

(2011) 12 PAT CK 0090

In the Patna High Court

Case No : Criminal Miscellaneous No. 1293 of 2010

Vijay Kumar Jha

APPELLANT

Vs

The State Of Bihar and Divisional Forest Officer, Barachatti,
Division-Barachatti, Gaya

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Citation : (2011) 12 PAT CK 0090

Final Decision : Allowed

Judgement

Honourable Mr. Justice Aditya Kumar Trivedi

1. Petitioner, Vijay Kumar Jha has challenged order dated 26.6.2008/7.8.2008 passed by S.D.J.M., Sherghati, Gaya in connection with Forest Case No. 26 of 2006, Trial No. 537/2008 whereby and whereunder, petitioner has been summoned to face trial for an offence punishable under Sections 33 and 63 of the Forest Act.

2. The building for Block Resource Centre under the special scheme launched by the Government of India was to be constructed at Mohanpur Block which, as per prosecution version, was erected over the land belonging to the Forest Department without any permission accorded by the competent authority. As such, prosecution was launched before the SDJM, Sherghati, Gaya, whereupon, petitioner including others were summoned which has been put under challenge.

3. Contention on behalf of the petitioner is that he is not at all concerned with the aforesaid episode in his individual/personal capacity. Then submitted that petitioner was posted at Gaya as District Programme Coordinator-cum- District Education Superintendent. Then it has been submitted that Rs.13,45,000/- was sanctioned for the construction of B.R.C. building and for that, during financial year of 2005, Block Education Extension Officer had communicated with C.O., Mohanpur vide letter no. 119 dated 9.7.2005 and the C.O. after proper verification vide letter no. 29 dated 23.7.2005, made the land available for the

purpose of construction of building (Annexure-2). Accordingly, the land was demarcated and then after necessary formalities completed in terms of requirement as laid down by the Government of India, the amount was released by the petitioner's predecessor over which construction began. Petitioner had joined in the month of July 2006 and only third instalment was released by him in connection with continuing construction work of B.R.C building. The prosecution report also suggests that petitioner was not found at the spot rather his name figured on account of disclosure made by the Headmaster of the school and so he has been implicated in this case. Also submitted that in the facts and circumstances of the case, the act of the petitioner was in due discharge of duty and so Section 197 of the Cr.P.C. is fully applicable as such submitted that the prosecution of the petitioner happens to be bad. Consequent thereupon, the order of cognizance is liable to be quashed.

4. On the other hand, in spite of having ample opportunity the Forest Department failed to file counter affidavit. Not only this, on the date of hearing, the learned counsel did not have his presence as a result of which the version of the petitioner is uncontrovered.

5. However, the learned Additional Public Prosecutor fairly submitted that the work was going on in accordance with the terms and norms so fixed by the Central Government. The land in question had fully been detailed under Annexure-2 of the petition which belongs to State Government. Had the Forest Department any interest in the aforesaid land, it ought to have raised its grievance challenging the genuineness of the aforesaid Annexure-2. Also submitted that the work was being performed in due discharge of duty apart from the fact that there was no physical presence of the petitioner at the spot.

6. From the conduct, it is evident that there happens to be some sort of differences/confusion amongst two responsible Department of Government which led institution of the instant case. Apart from this, from the conduct of the forest Department by having their absence, failed to file counter affidavit even challenging the authenticity of Annexure-2, is a matter of concerned and puts mark of interrogation over genuine conduct of the Department although had appeared at earlier count.

7. Be that as it may, from the prosecution report itself it is evident, that no allegation has been alleged against the petitioner nay his presence happens to be at the spot. Even if accepting the version so coming out from the prosecution report, the Headmaster had simply disclosed that as per order of District Superintendent of Education, he is not going to stop the construction work. This part of allegation further supports complicity of petitioner in his official capacity and further happens to be in due discharge of his duty and so being the position, he cannot be prosecuted in the present manner unless and until having been so permitted by way of grant of sanction order by the competent authority and for that Section 197 of the Cr.P.C. has to be taken into consideration which runs as follows:

197. Prosecution of Judges and public servants.- (1) When any person who is or was a Judge or Magistrate or 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;

(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:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 365 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces Charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[3-A) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of the article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the

State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

8. The aforesaid view is further supported with a decision reported in Rakesh Kumar Mishra Vs. The State of Bihar and Others, wherein paragraphs 11 to 13 are relevant which are as follows:

11. Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

12. 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 the 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 the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in the 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 an 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 the 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 the course of service but not in the 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 the discharge of his duty can be deemed to be official was explained by this Court in Matajog Dobey v. H.C. Bhari 4 thus SCR pp. 933 & 934-35

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.

13. 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.

9. Thus taking into account the totality of event, the prayer made by the petitioner is found to be just, legal and maintainable. Hence, the order dated 26.6.2008/7.8.2008 passed by S.D.J.M., Sherghati, Gaya in connection with Forest Case No. 26 of 2006, Trial No. 537/2008 punishable under Sections 33 and 63 of the Forest Act is hereby quashed. Thus, petition is allowed.