

(1994) 02 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Special Appeal No. 35 of 1993

Motilal Jagetia

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-02-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Judicial Officers Protection Act, 1850 — Section 1

Citation : (1994) 1 WLN 345

Hon'ble Judges : R.P. Saxena, J; Jasraj Chopra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajendra Saxena, J.—This appeal has been directed against the order dated 28th April, 1993, passed in S.B. Civil First Appeal No. 66/93 (Def.), whereby the learned Single Judge of this Court dismissed the appeal filed by the appellant and upheld the order of the learned Additional District Judge, Chittorgarh rejecting appellant's plaint under Order 7, Rule 11 (a) and (d) C.P.C. on the ground that the plaint did not disclose cause of action and also the suit was barred under the provisions of the Judicial Officers Protection Act, 1850, hereinafter referred to as the Act.

2. It has been contended on behalf of the appellant that the suit was filed against respondent No. 3 Manoharlal Soni also, who is admittedly not a Judicial Officer and, as such, he cannot get any protection of the provisions of the Act but the learned A.D.J., Chittorgarh as well as the learned Single Judge of this Court conveniently ignored this material fact and thus committed illegality in rejecting his plaint.

3. In our considered opinion, this contention is apparently devoid of any force & substance. Firstly, respondent No. 3, Manoharlal Soni neither in his suit for perpetual injunction nor in his application filed under Order 39, Rule 1-2 (a) C.P.C. dated 14.6.91 nor in his application dated 4.7.91 filed u/s 151 C.P.C. had

pleaded and imputed any malafide action against the appellant. It was only on 10.7.91 that during the course of arguments, the learned Counsel for the plaintiff Jugal Kishore, who is the minor son of respondent Manoharlal had alleged that the appellant Jagetia was instrumental in not executing & complying with the temporary injunction dt. 31.5.91 issued by the respondent Basantlal Babel, who was the then Presiding Officer of the Court of MJM, Chittorgarh. The respondent No. 2 in his order dt. 10/7/91 had expressly mentioned that he did not want to make* any comment about the alleged malafide action of appellant Motilal Jagetia. However, he observed that in case, the temporary injunction dt. 31.5.91 was not complied with and the result of plaintiff Jugal Kishore was not declared and the latter is deprived of getting admission in the ensuing academic session, then for that Shri Virendra Kumar (defendant), Principal of the School and Motilal Jagetia (appellant) shall be jointly responsible. However, in S.B. Civil Revision No. 692/91, the learned Single Judge by his order dated 2.4.92 expunged the remarks made against the appellant in the order dated 10.7.91 to the extent that those remarks will not be prejudicial to him in any way. Thus, respondent Manoharlal had neither acted malafidely nor attributed any illegality against the appellant. On the other hand, during the course of arguments, learned Counsel for the respondent plaintiff Jugal Kishore had pointed out to the learned Munsif, Chittorgarh that the appellant was instrumental in not getting the temporary injunction dated 31.5.91 complied with. Secondly, in the original civil suit filed by the appellant against the respondents for damages, it has been simply pleaded vide para 6 of the plaint that respondent Manoharlal malafide and in order to defame the appellant got the Civil Misc. Case No. 45/91 instituted in the Court of Chief Judicial Magistrate but no material facts regarding the alleged malafide have been pleaded. Moreover, no cause of action has been disclosed in the plaint filed by the appellant against respondent No. 3. Thus, in our considered opinion, the learned trial Judge did not commit any illegality in rejecting the plaint under Order 7, Rule 11 (a) C.P.C. against respondent No. 3.

4. It has been next argued by and on behalf of the appellant that admittedly, respondent No. 2 was the Presiding Officer of the Court of MJM, Chittorgarh and that respondent No. 3 was working under him as a clerk and that in order to give undue favour to the latter, strictures were passed against the appellant vide order dt. 10.7.91, which were baseless and unfounded and that those strictures were expunged by the learned Single Judge of this Court vide his order date 2.4.92. Thus, the respondent No. 2 had acted in order to unduly favour a party and was not acting as a judge and, therefore, he is not entitled for the protection of the provisions of the Act. For this, the case of Union of India and Ors. v. K.K. Dhawan reported in 1993 S.C.C. 325 has been cited. In that case, the respondent while working as Income Tax Officer completed certain assessments against number of assesses in an irregular manner with undue haste and apparently with a view to confer undue favour upon assesseees concerned. A chargesheet was served on him u/r.14 of Central Civil Services (CCA) Rules, 1965 alleging that the respondent had failed to maintain absolute integrity and

devotion to duty and exhibited the conduct unbecoming of a Govt. servant thereby violating the provisions of Rule 3 of the Central Civil Services (Conduct) Rules, 1964. Against the said charge memorandum, the respondent preferred an application before the Central Administrative Tribunal praying for a stay of the disciplinary proceedings and to consider his case for promotion on merits without resort to the sealed cover procedure. The Central Administrative Tribunal directed the Union of India to open the sealed cover immediately and implement the recommendations of the Departmental Promotion Committee and by a subsequent order, further held that the action taken by the respondent was quasi-judicial and should not have formed the basis of disciplinary action. The Union filed appeal wherein their lordships of the Apex Court referring to Rule 3 of the aforesaid Rules of 1964 which requires that every Govt. servant shall at all time maintain absolute integrity; maintain devotion to duty; and do nothing which is unbecoming of a Government servant have catalogued certain instances, wherein disciplinary action could be taken against an officer for the misconduct committed by him in exercise of his judicial or quasi-judicial powers and observed as under:

Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer under favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Govt. is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

- (i) Where the officer has acted in a manner as would reflect on his reputation for integrity on good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a Government servant;
- (iv) if he has acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) if he has acted in order to unduly favour a party;
- (vi) if he has been actuated by corrupt motive, however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

5. Apparently the case in hand is not a case where the respondent No. 2 has been chagelined for any alleged misconduct committed in exercise of his

judicial or quasi-judicial powers. Moreover, in K.K. Dhawan's case (supra), there was no occasion for considering the scope of the provisions of the Act. Section 1 of the Act specifically lays down that no Judge, Magistrate, Justice of the Peace, Collector or other persons acting Judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duties, whether or not within the limits of his jurisdiction; provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of....Thus, it is crystal clear that the provisions of Section 1 of the Act grant much protection to the Judges & Magistrates acting in discharge of their judicial duties and if the act done or ordered to be done in the discharge of judicial duties is within his jurisdiction, the protection is absolute and no enquiry or proceedings will be entertained whether the act done or ordered was erroneous, irregular or even illegal or was done or ordered without believing in good faith that he had jurisdiction to do or order the act complained of. Even if the act done or ordered is not within the limits of his jurisdiction, the judicial officer acting in the discharge of his judicial duties is still protected, if at the time of doing or ordering the act complained of, he in good faith believed himself to have jurisdiction to do or order the act.

6. In the case at hand, there is no dispute that respondent No. 2 in exercise of his judicial powers and acting as MJM, Chittorgarh, passed the order dt. 10.7.91, wherein the impugned observation was made against the appellant. Admittedly he had the jurisdiction to pass necessary orders in Civil Misc. Case No. 68/91 pertaining to the proceedings under Order 39, Rule 1-2(a) CPC r/w Section 151 CPC, which were initiated by the plaintiff Jugul Kishore. Simply because the observations made against the appellant were expunged by this Court vide its order dated 2.4.92, it cannot be held that respondent No. 2 was not acting as a Judge or that he had acted in order to unduly favour a party and was not entitled to the protection of the provisions of the Act. In the suit for damages filed by the appellant, respondent No. 1 was made defendant only for the alleged wrongful/illegal acts of respondents No. 2 and 3. As mentioned earlier, appellant's plaint was liable to be rejected against respondent No. 3 under Order 7, Rule 11 (a) C.P.C., because he did not disclose any cause of action against respondent No. 3. From the averments made in the plaint, it was abundantly apparent that respondent No. 2 was entitled for protective umbrella of the provisions of Section 1 of the Act and was not liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duties, whether or not within the limits of his jurisdiction. Therefore, the suit against him was barred by the specific provisions of the Act. In such circumstances, the appellant's plaint was rightly rejected under Order 7, Rule 11 (a) and (b) C.P.C.

7. Hence we do not find any apparent error or material illegality or jurisdictional defect in the impugned order warranting any interference. Accordingly, this Special Appeal stands dismissed summarily.