

(1977) 01 AHC CK 0023

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 2817 of 1976

Hari Govind Prasad Pandey and others

APPELLANT

Vs

Judicial Magistrate, (I) Bulandshahar and another

RESPONDENT

Date of Decision : 28-01-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197

Citation : (1977) 01 AHC CK 0023

Hon'ble Judges : D.M.Chandrashekhar, J

Final Decision : Disposed Of

Judgement

D. M. Chandra Shekhar, J.

This is an application under section 482 of the Code of Criminal Procedure, 1973, (hereinafter referred to as the Code) praying for quashing the order of the Judicial Magistrate I, Bulandshahar, issuing summonses to the applicants on a complaint preferred by opposite party No. 2 herein (hereinafter called the complainant),

Applicant No. 1 was the Rent Control and Eviction Officer, Bulandshahr, applicant No. 2 Reader in the office of applicant No. 1 and applicant No. 2 the Rent Control Inspector. Opposite party No. 2 was a tenant occupying a certain shop premises. He preferred a complaint against Smt. Surjit Kaur and Sardar Pritam Singh, owners of the shop premises, and the applicants. The allegations therein were briefly as follows. When Smt. Surjit Kaur purchased the shop premises the complainant's father was in possession thereof as tenant. After his death the complainant and his sisters continued to carry on business in the shop premises. Smt. Surjit Kaur filed an application under Sec. 12 (1) (2) of the U. P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972, (hereinafter referred to as the Act) alleging that the tenants had removed their effects from the shop premises. Though the complainant had been carrying on business in the shop premises. Applicant No. 2, in collusion with Smt Surjit Kaur and other applicants, made a false report to the effect that no business was carried on

therein. Applicant No. 1 in collusion with applicant No. 2 and others, misused his powers with intent to cause injury to the complainant and to favour unduly Smt. Surjit Kaur and got removed clandestinely from the file of the proceedings on that application, three documents, namely the Vakalatnama, filed on behalf of the tenants, their objections to the report of applicant No. 2 and their written arguments. Applicants No. 1 inspected the shop premises, found that business was being carried on therein by the complainant and prepared an inspection note, but did not keep the same in the file of the proceedings. He posted the case for final orders on 16/9/1975, On 4/9/1975 he got another application from Smt. Surjit Kaur and that the shop premises had become vacant from 19/9/1975. He also suppressed the application sent by the complainant praying for review of the order dated 6/9/1975. According to the complainant, all the applicants conspired, got up incorrect and false records and suppressed material records in order to cause injury to the complainant and to favour Smt. Surjit Kaur.

The Chief Judicial Magistrate, Bulandshahr before whom the complainant was filed, recorded under section 200 of the Code, the statement of the complainant and thereafter transferred the case to the Judicial Magistrate I, Bulandshahr, who took cognizance of the case and summoned applicants Nos. 1 to 3. Smt Surjit Kaur and Sardar Pritam Singh on the complaint of offences under sections 166 and 167 read with section 120B 1. P. C. Applicants Nos. 1 to 3 pleaded before the learned Magistrate that in the absence of sanction under section 197 of the Code, the learned Magistrate could not take cognizance of the case against them as they were public servants. The learned Magistrate, by his order dated 20/3/1976 overruled their objections and held that it was no part of the duty of a public servant to commit illegalities or offences in the name of the discharge of his official duties and that there was no reason at that stage to believe that when applicants Nos. 1 to 3 committed the offences under sections 166 and 167 I. P. C. they should have been acting in discharge of their public duties and that hence there was no necessity for sanction of the State Government under section 197 of the Code to prosecute them.

Feeling aggrieved by the aforesaid order of the learned Magistrate, the applicants preferred a revision petition to the Sessions Judge, Bulandshahr who dismissed it on the ground that the order of the Magistrate was not a final order.

Sri B. D. Mandhyan, learned counsel for the applicants contended that there was a manifest error in the view taken by the learned Magistrate that the alleged act and omissions by the accused were not in discharge or purported discharge of their official duties. It was also contended by Sri Mandhyan that applicant No. 1 functioned as a Judge while exercising powers under the Act, and, therefore, he could not be prosecuted for anything done by him while so functioning.

The relevant portions of subsection (1) of Section 197 of the Code read:

"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 charge of his official duty, court shall take cognizance of such offence except with the previous sanction:

(a) ...

(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."

I am unable to accept the contention of Sri Mandhyan that applicant No. 1 functioned as a Judge when he made certain orders under the Act. No doubt section 34 of the Act provides that several authorities under the Act, shall, for the purpose of holding inquiry under the Act, have certain powers as are vested in the Civil Court under the Code of Civil Procedure, while trying a suit, but mere conferment of such powers on the Rent Control and Eviction Officer does not make him a Judge.

However, Sri Mandhyan is right in his submission that all the, acts and omissions alleged against the applicants were in discharge or purported discharge of their official duties under the Act.

Sri S. N. Agarwal, learned counsel for opposite party No. 2, contended that it was no part of the official duty of the Rent Control and Eviction Officer to falsify the records, to suppress any document filed by opposite party No. 2 or to enter into a conspiracy with any of the parties before him, to show undue favour to such party and to do injustice to others and that hence no sanction of the State Government under section 197 of the Code was necessary to prosecute the applicants.

The legal position as to when sanction for prosecution of a public servant is necessary, was explained thus by Venkatarama Ayyar, J., who spoke for the court in *Amrik Singh v. State of Pepsu* A.I.R. 1955 SC 309.

"It is not every offence committed by a public servant that requires sanction for prosecution under section 197 (1) Criminal P.C.; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary, and that would be so irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution."

There, the allegation against the accused who was a SubDivisional Officer in the Public Works Department, was that he obtained the signatures or thumb impressions of employees before wages were paid to them and then

misappropriated the funds. It was contended that misappropriation of funds ect. Could, under no circumstances, be said to be within the scope of the duties of a public servant, that he could not, when charged with it, claim, justification for it by virtue of his office and that, therefore, no sanction under section 197 of the Code was necessary. Repelling that contention, his Lordship observed thus:

"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 those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required."

In the present case also the several acts and omissions alleged against the applicants are so integrally connected with the duties attached to their offices as to be inseparable from them.

It is seen from subsection (1) of section 197 of the Code that such sanction is necessary in the case of a public servant who cannot be removed from his office save by or with the sanction of the Government In *Nagrai v. State of Mysore* A.I.R. 1964 S.C. 269 the Supreme Court held that in the case of a SubInspector General of Police, no sanction of the State Government was necessary for prosecuting him for offence committed while performing or purporting to act in the discharge of his official duties.

So far as applicant No. 1 herein is concerned it does not admit of any doubt that he was an officer who could not be removed from his office save by or with the sanction of the Government. But, as regards applicants Nos. 2 and 3, it is not clear whether they could be removed from their offices only by or with the sanction of the State Government. The learned Magistrate should examine this point, if necessary after taking evidence.

In the result, I allow this petition and quash the proceedings before the learned Magistrate in so far as they relate to applicant No. 1 I further direct the learned Magistrate to decide first, if necessary after taking evidence, whether applicants Nos. 2 and 3 herein are officials who could be removed from their offices only by or with the sanction of the State Government. If he holds that they could be removed by any authority below the Government, he can proceed with the case against them. Otherwise, he shall not proceed with the case against them also without the sanction under section 197 of the Code.