Anjani Kumar vs State Of Bihar And Anr on 24 April, 2008

Equivalent citations: AIR 2008 SUPREME COURT 1992, 2008 AIR SCW 2870, 2008 (5) SRJ 283, 2008 CRILR(SC MAH GUJ) 466, (2008) 66 ALLINDCAS 72 (SC), (2008) 3 MH LJ (CRI) 508, 2008 (4) CRI RJ 544, (2008) 1 CRILR(RAJ) 466, (2008) 2 JCC 1337 (SC), 2008 (66) ALLINDCAS 72, 2008 (2) CALCRILR 375, 2008 (2) SCC(CRI) 582, 2008 (6) SCALE 185, 2008 (5) SCC 248, 2008 ALL MR(CRI) 57 NOC, (2008) 2 DLT(CRL) 821, (2008) 2 CAL LJ 139, 2008 CHANDLR(CIV&CRI) 511, (2008) 2 GUJ LH 423, (2008) 2 RECCRIR 849, (2008) 2 CURCRIR 369, (2008) 3 ALLCRIR 2782, (2008) 6 SCALE 185, (2008) 61 ALLCRIC 982, (2008) 3 CHANDCRIC 275, (2008) 3 ALLCRILR 169, 2008 CRILR(SC&MP) 466, (2008) 40 OCR 463, 2008 (2) ALD(CRL) 547

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Bench: Arijit Pasayat, P. Sathasivam

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           CASE NO.:
Appeal (crl.)  413 of 2000

PETITIONER:
Anjani Kumar

RESPONDENT:
State of Bihar and Anr

DATE OF JUDGMENT: 24/04/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
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J U D G M E N T REPORTABLE CRIMINAL APPEAL NO. 413 OF 2000 Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Patna High Court dismissing the petition filed by the appellant in terms of Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The appellant in the said petition had prayed for quashing the order dated 2.12.1993 taking cognizance of offences punishable under Sections 465, 466, 468, 469 and 471 of Indian Penal Code, 1860 (in short the 'IPC') in Begusarai Town P.S. Case No.63 of 1993.

2. Background facts as projected by the appellant are essentially as follows:

> On 29.8.1992 an application by respondent No.2 (hereinafter referred to as the 'complainant') was filed for cancellation of Form 19 filed relating to the license of M/s Arun Medical Hall. On the said date, appellant sent a report for cancellation of the application form for license. On the same date, as per the directions of District Magistrate, appellant conducted raid at the medical shop of respondent No.2 around 5.15 p.m. in the presence of two Executive Magistrates and certain medicines were seized. On 8.9.1992 appellant filed FIR (P.S. Case No.258/92) and a case was registered against respondent No.2 for alleged commission of offences punishable under Sections 420, 467, 468 IPC and Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940 (in short 'Drugs Act'). On 15.9.1992 respondent No.2 filed an application for bail. Significantly there was no averment in the bail petition that the appellant demanded bribe or made any interpolation of records. On 10.10.1992 respondent NO.2 moved the Civil Surgeon for release of the seized medicines. Here again there was no allegation of demand of bribe and interpolation. On 7.11.1992 appellant informed the authorities about the threats received from respondent No.2 and others. On 16.11.1992 respondent No.2 moved the learned Chief Judicial Magistrate for release of seized medicines. Here again, there was no allegation of demand of bribe or interpolation of records. On 16.12.1992 appellant informed the police officials about the threat received from respondent No.2 and others and requested to protect his life. On 4.2.1993 a complaint was made by respondent No.2 alleging that appellant had committed offences punishable under Sections 161, 167, 465, 466, 469 and 471 IPC and on the basis of the complaint, FIR was registered.

3. According to the appellant, there was no explanation offered as to why there was delay in filing the complaint and there was no grievance that the police officials had refused to register any FIR. On 31.7.1993 an order purported to have been passed under Section 196 of the Code was passed by District Magistrate according sanction for prosecution of the appellant. On 4.8.1993 charge sheet was filed against the appellant for alleged commission of offences under Sections 465, 466, 469 and 471 IPC. Here again, there was no allegation of alleged commission of offence relating to demand of bribe which is punishable under the Prevention of Corruption Act, 1988 (in short 'PC Act'). On 2.12.1993 cognizance was taken.

4. It is submitted that the District Magistrate had no authority to grant sanction purportedly under Section 196 of the Code. Further in the petition before the High Court it was categorically stated as follows:

> "15. That it is stated that the Incharge of the Peon Book or the Issue Register is not the petitioner. It is in the hands of the clerk of the office and the concerned clerk was the appointee of Dr. A.A. Mallick whose services has been terminated as his appointment itself was illegal and during his termination process from service, he connived with the informant and have done all the mischief's against the petitioner."

5. As noted above, a petition under Section 482 was filed, which was rejected by the High Court primarily on the ground that no sanction was required. No other question was decided. It is pointed

out by learned counsel for the appellant that on the basis of the FIR given by the appellant, respondent No.2 has been convicted under Section 18A and 28 of the Drugs Act and Sections 420 and 468 IPC.

6. In support of the appeal, learned counsel for the appellant submitted that the factual scenario as noted above goes to show the allegations were made as a counter blast by respondent No.2 for the action taken against him. With a view to harass and humiliate the appellant a complaint was filed. The appellant had acted in course of his official duty and the High Court should not have dismissed the petition on the ground that no sanction was necessary, without considering the mala fides.

7. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court.

8. There is no appearance on behalf of respondent no.2 in spite of service of notice.

9. As the factual scenario goes to show the complaint filed on 4.2.1993 appears to be a counter blast by respondent No.2 for the action taken by the appellant against him.

10. The pivotal issue i.e. applicability of Section 197 of the Code needs careful consideration. In Bakhshish Singh Brar v. Smt. Gurmej Kaur and Anr. (AIR 1988 SC 257), this Court while emphasizing on the balance between protection to the officers and the protection to the citizens observed as follows:-

> "It is necessary to protect the public servants in the discharge of their duties. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence."

11. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but

there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

12. At this juncture, we may refer to P. Arulswami v. State of Madras (AIR 1967 SC 776), wherein this Court held as under:

> "... It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; 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. It is quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable."

13. Prior to examining if the Courts below committed any error of law in discharging the accused it may not be out of place to examine the nature of power exercised by the Court under Section 197 of the Code and the extent of protection it affords to public servant, who apart, from various hazards in discharge of their duties, in absence of a provision like the one may be exposed to vexatious prosecutions. Section 197(1) and (2) of the Code reads as under:

> "197. (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 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.
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> * * * (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."

The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance no prosecution can be initiated in a Court of Sessions under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has been committed. So far public servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty.

14. Such being the nature of the provision the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his

official duty', be understood? What does it mean? 'Official' according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In B. Saha and Ors. v. M. S. Kochar (1979 (4) SCC 177), it was held : (SCC pp. 184-85, para 17) "The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes.

While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197 (1), an Act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution and the said provision."

Use of the expression, 'official duty' implies that the act or omission must have been done by the public officer 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.

15. 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 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 course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in 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 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 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 course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in Matajog Dobey v. H. C. Bhari (AIR 1956 SC 44) thus :

> "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."

16. 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.

17. Section 197(1) provides that when any person who is or was 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 and (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.

18. We may mention that the Law Commission in its 41st Report in paragraph 15.123 while dealing with Section 197, as it then stood, observed "it appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant". It was in pursuance of this observation that the expression 'was' come to be employed after the expression 'is' to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted.

19. The above position was highlighted in R. Balakrishna Pillai v. State of Kerala and Anr. (1996 (1) SCC 478), State of H.P. v. M.P. Gupta (2004 (2) SCC 349), State of Orissa through Kumar Raghvendra Singh and Ors. v. Ganesh Chandra Jew (2004 (8) SCC 40) and Rakesh Kumar Mishra v. State of Bihar and Ors. (2006 (1) SCC 557).

20. When the factual background as noted above is considered on the touchstone of legal principles set out above the inevitable conclusion is that certainly mala fides were involved apart from the applicability of Section 197 of the Code. It is no doubt true that at the threshold interference by exercise of Section 482 of the Code has to be in rare cases. The present case appears to be of that nature and falls under category (7) indicated in State of Haryana and Ors. v. Bhajan Lal and Ors. (1992 Supp (1) SCC 335). The continuance of the proceedings by the prosecution would amount to abuse of the process of law. The criminal proceedings in the Court of learned Chief Judicial

Magistrate, Begusarai in PS Case No.63/1993 are quashed. The appeal is allowed.