

(2006) 02 UK CK 0004

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 216 of 2001

Sanjai Agarwal and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 196, 197, 482

Forest Act, 1927 — Section 26, 73, 74

Penal Code, 1860 (IPC) — Section 21

Uttar Pradesh Resin and other Forest Produce (Trade Regulation) Act, 1976 — Section 14, 18

Citation : (2006) NCC 397

Hon'ble Judges : J.C.S.Rawat, J

Bench : Single Bench

Advocate : Manoj Tiwari, for the Appellant; Anup Verma and Mr. CD. Bahuguna, Advocate For the Respdt No. 2, for the Respondent

Final Decision : Allowed

Judgement

J.C.S. Rawat

1. Heard Sri Manoj Tiwari, learned counsel for the applicants, learned AGA for respondent no. 1 and Sri Anup Verma, holding brief of Sri CD. Bahuguna, learned counsel for respondent no. 2. The applicants had preferred this application u/s 482 of Cr.P.C. for quashing of Criminal Complaint No. 440 of 1991 filed by respondent No. 2, chargesheet dated 27.03.1991 and impugned order dated 08.12.1992 passed by Chief Judicial Magistrate, Almora in Criminal Case No. 440 of 1991 (State of U.P. vs. Sanjai Agarwal and others).

2. The brief facts of the case for disposal of this petition are that applicants made search of the premises of opposite party no. 2 on 12.06.1990 and the same was continued till 15.06.1990. During the search some illegal forest produce was found in the factory premises of respondent no, 2. The storage of which was strictly prohibited under U.P. Resin and Other Forest Produce (Regulation of

Trade) Act, 1976 and is punishable u/s 14 of the said Act. The said offence was also punishable u/s 26 of Indian Forest Act. This search was made in presence of Divisional Forest Officer, East Almora, Sub Divisional Officer (Forest) and other revenue officers.

3. After making the search, the result of the search was communicated to the Chief Judicial Magistrate, Almora having jurisdiction of the area. Thereafter, the notice was issued and complaint was filed against the respondent No. 2.

4. Meanwhile, the complaint was filed by respondent no. 2 on 19.06.1990 wherein it has been alleged that in absence of respondent no. 2 the applicants/ Forest Officers have taken away 65 quintals of Resin, 600 litres of finished Varnish, 1200 litres of Turpentine oil and 22 quintal of Biroja, from his factory without his consent.

5. It was further alleged that in the night of 14.06.1990 applicants have also taken Rs. 12,000/-, a necklace of gold weighing about 3 tola and a tape recorder etc. The said report was submitted to the Chief Judicial Magistrate and the Chief Judicial Magistrate directed the Police to investigate the matter. After investigation the police submitted chargesheet against the applicants.

6. Applicants filed an application before the court below alleging therein that they are protected u/s 197 of Criminal Procedure Code and they are public servant. They also stated that Resin, Biroja and other forest produce were taken by them in discharge of their official duty. They also alleged that respondent no. 2 has falsely implicated them for the removal of other items namely jewellery and cash money. Learned Magistrate rejected the application and held that applicants are not protected u/s 197 of Criminal Procedure Code. It was further observed that the said search and seizure was made in violation of provision of Criminal Procedure Code.

7. I have heard learned counsel for the parties and perused the record. Learned counsel for the applicant has contended that action of taking cognizance by the Chief Judicial Magistrate was itself barred by the provision of Section 197 of Criminal Procedure Code. Therefore, the Chief Judicial Magistrate has got no jurisdiction to take cognizance against the applicants. It was further contended that in view of Section 73 of Indian Forest Act, applicants are public servants as also provided u/s 21 of the Indian Penal Code. The present complaint has been filed in utter violation of mandatory provision of Section 197. It was further contended that Section 74 of the Indian Forest Act also provides that for any act done in good faith by the officers of the department they will be protected by the provision of the Act. It is also provided u/s 18 of U.P. Resin and other Forest Produce Act, 1976 that no suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intending to be done in pursuance to the provisions of this Chapter or Rules made there under. It was contended that the complaint is not maintainable in view of the above facts. It was further contended that the present complaint is counter blast to the action

taken by the forest department and it was only filed to protect and save himself from the prosecution.

8. Learned counsel for the respondent refuted and contended that applicants and other officials have also entered into the room of respondent no. 2, after breaking the doors and they have taken the belongings of the respondent no. 2 and as such, the provision of Section 197 is not applicable in this case. The perusal of the record reveals that the complaint was filed before the court on 19.06.1990. It is also pertinent to mention here that the statement of respondent no. 2 was recorded before the Magistrate in the complaint filed by the department against the respondent no. 2. He has nowhere mentioned that while making the search or seizure on 14.06.1990 the applicants entered into the premises of respondent no. 2 and they had taken away the belongings of the respondent no. 2. While taking cognizance the Magistrate has not taken note of the factual position. Even if the search and seizure was made in violation of the provision of Criminal Procedure Code respondent no. 2 had right to resist the search and seizure.

9. The version of the respondent no. 2 that the applicants have taken his belongings does not find place in the statement recorded before Magistrate. Learned counsel for the respondent no. 2 has failed to show me that he has stated in any application before the Magistrate after putting his appearance in the said case that applicants have taken his belongings. If accused respondent no. 2 did not make any grievance at the time of recording of statement that applicants have taken away cash and ornament without his consent. On the contrary it is presumed that the incident does not take place.

10. The pivotal question that is applicability of section 197 needs careful consideration. It is necessary to protect the public servants to discharge their duties. In the facts and circumstances of each case protection of public officers and the public servant's functioning in discharging of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is public servant working in discharge of his duties or purported to discharge of his duties and whether the public servant has exceeded his limit. It is provided u/s 196 that no cognizance can be taken and even after cognizance having been taken if the facts come to light that the acts complained of were done in discharge of the official duties then the trial may have to be stayed unless sanction is obtained.

11. The protection u/s 197 is to protect responsible public servant against 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 servant.

12. This protection has certain limits and is available only when the alleged act is done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing objectionable act. If in doing his

official duty, he acted in excess of his duty but there is reasonable connection between the act and performance of the official duty, the excess will not be sufficient to deprive the public servant of the protection. Before section 197 can be invoked it must be shown that the official concerned was accused of offence alleged to have been committed by him while acting or performing in discharge of his official duties. It is not the duty which requires examination so much as act because official act can be performed both in discharge of the official duties as well as in dereliction of it. The act must fall within the range as indicated above.

13. In the light of the above observation, it is clear that the applicants entered into the premises to make search and seizure under provision of U.P. Resin and other Forest Produce Act, 1976 and Indian Forest Act. They have recovered certain articles of forest produce from his possession and search memo was produced before Chief Judicial Magistrate, Almora. The accused respondent had not made any grievance while the statement was recorded that his belongings were taken by the applicants. The theory of respondent no. 2 is definitely based on malafide and the prosecution is vexatious and malicious.

14. The Hon''ble Apex Court in State of Orissa and others vs. Ganesh Chandra Jew reported in 2004 (8) SCC page 40, in which complaint was filed against the police personnel who entered into clinic and arrested him alleging that some elephant tusks were recovered from his possession and he was prosecuted. Its counter blast was that a complaint was filed before the court by the person from whose possession elephant tusks were recovered that he was maltreated and ill treatment was made to him and he obtained the medical certificate after being released from jail. It was pointed in the judgment that he did not state this fact before the Magistrate when he appeared before him he also stated that he was not ill treated before him. The Hon''ble Apex Court extended benefit of Section 197 to the police officers and quashed the proceedings of the case. The present case is squarely covered with this judgment. In view of the foregoing discussion I am of the view that Criminal Complaint No. 440 of 1991 filed by respondent no. 2, chargesheet dated 27.02.1991 and impugned order dated 08.12.1992 passed by Chief Judicial Magistrate, Almora in Criminal Case No. 440 of 1991 (State of U.P. Vs. Sanjai Agarwal and others) are hereby quashed. Application/Petition filed u/s 482 is allowed. No order as to costs.