
(2011) 03 BOM CK 0017

In the Bombay High Court

Case No : Criminal Writ Petition No. 203 of 2010

Uttam Kahane

APPELLANT

Vs

Chandramohan Hangekar, G.B. Nannor and S.M. Supekar

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(1)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 48, 48(1)
Penal Code, 1860 (IPC) — Section 21

Citation : (2012) BomCR(Cri) 217

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : P.V. Barde, for the Appellant; P.R. Tandale, for the Respondent

Final Decision : Dismissed

Judgement

K.U. Chandiwal, J.—Heard. Rule, made returnable and heard forthwith by consent.

2. The Petitioner claims to be a beneficiary under Project Affected Category and, the Respondents, having not adhered to the directions, of learned Judge, Industrial Court, dt.15.4.2008 in Complaint (ULP) No. 192/1997, the Petitioner filed Complaint No. 15/2009, before the learned Judge, Labour Court at Ahmednagar, who, in turn, issued process summons against Respondents Government servants by order dt. 9.10.2009 which, was questioned by the Respondents by filing Revision ULP No. 59/2009. Learned Industrial Court by order dt.4.2.2010, set aside the orders of issuance of process summons. These orders are impugned in the present writ.

3. Mr. Barde had a predominant thrust of the submission that the learned Judge, Industrial Court, should have dealt with the judgment in the matter of N.J. Lavankar and Ors. v. Anil Devidas Garad (2007 (5) Mh.L.J. 214) in its true spirit.

4. Section 197 of Code of Criminal Procedure Deals with condition for sanction of prosecution of Judges and public servants with three conditions;

(i) the person against whom prosecution is to be lodged is necessarily a public servant,

(ii) such public servant is not removable from his office save by or with sanction of the Government.

(iii) The offense alleged should be an act or omission by public servant while discharging his official duties. Learned Counsel submits that the protective umbrella in terms of Section 21 of IPC, would not be available to be coined by the Respondents even if they are servants of Godavari Marathwada Irrigation Development Corporation (for short, GMIDC), or even if they are public servants.

5. The Respondents - officers of GMIDC, even if are branded to be public servants, however, they can be removed by the Corporation without permission of the State Government which necessarily means that the second requirement to attract 197 Code of Criminal Procedure for public servant would not be a shelter to the Respondent. This is more so in the light of Section 12(4) of G.M.I.D.C. Act as the affairs are controlled by the Managing Director who also controls the services of the employees of G.M.I.D.C.

6. Mr. Barde, to stress his point, has relied to the judgment in the matter of K. Ch. Prasad Vs. Smt. J. Vanalatha Devi and Others, . In the said case, the Appellant was an employee of Nationalized Bank. The Apex Court held, Section 197 Code of Criminal Procedure is attracted only in cases where the public servant is such who is not removable from his office, save by or with the sanction of the Government. The Apex Court observed, "it is not disputed that the Appellant is not holding a post where he could not be removed from the service except by or with the sanction of the Government. In this view of the matter, even if it is held that the Appellant is a public servant, still, provisions of Section 197 are not attracted at all." This legal position was not brought to the notice of the learned Judge dealing with N.J. Lawankar"s matter.

7. In the matter of Anjani Kumar Vs. State of Bihar and Another, scope of provisions of Section 197 Code of Criminal Procedure are illustrated. The Hon"ble Lordships have observed in paragraph Nos. 15, 16 and 17 as under:

15. 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 performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in 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 act or 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 Vs. H.C. Bhari*, thus:

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.

16. 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.

17. Section 197(1) provides that when any person who is or was 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 sanction (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 and (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.

8. In the matter of *Choudhury Parveen Sultana Vs. State of West Bengal and Another*, , the Hon''ble Lordships of the Apex Court expressed that the act done in discharge of official duty would not include cases of abuse of power. The Hon''ble Lordships have observed in paragraph No. 14, as under:

14. The direction which had been given by this Court, as far back as in 1971 in *Bhagwan Prasad Srivastava's* case (supra) holds good even today. All acts done by a public servant in the purported discharge of his official duties cannot as a

matter of course be brought under the protective umbrella of Section 197 Code of Criminal Procedure. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. As mentioned in Bhagwan Prasad Srivastava's case (supra), the underlying object of Section 197 Code of Criminal Procedure is to enable the authorities to scrutinize the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated herein above, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 Code of Criminal Procedure and have to be considered *de hors* the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.

In the said case, the Police Officer, Deputy Superintendent of Police were alleged to have committed acts of extortion and criminal intimidation. The Apex Court held the acts cannot be said to be part of duties of investigating officer while investigating the offense entitling him to get protection of Section 197 of Cr.P.C.

9. Taking survey of above reported judgments, issuance of process summons in terms of Section 48 of MRTU & PULP Act by the learned Judge, Labour Court, need not be questioned for want of sanction against the Respondent.

10. The observations of the learned Single Judge, in the matter of N.J. Lavankar, referred above, is not depicting the legal position in the light of the Scheme of MRTU & PULP Act and the powers vested to the authorities to correct the wrong, if the orders of Industrial Court are not adhered to.

11. Section 38 of the MRTU & PULP Act, 1971, vests powers in the Labour Court to try offenses punishable under the said Act and said Court can take cognizance of any offense provided there is a complaint on facts constituting such offense made by the person affected thereby. Section 40 vests powers under the Code of Criminal Procedure, 1898, or powers of Magistrate of First Class elsewhere in the trial of every such offense. Appeal is provided in Section 42 to the Industrial Court. Section 48 deals with contempts of Industrial or Labour Courts, specifying any person who fails to comply with any order of the Court under Clause (b) of Sub-section (1) or Sub-section (2) of Section 30 of this Court shall, on conviction, be punished with imprisonment upto three months or with fine. Section 48(2) sub clause (d) contemplates, if such person, intentionally offers any insult or causes any interruption to the Industrial Court or a Labour Court, at any stage of its judicial proceeding, he shall, on conviction, be punished with imprisonment. It cannot be said that the Respondents were being not party to the original proceedings, cannot be arrayed as Respondents in the proceedings before the learned Judge, Labour Court. Thus, the competence of the Labour Court for issuance of the summons is unbridled. The Respondents were basically

party, by designation, before the Judge, Industrial Court, Ahmednagar.

12. It is not, as a matter of course, that in every case, against Government official, the proceedings should be quashed for want of sanction u/s 197 Code of Criminal Procedure Apparent violation of the orders, dereliction in discharging duties, to adhere to the orders of the Judge, Industrial Court, would seldom insulate from such prosecution by shelter and effect of Section 197 Code of Criminal Procedure If the officer was expected to discharge his duty lawfully and ignores the orders of a court, he cannot be protected by operation of Section 197 Cr.P.C. This legal position is manifestly ignored by the Judge, Industrial Court. However, he was correct on facts to hold illegality in order of learned Judge for issuance of process.

13. Now, reverting to the facts of the present case, the directions of the learned Judge, Industrial Court, in Application No. 192/1997, indicate as under:

(a) The Respondents to implement the Government Scheme for Project Affected Persons and to carry necessary formalities at the earliest and on priority.

14. These directions of the learned Judge do not mandate notwithstanding the applicant/Petitioner disqualifying himself to be Project Affected Person, his case should be favorably considered for employment. It was in this scenario, the proposal of the Petitioner was forwarded to the learned District Collector and the Administrator, Rehabilitation, Ahmednagar. It was the District Collector who maintains the seniority list and has to take appropriate action for giving appointments to the eligible class of persons.

15. The Respondent is not the competent authority to appoint or engage applicant as an employee under the scheme. The District Collector, pursuant to directions of the Industrial Court entered the name of the Petitioner on 11.7.2003, in the register of Project Affected candidates at Sr. No. 2868/2003 which necessarily follows that any appointment based on eligibility will be benefited to the Petitioner on exhausting earlier candidates and termination of the waiting list. There cannot be an overlapping to the waiting list in favour of the applicant. This aspect was brought to the notice of the learned Judge, Industrial Court and issuance of compliance certificate was expected. However, for want of such procedure and provision, such certificate was not issued.

16. These aspects of the matter, in particular the orders of the learned Judge, Industrial Court, which was said to be not pleaded before the Judge, Labour Court, has been actuated with fractured and concocted sequence. This is evident reading the complaint before the learned Judge, Labour Court, wherein the complainant/Petitioner refers this. To repeat, there was no positive direction from the Judge, Industrial Court, to provide employment to the applicant. It was, Petitioner's case was to be considered for eligibility on priority.

17. The verification before the learned Judge, Labour Court also speaks in the same tune as if the orders of the Industrial Court are flouted. The complaint is on

misconception of facts. The Respondents were not expected to issue appointment order to the Petitioner. The learned Judge of the Labour Court should not have issued process summons against the Respondents on 9.10.2009 in terms of Section 48(1) of MRTU & PULP Act, 1971. The order of the learned Industrial Court in the Revision No. 59/2009, dt. 4.2.2010, correcting such error is in consonance by appreciation of the matrix. The order does not call for interference.

Criminal Writ Petition lacks merit, dismissed. Rule discharged.