

(1986) 05 PAT CK 0025

In the Patna High Court

Case No : Criminal Miscellaneous No. 7205 of 1985

Ramdhani Sao and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-05-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 197, 200, 202
Electricity (Supply) Act, 1948 — Section 77C
Essential Commodities Act, 1955 — Section 11
Penal Code, 1860 (IPC) — Section 143, 147, 172, 173, 174
Prevention of Food Adulteration Act, 1954 — Section 20

Citation : (1986) 34 BLJR 681

Hon'ble Judges : S.S. Sandhawalia, C.J.; P.S. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—Whether the phrase, "acting or purporting to act in the discharge of his official duties", employed in Clause (a) of the first proviso to Section 200 of the Code of Criminal Procedure, 1973 pertains to a duty to make the complaint, or, has reference to the nature of the incident and the offence alleged in the complaint, or both, is the somewhat ticklish and significant question necessitating this reference to the Division Bench.

2. The facts lie in a narrow compass and are indeed not in serious dispute. On the 17th of June, 1985, the complainant, Shri Rajendra Prasad, who had been duly appointed as an Advocate-Commissioner, sent the complaint (Annexure "1") to the court of the Munsif, Bihar Sharif, though the same was addressed to the Chief Judicial Magistrate of Nalanda. Therein it was inter alia alleged that on the 16th of June, 1985, whilst he was effecting the delivery of possession over the disputed land, the petitioners and the other accused persons forcibly obstructed him from doing so and also assaulted and caused hurt to the persons assisting him. Allegations of offences under Sections 143, 147, 186, 353 and 504 of the Indian Penal Code against the petitioners and others were made in the complaint.

3. On behalf of the petitioners it is averred that on receipt of the aforesaid complaint from the Advocate Commissioner, the learned Munsif forwarded the same to the Chief Judicial Magistrate of Nalanda, and the latter, without recording the statements of the complaint, or his witnesses, and making any further inquiry in the matter, registered the complaint and took cognizance under Sections 143, 147, 186, 353 and 504 of the Indian Penal Code against the petitioners and others, issued processes against them and transferred the case to the Judicial Magistrate, Second Class, Biharsharif, for trial, vide his order dated the 19th June. 1985.

4. Aggrieved by the order aforesaid, the present petition has been preferred for quashing the proceeding and the order taking cognizance against the petitioners, primarily on the ground that the complaint did not come within the ambit of the first proviso to Section 200 of the Code and consequently, the examination upon oath of the complainant and his witnesses was mandatory before taking cognizance of the offences,

5. This case originally came up for admission before my learned Brother, P.S. MiShra, J., sitting singly. Before his Lordship, firm reliance was placed on Ramashray Singh Vs. Dr. Anand Mohan, . on behalf of the petitioner for contending that the first proviso to Section 200 envisages only a case where the public servant is under a mandatory duty to prefer the complaint and no other. Expressing some doubt about the correctness of this view, and posing the questions, whether there should be a duty spelt out extending to the making of the complaint or it should be a complaint in respect of a certain act done in the discharge of the official duty, the case was referred to a Division Bench for clarification of the law by an authoritative adjudication

6. Inevitably, the controversy herein turns on the language of Section 200 of the Code. However, before one proceeds to analyse the same, it becomes necessary to view it in its historical set up. Its predecessor Section 200 in the Code of Criminal Procedure of 1898 was rather cumbersome and worded. Consequently, the Law Commission of India, in its Forty- first Report (Sept. 1969), on the Code of Criminal Procedure, 1898, suggested a revision thereof, without proposing any change of substance. The words "at once" as also the whole of Clause (b) of the proviso were proposed to be omitted. Thereafter the section was recast and more pithily provided. For our purpose it would now suffice to juxtapose the two provisions against each other.

New Provision	Old Provision
200 Examination of complainant-	200 Examination of complainant-
A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant at once examine the complainant and the witnesses present, if any, and the witnesses present, if any, and the substance of such examination upon oath and the substance of the shall be reduced to writing and examination shall be reduced to shall be signed by the complainant writing and shall be signed by the and the witnesses, and also by the complainant and the	A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant at once examine the complainant and the witnesses present, if any, and the witnesses present, if any, and the substance of such examination upon oath and the substance of the shall be reduced to writing and examination shall be reduced to shall be signed by the complainant writing and shall be signed by the and the witnesses, and also by the complainant and the

witnesses, and Magistrate: also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses- in writing, nothing herein contained shall be deemed to require a (a) if a public servant acting Magistrate to examine the complaint or purporting to act in the discharge of his official duties: 192; made the complaint; or,

(aa) when the complaint is made in writing, nothing herein over the case for inquiry or trial to be contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a public servant acting Magistrate makes over the case to or purporting to act in the discharge of his official duties: 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them." Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and where the complaint is made in writing need not be reduced to writing; "but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing;

(c) when the case has been transferred u/s 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

7. It is plain that Clause (aa) of the proviso to the old Code has become Clause (a) of the first proviso to the present one. Though the language of these corresponding provisions has now been materially recast, they still remain in pari materia in substance. This exercise becomes necessary, because later reference must follow to earlier precedents based on the provisions of Section 200 of the old Code.

8. Now, a plain reading of Section 200 makes it manifest that the law mandates that a Magistrate taking cognizance of an offence on a complaint, shall examine upon oath, the complainant and the witnesses present. However, to this basic rule, the exceptions are spelt out by the provisos to Section 200. Perhaps, the larger rationale of exemption of court or a public servant acting or purporting to act in the discharge of his official duties from being examined upon oath at the threshold stage of cognizance is a two-fold one. Firstly, the law apparently attaches some sanctity and significance to the status of a court or of a public servant, who may be the author of the complaint. In a way, a presumption is raised that such a court or a public servant, acting or purporting to act in the discharge of his official duties, is doing so reasonably, responsibly and in a bona fide manner. Therefore, greater weight should attach to the allegations made in such a complaint in writing, and, it may not be necessary to examine him at the threshold stage of taking cognizance. Whereas, an ordinary complaint must be

examined upon oath to support the allegations in the complaint, the very fact that a written complaint is made by a court or a public servant, may suffice in the later case for taking cognizance. An added reason for exempting the court or public servant in such a situation is that it would lessen the burden of having to remain present in support of the complaint for the purpose of his being examined upon oath. The inconvenience for a Presiding Officer of a court or public servant acting or purporting to act in the discharge of his official duties, to launch a criminal proceeding is thus obviated. The broader rationale for according some recognition to the status of a court and a public servant and exempting them from personal presence and the obligation of being examined on oath at the stage of taking of cognizance on a complaint is thus manifest.

9. Having viewed Section 200 in the larger perspectives, one may now notice the pointed stand taken on behalf of the petitioners. As before the learned Single Judge, so before us, the core of the arguments projected by Mr. Brajkishore Prasad, learned Counsel for the petitioners, is that Clause (a) of the first proviso envisages that the public servant making the complaint must have a mandatory duty to prefer such a complaint and then alone the requisites of the provision would be satisfied. It was the stand that such a public servant must be one who is by a particular provision of law either authorised or mandated to prefer a complaint under that statute. According to the learned Counsel only a public servant, discharging his statutory duty to prefer a complaint alone has been exempted from the obligation of his being examined on oath in support of the written complaint. Reference in this connection was made to the provisions of Section 11 of the Essential Commodities Act, Section 20 of the Prevention of Food Adulteration Act and Section 77-C of the Electricity (Supply) Act, 1948 which require that cognizance of offences under the said statute can only be taken on a complaint or report made by the person designated therein. In sum, the petitioners contend that the discharge of his official duty herein is qualified as the duty to prefer or make the complaint and nothing else. Inevitably, in the converse it was argued that Clause (a) of the proviso has not the least relevance to the nature of the transaction alleged in the complaint, or to the factum of the offence having been committed against a public servant acting or purporting to act in the discharge of his official duties.

10. Despite the plausibility with which the aforesaid contention has been advanced, it would appear to be nevertheless fallacious on a closer analysis of the provision and its underlying principle. Clause (a) of the first proviso plainly deals with two distinct classes of cases, namely, complaints made by a court and complaints made by a public servant. It is manifest that complaints made by a court stand in a class by themselves. An obvious example thereof would be a complaint in writing made by the court under Clause (b) of Section 195 of the Code, when the offences under Sections 193 to 196, 199, 200, 205 to 211 and 228 of the Indian Penal Code are committed in or in relation to any proceeding in such a court. Section 195 mandates that no court shall take cognizance of such offences, except on a complaint in writing of that court or of some other court to

which that court is subordinate. In such a case, when a complaint is made by a court, Clause (a) of the first proviso to Section 200 would be automatically attracted and no further condition is necessary. Even on principle it is plain that so far as complaints made by a court are concerned, they come squarely and unambiguously within the exemption provided by Clause (a) of the first proviso and stand in a class apart. Equally on precedent it has been categorically observed in *Ranjit Singh Vs. The State of Punjab*, .

That contention is equally unable because u/s 200, proviso (aa), it is not necessary for a Magistrate, when a complaint is made by him, to examine the complaint and neither Section 200 nor Section 202 requires a preliminary enquiry before the Magistrate can assume jurisdiction to issue processes against the person complained against.

11. Adverting now to the other class of complaints made by a public servant, it has to be noticed that the phrase designedly employed by the legislature in wider terms is "acting or purporting to act in the discharge of his official duties". This envisages in its ambit not merely a public servant acting *stricto sensu* in discharge of his official duties, but, equally one purporting to act as such. Where a mandatory duty is laid on a public servant to file a complaint in discharge of his official duty, on question of "purporting to act" in such a case would normally arise. As has been noticed, the language has been couched in a wider amplitude and this has not to be constricted by an interpretative exercise and must be given its fuller and wider meaning, as is clearly intended by the legislature.

12. Undoubtedly, the phrase, "acting or purporting to act in the discharge of his official duties," has two aspects, and, if one may use a metaphor, two faces of the same coin. Firstly arise the class of cases where the law enjoins that cognizance of an offence can only be taken on the complaint of a public servant, and, consequently, where such an offence is committed, a duty is laid on the public servant to do so both under the general and the special statutes. Herein the duty usually is with regard to the making or the preferring of the complaint itself. The public servant making such a complaint may have no personal or direct connection with the commission of the offence. He may be doing so only in his capacity as the public servant authorised to make such a complaint, which is often made a pre-condition for the cognizance of the offence. Classic examples thereof may well be Section 11 of the Essential Commodities Act and Section 20 of the Prevention of Food Adulteration Act. Indeed there seems to be no controversy herein and it is plain that these are clear cases where the complaint has been made by a public servant acting strictly in discharge of his official duty, and, therefore, would come within the exemption spelt out in Clause (a) of the first proviso to Section 200.

13. As regards the second classes, an example thereof is to be found in the offences enumerated in Chapters X and XI of the Indian Penal Code. These pertain to contempts of the lawful authority of the public servants and of false evidence and offences against public servants. Sections 172 to 299 therein and

equally some other provisions thereof, refer to offences committed against public servants, whilst they are acting or purporting to act in the discharge of their duties. It is, perhaps, for this reason that the phraseology in Clause (a) of the first proviso to Section 200 has been widely couched to include within its scope offences committed against a public servant whilst he was merely purporting to act in the discharge of his official duties.

14. Now, the identical phrase, "acting or purporting to act in discharge of his official duties" has been employed in the preceding Section 197 of the Code as well. A long line of precedent, which undisputed, has construed this phrase in Section 197 as pertaining to the nature of the offence or the transaction giving rise thereto. To my mind, an identical phrase employed in Section 197 of the Code and numerous other provisions of the Code as also of the Indian Penal Code should leave no manner of doubt that this would include within its ambit equally the nature of the offence or the transaction in which the offence was committed against the public servant, for which he makes the complaint. There appears no valid reason to constrict and confine the phrase to only cases where there is a mandatory statutory duty to file a complaint. On the sounder canons of construction, it seems correct to place both these categories within the ambit of Clause (a) of the first proviso.

15. Now, once the aforesaid interpretation is placed on proviso (a) to Section 200, it would take away the very thrust of the argument of Mr. Braj Kishore Prasad. The core of the submission on his behalf was that it would be anomalous that a public servant obliged in law to prefer a complaint under special statutes would not be exempted by the proviso. That argument proceeded upon the constricted construction of Clause (a) of the proviso, by confining it to one or the other of the two alternatives, namely, a duty to prefer the complaint of the transaction and the offence being one against the public servant acting or purporting to act in the discharge of his official duty. Once the synthesis is arrived at with regard to the two extremes and that the phrase covers both the classes, the alleged anomaly projected by the learned Counsel evaporates in thin air. Even otherwise, the view we are inclined to take subserves the larger purposes and the rationale of exempting public servants from presence and examination on oath at the very threshold stage of cognizance by the Magistrate, where either the offence has been committed against them in the discharge of their official duty or they are themselves under a duty to file the complaint.

16. Inevitably one must now advert to the precedents. The earliest case having some analogy, which has been brought to our notice is *K. Krishna Warriar Vs. T.R. Velunni*, . Therein it was held that a commissions of Enquiry Act, who was merely authorised by the Government to prefer a complaint was under no mandatory duty to file such complaints, and, therefore, did not come within the proviso (aa) of Section 200 of the old Code. The case is plainly distinguishable, as its ratio primarily turned on the factual aspect, that in the peculiar context, it was not duty of the Commissioner to prefer complaint, and, therefore, he was

neither acting nor purporting to act in the discharge of his official duty.

17. The later judgment in Smt. Rangamoyee Choudhury and Another Vs. Sudhir Kumar Bhowmik Kabiraj, again does not cover the issue. Therein also it was held that because the complaint was not covered by the provisions of Section 195 of the Code of Criminal Procedure, it could not be said to be a complaint filed either by a court or by a public servant in the discharge of his official duty, and, therefore, the proviso to Section 200 would not be attracted. Obviously the case has no direct application to the present situation.

18. In Shyama Prasanna Das Gupta Vs. The State, . a Division Bench of the Calcutta High Court went to the extreme length of setting aside the conviction and sentence only on the ground that the complainant, who was a sub-Inspector of Police, Detective Department, Lal Bazar, was not examined by the learned Special Judge before taking cognizance. In doing so Their Lordships, without giving any independent reasoning, followed some earlier unreported judgments of the said Court. It would appear that the case should be distinguishable as the facts are obscure and it does not categorically appear, whether the Sub Inspector of Police was acting in the discharge of his official duty in preferring the complaint or not. However, if this judgment is sought to be a warrant for the proposition urged on behalf of the petitioners, then I must record my respectful dissent therefrom.

19. One must now come to the judgment of the learned Single Judge of this Court in Ramashray Singh v. Dr. Anand Mohan (supra) the correctness of the view wherein has necessitated this reference to the Division Bench. A perusal of the judgment would disclose that the issue was not adequately debated on principle and the language of the statute. The various aspects discussed in the earlier part of the judgment were not projected in their correct perspective. The learned Judge purported to draw sustenance from the cases of K. Krishna Warner (3), and Kalu Munchi and others supra (4). which, as already shown, are distinguishable. Basic reliance seems to have been placed on Shyama Prasanna Das Gupta (supra), which has already been distinguished or dissented from above. It would appear that the larger aspect that the proviso to Section 200 of the Code may well cover both the classes of cases was not even presented. In that context, the learned Single Judge sought to constrict Section 200 only to cases where it was the mandatory duty of a public servant to prefer complaints. For the reasons recorded earlier, and with deepest deference, the judgment does not lay down the law correctly and is hereby overruled.

20. The view I am inclined to take is strongly buttressed by the following observation of the Full Bench in Bharat Kishore Lal Singh Deo Vs. Judhistir Modak, .

Every High Court in India has held that the omission to examine the complainant on oath is in fact not an illegality but is an irregularity....

The aforesaid view has been later re-echoed independently by the Division Bench

of Untwalia and Akbar Hussain, JJ , in Sudama Singh v. Kavindra Narain Singh 1973 BBCJ 19. holding that the examination of the complainant upon oath is not an integral part of the process of taking cognizance and even a violation of the rule would not vitiate the trial. Again in Ch. Tara Singh Vs. Emperor, Allosp, J., observed as under:

It is clearly stated in Section 200 that it is unnecessary for a Court to examine the complainant when the complaint is made in writing by a Court or a public servant acting or purporting to act in the discharge of his official duties. It seems prima facie that the Civil Judge was at least purporting to act in the exercise of his official duties and he certainly is a public servant within the meaning of the definition. However, even if he should have been examined and was not examined that would amount only to an irregularity which would not vitiate the whole trial.

Lastly, in Maniyari Madhavan v. The State of Kerala ILR 1981 Ker 492. the learned judge in terms dissented from the extreme Calcutta view in Shyam Prasanna Das Gupta's case (supra).

21. To finally conclude, it must be held on principle and precedent that the phrase "acting or purporting to act in the discharge of his official duties" employed in Clause (a) of the first proviso to Section 200 of the Code pertains both to the statutory duty to make the complaint and equally to the nature of the incident and the offence against the public servant alleged in the complaint.

22. Once it is held as above on the legal question, the wind is taken out of the sails of the petitioners as regards the merits of the case. It is common ground that the complaint was preferred by an Advocate-Commissioner, who comes squarely within the definition of a public servant. The allegations in the complaint expressly levelled the offences against a public servant whilst acting or purporting to act in the discharge of his official duties. That being so, the case comes squarely within the ambit of Clause (a) of the first proviso to Section 200, and, there was thus no requirement of examining the complainant before taking cognizance. The impugned orders are thus free [from any infirmity. The criminal miscellaneous case is devoid of merits and is hereby dismissed.

P.S. Misra, J.

23. I agree.