

(2015) 02 JH CK 0132

In the Jharkhand High Court

Case No : Cr.M.P. No. 504 of 2003 & Criminal M.P. No. 504 of 2003

Ram Raj Ram and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482
Penal Code, 1860 (IPC) — Section 323, 341, 342, 379, 506

Citation : (2015) 3 Crimes 258

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : P.C. Roy, for the Appellant; Shekhar Sinha, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.—Heard Mr. P.C. Roy, learned counsel for the petitioners, Mr. Shekhar Sinha, learned counsel for the State and Mr. S.K. Murty, learned counsel for O.P. No. 2.

2. In this application, the petitioners have prayed for quashing the entire criminal proceeding in connection with Complaint Case No. 6 of 2003, corresponding to T.R. No. 975 of 2003 including the order dated 24.2.2003, passed by Shri A. Kumar, learned Judicial Magistrate, 1st class, Giridih, whereby and whereunder cognizance has been taken for the offence under sections 341, 342, 323 and 379 of the Indian Penal Code.

3. The prosecution story in brief is that on 27.12.2002, the petitioner No. 1 was posted as a Junior Sub Inspector and he had asked the complainant to disclose the name of some boys of the locality and on refusal to do the same, the petitioner No. 1 caught hold of the hands of the complainant-opposite party No. 2 and brought him to the police station where he was assaulted by him and a wrist watch was allegedly snatched from the complainant. It was further alleged therein that petitioner No. 2 had slapped the complainant and had abused him

and finally had locked him up in the lock up of the police station and only at the intervention of S.P., Giridih, the complainant was finally released.

4. After examination of the complainant on solemn affirmation and his witnesses, vide order dated 24.2.2003 cognizance was taken for the offence under sections 341, 342, 323 and 379 and 506 of the Indian Penal Code.

5. Learned counsel for the petitioners has submitted that the complainant-opposite party No. 2 is an accused in several cases being Giridih (Town) P.S. Case No. 2 of 2003, Giridih (Town) P.S. Case No. 22 of 2003 and Giridih (Town) P.S. Case No. 240 of 2002 and the petitioner No. 1 was instructed by the officer incharge of Giridih (Town) Police Station to enquire and investigate into the cases. He has further submitted that the opposite party No. 2 in order to dilute the cases registered against him by creating pressure on the police has instituted a false case, which would further be evident from the fact that in spite of the alleged assault upon him, no injury report was produced by the opposite party No. 2. He has also submitted that the act on the part of the petitioner No. 1 even if it is taken to be true is in discharge of his official duties and in absence of sanction for prosecution, the criminal case instituted against the petitioners cannot be allowed to be continued. In this connection, he has referred to a judgment rendered in the case of State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew, .

6. Learned counsel for Opposite party No. 2, on the other hand, has relied on the counter affidavit filed by the opposite party No. 2, in which it has been stated that the matter was enquired into by the S.P., Giridih and on being prima facie satisfied that petitioner No. 1 has committed the offence, he was put under suspension and a departmental proceeding was also initiated and in the enquiry, the petitioner No. 1 was found guilty for the charges levelled against him. Subsequent thereto, the petitioner No. 1 was handed out a punishment of withholding two increments. Thus, according to learned counsel for opposite party No. 2, prima facie an offence has been made out against the petitioners, which does not warrant any interference by this Court.

7. After hearing learned counsel for the parties and after going through the records, I find that with respect to the alleged offence, the enquiry report of Deputy Superintendent of Police (Hqrs.) 1st, Giridih, it appears that in connection with Giridih (Town) P.S. Case No. 2 of 2003, Sub Inspector Surendra Prasad Singh and the petitioners had arrested the opposite party No. 2, which has been recorded in Sanha but on enquiry, it was found that both the persons neither had gone together nor had returned together. It further appears that in Giridih (Town) P.S. Case No. 240 of 2002, the complainant-opposite party No. 2 was not a named accused and the investigating officer was Sub Inspector Surendra Prasad Singh and that there was no direction in the supervision report to arrest the O.P. No. 2 but in spite of the same, the petitioner No. 1 had arrested him and had misbehaved with him in the police station. In the case of State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew, , it has

been held thus:-

7. The protection given under Section 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 of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent 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 this 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. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly while determining its applicability to any act or omission in -the course of service. Its

operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far as its official nature is concerned. For instance, a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that the act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance, a police officer in discharge of duty may have to use force, which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in the course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in *Matajog Dobey v. H.C. Bhari* thus: (AIR p. 49, paras 17 and 19)

"The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner, with the discharge of official duty....

There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim), but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

8. The act of petitioner No. 1 in the backdrop of the enquiry report submitted by the Deputy Superintendent of Police (Hq.), 1st Giridih, points to dereliction of duty on the part of petitioner No. 1 as in spite of not being authorized or being the investigating officer in the cases against the opposite party No. 2, he had brought the opposite party No. 2 to the police station and had locked him up in Thana Hazat. The fact also remains that several cases were earlier instituted against the opposite party No. 2 and as a police officer, it was the duty of the petitioners to maintain law and order and to book the culprits, who have been made accused in criminal cases. The act of petitioners seems to have a reasonable nexus in discharge of their official duties, which is further fortified by the judgment of the Hon"ble Supreme Court referred to above, wherein it was held that if the charge on a public servant is for dereliction of official duty, it may be said that such act was committed by the public servant while acting in discharge of his official duty. In the case of *Om Prakash and Others Vs. State of Jharkhand and Another*, , the Hon"ble Supreme Court while considering the protection given under section 197 Cr.P.C. held as follows:-

"32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly

connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh). The protection given under Section 197 of the Code 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 of the protection (Ganesh Chandra Jew). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood. 9. The aforesaid judgment, therefore, categorically lays down that there has to be a reasonable connection between the act and the performance of the official duty and if the public servant acts in excess of his duty, he cannot be deprived from being given the protection as envisaged under section 197 Cr.P.C. Even assuming that whatever has been alleged by the complainant-opposite party No. 2 is deemed to be true on the face of it, even then the petitioners cannot be deprived of protection under section 197 Cr.P.C. as at best the acts of the petitioners can be held to be in excess of discharge of their official duty. This finding is further bolstered by the enquiry report, which if considered in its entirety also reveals the fact that the act of the petitioner No. 1 was in excess of his duty or a dereliction of duty. At this stage, the pertinent question, which arises as to whether on the very inception of the case, this Court can exercise its inherent powers under section 482 of the Code of Criminal Procedure. This question has also been answered in the case of Om Prakash and others (supra), wherein it was held that the question of sanction may arise at any stage of the proceeding and in a given case if the question of sanction arises at the inception, there may be unassailable and unimpeachable circumstances on record, which may establish the necessity of the police officer or public servant being given the protection under section 197 of Cr.P.C.. In that context, it was also held therein that the nature of the complaint may have to be kept in mind.

10. Since it has been held by this Court that the act of the petitioners do make out a case purporting to be in discharge of their official duties even as per the contents of the complaint coupled with the enquiry conducted by the higher police officer, the petitioners are entitled to be granted protection under section 197 of Cr.P.C. and since the same having not been obtained, the learned court below committed an error of law in taking cognizance against the petitioners for the offences mentioned therein.

11. In view of what has been stated above, I do find merit in this application. This application is, accordingly, allowed. The entire criminal proceeding in

connection with Complaint Case No. 6 of 2003, corresponding to T.R. No. 975 of 2003 including the order dated 24.2.2003, passed by Shri A. Kumar, learned Judicial Magistrate, 1st class, Giridih, whereby and whereunder cognizance has been taken for the offence under sections 341, 342, 323 and 379 of the Indian Penal Code, is hereby quashed.