Ram Kumar vs State Of Haryana on 13 January, 1987

Equivalent citations: 1987 AIR 735, 1987 SCR (1) 991, AIR 1987 SUPREME COURT 735, 1987 (1) SCC 476, 1987 CRIAPPR(SC) 65, 1987 APLJ(CRI) 66, 1987 ALLCRIC 85.2, 1987 ALL WC 905, 1987 UP CRIR 121, 1987 SCC(CRI) 190, 1987 JT 157, 1987 (1.1) IJR (SC) 337, 1987 ALLAPPCAS (CRI) 77, 1987 CURCRIJ 207, 1987 BBCJ 29, 1987 (1) UJ (SC) 351, 1987 CHANDLR(CIV&CRI) 619, (1987) SC CR R 93, (1987) 1 KER LT 462, (1987) MADLW(CRI) 223, (1987) 1 APLJ 25, (1987) 1 RECCRIR 367, (1987) 1 SCJ 397, (1987) ALLCRIR 417, (1987) ALLCRIC 85(2)

Author: M.P. Thakkar

Bench: M.P. Thakkar, B.C. Ray

PETITIONER:
RAM KUMAR

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT13/01/1987

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
RAY, B.C. (J)

CITATION:
1987 AIR 735 1987 SCR (1) 991
1987 SCC (1) 476 JT 1987 157
1987 SCALE (1)58

ACT:
Criminal Procedure Code, 1973: Sections 132(a) & 197(2)-Armed Forces/Forces charged with maintenance of public order-Prosecution of--Safeguards--Whether a sanction to prosecute can surrogate for a sanction to take cognizance.

HEADNOTE:

The Trial Court, without any previous sanction of the State Government under s.197 Cr.P.C. took cognizance in respect of a charge, that the appellant had, in the purported discharge of his duties, used force in excess of what was necessary and thereby committed an offence.

The High Court, in appeal by the appellant, however, took the view that inasmuch as the State Government itself had accorded sanction to 'prosecute' the appellant in exercise of powers under s.132 of the Cr.P.C. there was no need for sanction under s.197 of Cr. P.C.

Allowing the appeal to this Court,

Held: 1. The proceedings against the appellant must be quashed as lacking in jurisdiction. The Court could not have taken cognizance of the offence, for there was no jurisdiction to do so in the absence of the requisite sanction. This order will not operate as an acquittal an merits, and the appellant can be proceeded again. it afresh. Whether or not to do so is for the competent authority to decide. [996B-C]

2.1 Two safeguards are provided in regard to prosecution of members of the Armed Forces or of the forces charged with the maintenance of public order sought to be prosecuted for use of excessive force in the discharge or purported discharge of their duty. The first safeguard provided in s. 132 Cr.P.C. is that they cannot be "prosecuted" without obtaining a sanction to prosecute from the appropriate Government and the second safeguard is the one provided under s. 197 that no Court can take "Cognizance" of an offence against such an official in the absence of the previous sanction of the appropriate Government. [993D-F; 994A]

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2.2 A sanction under s.132 of the Cr.P.C. is no substitute for a sanction under s. 197 of the Cr.P.C. Six significant points of difference need to be highlighted. [994D]

1. The two sanctions are addressed to altogether different persons. While sanction under sec. 132 is addressed to the intending complainant, sanction under s. 197 is addressed to the Magistrate presiding over a Court. [994E-995A]

2. The two sanctions serve two altogether different purposes. While the sanction under s.132 clothes the intending complainant with authority to institute a complaint and set the machinary of the criminal court in motion, the sanction under s. 197 clothes the court with the jurisdiction to take cognizance of the offence. Without the former, the intending complainant cannot trigger the proceedings. Without the latter the Magistrate cannot have seisin over the matter or act in the matter. [995B]

3. The absence of sanction in each case visits different persons with different consequences. Absence of the former disables the intending complainant whereas absence of the latter disables the Court. [995C]

4. The disability operates in two different spheres. Want of sanction under s. 132 renders the complaint invalid. Want of sanction under s. 197 vitiates all the proceedings in the

Court. For want of the former, the complainant cannot complain, for want of the latter the court cannot try the case. [995D]

5. The sanctioning authority has to address itself to different questions. In regard to sanction under sec. 132 Cr.P.C. the question to be answered is whether the intending complainant is a suitable person to be authorized for prosecuting the matter in good faith. In regard to the sanction under sec. 197 the question to he answered is which particular court should be empowered to try the case. So also in granting sanction under sec. 197 the sanctioning authority has to consider whether or not to exercise the powers under s. 197(4) to specify "the person by whom, the manner in which, and the offence or offences for which" the concerned public servant should be tried and "the court before which the trial is to be held". The authority seized of the matter in the context of sanction under sec. 132 does not have to address himself to these questions and in fact has no competence in this behalf. [995E-995G]

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6. One is an authority to an individual to 'prosecute' the alleged offender, the other is an authority to 'try' the alleged offender. [995H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 25 of 1987.

From the Judgment and Order dated 22.7.86 of the Punjab & Haryana High Court in Crl. Revision No. 615 of 1986 Prem Malhotra for the Appellant.

M.S. Gujral, C.V. Subba Rao and Ms. Kailash Mehta for the Respondent.

The Judgment of the Court was delivered by THAKKAR, J. Can a sanction to PROSECUTE surrogate for a sanction to take COGNIZANCE?

Two safeguards are provided in regard to prosecution of members of the Armed Forces or of the forces charged with the maintenance of public order sought to be prosecuted for use of excessive force in the discharge of purported dis- charge of their duty:

(1) They cannot be "prosecuted" without obtaining a sanction to prosecute from the appropriate Government (Section 1321 of the Code of Criminal Procedure) (Cr.P.C.)
(2) No Court can take "cognizance" of an offence against such an official in the absence of the previous sanction of the

1. "132. protection against prosecution for acts done under Preceding sections-(1)No Prosecution against any person for any act purporting to be done under Section 129,

Section 139 or Section 13 1 shall be instituted in any Criminal Court except-

(a) with the sanction of the Central Government where such person is an officer or member of the armed forces;

(b) with the sanction of the State Government in any other case.

....."

appropriate Government (see Section 197 2 of Cr. P.C.) In the present case the Trial Court has taken cognizance without the previous sanction (of the State Government) as envisioned by Section 197(2) read with Section 197(3) of the Code of Criminal Procedure in respect of a charge that the appellant had in the purported discharge of his duties used force in excess of what was necessary and thereby committed on offence. Admittedly, there is no such previous sanction authorising any court to take 'cognizance' of the offence against the appellant. The High Court has, however, taken the view that inasmuch as the State Government itself had accorded sanction to 'prosecute' the appellant in exercise of powers under Section 132 of the Cr.P.C. there was no need for sanction under Section 197 of Cr.P.C. The reasoning runs along these lines: Both sanctions are (1) to be given by the State Government, (2) in respect of the same person, and (3) on the same allegations. Therefore, the sanction under one provision (Sec. 132) can be treated as a sanction under the other provision (Sec. 197(3) as well). We are afraid, the High Court has overlooked the scope, purpose and character of sanction under Section 132 of Cr.P.C. on the one hand and Section 197 Cr.P.C. on the other. Six significant points of difference need to be highlighted:-

(1) The two sanctions are addressed to altogether different persons. While sanction under Sec. 132 is addressed to the intending complainant, sanction "197. Prosecution of Judges and public servants-- (1) xxxx

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.

3. The State Government may, by notification, direct that the provisions of subsection (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein. Wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government~. occurring therein, the expression "State Government" were substituted.

4. The Central Government or the State Government. as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which the prosecution of such a Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

under Section 197 is addressed to the Magistrate presiding over a Court.

(2) The two sanctions serve two altogether different pur- poses. While the sanction under Section 132 clothes the intending complainant with authority to institute a com- plaint and set the machinary of the criminal court in mo- tion, the sanction under Section 197 clothes the court with the jurisdiction to take cognizance of the offence. Without the former, the intending complainant cannot trigger the proceedings, without the latter the Magistrate cannot have seisin over the matter or act in the matter. (3) The absence of sanction in each case visits different persons with different consequences. Absence of the former disables the intending complainant whereas absence of the latter disables the Court.

(4) The disability operates in two different spheres. Want of sanction under Sec. 132 renders the complaint invalid. Want of sanction under Sec. 197 vitiates all the proceedings in the Court. For want of the former, the complainant cannot complain, for want of the latter the court cannot try the case.

(5) The sanctioning authority has to address itself to different questions. In regard to a sanction under Sec. 132 Cr.P.C. the question to be answered is whether the intending complainant is a suitable person to be authorized for prose- cuting the matter in good faith. In regard to the sanction under Sec. 197 the question to be answered is which particu- lar court should be empowered to try the case'. So also in granting sanction under Sec. 197 the sanctioning authority has to consider whether or not to exercise the powers under Section 197(4) to specify "the person by whom, the manner in which, and the offence or offences for which" the concerned public servant should be tried and "the court before which the trial is to be held". The authority seized of the matter in the context of sanction under Sec. 132 does not have to address himself to these questions and in fact has no compe- tence in this behalf.

(6) One is an authority to an individual to 'prosecute' the alleged offender, the other is an authority to 'try' the alleged offender.

Therefore, a sanction under Section 132 is no substitute for a sanction under Section 197. Under the circumstances, the court could not have taken cognizance of the offence in so far as the appellant was concerned for there was no jurisdiction to do so in the absence of the requisite sanc- tion. The appeal must, therefore, be allowed, the order passed by the High Court must be set aside, and the proceed- ings against the appellant must be quashed as lacking in jurisdiction. No doubt, this order will not operate as an acquittal on merits and the appellant can be proceeded against afresh. Whether or not to do so is for the competent authority to decide. So far as the proceedings giving rise to the present appeal are concerned, the same will stand quashed.

The appeal is disposed of accordingly.

M.L.A. Appeal dis-
posed of.

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