

(2005) 03 AHC CK 0175

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 3908 of 2004

Rakesh Kumar Gupta, Sahayak Nagar Adhikari, Nagar Nigam,
Parasnath Nath Shukla, Revenue Inspector, Nagar Nigam and
Sheshnath Shukla, Nagar Nigam APPELLANT

Vs

State of U.P., Vijay Kumar Kushwaha and Harshchandra
Prajapati RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 379, 382
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)
Uttar Pradesh Municipal Corporation Act, 1959 — Section 570, 571

Citation : (2005) CriLJ 2776

Hon'ble Judges : K.N. Ojha, J

Bench : Single Bench

Advocate : Kumar Anish, B.D. Mandhyan and Satish Mandhyan, for the
Appellant; S.D. Kautilya, K.M. Tripathi and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

K.N. Ojha, J.—Instant application has been moved by Rakesh Kumar Gupta and two others, employees of Nagar Nigam, Gorakhpur, u/s 482 Cr.P.C. to quash proceeding of Complaint Case No. 1189 of 2002 pending against them in the Court of Additional Chief Judicial Magistrate III, Gorakhpur, under 147, 427, 504, 506, 120B, 382, 148, 451 I.P.C. and Section 3(1)(x) of S.C. S.T. Prevention of Atrocities Act and also to quash the order dated 18.3.2004 whereby the applicants have been summoned to face trial.

2. Heard Sri Kumar Anish, Advocate, holding brief of Sri Satish Mandhyan, Seamed counsel for the applicants, Sri S. D. Kautilya learned AGA and Sri K. M. Tripathi, counsel for the O.P. No. 2 and have gone through the record.

3. Applicants are employees of Nagar Nigam, Gorakhpur. The applicant No. 1,

Rakesh Kumar Gupta is Sahayak Nagar Adhikari, applicant No. 2, Parasnath Shukla is Revenue Inspector and applicant No. 3 Sheshnath Shukla is an employee of Nagar Nigam, Gorakhpur. Affidavit has been filed by Parasnath Shukla, applicant No. 2 that the opposite party No. 2, Vijay Kumar Kushwaha filed a complaint that his Tin shed in Mohalla Hasupur, police station Rajghat, district Gorakhpur, was existing since last 50 years but the applicants, who are employees of Nagar Nigam, Gorakhpur, in collusion with O. P. No. 3, Harsh Chandra Prajapati got it demolished. It is stated that there was enmity of election between O.P. No. 2 Vijay Kumar Kushwaha and O. P. No. 3 Harsh Chandra Prajapati. On the complaint filed by the O. P. No. 2 Case No. 1189 of 2002 was registered in the Court of Additional C.J. M. III, Gorakhpur. Copy of the complaint is Annexure No. 2 to the affidavit. The case of the O.P. No. 2. complainant, was that It was got done by O. P. No. 3, who was elected as Corporator, Nagar Nigam, Gorakhpur. While no encroachment on Nali and road was made by him.

4. When the complaint was filed the applicants were summoned, hence this application has been filed for quashing the proceedings of the complaint case and it is submitted that the applicants are protected u/s 570 of the U. P. Municipal Corporation Act, 1959, which contemplates as below:

"570. Indemnity for acts done in good faith.- No suit, prosecution or other legal proceedings shall lie in respect of anything in good faith done or purported or intended to be done under this Act against the State Government, any Sabhasad, Nagar Pramukh or against the Mukhya Nagar Adhikari or any Corporation officer or servant or against person acting under and in accordance with the direction under this Act of the State Government, Corporation, any Committee constituted under this Act, the Mukhya nagar Adhikari, any Corporation Officer or servant or of a Magistrate."

5. Section 571 of the Act has also been relied on which provides that no suit shall be instituted against the Corporation or against the Mukhya Nagar Adhikari or against any Corporation officer or servant, in respect of any act done or purported to be done in pursuance of execution or intended execution of this Act or in respect any alleged neglect or default in the execution of this Act.

6. Learned counsel for the applicant has submitted that the protection under Sections 570 and 571 has been provided to the employees of Nagar Nigam by U.P. Municipal Corporation Act, 1959 as has been provided by Section 197 of Cr.P.C. which provides that no Court shall take cognizance of any offence when a government servant specified in the Section acts or purports to acts in discharge of the official duty and any offence is alleged to have been committed in the discharge of the said duty.

7. Learned counsel for the applicant has cited Abdul Wahab Ansari Vs. State of Bihar Another, in which it has been laid down by Hon'ble the Apex Court that when there is a dispute about encroachment of the property belonging to

mosque and the appellant was a Circle inspector appointed as Dy. Magistrate pursuant to orders of Sub Divisional Magistrate who directed to use police force to remove the encroachment, some miscreants armed with weapons started hurling stones and situation became out of control and when the applicant directed opening of fire to control mob, two persons were injured and one person died, it was held that the order for opening fire is in exercise of official duty imposed under the order of the Magistrate. Cognizance of the offence against the applicant without prior sanction of the competent authority u/s 197 was quashed.

8. In *B. Saha and Others Vs. M.S. Kochar*, it has been laid down by Hon''ble Apex Court that "the question of sanction u/s 197 can be raised and considered at any stage of the proceedings. In considering whether prosecution was required, it is not necessary for the Court to confine itself to the allegations in the complaint. It can take into account all the materials on the record at the time when the question is raised and falls for consideration."

9. In *N.K. Ogle Vs. Sanwaldas @ Sanwalmal Ahuja*, it was held by Hon''ble the Apex court that Tehsildar and the District Collector had passed an order for collecting lease money from the respondent. On the basis of the aforesaid order the appellants had registered the matter in his Court and ordered for Issuance of demand letter. The letter was served on the respondent and yet he did not make payment, therefore, the order of attachment warrant was issued. When the respondent! was available with scooter in the Tehsildar the scooter was seized and was auctioned by the Tehsildar. the respondent filed a complaint and initiated; criminal prosecution against the Tehsildar for the offence u/s 379 I.P.C. it was held by Hon''ble the Apex Court that the act complained of against the Tehsildar was an act committed in discharge of the official duty of such Tehsildar and therefore the cognizance cannot be taken against the Tehsildar by any Court without prior sanction of the competent authority.

10. In 2000 SCC(CrI) 872, *Gaurishanker Prasad v. State of Bihar and Anr.* it was laid down by Hon''ble the Apex Court that u/s 197 of Cr.P.C. what is to be determine is whether the alleged action, which constituted an offence has a reasonable and rational nexus with the official duties required to be discharged by the public servant. If answer is in affirmative then sanction for his prosecution is required to be obtained. In the cited case the appellant in his official capacity as Sub Divisional Magistrate went to the place of the complainant for the purpose of removal of encroachment from Government land and in exercise of such duty he allegedly entered the chamber of the complainant, used filthy language and dragged him out of his chamber. It was held that the act had reasonable nexus with the official duty of the appellant and no criminal proceeding could be initiated against the application without obtaining prior sanction because the appellant was present there in his official capacity as Sub Divisional Magistrate for the purposes of removal of the encroachment from the government land and in exercise of such duty he committed the act.

11. In instant case it is admitted that the applicants are officer or employee of

the Nagar Nigam, Gorakhpur it is alleged that are protected u/s 570 of the U.P. Municipal Corporation Act by the Nagar Ralikas as Government servant and officers are protected u/s 197 of Cr.P.C.

12. In instant case when Corporator moved application and complaint was received from another person also the Mukhya Nagar Adhikari sent letter No. 203 dated 5.9.2002 to Superintendent of Police, Gorakhpur that complainant-respondent and two others had made encroachment on path of Nagar Palika Parishad by installing water tank and erecting Chabutara. On receipt of the letter the Superintendent of Police passed order on 9.9.2002, copy of which is Annexure No. 2 to the affidavit, for removal of encroachment on 11.9.2002 and for maintaining law and order on the spot. Police force was appointed and duties were allotted to the police officials. The Superintendent of Police directed that the police force be got made available to the officers and officials of Nagar Nigam, Gorakhpur, so that encroachment may be removed. When police force was made available the applicants made compliance of the order passed by the Mukhya Nagar Adhihari. Thus it is a clear case in which the applicants acted in discharged of their official duties and therefore, they are protected by Section 570 of the U.P. Municipal Corporation Act, 1959 and complaint case against the applicants cannot proceed.

13. The applicant No. 2 has filed affidavit and has denied that any Insulting language was used or any threatening was extended. No enmity was existing on the date of the occurrence between the complainant- O.P. No. 2 and the applicants. Therefore, there is no reason to disbelieve the affidavit of the applicant No. 2.

14. Therefore, the application u/s 482 Cr.P.C. filed by the applicants is allowed and the proceedings of Complaint Case No. 1189 of 2002 pending against the applicants Court the Court of Additional Chief Judicial Magistrate III, Gorakhpur, including the summoning order dated 18.3.2004 is quashed.