Amrik Singh vs The State Of Pepsu on 28 February, 1955

Equivalent citations: 1955 AIR 309, 1955 SCR (1)1302, AIR 1955 SUPREME COURT 309, 57 PUN L R 295

Author: Natwarlal H. Bhagwati

Bench: Natwarlal H. Bhagwati

PETITIONER:
AMRIK SINGH

Vs.

RESPONDENT:
THE STATE OF PEPSU.

DATE OF JUDGMENT:
28/02/1955

BENCH:
AIYYAR, T.L. VENKATARAMA
BENCH:
AIYYAR, T.L. VENKATARAMA
DAS, SUDHI RANJAN
BHAGWATI, NATWARLAL H.

CITATION:
1955 AIR 309 1955 SCR (1)1302

ACT:
Criminal Procedure Code (Act V of 1898), s. 19 7(1)-Charge of criminal misappropriation against a public servant-Sanction for prosecution under s. 197(1) of the Code of Criminal Procedure When necessary-Whether every offence committed by a public servant or every act done by him while performing official duties requires sanction for prosecution.

HEADNOTE:
It is not every offence committed by a public servant that requires sanction for prosecution under s. 197 (1) of the Code of Criminal Procedure nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the

office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.
Whether sanction is necessary to prosecute a public servant on a charge of criminal misappropriation, will depend on whether the acts complained of hinge on his duties as a public servant. If they do, then sanction is requisite. But if they are unconnected with such duties, then no sanction is necessary.
Hori Ram Singh v. Emperor ([1939] F.C.R. 159), H. H. B. Gill v. The King ([1948] L.R. 75 I.A. 41), Albert West Meads v. The King ([1948] L.A. 75 I.A. 185), Phanindra Chandra v. The King ([1949] L.R. 76 I.A. 10), B. W. Mothavzs v. State of West Bengal ([1955] 1 S.C.R. 216) and Shreekantiah Ramayya Munipalli v. The State of Bombay ([1955] 1 S.C.R. 1177), referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 48 of 1954.

Appeal by Special Leave granted by the Supreme Court by its Order dated the 31st July 1953 from the Judgment and Order dated the 15th May 1953 of the High Court of Judicature for the State of Pepsu at Th, Patiala in Criminal Appeal No. 140 of 1952 arising out of the Judgment and Order dated the 31st March 1952 of the Court of Magistrate 1st Class, Patiala in Challan Case No. 160/102 of 1951.

Jai Gopal Sethi, (Naunit Lal, with him) for the appellant. N. S. Bindra, (Porus A. Mehta and P. G. Gokhale, with him) for the respondent.

1955. February 28. The Judgment of the Court was delivered by VENKATARAMA AYYAR J.-The appellant was a Sub-Divisional Officer in the Public Works Department, Pepsu, and was, at the material dates,, in charge of certain works at a place called Karhali. It was part of his duties to disburse the wages to the workmen employed in the works, and the procedure usually followed was that be drew the amount required from the treasury, and paid the same to the emplo- yees against their signatures or thumb-impressions in the monthly acquittance roll. In the roll for April 1951, one Parma was mentioned as a khalasi (menial servant), and a sum of Rs. 51 shown as paid to him for his wages, the payment being vouched by thumbimpression. The case of the prosecution was that there was, in fact, no person of the name of Parma, that the thumb-impression found in the acquittance roll was that of the appellant himself, that he had included a fictitious name in the acquittance roll, with intent to himself draw the amount, and that by this expedient he had received Rs. 51 and misappropriated the same.

The First-Class Magistrate of Patiala, before whom the appellant was put up for trial, framed charges against him under section 465 of the Indian Penal Code for forging the thumb-impression of Parma, and under section 409 of the Indian Penal Code for criminal misappropriation of Rs. 51, and after a full trial, acquitted him. He held on the evidence that "there was a khalasi Parma by name in the service of the accused at Kehrauli", and that though the thumbimpression in the acquittance roll was that of the appellant, the prosecution had not established that the amount drawn by him did not reach the hands of Parma. Against this judgment, there was an appeal by the State to the High Court of Pepsu, which held that proof that the thumb-impression in the acquittance roll was that of the appellant was sufficient, ,.when taken along with other circumstances, to establish his guilt, and accordingly convicted him both under section 465 and section 409 of the Indian Penal Code. This appeal by special leave is directed against this judgment.

In support of " the appeal it is argued by Mr. Jai Gopal Sethi that the conviction of the appellant is illegal, as sanction had not been obtained under section 197 (1) of the Code of Criminal Procedure for his prosecution, that the evidence on record is insufficient to establish an offence either under section 465 or section 409 of the Indian Penal Code and that there having been an acquittal of the appellant by the trial Magistrate, the materials on record did not justify a reversal of that verdict by the appellate Court.

The question of sanction under section 197 (1) of the Code of Criminal Procedure may be taken up first for consideration, as it goes to the root of the matter. The facts bearing on this question are that there was an application by the Department for sanction to prosecute the appellant for an offence under section 409, and that, the Chief Secretary, Home Department, sent the communication, Exhibft PX, stating that he had been "directed to convey sanction of the Government to his prosecution". In view of this, no question was raised before the trial Magistrate or the High Court that the prosecution was bad for want of sanction. But after the disposal of the appeal by the High Court, it was discovered that, in fact, there was no order of the Government sanctioning the prosecution, and that the Chief Secretary had committed a mistake in sendidg the communication, Exhibit PX.

The position, therefore, is that the prosecution which has resulted in the conviction of the appellant was initiated without any sanction under section 197(1) of the Code of Criminal Procedure and if sanction under that section is necessary, as contended for by Mr. Sethi, then the entire proceedings including the conviction must be quashed. According to the respondent, however, the main charge against the appellant is under section 409, and no sanction is required for a prosecution under that section. The point for decision is whether sanction under section 197 (1) of the Code of Criminal Procedure is necessary for prosecuting the appellant under section 409. -

There has been considerable divergence of judicial opinion on the scope of section 197(1) of the Code of Criminal Procedure. The question has latterly been the subject of consideration by the highest Courts in this country, and by the Privy Council, and the position may now be taken to be fairly well-settled. Hori Ram Singh v. Emperor(1) is a decision of the Federal Court on the necessity for sanction under section 270 of the Government of India Act, 1935, which is similar in terms to section 197(1) of the Code of Criminal Procedure. The facts in that case were that a Sub- Assistant

Surgeon was charged under section 409 with having dishonestly removed certain medicines from a hospital which was under his charge, to his own residence, and under section 477-A, with having failed to enter them in the stock book. The sanction of the Government had not been obtained for the prosecution under section 270 of the Government of India Act, and the point for decision was whether it was necessary. It was held that the charge under section 477-A required sanction, as "the official capacity is involved in the very act complained of as amounting to a crime"; but that no sanction was required for a charge under section 409, because "the official capacity is material only in connection with the 'entrustment' and does not necessarily enter into the later act of misappropriation or conversion, which is the act complained of".

(1) [1939] F.C.R. 159.

In the course of his judgment, Varadachariar, J. discussed the scope of section 197(1) of the Code of Criminal Procedure and after observing that the decisions on that section were not uniform, proceeded to group them under three categories-those which had held that sanction was necessary when the act complained of attached to' the official character of the person doing it, those which had held that it was necessary in all cases in which the official character of the person gave him an opportunity for the commission of the crime, and those which had held it necessary when the offence was committed while the accused was actually engaged in the performance of official duties. The learned Judge expressed his agreement with the first of the three views.

In H. H. B. Gill v. The King(1), the question arose directly with reference to section 197(1) of the Code of Criminal Procedure. There, the accused was charged under section 161 with taking bribes, and under section 120-B with conspiracy. On the question whether sanction was necessary under section 197(1) it was held by the Privy Council that there was no difference in scope between that section and section 270 of the Government of India Act, 1935, and approving the statement of the law by Varadachariar, J. in Hori Ram Singh v. Emperor(2), Lord Simonds observed:

> "A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty..... The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office".

It was accordingly held that as the acts with which the accused was charged could not be justified as done by virtue of his office, no sanction was necessary. The view taken in H. H. B. Gill v. The King(1) was followed by the Privy Council in A16 ert West Meads v. The King(-'), and reaffirmed in Phanindra Chandra v.

(1) [1948] L.R. 75 I.A. 41.

(2) [1939] F.C.R. 159.

(3) [1948] L.,R. 70 I.A. 185, The King(1), and adopted by this Court in R. W. Mathams V. State of We8t Bengal(1).

The result of the authorities may thus be summed up: It is not every offence committed by a public servant that requires sanction for prosecution under section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which mu_t precede the institution of the prosecution.

It is conceded for the respondent that on the principle above enunciated, sanction would be required for prosecuting the appellant under section 465, as the charge was in respect of his duty of obtaining signatures or thumb- impressions of the employees before wages were paid to them. But he contends that misappropriation of funds could, under no circumstances, be said to be within the scope of the duties of a public servant, that he could not, when charged with it, claim justification for it by virtue of his office, that therefore no sanction under section 197(1) was necessary, and that the question was concluded by the decisions in Hori Ram Singh v. Emperor(1) and Albert We8t Meads v. The King(1), in both of which the charges were of criminal misappropriation. We are of opinion that this is too broad a statement of the legal position, and that the two decisions cited lend no support to it. In our judgment, even when the charge is one of misappropriation by a public servant, whether sanction is required under section 197(1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attach-

(1) [1949] L.R. 76 I.A. 10.

(3) [1939] F.C.R. 159.

(2) [1955] 1 S.O.R. 216.

(4) [1948] L.R. 75 I.A. 180, ing to the office as to be inseparable from them, then sanction under section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties) the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.

Quite recently, this Court had to consider in Shreekantiah Ramayya Munipalli v. The State of Bombay(1) the necessity for sanction under section 197(1), when the charge was one of misappropriation under section 409. There, the law was laid down in the following terms:

"The section has content and its language must be given meaning. What it says is-

'When any public servant..... 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.....

> We have therefore first to concentrate on the word "offence'.
>
> Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the present case, the elements alleged against the second accused are, first, that there was an 'entrustment' and/or 'dominion'; second, that the entrustment and/or dominion was 'in his capacity as a public servant'; third, that there was a 'disposal'; and fourth, that the disposal was 'dishonest'. Now it is evident that the entrustment and/or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity".

On the facts, it was held in that case that the several acts which were complained of, were official acts, and that the prosecution was bad for want of sanction.

The decisions in Hori Ram Singh v. Emperor(1), and Albert West Meads v. The King(1), when properly examined, do not support the extreme contention (1) [1955] 1 B.C.R. 1177. (2) [1989] F.C.R. 159. (3) [1948] L.R 75 I.A. 185.

urged on behalf of the respondent. In Hori Ram Singh v. Emperor(1), the medicines had not been entered in the stock book, and were removed by the accused to his residence, and the charge against him was that in so removing them he had committed MISappropriation. It was no part of the duty of the accused to remove medicines to his house, and he could not claim that he did so by virtue of his office. He could have made such a claim if he had, let us suppose, entered the medicines in- the stock books and shown them as expended in the hospital. But, on the facts, no official act was involved, and that was why Varadachariar, J. observed that, ".... so far as the charge under section 409 was con cerned, the acts in respect of which he was intended to be prosecuted could not be regarded as acts done or purported to be done in execution of his duty".

Reference may also be made to the following observations of Sulaiman, J. in the same case:

> "The question whether a criminal breach of trust can be committed while purporting to act in execution of his duty is not capable of being answered hypothetically in the abstract, without any reference to the actual facts of the case. An attempt to answer the question in a generalized way has been responsible for loose language used in some of the cases cited before us.... The question whether the act purported to have been done in execution of duty or not must depend on the special circumstances of each case".

In Albert West Meads v. The King(1), an Army Officer had received two sums of money, and was subsequently unable to produce them. He was charged with criminal misappropriation, and convicted. He contended that the conviction was illegal for want of sanction, but the Privy Council, following H. H. B. Gill v. The King(1), rejected this contention. It is essential to note that the accused did not claim to have spent the amount in the course of his official duties, but stated that the moneys

had been con- sumed by fire. It is with reference to these facts that the Privy Council observed:

(1) [1939] F.C.R. 159. (2) [1948] L.R. 75 I.A. 185. (3) [1948] L.R. 75 I.A. 41.

of which he was charged', i.e. acts of fraudulently misapplying money entrusted to his care as a public servant, 'as acts done by him by virtue of the office that he held' ".

The result then is that whether sanction is necessary to prosecute a public servant on a charge of criminal misappropriation, will depend on whether the acts complained of hinge on his duties as a pubic servant. If they do, then sanction is requisite. But if they are unconnected with such duties, then no sanction is necessary. In this view, we have to examine whether the acts with which the appellant is charged directly bear on the duties which he has got to discharge as a public servant. The appellant received the sum of Rs. 51 alleged to have been misappropriated, as Subdivisions Officer, and he admits receipt of the same. Then it was his duty to pay that amount to the khalasi Parma, and take his signature or thumb-impression in acknowledgment thereof. The accused does claim to have paid the amount to Parma, and the acquittance roll records the payment, and there is in acknowledgment thereof a thumb-impression as against his name. If what appears on the face of the roll is true-and whether it is true or not is not a matter relevant at the stage of sanction-then the acts with which the appellant is charged fall within the scope of his duties, and can be justified by him as done by virtue of his office. Clearly, therefore, sanction was required under section 197(1) of the Code of Criminal Procedure before the appellant could be prosecuted under section 409, and the absence of such sanc- tion is fatal to the maintainability of the prosecution. The conviction should, therefore, be quashed. In this view, there is no need to consider whether on the evidence, the offence of criminal misappropriation or forgery has been brought home to the appellant or not. The appeal is accordingly allowed, and the convictions and sentences passed on the appellant arc set aside. Fine, if paid, will be refunded.

Appeal allowed.