

(2003) 02 BOM CK 0131

In the Bombay High Court

Case No : Criminal Revision Application No. 191 of 1998 and Criminal Application No's. 2222, 2281 and 2294 of 1998

Prabhakar Vyankatesh Sangwai

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 11-02-2003

Acts Referred:

Constitution of India, 1950 — Article 356
Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 161, 420, 468, 471

Citation : (2003) BomCR(Cri) 1421 : (2003) 105 BOMLR 935

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Judgement

S.T. Kharche, J.—Rule is taken up for final hearing with consent of" parties.

Heard Shri Dharmadhikari and Shri Gordey. learned Counsel for the applicants and Shri Thakare, learned Additional Public Prosecutor for the respondent State.

All these four criminal applications involve common questions of law and facts and take an exception to the order dated 23.11.1998 passed by the learned Chief Judicial Magistrate rejecting the discharge applications of the applicants u/s 197 of the Code of Criminal Procedure for want of sanction to prosecute the applicants and. therefore, all are being disposed of by this common judgment.

2. Brief facts are as under :

Applicant Prabhakar Sangwai is working as a Senior Clerk in the office of Employees State Insurance Scheme, Amravati. Applicant Uttani Ingle is working as a Peon in the Department of Medical and Health Services of Government of Maharashtra and at the relevant time was working as officiating Junior/Senior Clerk in the office of the said Department at Amravati, Applicant Manohar Ingale was working as a Junior Clerk in the State Employees Insurance Scheme at Amravati at the relevant time and applicant Ramesh Jaiswal is working as a

Junior Clerk in the Treasury Office situated at Amravati. The applicants have been criminally prosecuted for the offences punishable under Sections 468, 471 and 420 of the Indian Penal Code on the basis of first information report lodged on 13.8.1991 by Ranjit Singh Narayan Singh Sayar, Incharge Insurance Medical Officer, on the allegations that the applicants had prepared the bogus bills to the tune of Rs. 1,65,334/- on 5.5.1989, 6.7.1989 and 6.7.1991 and submitted the same to the Treasury, obtained bank draft and encashed amount of the draft and committed the offence of forgery and cheating. The charge-sheet against all the applicants was filed in the Court of learned Chief Judicial Magistrate, Amravati. Thereafter the applicants had filed applications for discharge on (he ground that all the applicants/accused are public servants and they are not removable except with the previous sanction of the State Government and, therefore,, sanction to prosecution u/s 197 of the Code of Criminal Procedure was necessary. These applications for discharge were rejected by the learned Chief Judicial Magistrate on 23.11.1998. It is this order that is under challenge in all these applications.

3. The learned Counsel for the applicants contended that the impugned order passed by the learned Chief Judicial Magistrate is not sustainable in law. The act complained of was done by the applicants in the discharge of their official duties without which they could not have prepared the bills and could not have submitted the same to the Treasury and ultimately whatever was done by them could be taken as has been done in discharge of their official duties or purporting to have been done in discharge of their official duties.

4. The learned Counsel for the applicants further contended that all the applicants are public servants in the office of the State Government and they are not removable except with sanction of the State Government and, therefore, previous sanction as is required u/s 197 of the Code of Criminal Procedure was necessary. The learned Counsel further contended that charge-sheet presented against all the applicants without obtaining previous sanction to prosecute them from the State Government is liable to be quashed.

5. It is further contended by the learned Counsel for the applicants that the learned Chief Judicial Magistrate incorrectly observed in his order that accused have admitted that it is not necessary that they can be removed from their service without prior sanction of the Government. It was contended that in such circumstances the impugned order passed by the learned Chief Judicial Magistrate rejecting applications for discharge has resulted into miscarriage of justice and. therefore, same deserves to be set aside. In support of their submissions, the learned Counsel for the applicants relied on the decisions of the Single Judge of this Court in Abdul Hamid Ismail v. State of Maharashtra (1993) Mh. L.J. 139; Anil Shet Gaonkar Vs. Abdulla Khan Karol and Another, and Criminal Revision Application No. 100/98 decided on 4.5.2001, They have also relied on Division Bench decision of the Apex Court in Gauri Shankar Prasad Vs. State of Bihar and Another, and Full Bench decision of the Apex Court in P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of

Investigation, .

6. Shri Thakare, learned Additional Public Prosecutor for the respondent State, supported the impugned order that has been passed by the learned Chief Judicial Magistrate and submitted that three applicants/accused are employees of Employees State Insurance Scheme and one applicant/accused is in the employment of Treasury Office; and though all of them are public servants, they are not holding the post, from where they could be removed from service except by or with the sanction of the State Government. He further contended that provisions of Section 197 of the Code of Criminal Procedure are not attracted to the facts and circumstances of the present case. He contended that the offences of forgery and cheating have been committed by the applicants/accused and it cannot be said that the said offences were committed by them while acting or purporting to act in discharge of their official duties. Hence, according to him, the impugned order passed by the learned Chief Judicial Magistrate is sustainable in law.

7. I have given thoughtful consideration to the contentions canvassed by the learned Counsel for the parties. Before appreciation of contentions of respective Counsel, I think it proper to reproduce Section 197 of the Code of Criminal Procedure, which reads thus :

197. Prosecution of Judges and Public Servants (1) When any person who is or was a Judge or Magistrate 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 been 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) in a 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 the Union, of the Central Government;

(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 :

Provided that where the alleged offence was committed by a person referred to in Clause (b) during the period while a Proclamation issued under Clause (1) of Article 356 of the Constitution was in force in a State, Clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

(2)...

(3)...

(3A)...

(3B)...

(4)...

8. On bare reading of these provisions of law, it will be clear that no Court shall take cognizance of the offence except with the previous sanction of the State Government in case a person is employed in connection with affairs of the State Government. It will be clear from Section 197 that for claiming protection under that section, it has to be shown by the accused that there is a reasonable connection between act complained of and discharge of official duty. An official act can be performed in discharge of official duty as well as in dereliction of it. The object of this section is to guard against vexatious proceedings in case of public servants and to secure the opinion of superior Authority whether it is desirable that there should be prosecution. The nexus between the discharge of the public duty and the offending act or omission must be inseparable.

9. In *P.K. Pradhan v. State of Sikkim* (cited supra), the Apex Court observed in para 9 as under :

In the case of *Amrik Singh Vs. The State of Pepsu*, upon a detailed discussion, this Court was of the view that if the discharge of official duty and the act of the accused complained of are inseparable, sanction under section. 197 of the Code would be necessary. Venkatarama Ayyar, J., speaking for the Court observed at pages 1307-08 which runs thus :

If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction u/s 197(1) would be necessary; but if there are no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.

(Emphasis added)

The Apex Court further observed in paras (14) and (15) as under :

In the case of *K. Satwant Singh Vs. The State of Punjab*, a Constitution Bench of this Court observed that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of bribe, an offence punishable u/s 161 of the Indian Penal Code is one of them and offence of cheating and abetment thereof is another. Likewise, another Constitution Bench in the case of *Om Prakash Gupta Vs. State of U.P.*, observed that... public servant committing criminal breach of trust does not normally act in his public capacity as such no sanction is required for such an act.

Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection u/s 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection u/s 197 of the Code, the acts of the accused complained of must, be such that the same cannot be separated

from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the acts as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction u/s 197 of the Code can be raised any time after cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left, open to be decided in the main judgment which may be delivered upon conclusion of the trial.

10. I may usefully refer to latest Division Bench decision of the Apex Court in the case of Raj Kishor Roy Vs. Kamleshwar Pandey and Another, . In this case the ratio laid down by the Apex Court in the case of P.K. Pradhan v. State of Sikkim (cited supra) was relied on and it has been observed in paras (9) and (10) as under :

Mr. Nageshwara Rao sought to support the order of the High Court by placing reliance on the case of Matajog Dobey v. H.C. Bhari. This was a case where the Investigating Officers went, with a search warrant, to search a place. They were obstructed in performance of their duties. They had thus broken open the door of the flat and the lock of a door of a room. It was held that these were acts which were performed in the course of their duty. This finding is thus on facts of that case. In tills case, it has also been held that the need for sanction u/s 197 of the Criminal Procedure Code is not. necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. It is held that this question may arise at any stage of the proceedings. It is held that the question whether sanction is necessary or not may have to be determined from stage to stage. Thus, far from helping the 1st respondent, this authority also supports the proposition that in certain cases, depending on the nature of the acts complained of, the complaint cannot be quashed at the initial stage itself. Mr. Nageswara Rao also relied on the decisions of this Court in State of Maharashtra v. Dr. Budhikota Subbarao and State v. B.L. Verma. These two authorities merely lay down the general proposition of law that the bar u/s 197 of the Criminal Procedure Code is mandatory where the act has been done by the public servant, in the course of his service or in the discharge of his duty. There can be no dispute with that proposition.

11. Having resume of the law laid down by the Supreme Court let us examine

the present case. In the present case, three accused are employees of Employees State Insurance Scheme and one accused is an employee in the Treasury Office. The allegation of the prosecution is that all the applicants/accused joined Viands and prepared medical reimbursement, bills with forged signatures of the complainant and presented the same to the Treasury and that Bank draft was obtained amounting to Rs. 1,65,334/-, which was encashed, but the amount, was embezzled or misappropriated by them and, therefore, they have been prosecuted for the offences punishable under Sections 468, 471 and 420 of the Indian Penal Code. All the applicants are public servants, but whether the sanction of the State Government is necessary is a question, which cannot be adjudicated without there being proper material on record. The learned Additional Public Prosecutor was given opportunity to produce the service record of the applicants/accused, but the same could not be produced by him. Admittedly, all the applicants are not Gazetted Government servants and it is not known whether they can be removed without or with sanction of the State Government.

12. Similarly, the acts complained of are said to have been done in the discharge of official duty. Having regard to the nature of allegations of prosecution, it cannot be said with any amount of "certainty that acts of accused complained of are inseparable. The official act can be performed in discharge of official duty as well as in dereliction of it. and for invoking protection u/s 197 of the Code of Criminal Procedure, the acts of accused complained of must be such that same cannot be separated from discharge of the official duty. But, if there was no reasonable connection between them and performance of those duties and the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or defence establishes that the act purported to be done is in the discharge of duty, the proceedings will have to be dropped. But this is a case wherein it is not possible to decide the question effectively without giving opportunity to the defence to establish that what the accused did was in the discharge of their official duty and claim of the accused that the act they did was in the course of performance of their duty was reasonable one and neither pretended nor fanciful can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, question of sanction should be left open to be decided in the main judgment, which may be delivered upon conclusion of the trial. This is a case where prosecution must be given opportunity to establish its case by evidence and opportunity must be given to the defence to establish that accused had been acting in the official course of their duty. In the circumstances, I am of the firm view that in this case, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial. The learned Chief Judicial Magistrate is directed to decide the criminal case according to law within a period of three months from the date of receipt of this judgment.

13. In the result, all the applications are disposed of in the aforesaid terms. The

record and proceedings be sent to the Lower Court without delay.

Copy of this judgment be retained in Criminal Application Nos. 2281/1998, 2294/1998 and 2222/1998.