

(2004) 05 GAU CK 0060

In the Gauhati High Court

Case No : Criminal Revision (Suo Moto) No. 119 of 2000 and Criminal Revision No. 47 of 2000

State of Assam

APPELLANT

Vs

Dineswar Deka and Others

RESPONDENT

Date of Decision : 14-05-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 197, 197(1), 227
Penal Code, 1860 (IPC) — Section 147, 302, 34

Citation : (2005) 1 GLT 42

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : J.M. Choudhury, D. Talukdar, N.P. Das and B.K. Ghosh, for the Appellant; P.P., for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—Criminal Revision Nos. 119, 2000 and 47 of 2000 were heard together and disposed of by this common order as both the revisions have arisen out of the order dated 06-12-99 passed by the learned Sessions Judge, Darrang, Mangaldoi in Sessions Case No. 1(D-M)/99.

2. The facts leading to the present revisions, in brief, are that one Khagen Nath Boro lodged a written FIR before the Mangaldoi Police Station stating, inter alia, that on 12-09-96, the Excise Staff of Mangaldoi took away his brother Chanaram Boro from his house after assaulting him and subsequently said Chanaram Boro was found dead in the house of the Excise Inspector Md. Abdul Hussain, G.R. Case No. 636/99 was registered and after usual investigation police submitted charge-sheet u/s 147/302 IPC against, as many as, 13 persons. The case was committed before the Court of Sessions and at the stage of consideration of charge the trial court framed charges against 12 accused persons u/s 302/34 IPC. The trial Court, however, discharged Md. Abdul Hussain vide the impugned order on the ground of lack of sanction u/s 197 Code of Criminal Procedure.

3. Criminal Revision No. 119 of 2000 has been registered suo moto by this Court and notices were issued to the accused Chiranjeet Das. On the other hand, accused Abdul Hussain has filed 47/2000 for setting aside the order of framing charge against him. The other 11 accused persons have not challenged the impugned order of framing of charge.

4. The law regarding the framing of charge has been more or less well settled by a catena of decisions of the Apex Court. *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*,

Under Section 227 a duty is cast on the Judge to apply his mind to the material on record and if on examination of the record he does not find sufficient ground for proceeding against the accused, he must discharge him. On the other hand, if after such consideration and hearing he is satisfied that a prima facie case is made out against the accused, he must proceed to frame a charge as required by Section 228 of the Code. Once the charge is framed the trial must ordinarily end in the conviction or acquittal of the accused. *State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc.*,

If the Court were to think that the accused might have committed the offence, it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage. *State of M.P. Vs. S.B. Johari and Others*,

Instead of considering the prima facie case, the High Court in Criminal revision cannot appreciate and weigh the materials on record for coming to the conclusion that charge against the accused could not have been framed. It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for conviction of the accused.

5. In this case the police has examined a large number of witnesses during investigation, as many as, 23 persons have been cited as witnesses in the charge-sheet. Md. Sakat Hussain and Kumud Bhuyan are the neighbours who reside near the place of occurrence and they have witnessed the "marpit" carried out by the Excise staff including the Superintendent. It was in the early hours in the morning, i.e., around 3-00 to 4-00 A.M. One Mukul Kalita is the driver of the bus which was used by the Excise people who were 13 in numbers and who picked up a number of persons, including the deceased. The witness has stated that when the deceased was brought in the bus he was assaulted on the road also and subsequently that person died in the house of the accused, Superintendent of Excise. In view of the oral and medical evidence on record, including the post-mortem report, the death of Chanaram Boro as a result of the assault has been prima facie established. There is a large number of statement of witnesses

recorded u/s 161 Code of Criminal Procedure to show the involvement of the accused Md. Abdul Hussain, accused Chiranjit Das, Excise Superintendent. There is specific statement against the Petitioner Md. Abdul Hussain and in view of the law laid down, as quoted above, we hold that the trial Court did not commit any illegality in framing the charge, as there is a prima facie case against the charge-sheeted accused person. The fact that the documents u/s 173 Code of Criminal Procedure established a prima facie case against the Excise Superintendent Chiranjit Das (since discharged) is also not disputed.

6. The plea of discharging the accused Chiranjit Das is that he was a public servant and the act, alleged against him, was committed by him in the purported discharge of duties and even if it amounts to abuse of power, the requirement of Section 197 Code of Criminal Procedure remains. In support of his submission, learned Counsel has relied on a decision of the Apex Court in the case of State through 1997 (3) CTC 369 (SC) In this case there is no dispute at the Bar that the prosecution has been lodged without obtaining any sanction. It is also not disputed that accused Chiranjit Das being the Excise Superintendent is an Excise officer and, as such, he cannot be removed without the prior sanction of the Government. In the present case, the moot point for consideration is whether the act of the accused, as alleged, is a part of the official duty. As stated above, the deceased was picked up from his house. The deceased was assaulted at the time of his picking up on the road and thereafter when he was brought to the house of the accused, the accused himself assaulted him with lathi (as per the statement of the witnesses recorded u/s 161 Code of Criminal Procedure). There is nothing on record to show that the accused has resisted his arrest. The question that arises is whether the alleged act can be deemed to be committed in due discharge of his official duties. In the words of the Apex Court, in the case of Manohar Nath Kaul Vs. State of Jammu and Kashmir,

Undoubtedly, Section 197(1) is designed to facilitate an effective and unhampered performance of official duty by public servants by making provision for scrutiny into allegations against them by superior authorities and prior sanction for prosecution as a condition precedent to the cognizance of cases against them by Courts so that protection may be available from frivolous, vexatious or false prosecutions for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty.

7. The accused person, therefore, in order to claim protection u/s 197 Code of Criminal Procedure must show a nexus between the official duties/performance of duties of the public servant with the offence alleged. In the case of State of Bihar and Another Vs. P.P. Sharma, IAS and Another, the Apex Court observed:

The nexus between the discharge of the public duty and the offending act or omission must be inseparable. The offending act must be integrally connected with the discharge of duty and should not be fanciful or pretended. If the act complained of is directly, and inextricably connected with the official duty, though it was done negligently, or in dereliction of duty or in excess thereof. Section 197

and similar provisions operate as a canopy against malicious, vexatious or frivolous accusation or prosecution at the hands of the aggrieved persons.

In *B. Saha and Others Vs. M.S. Kochar*, the relevant observations relied upon are to be found in Para. 17 of the judgment. It is pointed out that 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 of Criminal Procedure, are capable of both a narrow and wide interpretation but their Lordships pointed out that if they were 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,". At the same time if they were too widely construed, they 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 is purported to be performed. The right approach, it was pointed out, was to see that the meaning of this expression lies between these 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. Only an act constituting an offence directly or reasonably connected with his official duty will require sanction for prosecution. To put it briefly, it is the quality of the act that is important, and if it falls within the scope of the afore -- quoted words, the protection of Section 197 will have to be extended to the concerned public servant. This decision, therefore, points out what approach the Court should adopt while construing Section 197(1) of the Code of Criminal Procedure and its application to the facts of the case on hand.

8. In the case of *Bhagwan Prasad Srivastava Vs. N.P. Mishra*, a superior officer insulted and humiliated another junior officer in the presence of the staff and public and the Apex Court held that no sanction is required for prosecution. Likewise, in the case of *Pukhraj Vs. State of Rajasthan and Another*, the public servant hit and abused the complainant. The Court observed: "It is difficult to say that the act complained of have been done in the course of performance of duty". It is not apart of official duty to assault an accused person. In the instant case, the deceased was not only assaulted at the time of arrest but he was assaulted all along and even after he was brought to the resident of the Respondent Superintendent of Excise and as a result of the above assault, Chanaram died while in custody. The official capacity of the Superintendent of Excise only enabled him to assault the deceased, which resulted in the death. Hence, in the facts and circumstances of the case and in view of the materials available so far we hold that no sanction u/s 197 Code of Criminal Procedure is called for and the impugned order passed by the learned Sessions Judge, Darrang, Mangaldoi discharging the Respondent accused Chiranjit Das, is bad in law and not maintainable. Accordingly, the impugned order, so far it relates to discharge of the Respondent Chiranjit Das is concerned, stands set aside. The learned trial court shall hear the parties and pass fresh orders as regards the

framing of charge and thereafter, proceed with the matter. Send down the record immediately. The suo moto revision stands allowed and the other revision filed by Abdul Hussain is dismissed.