

(1995) 11 GAU CK 0011
In the Gauhati High Court
Case No : Criminal Revision No. 420 of 1995

Narayan Tamuli

APPELLANT

Vs

Pradip Kumar Talukdar

RESPONDENT

Date of Decision : 21-11-1995

Acts Referred:

Criminal Procedure Code, 1973 — Section 197

Criminal Procedure Code, 1973 (CrPC) — Section 197

Citation : (1995) 2 GLJ 573 : (1996) 1 GLR 282 : (1996) 1 GLT 597

Hon'ble Judges : B.N.Singh Neelam, J

Bench : Single Bench

Advocate : T.Islam , T.Goswami, K.R.Deb , K.Barua, B.K.Goswami,
D.S.Bhattacharyya, Advocates appearing for Parties

Judgement

1. Heard Mr. BK Goswami, learned counsel appearing for the petitioner complainant. Also heard Mr. DS Bhattacharyya, learned counsel appearing for the opposite parties/accused, namely, Pradip Kumar Talukdar, Sub Inspector of Police and Jantu Nath, a constable.

2. Also perused the previous order dated 6.11.95 which reveals that both side"s learned counsel have shown their deserve as to get this matter finally heard and disposed of at this stage.

3. Mr. Goswami, learned counsel submits that it was improper on the part of the learned Judicial Magistrate, Mangaldai, Darrang vide his order dated 29.7.95 marked as Annexure VII in connection with a complaint case so lodged by the petitioner bearing CR Case No.1055 of 1995 under section 323/201IPC finding prima facie material against the accused opposite parties committing offence coming under the purview of section 323/201 read with section 34 IPC and then instead issuing processes for facing the trial under section 204 CrPC, giving a direction as coming from the impugned order of the learned Judicial Magistrate directing the complaint as to procure sanction in this regard withholding the issue of process.

4. Complaint's case in short is that while he was moving on the road on a motorbike without helmet the accused opposite parties on official duty as the persons from police department deputed and engaged on 19.7.95 at about 10AM for controlling traffic in Mangaldai Town, stopped the complainant and severely assaulted him as detailed in the complaint petition and what was expected of the accused opposite parties was to detain him and forward him to the nearest Magistrate, if any offence is said to have been so committed under the provisions of Motor Vehicles Act for contravention of the provisions for not using the helmet. But after stopping the complainant petitioner as per the complaint petition coming from the mouth of the complainant being supported in his statement on solemn affirmation and also by one of the witnesses so cited and presented before the Magistrate namely Jainur Ali, the accused opposite party members in excess of their official duty manhandled the complainant and also assaulted him as detailed in paragraph 2 and 3 of the complaint petition which need not be repeated. It is pointed out that though the opposite parties/accused happened to be public servants but to the extent of their stopping the complainant and taking him to police station for not using the helmet can well be said to have been the act coming under the purview of discharge of their official duty. But Mr. Goswami has pointed out that overtacts so committed by them after locating the complainant petitioner manhandling him and inflicted injuries on his person in support of which medical certificate is said to have been filed at the time of lodging of the complaint and again also attempting to cause disappearance of the evidence of offence by forcing to change the blood stained garments etc, on no account can be said to be an act which was so exercised in their official duty and the allegation being with regard to the opposite parties/accused's beating the complainant in that course for which prima facie material was also so found by the Judicial Magistrate, had left no occasion for directing the complainant petitioner as to obtain sanction under the provisions of section 197 CrPC. Mr. Goswami, learned counsel submits that by a plain reading of the complaint petition it will transpire that their act can well be bifurcated in two parts. First by stopping the complainant questioning as to why helmet was not used while found moving on two wheeler and another part with regard to the complainant manhandled as detailed in the complaint petition at paragraph 2 and 3. The first part of the complaint, the learned counsel for the petitioner submits can well be said to be an act committed in exercise of official duty which is quite separable with the other part of the act committed by the opposite parties/accused. For beating the complainant there was prima facie material before the Judicial Magistrate while passing the impugned order which is so also incorporated in his said order. In all fairness Mr. Goswami has also pointed out that on no account it can be said in the instant case that the action of the opposite parties/accused was reasonable so committed in the garb of official duty. That being the position the impugned judgment warrants interference. In support of his contention learned counsel for the petitioner relied on a decision of this High Court reported in (1994) 1 GLR 319 [1994 (1) GLJ 61] (Mahendra Nath Saikia vs. Nuruddin Ahmed, Additional Superintendent of Police, Morigaon). In almost the same situation it is pointed

out that this Court has set aside the order of the Judicial Magistrate by which the Judicial Magistrate had also held that the sanction under section 197 CrPC was so required and this Court held therein that in such circumstance when the act in exercise of official duty said to have been committed are separable, instead passing necessary order under section 204 CrPC against police personnel, sanction order under section 197 CrPC so required and called for if prima facie material is so found by the learned Judicial Magistrate as to proceed with the matter by summoning the accused as to appear and face proceeding is not justifiable.

5. Mr. Bhattacharyya, learned counsel on the other hand has submitted that since the opposite parties/accused happened to be police personnel, before issuing process in such circumstance learned Court below was justified in directing the complainant as to obtain sanction. By referring to the counter affidavit so filed on behalf of the opposite parties particularly Annexure C notification it is pointed out that the State Government under the provisions of section 197 (3), CrPC, notified that all members of the Assam Police Forces deployed for maintenance of law and order in the State of Assam shall have all the protection as provided under section 197 (2) CrPC and the said notification being of dated the 29.5.90 is still in force. Sanction before the cognizance thus was a must and therefore the impugned order does not suffer from any infirmity. Secondly, it is pointed out by referring to some of the reported cases detailed course of exercising official duty if the circumstance so warrants, police personnel are very within their limits even as to use forces and in the present circumstance by referring Annexure A and B of the counter affidavit so filed Mr. Bhattacharyya, learned counsel averred that in course of the complainant attempted to escape after insulting the police personnel, the accused/opposite parties had no alternative but to chase the complainant and in that course because of his falling down on the ground, he sustained injuries. That being the position there is no merit in this criminal revision petition and the same be dismissed. In support of this contention on behalf of the opposite parties some of the reported cases so cited are (1988) 1GLR235 [1988 (1) GLJNOC 6] (Abedur Rahman vs. Banmali Choudhury), AIR 1956 SC 44 (Matajog Dobey vs. HC Bhari) paragraph 17 and 23. Basing on these two judgments referred to above Mr. Bhattacharyya, learned counsel submits that if in performing of the official duty, police personnel used force that can well be said to be within the scope of an act coming under the purview of official duty. Mr. Bhattacharyya has also referred to some of the other reported case and they are 1988 CrL LJ100 (Karnalsingh Gill vs. State of Gujarat). In the background of this reported case it is further argued that the act so done by a Government servant while engaged in the performance of his official duties requires sanction if it is directly concerned with his official duties so that, if questioned, it would be claimed to have been done by virtue of the office and thus the act so done is in proper discharge of his duties. In the instant case the opposite parties/accused it is pointed out had to take the complainant petitioner to the police station because of his misbehaving as

mentioned in Annexure A of the counter affidavit and it was because of the complainant's falling down on the ground as submitted by the learned counsel for the other side that he sustained injuries.

6. Be that as it may, in the background of the facts and circumstances of the case and also after going through the reported cases so cited by the learned counsel for both sides in the instant case, I hold the view that the second act said to have been so committed by the accused/opposite party members as detailed in paragraphs 2 and 3 of the complaint petition are quite separable and such act of manhandling the complainant as alleged for which as observed by the learned Judicial Magistrate there was prima facie material, on no account can be said to be an act so committed in exercise of official duty. The complainant had lodged the complaint petition relating to overtact said to have been committed by the accused/opposite parties as detailed in paragraph 2 and 3 of the complaint petition and for the same learned Court below found prima facie material with regard to the complainant being beaten up etc, which had no direct concern with the act so committed by him in official duty stopping the complainant while moving on two wheeler without helmet. As a result the ruling so relied upon on behalf of the petitioner as reported in (1994) 1 GLR 319 [1994 (1) GLJ 61] and the findings arrived at has great simblance with the facts and circumstance of the present case under consideration and the allegations so put in the complaint petition as detailed in paras 2 and 3 of the complaint petition for which even prima facie material was so also found by the Judicial Magistrate cannot to be said to