
(2002) 05 CAL CK 0008
In the Calcutta High Court
Case No : C.R.R No. 2155 of 1992

Tapan Kumar Bhattacharjee	Vs	APPELLANT
Bijan Kumar Bose and Another		RESPONDENT

Date of Decision : 03-05-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(1), 482
Penal Code, 1860 (IPC) — Section 323, 506

Citation : (2002) 05 CAL CK 0008

Hon'ble Judges : Arunava Barua, J

Bench : Single Bench

Advocate : C.R. Bag, Mr. A. Ganguly, Mr. C.S. Bag and Mr. S. Banerjee, for the Appellant; T. Das Sarma, Miss Piyali Mukherjee and Mrs. Chandri Alam, for the Respondent

Final Decision : Dismissed

Judgement

Arunava Barua, J.—This revisional application is for the purpose of quashing the proceedings pending before the learned Chief Judicial Magistrate, Barasat in connection with Case No.C-268 of 1992 u/s 323 of the Indian Penal Code.

2. The petitioner, Tapan Kr. Bhattacharya, is a Medical Officer (orthopaedic) attached to the Barasat Government Hospital, Barasat Dist.24 Parganas (North). On 23.3.1992 the petitioner received summons issued by the learned Chief Judicial Magistrate North 24-Parganas, Barasat, to appear before the learned Magistrate for committing of an alleged offence u/s 323, I.P.C. The allegations against the petitioner by way of a petition of complaint before the learned Magistrate, in short, were as follows:-

On 18.3.1992 the petitioner (accused), while he was doctor in the said Government Hospital, admitted two patients under him. On 21.3.1992 the petitioner asked both the patients to get discharge certificate from the hospital and to get themselves admitted in Barasat Nursing Home to which the petitioner, Dr.Bhattacharya, was attached for better treatment in the said Nursing Home.

But, the complainant, one Bijoy Kr.Bose, that is the opposite party, who got the aforesaid two patients admitted in the hospital under Dr.Bhattacharya, did not agree to the petitioner's proposal because the patients were poor and were not able to meet the expenses of the nursing home. At this the petitioner, Dr.Bhattacharya, became furious and abusing the complainant in filthy language, assaulted him by fist and blows. The complainant was injured and was treated by the doctor on duty at the emergency. The complainant thereafter lodged a G.D. at the local Police Station and lodged a complaint in writing to the Sub-Divisional Medical Officer and the Chief Medical Officer. On 24.3.1992 the learned Chief Judicial Magistrate, Barasat having seen the petition of complaint u/s 323/506, I.P.C. by O.P., Bijoy Mr.Bose and having examined the complainant and another witness for the complainant and also having perused their evidence and injury report found a prima facie case u/s 323, I.P.C. against the petitioner, that is the accused, took cognizance and issued process against the petitioner-accused fixing 1.7.1992 for S/R. According to the petitioner-accused, the issuance of summons upon him by the learned Chief Judicial Magistrate was illegal. It is further alleged that taking cognizance after 3 days of the alleged occurrence without any explanation is without jurisdiction and liable to be quashed, that there was no basis of the complaint which was false, totally concocted and ill-motivated. By a supplementary application the petitioner has further alleged that the alleged act complained of against the petitioner was in the course of discharging of his official duty or purporting to be in discharge of his official duty as a Medical Officer at the hospital and hence, sanction for prosecution was a must before the Magistrate thought of taking cognizance of the alleged offence and that since no previous sanction was taken, the proceeding was bad-in-law. The Petitioner has further alleged that a departmental proceeding was initiated against the petitioner in respect of the identical occurrence, he was charge-sheeted on 17.2.1994 and eventually the Governor was pleased to exonerate the petitioner from the charge framed against him by an order dated 20.5.1995 in respect of that departmental proceeding against him. According to the petitioner because of the aforesaid facts and circumstances the entire proceeding in question is bad-in-law and should be quashed and further that any further proceeding shall be an abuse of the process of Court.

3. The learned Advocate for the petitioner has submitted that first of all, though summons were issued to the petitioner (accused) u/s 323 of the Indian Penal Code, no prima facie case u/s 323, I.P.C. against the petitioner was at all made out. He has further submitted that the complaint was false and motivated in that complainant and some other persons in order to malign and damage his social prestige had filed the false complaint. His further submission is that though a disciplinary proceeding was initiated against the petitioner, nothing was proved and he was given a clean chit and that since in a criminal trial offence against the accused has to be proved to the hilt, nothing will stand against him on proof and, therefore, proceeding further with the criminal proceeding in question would be a sheet abuse of the process of Court. Moreover, the criminal proceeding in

question is virtually rotten in its foundation because the alleged assault by the petitioner took place on the floor of the hospital at 9.30 p.m. while the petitioner, who was the Government doctor was still on duty and in the course of it he allegedly advised his patients to go to his Nursing Home. In that view of the matter sanction for prosecution was necessary before the learned Magistrate could take cognizance of the offence and since such a sanction was not taken as per provision of Section 197, Cr.P.C, the cognizance taken was bad-in-law and the entire proceeding in pursuance thereof is vitiated. The learned Advocate for the petitioner has submitted some decisions of the High Court and the Supreme Court as reported in K. Premkumar Vs. Rajangam, , Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others, .

4. The learned Advocate for O.P.-complainant has submitted that there are sufficient grounds for proceeding against the petitioner-accused because prima facie offence u/s 323, I.P.C. has been substantially made out in the petition of complaint. He further submitted that, admittedly the petitioner accused was on duty at the hospital when the act complained of had taken place and since there was no reasonable nexus or connection between the doctor's official duty at the hospital with the commission of offence that is the assault and since it cannot be said even that the act and the official duty are so inter-related that one can reasonably believe that it was done by the accused in the performance of official duty, though in excess of the execution of the same. And hence, no sanction was necessary and there was no bar to the criminal proceeding and issuance of process against the accused in accordance with law as rightly done by the learned Magistrate. It is further submitted that the departmental proceeding and the result thereof has nothing to do with the criminal case against the petitioner and that the criminal case shall be decided independently on its own merits. According to the learned Advocate for the complainant there are absolutely no merits in this revisional application and there is no question of any abuse of the process of the Court and, therefore, this revisional application u/s 482 of the Code of Criminal Procedure is not maintainable in support of the aforesaid submissions reliance is placed in a couple of decisions namely Bidhi Singh Vs. M.S. Mandyal and Another, ., 1997C.Cr.L.R. (SC) 192.

5. The petitioner-accused, who was a Medical officer attached to a Government hospital at the relevant point of time, has sought to get the revisional jurisdiction of the High Court invoked u/s 482 of the Code of Criminal Procedure. He has challenged the issuance of process against him u/s 323, I.P.C. by the learned Chief Judicial Magistrate, Barasat, by the impugned order dated 24.3.1992. Because, according to him, there was no material for constituting an offence u/s 323, I.P.C. and the allegations against him are all male fide and false. The petitioner has also assailed the cognizance taken by the learned Magistrate before issuance of the process for want of prior sanction because according to him whatever allegations have been made against him by the complainant, those were done while he was discharging his official duties as a Govt. Officer or Doctor of the Barasat Government Hospital and as such a sanction u/s 197 of the Code

of Criminal Procedure was imperative before prosecuting him and since that sanction was not obtained, the cognizance taken by the Magistrate was bad-in-law and the entire criminal proceeding is vitiated and any further proceeding would be an abuse of the process of Court. Moreover, the petitioner farther maintains that he is already exonerated from the Departmental proceeding against him and so, eventually nothing will be proved against him in the trial.

6. Now, it is clearly stated in the petition of complaint that the complainant got two patients admitted under the petitioner-medical officer at the Barasat Government Hospital on 18.3.1992, that the petitioner told them to leave the hospital after taking discharge certificate and get themselves admitted into the Barasat Nursing Home where he was attached for better treatment, that when complainant refused to take away the said patients from the hospital, the petitioner suddenly got excited and catching the complainant by the collar, started the assaulting him with fists and blows and at this the complainant got hurt and the same night got himself treated by a hospital doctor.

7. The complainant while examined by the learned Magistrate on S/A held on to his allegation stated in the petition of complaint clearly making out a case of assault on him by fists and blows by the petitioner and he is supported by another witness. The learned Magistrate having perused their evidence and the injury report found a prima facie case u/s 323, I.P.C. against the accused, took cognizance and issued process against him by his order dated 24.3.1992.

8. Now, in deciding this revision, in exercise of the inherent jurisdiction u/s 482, Cr.P.C., this Court must necessarily confine itself to the "prima facie" state of things, Or, in other words, the determining factor shall be the allegations made in the complaint. It need not at this stage stand the scrutiny of the test of proof beyond reasonable doubt or that of genuineness on the basis of unimpeachable evidence a trial of the case only admits of. In the case of State of Haryana v. Bhajan Lal, AIR 1992 SCW 237 , the Hon"ble Supreme Court sounds a note of caution to the effect that the power to quash criminal proceedings should be exercised very sparingly with circumspection and that too in rarest of rare cases, that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or complaint and that at that stage it is not possible for the Court to shift the materials or to weigh the materials and then come to a conclusion one way or other. It was also said by the Supreme Court in Trisuns Chemical Industry Vs. Rajesh Agarwal and others, , that quashing of FIR or complaint in exercise of inherent powers of High Court should be limited to very extreme exceptions.

9. I might straightway say that this one before us is plainly none of those exceptional or rarest of rare cause to warrant invoking of inherent jurisdiction of this Court. The "prima facie" case of assault on the complainant by the petitioner-accused is clearly made out and the learned Magistrate was legally justified in issuing process against the petitioner u/s 323, I.P.C. Also, that the petitioner has since been exonerated from the departmental proceeding against him as alleged

has hardly any material bearing on this case at this stage and cannot come to his aid now.

10. We are now left with the solitary question whether sanction for prosecution as contemplated u/s 197 of the Code of Criminal Procedure was necessitated. That sanction, if at all, was not needed to be taken before the Magistrate took cognizance is what P.K. Pradhan v. The State of Sikkim, AIR 2001 SCW 2648, unmistakably mandates. There the Hon'ble Supreme court holds-"It is well-settled that question of sanction u/s 197 of the Code can be raised any time after the cognizance." But having said that, the petitioner's contention and argument that sanction for prosecution was in any case a must needs to be answered. The petitioner maintains that since the act complained of was done while he was discharging his official duty as a Government Officer at the Barasat Govt. Hospital, sanction for his prosecution was necessary. Here against, the said decision of the Apex Court in AIR 2001 SCW 2648 gives us the guidelines thus:-

What a Court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of situation. (Para 5)..... "for claiming protection u/s 197 of the Code, it has to be shown by accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection u/s 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity of the acts, then no sanction would be required.

11. In Shambhoo Nath Misra v. State of U.P. & Ors. (supra), the Apex Court had held as follows:-

The essential requirement postulated for sanction to prosecute the public servant is that the offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. In such a situation, it postulates that the public servant's act is in furtherance of his performance of his official duties. If the act/omission is integral to performance of public duty, the public servant is entitled to the protection u/s 197(1) of Cr.P.C.

It is not the official duty of the public servant to fabricate the false record and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably inter-linked with the crime committed in the course of same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by High Court as well as by the trial Court on the question of sanction is clearly illegal and cannot

be sustained.

12. We might also give yet another example. In *Pukhraj v. State of Rajasthan*, 1973 SCC (Cri.) 944, the Postmaster General had kicked a clerk when such clerk requested to cancel his transfer order. Such act had no semblance of discharging any public duty by the Postmaster General. Hence, it was held that no sanction u/s 197, Cr.P.C. was necessary.

13. Now, in the instant case of ours, the act complained of namely, the assault on the complainant by the petitioner-accused by fists and blows as alleged, was certainly not within the scope of the petitioner's official duty at the Government hospital. Here, the alleged act of the accused and his official duty as a Medical Official or Doctor were distinctly separable. One was in no way an integral part of the other. It cannot be said either that the act and the official duty was so inter-related that one can postulate reasonably that it was done by the accused in performance of official duty, though, possibly in excess of the needs and requirements of situation. Indeed, there cannot be any reasonable connection or nexus between his performance of official duty as a doctor and causing hurt to the complainant by fist and blows at the relevant point of time. Rather, the official position or status of the accused only gave him the occasion or opportunity for the act complained of. The alleged acts as a matter of fact were done purely in private capacity by a Public Servant. It does not certainly lie in his mouth to say that what he did, he did in virtue of his office. No sanction, in my opinion, was, therefore, necessary for the purpose of the prosecution of the petitioner-accused u/s 197, Cr.P.C.

14. There was no illegality in the order dated 24.3.1992 by the learned Chief Judicial Magistrate, Barasat, issuing process against the petitioner-accused for the alleged offence punishable u/s 323, I.P.C. There is no question of quashment of proceeding pending before the learned Chief Judicial Magistrate, Barasat in Case No. C-268 of 1992 u/s 323 I.P.C.

15. Accordingly, this revisional application having had no merits is hereby dismissed. The learned Court below is directed to proceed with the case and dispose of it as expeditiously as possible in accordance with law.

Urgent xerox certified copy of this order, if applied for, be given to the parties.