

(1995) 11 BOM CK 0037

In the Bombay High Court

Case No : Criminal Revision Application No. 259 of 1986

State of Maharashtra

APPELLANT

Vs

Suresh N. Vaidya and others

RESPONDENT

Date of Decision : 09-11-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 194, 197
Penal Code, 1860 (IPC) — Section 143, 147, 149, 225, 332

Citation : (1996) CriLJ 1113 : (1996) 1 MhLj 551

Hon'ble Judges : R.G. Vaidyanatha, J

Bench : Single Bench

Advocate : Mrs. S.J. Pingulkar, app, for the Appellant; Rajiv Patil and A.V. Bandivadekar, for the Respondent

Judgement

1. This is a revision petition filed by the State against the order of discharge dated 25th March, 1986 in Criminal Case No. 45/P/85 on the file of Additional Chief Metropolitan Magistrate, 2nd Court, Mazgaon, Bombay. Heard both the sides.

2. The facts necessary for the disposal of this revision are as follows :-

It appears on 23rd November, 1984 the C.B.I. officials had gone to trap a Rakshak of the R.P.F. in connection with the demand for a bribe by him. The trap was successful. The Rakshak Shukla was held by the C.B.I. officials in order to complete the post-trap formalities. At that time, all the respondents who are Inspector and Rakshaks of the Railway Protection Force rushed to the spot and released Shukla, and manhandled Inspector Mishra and other C.B.I. Officers even after they disclosed their identity and the purpose for which they had come. Inspector Mishra and some others sustained some injuries as a result of this manhandling. then the C.B.I. Officers were taken to the R.P.F. Officer by the first respondent. Later on second thoughts the respondents allowed the C.B.I. Officers to complete the formalities of panchanama etc.

It is alleged by the prosecution that the accused persons being members of an unlawful assembly assaulted public Officers on duty and interfered with discharge of duties by public servants and thereby committed offences punishable under Sections 143, 147, 149, 332 and 225 of I.P.C.

The respondents-accused filed an application before the learned Magistrate stating that the prosecution is not sustainable without complying with Section 20(3) of the Railway Protection Force Act, 1957.

After hearing both the sides, the learned Magistrate held that the prosecution is bad for non-compliance of Section 20(3) of the Railway Protection Force Act and hence discharged all the accused.

Being aggrieved by the order of discharge, the State has come up in revision.

3. The learned Public Prosecutor appearing for the State contended that the order of the learned Magistrate is erroneous and without jurisdiction. That the finding of the Magistrate that the prosecution is bad for want of notice u/s 20(3) of the Railway Protection Force Act is erroneous. It was argued that Section 20(3) of the said Act is not attracted when the assault and manhandling are not done in the discharge of duties by the respondents. On the other hand, the learned Counsel for the respondents supported the impugned order.

4. The short point for consideration is whether the order of discharge is sustainable in law or not ?

5. The learned Counsel for the respondents contended that having seen as R.P.F. Rakshak in uniform being apprehended by some persons in civil dress, respondents had every right to rush to the spot and free the said R.P.F. Rakshak and if during the course of the struggle they have manhandled or caused some hurt to those persons, it will come squarely within the meaning of Section 20(3) of the Act and the prosecution is bad without prior notice to the respondents as provided thereunder. The argument is no doubt attractive but on deeper scrutiny I find that the argument cannot be accepted. The question is whether assault or manhandling is done in the discharge of duties by the respondents. There is no provision either in the Railway Protection Force Act or in the rules that a R.P.F. Officer or official has a right to assault or manhandle some other persons. Similarly, a police Officer may have a power of arrest, seizure, interrogation, but he has no power to beat anybody even if he is the worst criminal in the world. Therefore, the conduct of the respondents as alleged in the complaint if proved then it cannot be a thing which is done in the discharge of official duties. This is much more so when the C.B.I. Officers disclosed their identity to the accused and informed their purpose of visit, but still the manhandling and assault continued. By any stretch of imagination the alleged act of the accused, if proved, cannot be brought within the meaning of words "anything done or intended to be done under the powers conferred by or in pursuance of, any provisions of the Act." There is a definite averment in the complaint, which is treated as F.I.R. in the case that even after disclosure of identity by the C.B.I.

Officers, the manhandling and pushing continued and the first respondent ordered that the C.B.I. Officers should be taken inside the R.P.F. Office and should be pushed there. This we could gather from the statements of witnesses recorded during Investigation.

6. The learned Magistrate has placed reliance on a case recorded in D.S. Bhorla and Another Vs. N. Singh, , where the learned single Judge of Patna High Court has held that even if some assault has taken place, it is in discharge of duties and is covered by Section 20(3) of the Act. The learned Counsel for the respondents pressed into service the said decision before me also. In that case, the complainant was a Ticket Collector. The first accused was an Assistant Traffic Superintendent who was deputed to keep a watch over the work of the complainant. Accused No. 2 was a Havildar in the R.P.F. force. It appears that a ticketless traveller was found. The complainant collected the amount from the passenger near the gate and before even he issued a receipt, the accused came and assaulted him and abused him. On the complaint by the Ticket Collector, a case was registered and after Investigation chargesheet was filed. The accused took the stand that their act of assault and abusing was in the discharge of their duties, and therefore, they are protected u/s 20(3) of the Act. The learned Judge of the High Court accepted the case of the accused and held that what the accused did was in the discharge of duties, and therefore, they are protected u/s 20(3) of the Act and also as far as the first accused is concerned, sanction of the Government is necessary u/s 197 of the Cr.P.C. With great respect, I am unable to subscribe to the view of the learned Judge in the above case. It is no part of the duty of the Assistant Traffic Superintendent to assault or abuse a Ticket Collector even if the Ticket Collector had collected money and had not issued a receipt. The only course open to the Assistant Traffic Superintendent was to give a report to his higher Officers and to get a disciplinary enquiry instituted against the Ticket Collector.

7. As already pointed out, the protection u/s 20(3) of the Act is attracted only when "anything is done or intended to be done under the powers conferred by the Act or the rules"

We may make useful reference to Section 197 of the Cr.P.C. where there is a provision for obtaining sanction to prosecute a public servant if he has committed an offence while acting or purporting to act in the discharge of his official duty.

The question as to whether an offence is committed while discharging the duties by a public servant is purely a question of fact. It has to be decided on the facts and circumstances of each case. It is only after both the parties adduce evidence, the Court will be in a better position to say whether the alleged act done by the accused was done in the discharge of their official duties or otherwise.

8. As already pointed out by me if a public servant beats another person or commits misappropriation or takes a bribe, it cannot be said that he has done

these things in the discharge of his duties as a public servant. I am fortified in my view by number of decisions. Suffice it to refer to three or four leading decisions on the point.

In 1983 Cri LJ 165 , Mrs. Mary Kutty v. Mr. Pawar D.C.P., it was a case of a Police Officer assaulting the complainant while in police custody. The question was whether the assaulting is done by the police officer in the discharge of his official duties. The learned single Judge of this Court held that the act of assault by a police officer cannot be brought within the meaning of doing something in the discharge of his official duties, and therefore, it cannot be said that sanction is necessary to prosecute him as provided in Section 194 Cr.P.C.

In 1988 Cri LJ 78, Ashok v. Pralhad, again it was a case of assault of the complaint by police constables and it was held that the act does not come within the meaning of doing something in the discharge of official duties, and therefore, no sanction is necessary under the Bombay Police Act.

In B. Saha and Others Vs. M.S. Kochar, , it was a case where a public servant had committed criminal breach of trust and the question was whether sanction is necessary to prosecute him. The Supreme Court held that if the act of misappropriation was done in the discharge of official duties, then of course sanction is necessary. The Supreme Court pointed out that it is no part of the duty of a public servant to commit misappropriation in the discharge of his duties. If a person commits misappropriation he is doing it contrary to his official duties and certainly not in the discharge of his duties. It was, therefore, held that committing misappropriation cannot be said to be done in the discharge of one's official, and therefore, sanction u/s 197 Cr.P. is not necessary.

In Manohar Nath Kaul Vs. State of Jammu and Kashmir,), it was again a case of criminal breach of trust committed by a public servant and it was held that it cannot be said to be an offence committed in one's discharge of official duties.

9. It is, therefore, seen that the legal position is that assault or causing hurt cannot be part of an official duty. There is no provision in the Railway Protection Force Act or the Rules for causing hurt or assaulting any person. It may be that when a person is arrested and he tries to escape some minimum amount of force may be necessary to hold him or keep him. Similarly, when doing the official duty if the offender tries to abuse or assault a police officer, then the police officer may in self-defence assault him. But these exceptional defences prima facie do not arise in this case and that too at this stage. It is only after the entire evidence is recorded and witnesses are subjected to cross-examination if the defence can be made out on the basis of evidence that the act of the respondents-accused comes within the four corners of "acting in the discharge of their official duties" then they can certainly claim protection u/s 20(3) of the Act which can be proved only at the time of final arguments after trial. At this stage we have to accept the prosecution material as true and then we have to see whether the act of the accused was in discharge of their official duties or not. It

is the case of the prosecution that Inspector Mishra and other officials while they were discharging their official duties as public officers viz. C.B.I. Officers who had come to trap a R.P.F. Rakshak, the accused being members of an unlawful assembly manhandled and assaulted them and interfered with the discharge of duties as public servants and the assault and manhandling continued even after the C.B.I. Officials disclosed their identity. The accused at present cannot claim the benefit of Section 20(3) of the Act. It is open to the defence to cross-examine the complainant and other witnesses and elicit answers to support their defence of acting in discharge of their duties and then canvass the said argument at the time of final arguments. At this stage and on the available materials on record prima facie defence case cannot be accepted and it is too premature stage to consider the same. The learned Magistrate has on erroneous reasons accepted the defence plea and discharged the accused, which cannot be sustained.

10. In the result, the revision application is allowed. The impugned order of discharge dated 25th March 1986 is hereby set aside. The case is remanded to the learned trial Magistrate. Since this is an old case of 1984, the learned trial Magistrate is directed to expedite the trial of the case. It is made clear that whatever observations are made on the merits of the case are made for the limited purpose of finding out whether the defence has made out a prima facie case for the purpose of getting an order of discharge and hence these observations should not influence the learned trial Magistrate to come to his own independent conclusion on merits after recording evidence.

11. Revision allowed.