Pukhraj vs State Of Rajasthan & Anr on 29 August, 1973

Equivalent citations: 1973 AIR 2591, 1974 SCR (1) 559, AIR 1973 SUPREME COURT 2591, 1973 2 SCC 701, 1974 (1) SCJ 638, 1974 SCR 75, 1974 (1) SCR 550, 1973 2 SCWR 449, 1973 SCC(CRI) 944, 1974 MADLJ(CRI) 240

Author: A. Alagiriswami

Bench: A. Alagiriswami, Hans Raj Khanna

PETITIONER:
PUKHRAJ

Vs.

RESPONDENT:
STATE OF RAJASTHAN & ANR.

DATE OF JUDGMENT29/08/1973

BENCH:
ALAGIRISWAMI, A.
BENCH:
ALAGIRISWAMI, A.
KHANNA, HANS RAJ

CITATION:
1973 AIR 2591 1974 SCR (1) 559
1973 SCC (2) 701
CITATOR INFO :
F 1983 SC 64 (5)
R 1986 SC 345 (4)
R 1988 SC 257 (4)

ACT:
Section 197 Cr. P.C.-sanction- A criminal complaint filed by a subordinate employee against his superior alleging use-of abusive language and giving kicks.

HEADNOTE:
The appellant filed a complaint against respondent No. 2, his superior officer, in the Postal Department, under sections 323 and 502 of I.P.C. alleging that when the appellant went with a certain complaint to the second respondent, the second respondent kicked him,in his abdomen and abused him by saying "Sale, gunde, badmash. . . " The second respondent filed an application under section 197 of

the Cr.P.C. praying that the Court should not take cognizance of the offence without the sanction of the Government, as required by Section 197 of the Cr.P.C. it was further contended that the alleged acts, if at ail done by the accused were done while discharging his duties as a public servant. The trial Magistrate dismissed the application. The 'High Court allowed the revision application of second respondent.

Allowing the appeal,

HELD : (1) At this stage, the Court is concerned only with one point, whether on facts alleged in the complaint, it could be said that the acts were done in purported exercise of his duties. Applying the test laid down in the decisions of the Federal Court and Supreme Court to acts complained of, viz., licking the complainant and abusing, cannot be said to have been done in the course of the performance of the duty by the second respondent. [561H]

(2) The facts subsequently coming to light during the course of the judicial enquiry or during the course of the prosecution evidence at the trial may establish the necessity for sanction. It may be possible for the second respondent to,place the material on record during the course of the trial for showing what his duty was and also that the acts complained of were so inter-related with his official duty, so as to attract the protection afforded by sec. 197 of the Cr. P.C. Whether sanction is necessary or not may have to depend from stage to stage. [562D]

Horiram Singh, [1939] F.C.R. 159, Bhagwan Prasad Srivastava v. N. P. Mshra, [1971] 1 S.C.R. 317, Matajog Dobey v. H. C. Bhari [1955] 2 S.C.R. 925 and Sarjoo Prasad v. The King Emperor. [1945] F.C.R. 227. relied upon.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 101 of 1972.

Appeal by special leave from the Judgment and order dated the 25th February, 1972 of the Rajasthan High Court at Jodhpur in S. B. Criminal Revision No. 52 of 1972. B. D. Sharma, S. K. Bagga, S. Bagga, Rani Arora and Yash Bagga, for the appellant.

S. M. Jain, for respondent No. 1.

S. N. Prasad, for respondent No. 2.

The Judgment of the Court was delivered by ALAGIRISWAMI, J. The appellant filed a complaint against the 2nd respondent before the Add. Munsiff Magistrate of Jodhpur City under ss. 323 and 504 I.P.C. The 2nd respondent was the Post Master General, Rajasthan and the appellant a clerk in the Head Post Office at Jodhpur. He was also the, Divisional Secretary of National Union of Postal

Employees. The relevant portion of the complaint is as follows "4, That the accused came on tour to Jodhpur on 25-10-1971. He arrived at the Head Post Office Jodhpur, in connection with the inspection at 5.45 P.M. The complainant reached to submit his representation to the accused for cancelling his transfer, when. the accused just sat in his jeep and the complainant started narrating his story'.

> "5. That the accused being enraged by this complaint, kicked him in his abdomen and abused him by saying "Sale, Goonda, Badmash, on one hand you are complaining and on the other hand you are requesting for the cancellation of transfer.
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> "6. That the complainant became very much enraged over this incident but he suppressed his anger because of being responsible citizen and to avoid any further disturbance. "7. That after kicking and abusing the complainant the accused ran away in his jeep."

The 2nd respondent filed an application under S. 197 of the Code of Criminal Procedure praying that the court should not take cognizance of the offence without the sanction of the Government as the acts alleged, if at all done by the accused, were done while discharging his duties as a public servant. The Munsiff Magistrate dismissed the application but Justice Mehta of the Rajasthan High Court allowed the revision petition filed by the 2nd respondent and set aside the order of the lower court holding that the 2nd respondent could not be prosecuted unless prior sanction of the Central Government had been obtained. This appeal is against that order.

The law regarding the circumstances under which sanction under s.197 of the Code of Criminal Procedure is necessary is by now well settled as result of the decisions from Hori Ram Singh's(1) case to the latest decision of this Court in Bhagwan Prasad Srivastava v. N. P. Misra. (2) While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in the execution of duty. The test appears to be not that the offence is capable of being committed only, by a (2) [1971] (1) S. C. R. 317.

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

public servant and not anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty,. Nor need the act constituting the ,offence be so inseparably connected with the official duty as to form part and parcel of the same

transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "Cloak of office"

> and "professed exercise of office" may not always be appropriate to describe or delimit the scope of the section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty. In Hori Ram Singh's case (supra) Sulaiman, J. observed :
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> "The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same trans- action."

In the same case Varadachariar, J. observed "there must be something in the nature of the act complained of that attaches it to the official character of the person doing it." In affirming this view, the Judicial Committee of the Privy Council observed in case:

> "A public servant can only be said to act or 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."

In Matajog Dobey v. H. C. Bhari(2) the Court was of the view that the test laid down that it must be established that the act complained of was an official act unduly narrowed down the scope of the protection afforded by section 197. After referring to the earlier cases the court summed up the results as follows :

> "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, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

Applying this test it is difficult to say that the acts complained of i.e. of kicking the complainant and of abusing him, could be said to (1) 1948 L R. 75 1. A. 41. (2) [1955](2) S. C. R. 925.

have been done in the, course of performance of the 2nd respondent's duty. At this stage all that we are concerned with is whether on the facts alleged in the complaint it could be said that what the 2nd respondent is alleged to have done could be said' to be in purported exercise of his duty. Very clearly it is not. We must make it clear, however, that we express no opinion as to the truth or falsity of the allegations.

We must also make it clear that this is not the end of the matter. As was pointed out in Sarjoo Prasad v. The King Emperor(1), referring to the observations of Sulaiman, J. in Hori Ram Singh's case (supra) the mere fact, that the accused proposes to raise a defence of the act having purported to be done in. execution of duty would not in itself be sufficient to justify the case being thrown out for want of sanction. At this stage we have only to see whether the acts alleged against the 2nd respondent can be said to be in purported execution of his duty. But facts subsequently coming to light during the course of the judicial inquiry or during the course of the prosecution evidence at the trial may establish the necessity for sanction. Whether sanction is necessary or not may have for depend from stage to stage. The necessity may reveal, itself in the court of the progress of the case (see observations in Matajog Dobey v. H. C. Bhari (supra) In Bhagwan Prasad Srivastaval v. N. P: Misra (supra), also it was pointed out that it would be, open. to the appellant (.the 2nd respondent in this case) to place the material on record during the course of the trail for showing what his duty was and also that the acts complained of were so interrelated with, his official duty, so as to attract the protection afforded by s.197, Cr.P.C.

This appeal is, therefore allowed and the order of the learned Judge of the High Court is set aside. S.B.W. Appeal allowed.

(1) [1945] F.C.R. 227.