
(2013) 03 GUJ CK 0035

In the Gujarat High Court

Case No : Special Criminal Application No. 569 of 2008

Vasantkumar Thakarji Thakkar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(1)
Electricity (Supply) Act, 1948 — Section 81
Electricity Act, 1910 — Section 20, 56
Penal Code, 1860 (IPC) — Section 21, 21(12)

Citation : (2013) 2 GLR 1351

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

Bench : Single Bench

Advocate : Harin P. Raval, for the Appellant; K.P. Raval, Addl. P.P. for Respondent No. 1 and Ms. Manisha Lavkumar, for the Respondent

Judgement

G.R. Udhwani, J.—None present for the parties when called out for the second time, except Mr. K.P. Raval, learned A.P.P., for respondent No. 1. The petitioner complainant, have lodged a private complaint in the Court of learned Judicial Magistrate, First Class, Anjar (Kachchh) being Criminal Case No. 49 of 2007, inter alia making allegations that the respondent herein claiming to be officials from Gujarat Electricity Board but without disclosing their identity details, though asked for, forcibly took away the electricity meter from the petitioner's premises, and thereafter, entered necessary details in the printed form, the contents of which were not known to the complainant.

2. The trial Court after considering the arguments advanced, as also the documents produced before it, as also upon consideration of Sec. 197 of the Code of Criminal Procedure, as well as, Sec. 21(12) of the Indian Penal Code, dismissed the complaint for want of necessary prior sanction as contemplated under Sec. 197(1) of the Code of Criminal Procedure.

3. Being aggrieved by the said order, a revision application came to be preferred

before the learned Additional Sessions Judge, Anjar being Criminal Revision Application No. 9 of 2007, which also met with the same fate, against which the present petition has been preferred.

4. Having considered the impugned orders on record, as also the submissions made by the learned A.P.P., it transpires that the complainant himself in the complaint averred that respondents claimed that they were from G.E.B. but when he asked for their identity of the respondents, it was not disclosed to him and respondents insisted upon letting them discharge their public duty, and thereafter, although, it is alleged that the petitioner had no knowledge about the contents of the form which was filled up, admittedly such form was filled up and the electricity meter was taken away. Thus, it clearly appears that the respondent Nos. 2 and 3 being public officers within the meaning of Sec. 56 of the Electricity Act, 1910 read with Sec. 81 of the Electricity Act, 1948, were entitled to protection under first mentioned provision which is as under. Section 56 of the Act, 1910 reads as under:

56. Protection for acts done in good faith:- (1) No suit, prosecution or other proceeding shall lie against any public officer, or any servant of a local authority, for anything done, or in good faith purporting to be done, under this Act.

(2) No Court shall take cognizance of an offence under this Act, by a public officer except with the sanction-

(a) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and

(b) in any other case, for the State Government.

5. Section 20 of the Act of 1910 empowers the licensee to enter and to remove fittings and other apparatus of licensee for the purpose of inspecting, testing, repairing or altering the electric supply-lines, meters, fittings, works and apparatus for the supply of energy belonging to the licensee or ascertaining the amount of energy supplied or the electrical quantity contained in the supply or removing, where a supply of energy is no longer required, or where the licensee is authorised to take away and cut-off such supply, and electric supply-lines, meters, fittings, works or apparatus belonging to the licensee.

6. Thus, it cannot be disputed that the respondents were exercising their powers under the above provisions.

7. Section 56 of the Act of 1910 confers two-fold protection to a public officer. While sub-sec. (1) prohibits institution of a suit, prosecution or other proceedings against, inter alia, a public officer if he has done an act or purports to do such an act in good faith; sub-sec. (2) thereof prohibits taking of cognizance of an offence in absence of a sanction from a competent authority. Thus, if the acts are done or purported to have been done in good faith, the institution of a suit, prosecution or other proceedings are completely banned. While the question as to whether a public officer acts in a good faith or has acted in good faith or

purports to act in good faith is a question of fact, a reasonable necessary inference about his acts being bona fide or otherwise can be drawn after taking into consideration the powers conferred or duties imposed upon the officer by relevant statute or other legal source. After making such an exercise, if the acts of an officer are found to be lawful, there can be no question of exposing such officer to suit, prosecution or other proceedings. However, there may be cases, prima facie disclosing a commission of an offence by public officer while discharging his duty. In such cases, a prosecution may be launched but the law may mandate a sanction before cognizance of the offence is taken. In the instant case, the contents of the complaint itself indicated the lawful exercise of powers by 2nd and 3rd respondent. Therefore, launching of the prosecution was unwarranted. Permitting the prosecution in such apparent cases may demoralise the honest and hard-working officers, thus, enabling the unscrupulous elements to achieve what would be undesirable in larger public interest.

8. It appears that the petitioner relied upon *Jawahar Karunashanker Adhararyu and Others Vs. State of Gujarat and Another*, . The said authority pronounces that though the officers and employees of the Gujarat Electricity Board are public servant within the meaning of Sec. 81 of the Act of 1948, they are not in the category of public servant removable from office by or with the sanction of the Government. It can also be seen from the facts of the said case that the allegations were with regard to assault by the officers and it was obvious that such an act cannot be said to be in discharge of an official duty. In the above set of circumstances, the Court held that a sanction was not necessary.

9. In the instant case, though the Courts below have relied upon Sec. 197 of the Code of Criminal Procedure, as also Sec. 21 of the Indian Penal Code, the fact remains that this was a case where the respondents had gone to the premises of the petitioners posing themselves as the officers belonging to the Gujarat Electricity Board and then asked the petitioner to let them perform their duty and in fact they did perform their duty. Thus, the case squarely falls in sub-sec. (1) of Sec. 56 of the Act of 1910, and therefore, although for the reasons different than what was found by the Courts below, this Court is not inclined to interfere with the impugned order. Hence, the present Criminal Revision Application having no substance, is required to be dismissed and the same is dismissed. Rule is discharged with no order as to costs. Interim relief shall stand vacated.