

(1982) 08 P&H CK 0020
In the Punjab And Haryana At Chandigarh

Pawan Kumar

APPELLANT

Vs

Ruldu Ram and Another

RESPONDENT

Date of Decision : 02-08-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 383, 384, 500, 504

Citation : (1983) CriLJ 180

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Judgement

D.S. Tewatia, J.—The short question that falls for determination in this petition is as to whether the Magistrate could take cognizance of the offences under Sections 384/ 500/504, Penal Code, without the prior sanction of the competent authority (in this case, of the State Government) on a complaint filed before him by respondent Ruldu Earn.

2. To appreciate the proposition posed above, a few relevant facts, as find mention in the complaint itself, need be taken notice of, which can be stated thus:

On 31st of March, 1980, at about 9 p.m., Ruldu Ram complainant brought a number of bahis within the municipal area of Maur through the Ghuman Octroi Barrier, Maur, after allegedly paying the necessary octroi thereon, vide receipt No. 216 dated 31st March, 1980. Soon after when he was on his way to his house from the said octroi post, he was intercepted by Pawan Kumar petitioner, Executive Officer, Maur Mandi, District Bhatinda, who checked the bahis. The petitioner is said to have asked Ruldu Ram that he was importing the bahis without paying the octroi. Ruldu Ram complainant replied that he had paid the octroi charges and produced the receipt but the petitioner threw away the same and abusively alleged that the complainant was in the habit of importing goods in the municipal area without paying the octroi charges. When the complainant protested, the petitioner abused him and called the Moharrir Octroi from the carrier and ordered the complainant to pay Rs. 50/- immediately to Octroi

Moharrir as penalty on the threat of otherwise being handed over to the police and thus the petitioner is said to have extorted Rs. 50/- from the complainant.

3-4. The relevant portion of Section 197 of the Criminal P. C., 1973, is in the following terms:

197. (1)- When any person who is or was a Judge 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 committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction -

(a) xx xx xx xx xx (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.

5. It is not disputed that if the offence is held to have been committed while acting or purporting to act in the discharge of official duty, the provisions of Section 197 of the Criminal P. C. would be attracted and a prior sanction for prosecution would be required. So, the sole point that arises for consideration is as to whether all or any one of the offences for which he is sought to be prosecuted could be held to have been committed by the petitioner while acting or purporting to act in the discharge of his official duties.

6. The petitioner is the Executive Officer of the Municipal Committee. It is one of the functions of the Executive Officer to see that the provisions of Section 76 of the Punjab Municipal Act, 1911, are being complied with. Section 4 of the Punjab Municipal (Executive Officer) Act. 1931, in fact, invests the executive Officer with the power of carrying on the administration of the Municipal Committee. Therefore, when he checks a person importing goods in the Municipal Committee to see as to whether the necessary octroi tax has or has not been paid, he acts within the four corners of his functions. Even if he wrongly assesses the tax or imposes penalty in excess of his powers, such recovery of the tax and penalty would be an act performed in the discharge of his official duty. What the complainant labels an offence of extortion, the petitioner considers imposition of penalty, in the discharge of his duty, on a person avoiding to pay requisite octroi tax on the imported goods. Therefore, the act amounting to an offence u/s 383, Penal Code, was clearly performed in exercise of his official duty as an Executive Officer who had the responsibility of overseeing as to whether, on the goods imported into the area of the Municipal Committee, Maur, the requisite octroi tax had been paid or not.

7. The offence u/s 500, Penal Code, also appears to be connected with the performance of petitioner's duty as an Executive Officer, for it is based upon the act of the petitioner of saying to the complainant that he had evaded the payment of octroi tax and thereafter imposing penalty on him.

8. As regards the offence u/s 504, Penal Code, it appears to be based on the

assertion in the complaint that the petitioner had abused the complainant. Abusing a citizen by a public servant certainly does not come within the performance of lawer"s duty as such. But, where the public servant is prosecuted simultaneously for more than one offence and if any offence out of them is such which requires sanction, then without the prior sanction of the competent authority, the Magistrate cannot take cognizance of all the offences against that public servant and try him for those offences.

9. On behalf of Ruldu Ram respondent, his counsel Mr. Ashok Bhan cited Prabhakar V. Sinari Vs. Shanker Anant Verlekar, ; and Bhagwan Prasad Srivastava Vs. N.P. Mishra, . In these two authorities, the rationale underlying the provisions of Section 197 of the Criminal P. C. has been clearly delineated and there is no dispute with the proposition enunciated in these two judgments. Their Lordships have provided only the guidelines and, in the light of those guidelines, one has to see as to whether, in a given case, sanction u/s 197 of the Criminal P. C. is called for or not.

10. In the present case, sanction for prosecution for the offences under Sections 383 and 500, Penal Code, is clearly called for and since, as already observed, the petitioner is being prosecuted for these two offences along with the third offence u/s 504, Penal Code together, prior sanction u/s 197 of the Criminal Procedure Code would be necessary for the prosecution of the petitioner jointly for all the three offences. Accordingly, the petition is allowed and the order of the trial Magistrate dated 2nd March, 1982, holding that no sanction was necessary, is set aside and the proceedings before him are quashed. It would, however, be open to the complainant to apply and obtain sanction for the prosecution of the petitioner from the competent authority in accordance with law, if so advised.