
(1987) 10 GAU CK 0001
In the Gauhati High Court
Case No : Criminal Revision No. 153 of 1981

Shri Abedur Rahman

APPELLANT

Vs

Shri Banamali Choudhury

RESPONDENT

Date of Decision : 28-10-1987

Acts Referred:

Criminal Procedure (Amendment) Act, 1980 — Section 197, 197(3), 3
Criminal Procedure (Assam Amendment) Act, 1983 — Section 4(5)
Criminal Procedure Code, 1973 (CrPC) — Section 144, 197(2), 197(3)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 188, 201

Citation : (1988) 1 GLR 235

Hon'ble Judges : J. Sangma, J

Bench : Single Bench

Advocate : D.C. Mahanta, for the Appellant; P. Pathak and S.N. Sarma, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

J. Sangma, J.—The question raised in this Criminal Revision is whether a S.I. of Police who is deployed for law and order duty in Assam can be prosecuted for an offence which he is alleged to have committed in the discharge of such a duty without a Sanction from the Government.

2. These are the facts. During the movement against the foreigners the two organizations of Assam, viz., All Assam Students Union (AASU) and All Assam Gana Sangram Parishad (AAGSP) called upon the mass people of the State to offer Satyagraha every day before the offices of the Deputy Commissioner, Sub-Divisional Officer, Sub-Deputy Collector and Block Development Officer in Assam for a period from 18.12.80 to 30.12.80. The Kamrup District Unit of the GSP then organized for offering Satyagraha every day in front of the office of Sub-Deputy Collector at Mirza. In those days the Petitioner was an S.I. of Police and was the O.C. of Police Station at Palashbari which was very close to Mirza. During the Satyagraha he was in command of a Police Force for law and order duty at Mirza. Besides the Police force, there was a CRP Force under command of Platoon

Commander. Both the forces were under the direct control of an Executive Magistrate. From 18.12.80 onwards a large number of local people came and offered Satyagraha in the premises of the Office of the Sub-Deputy Collector at Mirza. As there was a possibility of breach of peace the Executive Magistrate promulgated an order u/s 144 Code of Criminal Procedure from 21.12.80. At 10-15 A.M. of 22.12.80 a large number of people came in a procession in the main road to assemble before the office of the Sub-Deputy Collector violating the promulgation u/s 144 Code of Criminal Procedure. The Executive Magistrate and the Petitioner persuaded the people to disperse from the procession but the crowd did not listen. Finding that the situation became un-controllable the Executive Magistrate ordered the police force, headed by the Petitioner to burst tear gas but that also failed to disperse. The crowd rather defied and became violent. So at 12-15 P.M. (at noon) the Executive Magistrate ordered the Platoon Commander to open fire and there the upon CRPF fired 23 rounds to disperse the crowd. One person, Shri Chandra Kalita, died at the spot and another person, Shri Ranjen Kumar, sustained bullet injuries. Thereafter, on the same day, the Executive Magistrate lodged an FIR at Palashbari Police Station. In the FIR it was stated that being unable to control the mob, he had to order the Platoon Commander to open fire and when the CRPF fired 23 rounds one Shri Chandra Kalita died on the spot and another Shri Rajen Kumar sustained bullet injuries. In the FIR he named 8 persons from amongst the mob. On that FIR the Petitioner, who is O.C. of the Police station, registered a case under Sections 147/148/149/332/333/336/427/188 IPC. Investigation of that case was going on. But on 7.2.81, i.e., more than 1 1/2 month after the incident, the Respondent No. 1, a Joint Secretary of the South Kamrup Unit of the GSP, filed a Criminal complaint under Sections 302/201 IPC in the Court of Judicial Magistrate, Gauhati, by alleging that the CRPF men obstructed the people on National Highway, in front of Mirza Higher Secondary School from proceeding onwards and at that place the Petitioner had fired his pistol killing Chandra Kalita inside the school compound and injuring Rajen Kumar, On 5.5.81 the learned Magistrate took cognizance of the case and issued warrant against the Petitioner. After that the Petitioner moved an application before the Court of learned Magistrate stating that as he was deployed for law and order duty, he could not be prosecuted for the alleged offence without a sanction from the Govt. of Assam. The learned Magistrate rejected this application. Hence this revision.

3. Mr. P.C. Mahanta placed a notification dated 16.6.80 issued by the Govt. of Assam under No. PLA/05/80/29. This notification was issued under Sub-Section 3 of Section 197 of the Code of Criminal Procedure, as amended by the Code of Criminal Procedure (Assam Amendment) Ordinance, 1980. It made Sub-section 197 of the Code applicable to all members of the Police including CRPF, BSF, SSB and Police Battalions of other States deployed for law and order duty in Assam and to other officials mentioned therein. This ordinance was repealed by the Code of Criminal Procedure (Assam Amendment) Act, 1980 which came into force on 5.6.80. Section 3 of the Act of 1980 provides as follows:

3. Amendment of Section 197.-In the Principal Act for Sub-section (3) of Section 197, the following Sub-section shall be substituted, namely:

(3) The State Government may, by notification, direct that the provisions of Sub-section (2) shall apply-

(a) to such class or category of the members of the forces charged with the maintenance of public order, or

(3) to such class or category or other public servants (not being persons to whom the provisions of the Sub-section (1) or Sub-section (2) apply charged with the maintenance of public order, as may be specified in the notification, wherever they may be serving, and thereupon the provision of Sub-section (2) shall apply as if for the expression "Central Government" occurring therein the expression "State Government" were substituted.

4. It appears that there is a mistake in the printing of his amendment. After para (a) the next para ought to be para (b) and not (3); and then after the word "public order" in (b) the rest ought to come under separate para because obviously that provision is meant for both. The correct position of the amendment should be as follows:

(3) The State Government may by notification direct that the provisions of Sub-section (2) shall apply-

(a) to such class or category of the members of the forces charged with the maintenance of public order, or

(b) to such class or category of other public servants, not being persons to whom the provisions of Sub-section (1) and (2) apply, charged with the maintenance of public order.

as may be specified in the notification, wherever they may be serving, and thereupon the provision of Sub-section (2) shall apply as if for the expression "Central Government" occurring therein the expression "State Government" were substituted.

5. No notification under this amendment Act has been produced; but the validity of the notification dated 16.6.80 even after the said Assam Amendment Act, 1980, is not disputed. It is also not disputed that on the day of alleged occurrence the Petitioner was deployed for law and order duty in connection with toe peoples" programme for Satyagraha and that the Petitioner was under the direct control of the Executive Magistrate. Mr. Mahanta contended that in view of the notification the Petitioner is protected u/s 197 the Code of Criminal Procedure and, therefore, be cannot be prosecuted without a sanction from the Govt. of Assam, as he at that time was deployed for maintenance of public order in the State. On this premises he submitted that the cognizance taken against the Petitioner was void and is liable to be set aside.

6. Sub-section 2 of Section 197, read as follows:

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty except with, the previous sanction of the "Central Government".

7. The protection is given in public interest to enable the Armed Forces of Union to perform their duties without fear of Criminal Prosecution in respect of the acts done in the course of their duties by giving the power to Central Government to scrutinize as to whether the allegation are well founded or ill-founded. But when a notification under Sub-section (3) is issued by the State Government in regard to certain class or category of members of the forces; or other public servants not being persons to whom the provisions of Sub-section (1) and apply, such members of the Forces or public servants, who are charged with the maintenance of public order, will come within the purview of Sub-section (2) and they cannot be prosecuted in Court for commission of an alleged offence in the discharge of maintenance of public order, without the sanction of State Government which gave the notification.

8. The Petitioner is an S.I. of Assam Police. The provisions of Sub-section (1) and (2) of Section 197 do not apply to him. But at the time of alleged offence he was deployed for law and order duty. Therefore, in view of the notification dated 16.6.80 his case would come within the purview of Sub-Section (2) and as per Section 3(a) of the 1980 Amendment he cannot be prosecuted without a sanction from the Govt. of Assam. Mr. P. Pathak does not dispute this legal position; but he had drawn ray attention to Sub-section (5)(a) of Section 4 of the Code of Criminal Procedure (Assam Amendment) Act, 1983, (Assam Act 3 of 1984) which provides as follows:

(a) Where a complaint is made to a Court against a public servant belonging to any class or category specified under Sub-section (3) alleging that he has committed an offence, the Court shall postpone the issue of process against the accused and make a reference to the State Government; or

9. Mr. P. Pathak submitted that in view of this provision case may be remanded to the Court of-learned Magistrate for making a reference to the State Govt. before issue of the process, But on his own showing that Act (Assam Act 3 of 1984) has been repealed by the Assam Repealing Act, 1986. There is nothing to show in the Repealing Act that the provisions of Sub-section (5)(a) of Section 4 of the Assam Amendment Act of 1983 was retained. This being the position the case cannot be sent back on remand to the learned Magistrate. In view of the notification dated 16.6.80 the Petitioner, who is an S.I. of Police, cannot be prosecuted for alleged commission of the offence without a sanction from the Govt. of Assam, as he was at relevant time deployed for law and order duty at Mirza in Assam.

10. The revision is allowed and the impugned order taking cognizance of the case against the Petitioner is set aside.