of creating false evidence and tampering with record, by the competent authority after holding an inquiry. The Ahmedabad Municipal Corporation, who is the employer of the petitioner has accepted the report of the Inquiry Officer and imposed punishment of withholding two increments of the petitioner. It is in the background of these facts that the Government did not think it fit to continue the petitioner as Public Analyst and withdrew his appointment as such. Petitioner was not the employee of the State Government. He was appointed as Public Analyst

because he held the requisite qualifications for appointment as Public Analyst and he was in employment as Chemist or Laboratory Officer of the Ahmedabad Municipal Corporation. It was on account of his being employed by the Ahmedabad Municipal Corporation that he was appointed as Public Analyst by the Government. However, in view of the fact that the charges levelled against the petitioner were found proved that his continuance as Public Analyst was not considered in the public interest by the Government. In the circumstances, stated above, I do not see how the petitioner can seek protection of Article 3, of the Constitution of India.

The petitioner carried the matter in appeal being Letters Patent Appeal No. 280 of 1982 before the Division Bench. The Division Bench also by a speaking order dated 19th July 1982 (per M. P. Thakkar, C. J. as he then was in this Court) observed that the petitioner, a Municipal employee, was entrusted by the State Government with the functions of a Public Analyst u/s 8 of the Prevention of Food Adulteration Act, 1954, and the Division Bench held that "petitioner has no right to insist that powers of Public Analyst u/s 8 should be conferred on him. Since he has no such legal right, it was not necessary for the State Government to afford him a hearing before withdrawing the power". Hence, the learned single Judge was held perfectly justified in rejecting the petition and the appeal was also rejected. It thus appears that he was not employed in connection with the affairs of the State and that he was not holding any public office of affairs of State but the State Government had merely entrusted him with the functions of a Public Analyst, which could be granted and taken back by an Administrative Act. Since the petitioner was an employee in connection with the affairs of the Ahmedabad Municipal Corporation (and not those of the State or of the Union), there was no question of State Government or the Central Government according any sanction in the present case.

9. Regarding the third contention of "the acts having been committed in discharge of his official duty", the nature of the acts alleged against the petitioner have to be seen. It is alleged that while exercising the functions as Public Analyst, the petitioner had destroyed his report regarding a food sample wherein, it is alleged, the sample was found "adulterated" and by destroying that report and evidence he had screened the offender and thereby he had committed offences punishable u/s 201. It is also alleged that he had committed offences punishable under Sections 465 & 468 by forging documents so as to make it appear that the missing report in respect of the sample had shown the sample as pure and not as adulterated. It is argued by the learned Advocate for the petitioner that the petitioner had allegedly committed all these acts while discharging his official duty as Public Analyst and, therefore, the sanction is necessary. It is to be noted that while discharging the functions as Public Analyst he was not discharging any function as a public servant and therefore, the requirement of the section is not fulfilled. Secondly, the act alleged against him cannot be said to have been committed while acting or purporting to act in discharge of his official duty even as a Public Analyst. As a Public Analyst it was

not even remotely within his official duty to remove or destroy the report of the analysis nor was it his official duty to tamper with the record so as to show that the destroyed report did not show the sample as adulterated. By forging and tampering with such documents, the act of cheating takes place. Those acts have no reasonable connection with his office as Public Analyst and/or a public servant. His office merely gave him an opportunity and colour of authority. However, that would not bring it within the scope of even purported discharge of his official duty.

10. In *K. Satwant Singh Vs. The State of Punjab*, the Supreme Court held that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. The Supreme Court further observed that:

We have no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences (*vide Amrik Singh Vs. The State of Pepsu*, The act of cheating or abetment thereof has no reasonable connection with the discharge of official duty. The act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty (*vide Matajog Dobey Vs. H.C. Bhari*, It was urged, however, that in the present case the act of Henderson in certifying the appellant's claims as true was an official act because it was his duty either to certify or not to certify claim as true and that if he falsely certified the claim as true he was acting or purporting to act in the discharge of his official duty. It is, however, to be remembered that Henderson was not prosecuted for any offence concerning his act of certification. He was prosecuted for abetting the appellant to cheat. We are firmly of the opinion that Henderson's offence was not one committed by him while acting or purporting to act in the discharge of his official duty. Such being the position the provisions of Section 197 of the Code are inapplicable even if Henderson be regarded as a public servant who was removable from his office by the Governor-General-in-Council or a Provincial Government.

In the present case also the petitioner is not being prosecuted for giving a false certificate or report as to the adulterated nature of the sample but is being prosecuted for destroying the evidence and for cheating by forgery and these acts are not committed in discharge or purported discharge of the official duty.

11. In the case of *T.V. Sarma Vs. R. Meeriah and Others*, (Full Bench), the act (the offence u/s 201) of suppressing evidence by the Police Officers to screen the murderer from legal punishment, was held not to be purporting to act in discharge of his official duty and it was observed as follows:

It is ridiculous to argue that it is a part of the duty of the police officer to be a party to the criminal conspiracy to suppress the evidence of the murder or screening offender from legal punishment. We have, therefore, no hesitation in holding that no sanction is required u/s 197. Cri. P.C.

It thus appears that the acts alleged against the petitioner cannot be reasonably connected with the discharge of his official duty as a Public Analyst or as a public servant.

12. From the above discussion, it is clear that in order to get the protection and to require sanction for prosecution u/s 197, all the following conditions are required to be satisfied:

- (i) the accused must be a public servant;
- (ii) he must be removable from his office of the public servant by or with sanction of Government, i.e. removability as public servant; conversely, if a public servant holds some other office (which is not included in the categories of public servants u/s 21 of I.P.C. or any other provision of law) and from such other office he is removable by the Government, this condition is not fulfilled;
- (iii) the alleged offence must have been committed by him while acting or purporting to act in discharge of his official duty as a public servant;
- (iv) the alleged act must have necessary and reasonable connection with discharge of his official duty. If his office gave him merely an opportunity, occasion and colour of authority to commit the alleged acts, they would not bring the case within "purported discharge of duty". The offences of cheating, cheating by forgery and destroying evidence cannot have the necessary connection with official duty;
- (v) the accused as a public servant must be employed in connection with the affairs of the State or the Union and not in connection with Municipal affairs or affairs other than those of State and Union.

13. The petitioner satisfies only the first condition which is not relevant for the present purposes and fails to fulfil the rest of the conditions. Therefore, no sanction is required u/s 197 in the present case.

14. Hence, the petition fails. Rule discharged.

The Learned Counsel for the petitioner requests that the interim stay granted in this matter be continued for a period of one month. It is directed that the interim stay granted earlier shall continue till 13th February 1984 and will stand vacated from 14th February, 1984.