
(2006) 06 BOM CK 0102

In the Bombay High Court

Case No : Criminal Writ Petition No. 599 of 1996

Subhash Manmothe

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(1)
Penal Code, 1860 (IPC) — Section 500

Citation : (2007) CriLJ 537

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : A.R. Rathod, for the Appellant; S.D. Kaldate, Assistant Public Prosecutor and V.B. Garud, for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—The petitioner, who was at the relevant time serving as District Joint Registrar and Collector of Stamps, Parbhani. By this petition, the challenge has been made to an order of issuance of process passed by the Judicial Magistrate First Class (J.M.F.C.), Aurangabad. The same order has been confirmed by the IInd Additional District Judge, Aurangabad by the impugned order dated 20-11-1996.

2. Some time in the year 1994, the petitioner was posted as Joint District Registrar and Collector of Stamps at Aurangabad. Respondent No. 3 during that period remained posted in the District of Aurangabad for 13 years. Respondent No. 2 the Inspector General of Registration, transferred respondent No. 3 on promotion to Buldhana. Respondent No. 3 demanded the reversion, as he was not interested in the promotion. By communication the petitioner reported respondent No. 2 to transfer respondent No. 3 out of Aurangabad. The said action was challenged by respondent No. 3 before the Maharashtra Administrative Tribunal, at Aurangabad. The petitioner filed an affidavit in reply and an official letter written by the petitioner dated 28-4-1994 was annexed.

Respondent No. 3 withdraw the said proceeding. Respondent No. 3 therefore, was transferred from Aurangabad, out of vindication, as alleged, on 27-9-1995.

Respondent No. 3 had filed a criminal case No. 513 of 1995 u/s 500 of I.P.C. before the J.M.F.C., Aurangabad, basically alleging that the petitioner had circulated false defamatory letter which lowered down the prestige of the complainant. The J.M.F.C., Aurangabad has issued the process of 30-12-1995. The petitioner, therefore, filed an application for recalling of process and also prayed for dismissal of the complaint. By order dated 15-2-1996 the same was rejected. The petitioner, therefore, preferred a revision No. 68 of 1996, before the Sessions Court at Aurangabad. The same was also dismissed on 20-11-1996. Hence, this petition.

3. There is a communication on record, at page 29 dated 22-4-1996, by the department of respondent No. 2 to the petitioner, in reference to his applications dated 1-3-1996 and 12-3-1996, that there was no sanction/permission granted by the department for initiating any criminal proceeding, on the complaint filed by respondent No. 3. The learned advocate appearing for respondent No. 3 however, now, makes a statement that no such communication was received by respondent No. 3 at any point of time. There is no affidavit filed in this petition. There is no challenge made to this communication also.

4. After considering the material placed on the record the concerned department has refused to grant permission/sanction, as envisaged u/s 197 of the Criminal Procedure Code (Cr. P.C.) against the Petitioner. The advocate appearing for the petitioner, therefore, makes submission that on the sole ground itself, this petition needs to be allowed and process be quashed and set aside. The Apex Court in Romesh Lal Jain Vs. Naginder Singh Rana and Others, has held that the sanction under sanction u/s 197 would be necessary when the action/offence complained of is related to the discharge of a public duty. The Apex Court for want of sanction in that matter held that the valid order of sanction is necessary.

5. The Apex Court in Sankaran Moitra v. Sadhna Das AIR 2006 SCW 1695 has held that : the prosecution hit by the provision of Section 197(1), if no sanction is obtained, it is a condition precedent though question may arise necessarily not at inception but even at subsequent stage; the decision on this question cannot be postponed; the sanction u/s 197(1) necessary for the prosecution.

6. The advocate appearing for respondent No. 3 has relied on Center for Public Interest Litigation and Another Vs. Union of India (UOI) and Another, wherein the Apex Court laid down the parameters for an application for sanction u/s 197, on a foundation that it is necessary for the protection of the public servant. The concept "official duty" has been explained, to mean "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."

7. In the present case, the letter was part of the affidavit in reply filed by the

department. The contents therein, therefore, filed on the record by the department. At the relevant time, it formed the part of the record. Filing of the affidavit along with such letter was definitely within the expression of the "official duty". The complainant himself had sent the application for the sanction/permission for launching the criminal prosecution against the petitioner. There was no sanction granted by respondent No. 2. The case of respondent No. 3 of non-receipt of the said communication, at this stage, cannot be the foundation to overlook the Apex Court's decision on the issue. In the facts and circumstances of the case, the reasoning given by the Courts below revolving around the Section 197 of Cr.P.C. is not in conformity with the reasons and the views expressed by the Apex Court and now is difficult to accept. Admittedly, when the process was issued, there was no communication of rejection of such sanction as referred above. The revisional Court has also failed to take note of this latter of rejection of the sanction.

8. The further submission of the learned advocate for respondent No. 3 based on *Bhagwan Prasad Srivastava Vs. N.P. Mishra*, , whether a particular public servant was discharging his official duty or not required examination and such act or action needs detailed trial. In the present case as referred above, there was reasonable connection with the act and the discharge of the official duty by the petitioner. The act was within the scope and range of the official duty of the public servant concerned. Having once got the rejection of the sanction by the department i.e. respondent No. 2, further enquiry in such case is of no use. The principles as laid down in *Bhagwan Prasad* (supra) has already been reiterated in the Apex Court's decision as referred hereinabove. The principle of law is not in dispute. The facts and circumstances of the case is distinct and distinguishable.

9. The reliance placed on *Roop Kishore Dargar v. State* 2005 All MR (Cri) 2206 in view of the above Apex Court's decisions, in no way supports the case of respondent No. 3 basically on facts itself. That was not the case of rejection of a sanction by the authority. When the process was issued there was no rejection order communicated to the parties.

10. The Apex Court in *Jayasingh Vs. K.K. Velayutham and Another*, , has quashed and set aside the complaint for want of sanction by considering the provision of Section 197 taking into account the meaning of the concept "official duty" as referred above.

11. For want of sanction such initiation of proceedings by the Magistrate is unjust and cannot be accepted. It goes to the root of the matter. There is no point in allowing such criminal proceeding to continue.

12. Taking into account all these aspects, the order passed by the Additional District Judge, Aurangabad dated 20-11-1996 in Criminal Revision No. 68 of 1996 and the order dated 13-12-1995 passed by the Chief J.M.F.C. Aurangabad are quashed and set aside. The complaint is accordingly dismissed.

13. The writ petition is allowed in terms of prayer Clauses (E) and (F). Rule made

absolute. No costs.