
(1984) 08 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 1615-M of 1984

Lajwant Singh, D.S.P.

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 24-08-1984

Acts Referred:

Citation : (1984) 08 P&H CK 0031

Hon'ble Judges : Pritpal Singh, J

Advocate : G.S. Tulsi, Ravinder Seth, Advocates for appearing Parties

Judgement

Pritpal Singh, J.

1. A complaint dated March 15, 1983 (Annexure P. 2) under section 302, Indian Penal Code was filed by respondent No. 2 Gurmukh Singh in the Court of the Chief Judicial Magistrate, Amritsar, against the petitioner Lajwant Singh, Deputy Superintendent of Police, who is at present posted at Phillaur. This complaint was sent by the Chief Judicial Magistrate for disposal to the Court of Shri M.M. Aggarwal, Judicial Magistrate Ist Class, Ajnala. The Judicial Magistrate after recording preliminary evidence produced by Gurmukh Singh summoned the petitioner to face his trial under section 302, Indian Penal Code vide order dated December 15, 1983 (Annexure P. 3). The petitioner has filed this petition under section 482 Code of Criminal Procedure, quashing the Complaint of Gurmukh Singh (respondent No. 2) as well as the proceedings taken the complaint by the Judicial Magistrate on the ground that he is accused of an offence which he committed while discharging his official duty and as such all the cognizance of the offence could not be taken by the Judicial Magistrate except with the previous sanction of the appropriate authority under section 197 or the Code of Criminal Procedure.

2. Gurmukh Singh, respondent No. 2, had filed the complaint (Annexure P. 2) alleging that one Shaheed Balwant Singh had tried to hoist a Kesari flag on October 16, 1982 which resulted in an altercation between the petitioner and Balwant Singh. Subsequently on October 26, 1982 when respondent No. 2 along

with his wife and aforesaid Balwant Singh were going from, the busstand Amritsar to the Golden Temple in a rickshaw, the petitioner, intercepted them in the way, while on a jeep. He took out his service revolver and fired the same hitting Balwant Singh on the left leg. The petitioner fired again which bit on the buttocks of Balwant Singh. Then the police party headed by the petitioner commenced lathi charge and eventually took away Balwant Singh to Kotwali. Balwant Singh was then got admitted in the hospital where he succumbed to the injuries. On these allegations respondent No. 2 complained that the petitioner had committed an offence under section 302 Indian Penal Code.

3. The petitioner has pleaded that the deceased Balwant Singh was an accused in a case under sections 307, 392, 398, 423 and 436, Indian Penal Code, in FIR No. 303 dated 18101982, registered at Police Station Kotwali Amritsar and so he had tried to arrest him. However, Balwant Singh took out his khanda and attacked the petitioner. In selfdefence the petitioner fired two shots from his service revolver causing injuries to Balwant Singh who was thereafter admitted in the hospital but he succumbed to the injuries. It is contended that the petitioner had acted in the performance of his official duty and as such he is entitled to the benefit Section 197 of the Code of Criminal Procedure.

4. On hearing the learned counsel for the parties I am of the opinion that the petitioner's contention must prevail. The District Magistrate had appointed Shri Narinder Singh as Enquiry Officer to hold inquest into the cause of death of aforesaid Balwant Singh. The Enquiry Officer after holding extensive enquiry submitted his report dated May 25, 1983, (Annexure P 1) in which he found that the petitioner while in the process of arresting the deceased in the aforesaid case relating to First Information Report No. 303 dated October fired two shots at the deceased in selfdefence. This report prima facie indicates that there was a reasonable connection between the act attributed to the petitioner and his official duty which attracted the provisions of section 197, Code of Criminal Procedure. It appears that the petitioner in the performance of his duty was trying to arrest the deceased and during that process the petitioner had caused fatal injuries with his revolver to the deceased. According to the inquest report (Exhibit P1) the petitioner was justified in causing the death of the deceased in exercise of his right of defence. It, however, does not matter even if the act exceeded what was strictly necessary for the discharge of the petitioner's duty as this question would arise only when the trial proceeds on merits. At this stage what the Court must find out is whether the petitioner's act and his official duty are so interrelated that it can be reasonably inferred that it was done by the petitioner in performance of his official duty. In the face of the inquest report, (Annexure P. 1) this query has to be answered affirmative.

5. The learned counsel for respondent No. 2 contended that the complaint (Annexure P.2) does not disclose that the act of the petitioner was done in the discharge of his official duties and as such the protection of section 197, Code of Criminal Procedure, is not available to the petitioner. This contention cannot be

accepted because as held by the Supreme Court in *Matajog Dobey v. H.C. Bheri*, AIR 1956 SC 44, the complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction under section 197 of the Code of Criminal Procedure. In another judgment in *S.B. Saha and others v. M.S. Kochar*, AIR 1979 Supreme Court 1841, it was held by the Supreme Court that the question of sanction under section 197, Code of Criminal Procedure can be raised and considered at any stage of the proceedings and in considering the question whether or not sanction for prosecution was required, it is not necessary for the Court to confine itself to the allegations in the complaint. The Court can take into account all the materials on record at the time when the question is raised and falls for consideration. It was further held in this judgment that the question whether an offence was committed in the course of official duty or under colour of office depends on the facts of each case but one broad test for this purpose is whether the public servant can reasonably claim that whatever he does, he does in virtue of his office. In the present case this test is manifestly satisfied.

6. For the reasons stated above, in the facts and circumstances of the case I have no hesitation to hold that sanction of the appropriate authority for the petitioner's prosecution was necessary under section 197 of the Code of Criminal Procedure. As a result of this finding the instant petition is allowed and the process issued by the trial Magistrate against the petitioner without such sanction is hereby quashed.