

(1997) 02 GAU CK 0015
In the Gauhati High Court
Case No : Criminal Revision No. 26 of 1992

Nangkar Taming

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 03-02-1997

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(1), 468, 482
Penal Code, 1860 (IPC) — Section 302, 323, 325

Citation : (1997) CriLJ 3468

Hon'ble Judges : Singh Neelam, J

Bench : Single Bench

Advocate : J.M. Choudhury and O.Z. Kamar, for the Appellant; B.D. Goswami, Public Prosecutor, for the Respondent

Judgement

Singh Neelam, J.—This criminal revision is preferred by the petitioner/accused Shri Nangkar Taming u/s 482 of the CrPC read with Article 227 of the Constitution of India against the impugned order dated 30-11-91 passed by the learned Judicial Magistrate First Class, Jonai in G.R. Case No. 130/1984 by virtue of which the learned Court below has justified the cognizance of offence so taken and non bailable warrant so issued against the present petitioner holding that the protection u/s 197 CrPC, in the present case need not be extended to him and hence cognizance so taken on 8-4-91 was held to be justified without sanction of the Government as the act alleged to have been done by the petitioner a police officer at the relevant time as Sub-Inspector of Police resorting two rounds of firing by the service revolver on 8-6-84 as a result of which as per the prosecution case put by the informant in Jonai P.S. Case No. 129/84 registered u/s 302/325 of the IPC one Dutt Ram Gogoi lost his life, cannot be said to be acting or purporting to act in discharge of his official colour or duty.

2. The facts of the case put in narrow compass as under :- For the occurrence taking place on 8-6-84 the matter was reported by filing the first information report and on 8-6-84 itself by the present petitioner on the basis of which Jonai

P.S. Case No. 119/84 got registered, a copy of which is filed and marked as Annexure II in this Criminal Revision Petition and another report lodged by one Shri Khagen Lahon as informant on 16-6-84 i. e. after a lapse of 7 days registered as Jonai P.S. Case No. 127/84 copy of which so filed is marked as Annexure III. The details of the content of both the FIR need not be repeated, however in Jonai P.S. Case No. 119/84 final report was submitted on 28-2-89, the copy of which is marked as Annexure IV and in this case (Jonai P.S. Case No. 127/84) cognizance of offence was taken by the learned Court below as detailed above against the petitioner. Police Personnel on 8-4-91 without extending protection u/s 197 of the CrPC and by the impugned order dt. 30-11-91, the copy of which is filed marked as Annexure-VI, on the petition so filed by this petitioner that the sanction was necessary the same was rejected on 30-11-91. Hence this Criminal Revision Petition.

3. The only point for consideration is as to whether in the instant case, in the background of the facts and circumstances, sanction was necessary to be obtained as provided u/s 197(1) of the CrPC prior to taking cognizance and whether the petitioner-accused is entitled for such protection as a Public servant?

4. Mr. J.M. Choudhury, the learned counsel for the petitioner is heard at length who has strenuously argued that taking cognizance of the offence in this case prior to obtaining proper sanction order from the Government is bad in law. By referring to the impugned order dt. 30-11-91, it is submitted that the learned Court below has held the alleged act was committed by the petitioner through in performance of the official duties but in excess of his powers and hence sanction was not necessary. It is argued with great emphasis that even if, suppose, the act is in excess of the official duties, the person alleged to have committed the said act can claim protection u/s 197 CrPC "Proof" of the act and the question of its exceeding what was strictly required in discharge of the duty fall for consideration at the later stage. Hence before taking cognizance of the offence, scrutiny by the Government and its sanction for prosecution was necessary which has not been done in the instant case.

5. Mr. Choudhury, the learned counsel also claimed himself to be fortified by some of the reported cases;

The first case referred is (1983) 1 G LR 31, Shri K.P.S. Gill v. Dimbeswar Sharma. It is pointed out by referring to Annexure-2 that firing was resorted to in a particular circumstance and since the act was inter-related, one can postulate reasonably that it was so done in performance of the official duty or in purported exercise of his official duty and hence the learned Magistrate had no jurisdiction as to take cognizance of the offence without valid sanction as required u/s 197(1) CrPC. The alleged act on no account, it is averred can be said to be having even no remote connection with the purported discharge of official act even in the background of the contents of the F.I. R. relating to Jonai P.S. Case No. 127/84.

6. Mr. Choudhury, the learned counsel further pointed out that the public servants are given this protection u/s 197 CrPC so that they may discharge their duties fearlessly and with vigour and to avoid vexacious prosecution against them without any check and break. It is submitted that on no account it can be said that the said act was not committed in good faith and/ or it was with some personal motive. The act since attaches official character of the person doing it, the same comes under the purview of Section 197(1) CrPC and the protective umbrella has thus to operate as to meet the ends of justice. The only point to be considered at this stage while deciding as to whether sanction is required or not is to see as to whether the same is done in his capacity as public servant. An official act can be performed in strict compliance of the official duties as well as in dereliction thereof. In support of his this contention, he has banked upon a reported case *Shreekantiah Ramayya Munipalli Vs. The State of Bombay*,

7. It is point blank argued that since the illegal exercise of the discretion by the public servant in exercise of the official duty would also fall within the ambit of the expression "acting or purporting to act in the discharge of his official duty" - the protections u/s 197(1) CrPC is very much extended to such acts.

8. Mr. Choudhury, the learned counsel further argued that taking the wrost view though not admitted, even if the petitioner resorted to firing as alleged in the F.I. R. lodged by Khagen Lahon (Annexure-3), the same can safely be said to have been done during the course of his functioning as an officer even as per the case of the informant, Khagen Lahon, and thus it required prior sanction and that way too, the impugned order dated 30-11-91, is fit to be set aside.

9. By referring to *Madan Singh Vs. P.K. Basuk and Others*, particularly its head note B detailed at para 11, it is submitted on behalf of the petitioner that the Court need not confine itself to cornplaint/or F.I. R. in question-rather all material on the record could be taken into consideration for the question of determining the issue of necessity of sanction as in such the act and omission as a whole is to be looked into.

10. On these grounds hence the submissions on behalf of the petitioner is that the impugned order dated 30-11-91 be set aside also setting aside the order dated 8-4-91, on which day cognizance of offence was so taken. There is also prayer as to pass consequential orders recalling issuance of warrant of arrest against the petitioner.

11. Mr. B.D. Goswami, learned P.P. representing the State on the other hand has submitted that the order dtd. 30-11-91, does not require any interference as the Court below has rightly held that in the background of the facts and circumstances of the present case, sanction was not required to be obtained to prosecute for the offence as the said act which took the valuable life of *Dutti Ram Gohain* by any stretch of imagination cannot be said to have been done within the limit of the exercise of the official duty and since the said act is very well separable, the petitioner is no way entitled for protection u/s 197(1) of the CrPC

In support of his this contention the learned P.P. has referred to a reported case B. Saha and Others Vs. M.S. Kochar,

12. After hearing both the sides counsel particularly also by going through the facts of the case, broadly keeping in mind the tests so required as to whether prior sanction as contemplated u/s 197(1) of the CrPC is required or not, I find that there is much of substance in the argument so advanced by the learned counsel for the petitioner that the alleged act was so done in the colour of the official capacity while discharging official duties which is so expressly projected by going through the material available on record as a whole. This is none of the business at this stage to discuss as to what extent the alleged act is done in excess of his official duty which is to be decided in course of trial giving opportunity to petitioner to defend. There is, in my opinion nexus between the alleged act done and performance of discharge of his official duty in the strict sense i.e. though the act said to have been done may not be falling within the inner circle of strict official duty, but the petitioner is entitled to the protection as so incorporated u/s 197(1) of the Cr. P. C.

13. It comes in light that Jonai P.S. Case No. 129/84 is registered under Sections 302/323 of the IPC So provisions of Section 468 CrPC will not be a bar in taking cognizance in this matter if the Government after scrutiny accords sanction. The Government while considering the matter on sanction shall also be conscious of the fact that the matter is hanging since long and therefore within a reasonable time limit, the sanction matter be considered and decided.

14. For the reason assigned, this revision petition is allowed. The order of the learned Court below taking cognizance of the offence for the present without sanction is set aside, the consequential order issuing warrant of arrest against the petitioner is called and the order dated 30-11-91 is also set aside in which it is held that in the background of the present case, prior sanction of the Government was not required before taking cognizance of the offence.

15. This matter stands accordingly disposed of.