Anowar Hussain vs Ajoy Kumar Mukherjee And Ors. on 19 February, 1965

Equivalent citations: AIR1965SC1651, 1965CRILJ686, AIR 1965 SUPREME COURT 1651

Author: J.C. Shah

Bench: K. Subba Rao, J.C. Shah, R.S. Bachawat

JUDGMENT

J.C. Shah, J.

1. In an action for compensation for false imprisonment the Subordinate Judge, Lower Assam District, granted to the respondent Ajoy Kumar Mukherjee a decree for Rs. 5,000. In appeal the High Court of Assam confirmed the decree. With certificate granted by the High Court under Art. 133(1)(c) of the Constitution, this appeal is preferred.

2. In March 1950 in the district of Kamrup, State of Assam, there were communal disturbances resulting in rioting and arson. The appellant was at the material time Sub-Divisional Officer of the Barpeta Sub-Division and also held the office of Sub-Divisional Magistrate. A. C. Bhattacharjee was the Deputy Commissioner of the District and held the office of District Magistrate and B. R. Chakravarty was the Circle Inspector of Police at Barpeta. The respondent Ajoy Kumar Mukherjee owned an extensive agricultural estate within the Barpeta Division. On March 17, 1950 at about 10-30 p.m. the respondent was arrested by the Circle Inspector of Police pursuant to an authority given by the appellant, and was confined in the lock-up for the night. Next morning the respondent was produced before the appellant who remanded him to custody. Eventually by order of the local First Class Magistrate, Mr. J. Barua, the respondent was released on March 20, 1950 on bail. It is common ground that neither on March 17, 1950 nor on any date thereafter, was any formal complaint lodged against the respondent charging him with an offence in connection with the riots, nor was any information recorded at any police station against the respondent in that behalf. The respondent had to appear before the local First Class Magistrate on diverse occasions but the proceeding was adjourned because the Magistrate was awaiting "investigation reports" from the police. On May 27, 1950 Mr. j. Barua recorded that "a great confusion exists amongst police officers about the case. It is surprising that the officer-incharge should refer to the C. I. (Circle Inspector) as authority for the arrest and the latter to the Sub-Divisional Officer. No case also seems to have been registered at the police station. I fail to see under strength of what the accused has been sent up. No F.I.R. is also traceable in Court Office in which, accused has been named, I find no justification for holding accused within the jurisdiction of Court under the present charge", and he issued an order

on May 31. 1950 closing the proceeding.

3. The respondent then instituted the action, which gives rise to this appeal, against the State of Assam, Bhattacharjee the Deputy-Commissioner, the appellant who was the Sub-Divisional Officer and Chakravarty the Circle Inspector of Police for compensation for false imprisonment. The respondent submitted that as an active member of the Peace Committee formed by the Stat Government in co-operation with the other leading citizens of the locality to bring about harmony between the two communities, he had "incurred displeasure" of the appellant and that the latter had with a view to insult and disgrace him ordered his "arrest detention and imprisonment maliciously, recklessly and without any lawful excuse or justification".

4. A joint written statement denying the averments made by the respondent was filed by the defendants. It was submitted by the defendants that the respondent was arrested by the Circle Inspector of Police at the instance of the Deputy Commissioner and the Sub-Divisional Officer because in their view there "were sufficient reasons based on credible information and reasonable suspicion that the respondent was concerned in some offences committed by a section of the local community on the lands belonging to the respondent, and that the case against the respondent was investigated carefully and "ultimately for want of conclusive evidence against him he was discharged by order dated May 31, 1950. The plea raised by the defendant's in the suit in substance was that the respondent was arrested and detained in bona fide exercise of executive power vested in them, there being "credible information and reasonable suspicion" that the respondent was concerned in some incidents for which a section of the local community was responsible: it was not pleaded that the appellant acted in discharge of his judicial duties as a Sub-Divisional Magistrate.

5. At the trial, evidence was led that information was received by the Deputy Commissioner and the appellant that the respondent was concerned in certain incidents which led to communal disturbances, and that in the course of discussions the Deputy Commissioner had asked the appellant to "take suitable action". The appellant stated that he had been orally directed by the Deputy Commissioner to issue orders of arrest of the respondent, and he acted in pursuance of that direction, and addressed the following letter Ext. A to the Circle Inspector of Police, directing that the respondent be arrested:

> "Deputy Commissioner has ordered the arrest of Sri Ajoy Mukherjee a resident of this town at once under S. 436, Indian Penal Code.
>
> sd/- Illegible S. D. O. 17-3-50".

The Deputy Commissioner denied that he had given any instructions for the arrest of the respondent; he stated that he had told the appellant about the reports received by him and by the Chief Minister that the respondent was concerned with incidents which led to rioting and arson, and that he had discussed the matter with the appellant and had told the appellant to take "suitable action" in the matter.

6. The Court of First Instance held that the arrest of the respondent was not made in exercise of any lawful authority and that the arrest "was reckless and without any lawful excuse", and that even though the information against the respondent was apparently credible, it was never acted upon either by the Deputy Commissioner or by the appellant for initiating any judicial proceeding against the respondent. Even though no express issue arose on the pleadings that the appellant was protected in respect of the acts done by him by the Judicial Officers' Protection Act, 1850, the Court of First Instance, it appears, allowed that plea to be raised, and held that on the evidence it was clear that the appellant in issuing an order for arrest of the respondent had not acted in the discharge of his judicial duties, but merely as an executive officer. The Subordinate Judge relied upon the following statement made by the appellant in cross-examination-

> "I did not take cognizance of the complaint made to me. My order for arrest of the plaintiff was not the outcome of any complaint of which I took cognizance or of any police report. It was mainly due to the order of the Deputy Commissioner. I cannot say if there was any complaint by the party to the Deputy Commissioner or if any report by the Police. I cannot say from what source the Deputy Commissioner made the order of arrest of the plaintiff.
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> I had occasion to discuss with the Deputy Commissioner regarding the plaintiff. It is after that the order of the arrest of the plaintiff was made. I did not suggest to the Deputy Commissioner that a formal order for arrest to be made after an enquiry. It was not at my suggestion that the order for his arrest was made. I cannot say if the Deputy Commissioner took cognizance of these", and certain other circumstances, and held that the appellant had not, in ordering the arrest of the respondent, taken action as a Magistrate under S. 204 of the Code of Criminal Procedure. On the view taken by him, the Subordinate Judge passed a decree against the appellant directing him to pay a sum of Rs. 5,000 as compensation, and dismissed the action against the other defendants.

7. Against the decree passed by the Subordinate Judge, two appeals were preferred to the High Court--one by the appellant challenging the decree passed against him, and the other by the respondent challenging the decree dismissing his suit against the other defendants. With the latter claim we are not concerned here. At the hearing of the appeal filed by the appellant, Surjoo Prasad, C. J., and Deka, J., disagreed. The learned Chief Justice substantially agreed with the Court of First Instance that the appellant could not have the protection of the Judicial Officers Protection Act, 1850. Deka, J., expressed a contrary opinion. The appeal was then referred to Mehrotra, J., who agreed with the opinion of Sarjoo Prasad, C J.

8. In this appeal, the only question raised is that in ordering the arrest of the respondent the appellant acted in discharge of his judicial duties, and be was on that account protected by the Judicial Officers' Protection Act, 1850. Section 1 of the Act, in so far as it is material, provided:

> "No Judge, Magistrate, * * * Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act-done or ordered to be done by him in the

> discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that lie at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; * * *.
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> The statute is clearly intended to grant protection to Judicial Officers against suits in respect of acts done or ordered to be done by them in discharge of their duties as such officers. The statute, it must be noticed, protects a Judicial Officer only when he is acting in his judicial capacity and not in any other capacity. But within the limits of its operation it grants large protection to Judges and Magistrates acting in the discharge of their judicial duties. If the act done or ordered to be done in the discharge of judicial duties is within his jurisdiction, the protection is absolute and no enquiry will be entertained whether the act done or ordered was erroneously, irregularly or even illegally, or was done or ordered without believing in good faith, that he had jurisdiction to do or order the act complained of. If the act done or ordered is not within the limits of his jurisdiction, the Judicial Officer acting in the discharge of his judicial duties is still protected, if at the time of doing or ordering the act complained of, he in good faith believed himself to have jurisdiction to do or order the act. The expression "jurisdiction" does not mean the power to do or order the act impugned, but generally the authority of the Judicial Officer to act in the matter: Tayen v. Ram Lal, ILR 12 All 115.

9. No formal complaint was laid against the respondent by any person, nor was any information recorded at any police station, and it appears that no investigation into any offence alleged to be committed by the respondent was commenced on or about March 17, 1950, or at any time thereafter. The appellant undoubtedly was invested with the power of a Sub-Divisional Magistrate and under S. 190 of the Code of Criminal Procedure he could take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence; (b) upon a report in writing of such facts made by any police officer; and (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed. Under S. 204 of the Code of Criminal Procedure, a Magistrate taking cognizance of an offence may, if in his opinion there is sufficient ground for proceeding, issue a warrant, if the offence be one in respect of which under the second schedule to the Code a warrant may issue for securing the attendance of the accused before him or before some other Magistrate having jurisdiction. Issue of a warrant after taking cognizance of an offence under S. 190 would normally be an act done in the discharge of the judicial duty, even if it turns out that there were not sufficient grounds for the Magistrate to proceed against the accused. In the present case no warrant in Form 2 prescribed by the Code of Criminal Procedure in the Fifth Schedule was issued. The letter Ext. A on which reliance was placed was in form a direction given to the Circle Inspector of Police to arrest the respondent: it did not bear the seal of the Magistrate and it did not state that the respondent stood charged with the offence under S. 436, Indian Penal Code. But these irregularities may not affect the exercise of the power, if the power was in fact exercised under S. 204 of the Code of Criminal Procedure. The only question to be determined, therefore, is whether the appellant had taken cognizance of the offence under Section 190 of the Code, before issuing the order to arrest the respondent.

10. There being no formal complaint lodged before the appellant charging the respondent with having committed an offence under S. 436, I. P. Code or any other offence, power under S. 190(1)(a) could not be exercised. And in the absence of a report in writing of the facts stating the offence made by any police officer, power under S. 190(1)(b) could not be exercised by the Magistrate. It is true that a Sub-Divisional Magistrate may under S. 190(1)(c) take cognizance of any offence upon information received from any person other than a police officer or even upon his own knowledge or suspicion, that an offence has been committed. It is also true that the Deputy Commissioner has deposed that information was received that the respondent was concerned in certain incidents which led to rioting in the Kamrup District, and in the view of the Court of First Instance the information was apparently credible, but the appellant did not act upon the information as a, Magistrate. He never even attempted to justify his action by pleading that he had done so. His sole plea was that he had acted under the orders of the Deputy Commissioner.

11. We are of the view that the Subordinate Judge and the majority of the Judges of the High Court were right in holding that the appellant had not the protection of the Judicial Officers Protection Act. There was no plea in the written statement that the appellant was, in issuing the order for arrest of the respondent, acting in the discharge of his judicial duty and that on that account he was entitled to the protection of the Judicial Officers' Protection Act, 1850. He made an admission (which is already set out) that he had not taken cognizance of the offence. We are unable to agree with counsel for the appellant that the admission only meant that the appellant had not taken cognizance of an offence under S. 436, I. P. Code on a complaint under Sub-section (1) (a) or on a report of a police officer under Sub-section (1) (b) of Section 190 of the Code of Criminal Procedure. The appellant had admitted that he had not taken cognizance of an offence against the respondent. He did not seek to make any reservation now suggested by his counsel. The Court of First Instance and the High Court understood it as an admission without any implication or reservation, and the context in which the admission occurs makes it clear beyond all doubt that no implication or reservation was intended by the appellant.

12. The finding that the appellant had not taken cognizance under S. 190(1)(c) of the offence under S. 436, I. P. Code against the respondent is supported by several circumstances apart from the admission. No record is maintained of any information received by the appellant or the grounds of his suspicion, pursuant to which he could act in taking cognizance of an offence under S. 190(1)(c). The record of the proceeding against the respondent commences with the first entry dated March 18, 1950 recording that the respondent was produced under arrest and that he was remanded to custody. There is also the order passed by the Magistrate who ultimately closed the proceeding against the respondent. The order-sheet clearly shows that no officer was prepared to undertake responsibility of having directed the arrest of the respondent. The Circle Inspector pleaded that he acted under the orders of the appellant and. the appellant pleaded that he acted under the orders of the Deputy Commissioner. The last-named officer denied that he had given any such authority to the appellant. At no stage of the proceeding, which ultimately ended in the order dated May 31, 1950, was it even suggested that the appellant had in exercise of the powers under S. 190 of the Code of Criminal Procedure taken cognizance of the offence under S. 436, I. P. Code against the respondent and had directed that he be arrested. The informality of the letter Ext. A under which the Circle Inspector of Police was directed to arrest also lends some support to this inference. Absence

of a plea that cognizance was taken of an offence against the respondent, viewed in the light of the admission made by the appellant that he had not taken cognizance of the offence against the respondent, but had acted merely in pursuance of the direction given by the Deputy Commissioner, and the subsequent proceedings taken against the respondent, establish that the arrest of the respondent was not made pursuant to the order made by a Magistrate in the discharge of his judicial duty. If, after taking cognizance of the offence, the appellant had ordered that the respondent be arrested, no enquiry, whether the appellant entertained a bona fide belief in the exercise of his jurisdiction, could be made, for the power to issue a warrant for the arrest of a person who was reported to be or suspected to have committed an offence and for whose arrest a warrant could issue, was within the jurisdiction of the Magistrate.

13. The appellant held two offices--one an executive office and the other a judicial office. He pleaded protection against the liability arising out of his action substantially on the ground that ha acted in the discharge of his duty under the direction given by his superior officer. In so pleading he was relying primarily upon his executive office. The Court of First Instance and the High Court have come to the conclusion that the appellant had "acted recklessly and maliciously" in arresting the respondent. That conclusion is based upon appreciation of evidence and has not been challenged before us. As a Judicial Officer the appellant has no protection, because he is not shown to have acted in ordering that the respondent be arrested in the discharge of the duties of his office as a Magistrate.

14. The appeal therefore, fails and is dismissed with cost.