

(2008) 01 CAL CK 0074
In the Calcutta High Court
Case No : C.R.R. No. 137 of 1998

Sri Krishnendu Narayan Chowdhury

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 193, 197, 197(1), 197(2)
Penal Code, 1860 (IPC) — Section 323, 324, 325, 326, 34

Citation : (2008) 2 ALT(Cri) 29 : (2008) 3 CHN 1041 : (2008) CriLJ 1691

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Kamal Bhattacharyya, P.N. Jash and Tapas Saha, for the Appellant;
Nisith Nandan Adhikary and Swapan Kumar Mullick and Tirthakar Ghosh, for O.P.
Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Roy, J.—Aggrieved by an order of dismissal of the complaint relating to the alleged commission of offences punishable under Sections 341/323/324/325/326/500/34 of the Indian Penal Code by the opposite party Nos. 2 and 3, who happened to be the Superintendent of Police, Malda, and the Additional Superintendent of Police, Malda at that material point of time, the petitioner moved the instant Criminal Revision.

2. It appears from the perusal of the impugned order that the said complaint was dismissed u/s 203 of the Code of Criminal Procedure by the learned Court below on the ground that the alleged act committed by the accused police officers were reasonably connected with their official duty and thus, in terms of provisions of Section 197 of the Code of Criminal Procedure, previous sanction is necessary for their prosecution and there was no sanction in terms thereof.

3. Thus in the instant criminal revision the only point fell for decisions whether the alleged act of the accused police officers are reasonably connected with their official duties and thus a sanction u/s 197 of the Code of Criminal Procedure is

necessary.

4. The case of the complainant as it transpires from the allegations made in the petition of complaint together with the initial depositions of the complainant and his witnesses are as follows:

On the date of the alleged incident i.e. on July 4, 1997 there was a call of Bangla Bandh by the Pradesh Congress Committee. Just before the incident the complainant along with his security guard and another Councilor were standing at Raj Mohal Road, when a police constable came and informed that the District Magistrate was calling him at Collectorate building. Having receipt of such information the complainant went to the Collectorate building where he found the O.P. Nos. 2 and 3, the then Superintendent of Police and Additional Superintendent of Police, Malda along with force standing there and as the complainant about to enter the Chamber of the District Magistrate he was obstructed by the accused Opposite Parties. Immediately the O.P. No. 2 asked the Opposite Party to beat him by saying "Krishendu ke petao" and the accused O.P. No. 3 "started assaulting him with lathi. On being so assaulted the complainant fell down on the ground with bleeding injuries all over his body. His security guard was also assaulted by the police while he tried to save him. Thereafter he was taken inside the Collectorate building where he was again assaulted by the accused O.P. No. 2 and was also filthily abused by him. At the time many reporters as well as member of the public were present there and saw the incident with their own eyes. Thereafter the complainant was removed to Malda Sadar Hospital in a seriously injured condition by the police, where he was treated in police custody. Subsequently, the complainant was informed that he was put under arrest. The complainant was discharged from hospital on 14th July, 1997 that for his treatment a medical board was constituted and was advised for treatment at Calcutta.

5. The complainant along with petition of complaint filed the several xerox copies of newspaper cuttings as well as injury reports in support of his case.

It appears from the perusal of the newspaper cuttings filed with the petition of complaint, that at the time of the alleged occurrence the accused persons were on official duty to maintain the law and order in front of the Collectorate Office. When at the place the complainant along with others were engaged in picketing in support of Bangla Bandh. At that time another procession of a rival political party, who were against the bandh, came there. However, police without even trying to stop the members of that procession against bandh and arrived subsequently, asked the complainant and his associates to disburse, some altercations ensued between the complainant and his associates in one side and the accused police officers on the other side and in course of such altercations, the complainant and others were first assaulted by the police with lathis and then were arrested.

6. Mr. Kamal Bhattacharyya the learned advocate appearing in support of this

criminal revision assailed the impugned order and submitted that it is never be the part of the duty of a police officer while maintaining law and order to assault mercilessly peaceful agitators and cause severe bleeding injuries to them. He further submitted since the assaulting the complainant is no way connected with the duty of the police officers no prior sanction u/s 197 of the Code for prosecution of those accused police officers were necessary and thus the impugned order of the learned Magistrate cannot be sustained in law and is liable to set aside. According to Mr. Bhattacharyya the newspaper reports is not reflected the correct picture and actually the complainant was entering into the Collectorate Office as he was called by the District Magistrate, when he was assaulted without any provocation.

Mr. Bhattacharyya in support of his contention relied upon the following decisions. (1) D.N. Bhattacharjee and Others Vs. State of West Bengal and Another, , (2) Parkash Singh Badal and Another Vs. State of Punjab and Others, , (3) Sankaran Moitra Vs. Sadhna Das and Another, .

On the other hand, Mr. Tirthankar Ghosh, the learned advocate appearing on behalf of the accused/O.P. Nos. 2 and 3 strenuously urged for dismissal of this Criminal Revisional application. Mr. Ghosh submitted that those newspaper cuttings, in which according to Mr. Bhattacharyya the correct picture has not been revealed, were filed with the petition of complaint and is the part of the complaint and as such the learned Magistrate very rightly took the same into consideration while deciding the question of requirement of sanction. Mr. Ghosh further submitted that admittedly those news paper cuttings are part of the complaint and the same were very much relied upon by the complainant in support of its case and as such the complainant now cannot be permitted to dispute the content thereof and to submit that the same do not bear the correct picture. According to Mr. Ghosh since the alleged act is reasonably connected with the discharge of the official duty of the accused police officers, public servants, even if they are in excess, necessity of sanction u/s 197 of the Code cannot be dispensed with. In support of his submissions, Mr. Ghosh relied upon the following decisions (1) Abdul Wahab Ansari Vs. State of Bihar Another, (2) B. Saha and Others Vs. M.S. Kochar, as well as on the decision of Sankaran Moitra Vs. Sadhna Das and Another, .

The learned Additional Advocate General Mr. Nisith Nandan Adhikary appearing with Mr. Swapan Mallick produced the relevant GD entries of that particular day and referring to the same and other materials on record submitted that at the time of the alleged incident both the accused police officers were engaged in law and order duty at the spot, when the alleged incident took place.

7. Heard the learned advocate appearing on behalf of the parties. Perused the lower Court records as well as the other materials on record. Considered the rival submissions of the parties as well as the decisions relied upon by them.

8. In the instant case, the controversy centered round is the applicability of

Section 197 of the Criminal Procedure Code. In a very recent decision in the case of Parkash Singh Badal and Another Vs. State of Punjab and Others, , the Apex Court very elaborately dealt with the same and observed as follows:

8.1 The protection given u/s 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 from 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 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. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. (para 35).

8.2 At this juncture, we may refer to P. Arulswami v. State of Madras wherein this Court held as under AIR p. 778 para 6

It is not therefore every offence committed by a public servant that requires sanction for prosecution u/s 197(1) of the Criminal Procedure Code, nor even every act done by him while he is actually engaged in the performance of his official duties, but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be

attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.

8.3 Sections 197 (1) and (2) of the Code read as under:

107. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanctionp-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government.

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

(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.

The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is, if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance, no prosecution can be initiated in a Court of Session u/s 193, as it cannot take cognizance as a Court of original jurisdiction, of any offence, unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police Officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any Court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, "no Court shall take cognizance of such offence except with the previous sanction". Use of the words, "no" and "shall" make it abundantly clear that the bar on the exercise of power of the Court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken

notice of. According to Black's Law Dictionary the word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance, it means taking notice of. A Court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty.

8.4 Such being the nature of the provision, the question is how should the expression, "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", be understood? What does it mean? "Official" according to the dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In *B. Saha and Others Vs. M.S. Kochar*, , It was held SCC pp. 184-85, para 17

17. The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the Import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197 an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision.

Use of the expression, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been In discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in ser vice but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official, duty.

8.5 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 course of his service and such act or omission 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 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 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 that act of 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 course of service but not in discharge of his duty (and without any justification therefor) then the bar u/s 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* reported in 1956 Cri LJ 140 thus : AIR p. 49, paras 17 & 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.

8.6 If, on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.

8A. Similarly in the case of *Abdul Wahab Ansari Vs. State of Bihar* Another, , a three Judge Bench of the Apex Court reiterated the observation of another three Judge Bench decision in the case of *B. Saha and Others Vs. M.S. Kochar*, held as follows:

(Para 7) Previous sanction of the competent authority being a precondition for the Court in taking cognizance of the offence, the offence alleged to have been committed by the accused can be said to be an act in discharge of his official duty, the question touches the jurisdiction of the Magistrate in the matter of taking cognizance and, therefore, there is no requirement that an accused should wait for taking such plea till the charges are framed. In *Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others*, , a similar contention had been advanced by Mr. Sibbal, the learned senior Counsel, appearing for the appellants in that case. In that case, the High Court had held, on the application of the accused, that the provisions of Section 197 gets attracted. Rejecting the contention, this Court had observed:

The legislative mandate, engrafted in Sub-section (1) of Section 197, debarring a Court from taking cognizance of an offence except with a previous sanction of the Government concerned, in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or

purporting to be in the discharge of his official duty and such public servant is not removable from his office, save by or with the sanction of the Government, touches the jurisdiction of the Court itself. It is a prohibition imposed by the statute from taking cognizance--the accused after appearing before the Court on process being issued, by an application indicating that Section 197(1) is attracted merely assists the Court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case, there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible, for adjudication of the question as to whether, in fact, Section 197 has any application in the case in hand. It is no longer in dispute and has been indicated by this Court in several cases that the question of sanction can be considered at any stage of the proceedings.

The Court had further observed:

The question of applicability of Section 197 of the Code and the consequential ouster of jurisdiction of the Court to take cognizance, without a valid sanction, is genetically different from the plea of the accused that the averments in the complaint do not make out an offence and as such the order of cognizance and/or the criminal proceedings be quashed. In the aforesaid premises, we are of the considered opinion that an accused is not debarred from producing the relevant documentary materials which can be legally looked into without any formal proof, in support of the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty, thereby requiring sanction of the appropriate authority.

In the case of *Ashok Sahu v. Gokhul Saikia*, this Court had said that want of sanction u/s 197 of the Code, is a prohibition against institution of the proceedings and the applicability of the Section must be judged at the earliest stage of the proceedings and in that case, the Court directed the Magistrate to consider the question of sanction before framing a charge. In yet another case, in the case of *B. Saha and Others Vs. M.S. Kochar*, a three Judge Bench of this Court had held that the question of sanction, u/s 197, Cr.P.C., can be raised and considered at any stage of the proceedings and further in considering the question, whether or not sanction for prosecution was required, it is not necessary for the Court to confine itself to the allegations in the complaint, and it can take into account all the material, on the record at the time when the question is raised and falls for consideration. This being the position, we are of the considered opinion that the decision of this Court in *Birendra K. Singh's case* 2000 (8) JT SC 248, does not lay down the correct law by directing that the objection on the question of sanction can be raised at the stage of framing of charge and not at any prior point of time.

9. Thus the legal position as it boils down from the principle of law laid down in the aforesaid cases are as follows:

Firstly the protection u/s 197 of the Code of Criminal Procedure is subject to the

following limitation,

(1) The protection 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.

(2) If in doing his official duty, he acted in excess "of his duty, but there is reasonable connection between the act and the performance of the official duty, the excess will not be sufficient ground to deprive the public servant of protection.

(3) 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.

(4) 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 duty. 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.

(5) The act can be performed in discharge of his official duty as well as in dereliction thereof.

Secondly, the question of sanction u/s 197 of the Cr.P.C. can be raised and considered at any stage of the proceeding and further in considering the question, whether or not sanction for prosecution was required, it is not necessary for the Court to confine itself to the allegations in the complaint and it can take into account all the materials on record at the time when the question is raised and fell for consideration. The accused is also not debarred from producing relevant documents and materials for adjudication of the question as to whether in the facts and circumstances of the case the prohibition contained in Section 197 of the Code is attracted.

10. Now having regards to the ratio of the aforesaid cases and applying the same to the facts of the instant case as it transpires from the petition of complaint and from the accompaniments thereof that is the documentary materials filed with the said complaint, I am of the opinion that the learned Magistrate very rightly held that for the prosecution of the accused police officers for the alleged acts committed by them a sanction u/s 197 of the Code of Criminal Procedure is necessary.

11. In the instant case from the totality of the allegations contained in the petition of complaint and Its accompaniments and those are appearing from the materials on record, it is apparent that at the time of the alleged incident, the accused police officers, the O.P. Nos. 2 and 3 on a day of Bangla Bandh called by a particular political party along with police force in course of their official duty

were engaged in maintaining law and order in front of the Collectorate Office. At that time, the complainant who was a supporter of Bangla Bandh came in a procession with others and started picketing there but after the arrival of another procession, of a rival political party, the complainant and his companions were asked by the accused police officers to disperse and over that issue an altercation took place between them and he was assaulted by the accused police officers with lathis in their hands causing bleeding injuries on his person. It is, therefore, prima facie appears that. at the time of the alleged incident the accused police officers were on official duty, it may be that while performing their duties they have acted in excess which may amount to an offence still then such excess being reasonably connected with their official duties, thus for prosecution of the accused police officer for such offences, necessary sanction in terms of Section 197 of the Code of Criminal Procedure is necessary.

12. In view of above, I do not find any valid reason to interfere with the impugned order of dismissal of complaint which does not suffers from any irregularity or infirmity. Hence this Criminal Revisional application stands dismissed.

The office is directed to sent down the lower Court records at once.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties as expeditiously as possible.