

Gauri Shankar Prasad vs State Of Bihar And Anr on 19 April, 2000

Equivalent citations: AIR 2000 SUPREME COURT 3517

Author: D.P. Mohapatra

Bench: K.T. Thomas, D.P. Mohapatra

CASE NO. :
Appeal (crl.) 379 of 2000

PETITIONER:
GAURI SHANKAR PRASAD

RESPONDENT:
STATE OF BIHAR AND ANR.

DATE OF JUDGMENT: 19/04/2000

BENCH:
K.T. THOMAS & D.P. MOHAPATRA

JUDGMENT:

JUDGMENT 2000 (3) SCR 159 The Judgment of the Court was delivered by D.P. MOHAPATRA, J. Leave granted.

The short question that arises for determination in this case is whether on the allegations made in the complaint and the materials available on record, Section 197 of the Code of Criminal Procedure is applicable to the case? The High Court of Patna having answered the question in the negative the accused has filed this appeal challenging the order.

The factual Matrix given rise to the proceeding may be stated thus:

The appellant Gauri Shankar Prasad was the Sub-Divisional Officer at Naugachia on 12.8.1996. In pursuance of an order of the Patna High Court in a public interest litigation that encroachments from road and roadside lands and unauthorised structures should be removed, the national highway division of the Public Works Department under the supervision of the appellant carried out operations for removal of encroachments according to the programme decided in a meeting of the officers of the departments concerned. In course of the drive undertaken for removal of encroachments on roadside lands the respondent was asked to remove a portion of the boundary wall which according to the measurements made by the officials of the PWD had encroached upon roadside land. When the appellant and the other officials

tried to remove the encroachments on 12.8.1996, the respondent objected/ protested against such action and filed a complaint in the Court of the Addl. Chief Judicial Magistrate, Naugachia which was registered as compliant No. 129 of 1996.

The averments made in the complaint which are material for the present purpose are as follows :

"That the residential-cum-clinic of the complainant and his wife is situated over cadestral Plot No. 2074 and 2072 constructed in or about the year 1973 to 1975 surrounding with boundary walls and the public road possesses through just In the side of the boundary wall of aforesaid residence of the complaint.

That it is also fit to be submitted that previously the accused maliciously took steps for cancellation of Arms Dealer's License in the name of the son of the complainant but the accused could not succeed in his nefarious game.

That recently the accused became active against the complainant in the garb and pretence of removal of public land encroachment movement and on false measurement knowingly and intentionally got a red mark fixed on the boundary wall of the complainant in the name of alleged encroachment of the road.

That the complainant in a bona fide way sent a notice u/s 80 C.P.C. to the collector Bhagalpur complaining against the so called alleged encroachment.

That on the completion of the period in the notice the complainant filed a suit in the court of Munsif Naugachia, bearing suit No. 68/96 for issue of permanent injunction against the State of Bihar through collector and S.D.M. Naugachia and there is also petition for issue of ad-interim injunction which is to put up for hearing.

That on the date and time of above mentioned occurrence and accused Gauri Shankar Prasad along with large number of labourers and constables came to the premises of the complainant and started the works of demolition whereupon the family members of the complain-ant requested the accused first to see the complainant who was at that time treating the patients in his clinic along with bis wife Dr. Bimla Roy.

That thereupon the accused Sri Gauri Shankar Prasad along with 10-11 constables rushed into the clinic and started abusing the filthy language thereupon the complainant protested and the accuse took away the licency gun of the complainant which was therein a room in the side of clinic and accused Gauri Shankar Prasad further ordered to drag out the complainant from the clinic and the constable obeyed the order and the constables dragged the complainant out who is a man of one leg and automatically he fell down.

That subsequently the complainant has been informed that the pucca gate boundary walls Isolation ward, Gairaz and cow-shed, all have been demolished illegally without any reason.

That it is humbly submitted that there is no encroachment. The total episode was maneuvered by the accused due to the political reason.

That it is submitted that accused Gauri Shankar Prasad has committed an offence of house trespass with preparation to assault the complainant and also commit theft of his gun valued at Rs. 10,000 (Ten thousand) and has also committed mischief by demolishing boundary walls and part of the building putting the complainant in loss of Rs. 50,000."

The learned ACJM by the order dated 22.5.98 took cognizance of the offence under sections 323, 504 and 452 of the IPC against the appellant. Thereafter the appellant filed the petition before the High Court seeking quashing of the cognizance order dated 22.5.98 on the ground of want of sanction of the competent authority as required under section 197 Cr.P.C., which was registered as Cr. Misc No. 23755/98. The High Court in the impugned Judgment dismissed the petition holding, inter alia, that the allegations constituting the offence against the appellant are not directly or reasonably connected with his official duty. The High Court observed:

"Even assuming for the sake agreement that the petitioner had gone to discharge his official duty of removing encroachment but in performance of such duty he did not face any resistance from either of the family members of the complainant or the complainant himself.

In these circumstances in my view, there was no reason for the petitioner to enter the chamber of the complainant and to use filthy languages and order for dragging out the complainant out of his chamber. Moreover, what led him to take the complainant and his wife to the police station and detain them there for the whole day is not clear from the records."

From the afore-quoted observations, it appears that the High Court was of the view that though the appellant had gone to the place of occurrence to discharge his official duty, there was no justification for him to enter the chambers of the complainant, abuse him and take him and his wife to the police station.

Section 197 Cr.P.C. affords protection to a judge or magistrate or a public servant not removable from his office save by or with the sanction of the Government against any offence which is alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. The protection is provided in the form that no Court shall take cognizance of such offence except with the previous sanction of the Central Government or State Government as the case may be. The object of the section is to save officials from vexatious proceedings against judges, magistrates and public servants but it is no part of the policy to set an official above the common law. If he commits

an offence not connected with his official duty he has no privilege. But if one of his official acts is alleged to be an offence, the State will not allow him to be prosecuted without its sanction. Section 197 embodies one of the exceptions to the general rules laid down in section 190 Cr.P.C., that any offence may be taken cognizance of by the Magistrates enumerated therein. Before this section can be invoked in the case of a public servant two conditions must be satisfied i.e., (1) that the accused was a public servant who was removable from his office only with the sanction of the State Government or the Central Government; and (2) he must be accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty.

What offences can be held to have been committed by a public servant while acting or purporting to act in the discharge of his official duties is a vexed question which has often troubled various courts including this Court. Broadly speaking, it has been indicated in various decisions of this Court that the alleged action constituting the offence said to have been committed by the public servant must have a reasonable and rational nexus with the official duties required to be discharged by such public servant.

More than four decades ago, this Court speaking through Chandrasekhara Aiyar, J. in *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44 succinctly stated the principle of law in these words:

"The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under S. 197, unless the act complained of is an offence, the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter ever, if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits.

What we must find out is whether the act and the official duty are so inter-related that one can postulated reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation."

This Court in *Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan and others*, [1998] 1 SCC 205 dealing with the question, the stage at which the plea against taking cognizance without a sanction from the competent authority can be raised observed thus:-

"The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the government touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the court on process being issued, by an application

indicating that Section 197(1) is attracted merely assists the court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible, for adjudication of the question as to whether in fact Section 197 has any application in the case in hand. It is no longer in dispute and has been indicated by this Court in several cases that the question of sanction can be considered at any stage of the proceedings."

In that case, this Court referred to the decision in *Matajog Dobey v. H.C. Bhari* (supra).

In the case of *State through the CBI v. B.L Verma and Another*; [1997] 10 SCC 772, this Court held that since it is not disputed that actions alleged against the public servant lay within the scope of his official duties or at any event were allegedly committed in the purported discharge of his duties as Director of Enforcement though it is canvassed that he had abused his official position while discharging his official duties that would not oust the necessity of sanction under Section 197 Cr. P.C. to take cognizance of the offence. This Court observed that expressed "no Court shall take cognizance of such offence except with the previous sanction"

occurring in Section 197 Cr.P.C. unmistakably shows that the bar on exercise of powers by the Court to take cognizance is mandatory and the previous sanction from the competent authority for prosecution of the public servant, who is accused of having committed an offence either in the execution of his duties or in the purported execution of his duties is essential to take cognizance. This Court confirmed the order of the High Court directing the dropping of proceedings against the public servant, in the absence of such a sanction.

In the case of *N.K. Ogle v. Sanwaldas Alias Sanwalmal Ahuja*, [1999] 3 SCC 284, in which the appellant at the relevant time was the Tehsildar and the District Collector had passed an order for collecting the lease money of Rs. 4653 from the respondent and on the basis of such order of the District Collector, the appellant registered the matter in his Court and ordered for issuance of the demand letter and a demand letter had been served on the respondent and yet the respondent had not made the payment and, therefore, an attachment warrant was issued and a few days thereafter when the respondent was available with the Scooter in the Tehsil Office, the said Scooter was seized and such seizure and retention of the Scooter of the respondent was the gravamen of the allegation of offence under Section 379 in the complaint case, this Court took the view that such action of the Tehsildar cannot but be a bonafide act on the part of the appellant in purported exercise of the power under the M.P. Land Revenue Code. On the aforesaid finding, this Court held that the acts complained of by the respondent against the appellant had been committed in discharge of the official duty of the Tehsildar and, therefore, no cognizance could be taken by any Court without prior sanction of the competent authority.

Coming to the facts of the case in hand, it is manifest that the appellant was present at the place of occurrence in his official capacity as Sub- Divisional Magistrate for the purpose of removal of encroachment from government land and in exercise of such duty, he is alleged to have committed the acts which form the gravamen of the allegations contained in the complaint lodged by the respondent. In such circumstances, it cannot but be held that the acts complained of by the respondent against the appellant have a reasonable nexus with the official duty of the appellant. It follows, therefore, that the appellant is entitled to the immunity from criminal proceedings without sanction provided under Section 197 Cr.P.C. Therefore, the High Court erred in holding that Section 197 Cr.P.C. is not applicable in the case.

Accordingly, the appeal is allowed. The order dated 9th May, 1999 passed by the High Court of Patna in Criminal Misc No. 23755 of 1998 is set aside and the cognizance order passed by the learned Magistrate is quashed. It is made clear that this order will not prevent the authority concerned from taking necessary steps to obtain sanction from the competent authority as required under Section 197 Cr.P.C. and, thereafter proceed in the matter in accordance with law.