
(2008) 03 JH CK 0038
In the Jharkhand High Court

Prabir Kumar Gangopadhy and Dipak Kumar Ghosh APPELLANT
Vs
State of Jharkhand and Another RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 380, 482
Penal Code, 1860 (IPC) — Section 193, 211, 337, 34, 353

Citation : (2008) 03 JH CK 0038

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This application has been filed u/s 482 of the Code of Criminal Procedure for quashing the entire proceedings of complaint case bearing C-1 case No. 97 of 2002 pending in the court of Sri S. Kumar, Judicial Magistrate, Jamshedpur including the order dated 27.1.2003 whereby and whereunder cognizance of the offences under Sections 380/427/437/505/34 of the Indian Penal Code has been taken against the petitioners and others.

2. Before advertng to the submissions advanced on behalf of the parties case of the complainant needs to be taken notice of which is as follows:

3. The complainant, the Secretary of Bazar Blkash Kalyan Sangh, lodged a complaint in the year 2002 stating therein that a criminal case was lodged against him as well as against the witnesses of this case at the instance of the petitioners and other officials of the South Eastern Railway including police officials and also Executive Magistrate of Jamshedpur which was registered as Baghbera P.S. case No. 106 of 1999 under Sections 337 and 353 of the Indian Penal Code. Upon investigation of the case charge sheet was submitted against the complainant and the witnesses of this case, but In course of trial, they were acquitted and thereby they were put to huge financial loss and that apart, their reputations were also tarnished. At the same time, it has also been alleged that accused persons damaged several shops situated at Plot No. 1, new Khata No.

14, Thana No. 1162, Mouza Sushni Geriya recorded in the name of late Baijnath Mishra on the pretext of removal of the encroachment from the land of the Railway and took away all the valuables on the truck and thereby all the accused persons including the petitioners committed offence under Sections 193/211/505/500/436/425/427/380/440/34 of the Indian Penal Code.

4. On filing the complaint, the statement of the complainant was recorded on solemn affirmation and the matter was taken up for enquiry. In course of which, witnesses were examined and thereafter learned court took cognizance of the offences under , Sections 380/427/436/505/34 of the Indian Penal Code against the petitioners and other persons including the police officials and also Executive Magistrate.

5. Being aggrieved with that order, this application has been filed for quashing the order taking cognizance of the offence and also entire criminal proceedings so far these petitioners are concerned.

6. Learned Counsel appearing for the petitioners submitted that the petitioners and others had made encroachment over the land belonging to the Railway and, therefore, (cic) drive was undertaken In compliance of the order passed by the Patna High Court In C.W.J.C. No. 2290 of 1990 whereby the authorities of the District Administration including Railway authorities had been directed to remove encroachment from the public land Including Railway land and thereupon Railway Officials with the help of police officials and also Executive Magistrate of the Jamshedpur in discharge of their official duties removed the encroachment and, therefore, petitioners being public servants were protected under the umbrella of the provisions of Section 197 of the Code of Criminal Procedure, from being prosecuted but the court blow without having sanction by the competent authority took cognizance of the offences which Is quite Illegal and hence it is fit to be set aside.

7. Learned Counsel in support of his submission has place reliance on a decision rendered in a case of Ramesh Kumar Verma and Ors. v. State of Bihar and Anr. 2002(3) JLJR 66 holding therein that even if some excesses are being committed in discharge of their official duties, the persons cannot be prosecuted in absence of prior sanction by the competent authority.

8. As against this, learned Counsel appearing for the opposite party No. 2 submitted that allegations levelled in the complaint petition go to constitute offence under which cognizance has been taken and as such order taking cognizance needs not to be interfered with this Court.

9. In this regard it was further submitted that the complainant in his complaint petition has also put allegation of taking away the articles belongings to the petitioners constituting offence u/s 380 which act in any view of the matter cannot be said to have been done in purported exercise of their official duties and, therefore, there was no necessity of prior sanction before taking cognizance of the offence. In support of his submission learned Counsel has referred to a

decision reported in State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew, .

10. It has been well settled that the protection of the provision of Section 197 of the Code of Criminal Procedure is available for public servant, when any act complained of is done in discharge of the official duty but if the act complained of is done in dereliction of the official duty then the protection is not available. Then obviously question arises as to what could be the test to ascertain act done was in discharge of the official duty. This seems to have been answered by Hon"ble Supreme Court in a case of State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew, where it has been held as under:

That the protection given u/s 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependant upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it the act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public

servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

11. In view of the principle as indicated above it needs to be examined as to whether the act complained of was done in discharge of the official duty. From the order of the Patna High Court in C.W.J.C. No. 2290 of 1990 which is on the record it appears that all the authorities were directed to remove the encroachment from the public land and the copy of the order seems to have been communicated to the District Magistrate, Superintendent of Police, East Singhbhum, Jamshedpur, Estate Officer, South Eastern Railway, Tatanagar. The authorities including the Railway authorities in compliance of the order passed by the Patna High Court seems to have acted upon and took action for removal of the encroachment which fact even gets indication from the complaint wherein it has been stated that shops other than the shop of the petitioners were also removed and that in course of the anti-encroachment drive even the police officials and the Executive Magistrate seems to have been deputed. This can be guessed from the fact that they were also made accused in the case. Thus, it is a clear indicative that the officials including the Railway officials whatever they did in discharge of their official duties and in course of removing encroachment if something is removed one can hardly be said to have committed offence of theft. Moreover even if there are some excesses still immunity from being prosecuted is available by virtue of the provision as contained in Section 197 of the Code of Criminal Procedure. Admittedly no prior sanction has been accorded for prosecution of the petitioners and, therefore, any prosecution lodged against the petitioners seems to be quite bad.

12. Thus, the entire criminal proceedings of complaint case bearing C-1 case No. 97 of 2002 including the order dated 27.1.2003 taking cognizance of the offences is hereby quashed so far these petitioners are concerned. In the result, this application is allowed.