Prof.Sumer Chand vs Union Of India on 7 September, 1993

Equivalent citations: 1993 AIR 2579, 1994 SCC (1) 64

Author: S.C. Agrawal

Bench: S.C. Agrawal, Kuldip Singh

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           PETITIONER:
PROF.SUMER CHAND

        Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT07/09/1993

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
KULDIP SINGH (J)

CITATION:
 1993 AIR 2579            1994 SCC  (1)  64
 JT 1993 (5)   189        1993 SCALE  (3)706


ACT:



HEADNOTE:



JUDGMENT:
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The Judgment of the Court was delivered by S.C. AGRAWAL, J.- This appeal, by special leave, raises the question whether the period of limitation for filing a suit for malicious prosecution against a member of the Delhi Police is governed by the provisions of Section 140 of Delhi Police Act, 1978, hereinafter referred to as 'the Act', or by Article 74 of the Limitation Act, 1963.

2. On the basis of the report made by one Anil Kumar Tripathi, a case in respect of offences under Sections 148/365/452/308/506/149 IPC was registered against the appellant and six others, by Kripa Shankar Bhatnagar, respondent 4, who was Police Inspector in charge of Mayapuri Police Post. After investigation, the challan was filed in the court by Vijay Malik, respondent 3, SHO of P.S.

Naraina. The appellant and the other six accused were prosecuted before the Additional Sessions Judge, New Delhi on charges under Sections 148, 365/149, 452/149, 308/149 and 506/149 IPC in Sessions Case No. 6 of 1985. By judgment dated February 28, 1986, the appellant as well as the other co- accused were acquitted by the Additional Sessions Judge. Thereafter, on April 20, 1987, the appellant filed a suit (No. 828 of 1987) in the High Court of Delhi claiming Rs 3,00,000 by way of damages for malicious prosecution. Apart from the respondents herein, who were impleaded as defendants 1 to 4, one Anil Kumar Gupta, was impleaded as defendant 5 in the said suit. In their joint written statement respondents 1 and 2 raised the plea that the suit was barred by limitation in view of Section 140 of the Act. Same plea was raised by respondent 3, in his written statement. Respondent 3 also pleaded that the suit was not maintainable in view of Section 140(2) of the Act as no prior notice of the filing of the suit was served on him. Respondent 4 filed an application (I.A. No. 7672 of 1987) for rejection of the plaint under Order 7 Rule 11 and Section 151, CPC wherein he submitted that the suit was one covered by Section 140 of the Act and since it had not been filed within a period of three months from the date of the impugned Act and was filed more than one year after the acquittal, it was barred by limitation and has to be dismissed under Section 140 of the Act. Another objection that was raised in the said application was that as per Section 140(2) of the Act, the appellant was required to give minimum one month's notice prior to filing of the suit and under Section 140(3), the fact of the service of notice is required to be stated in the plaint and that the appellant has neither served any such notice nor has he made any averment about serving any such notice on respondent 4 in the plaint. Having regard to the pleas raised by respondents 1 to 3 in their written statements, the following preliminary issue was framed:

"Whether the suit is barred by Section 140 of the Delhi Police Act."

3. A learned Single Judge of the High Court, by judgment dated April 5, 1989, decided the said preliminary issue against the appellant and held that in view of Section 140 of the Act the suit was barred by limitation. The learned Single Judge further held that the appellant had admittedly not served any notice prior to the filing of the suit of his intention to file the suit on any of the respondents as required by Section 140(2) of the Act and for that reason also the suit was liable to be dismissed as against the respondents. Consequently the suit as against the respondents was dismissed. It, however, proceeds against defendant 5. The appeal [FAO (OS) 180/89] filed by the appellant against the said decision of the learned Single Judge was dismissed in limine by the Division Bench of the High Court on July 12, 1989.

4. This appeal was filed by the appellant in person but during the course of the hearing, it was felt that it would be better if the appellant's case is presented through a lawyer and the Legal Aid Society of the Supreme Court was requested to give the assistance of a senior lawyer to the appellant for presenting his case before this Court. In pursuance of the said request, Shri S.B. Wad, Senior Advocate, has argued the appeal on behalf of the appellant. We record our appreciation for the assistance rendered by Shri Wad.

5. Section 140 of the Act provides as under:

"140. Bar to suits and prosecutions.- (1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of:

Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence. (2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one month's notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed.

(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof."

6. The first contention that has been urged by Shri Wad is that Section 140 of the Act is in the nature of a general provision governing all suits in respect of offences or wrongs alleged to have been done by a police officer, and Article 74 of the Schedule to the Limitation Act, which prescribes the period of limitation for suits for compensation for a malicious prosecution, is in the nature of special provision and since a special provision prevails over the general provision, the limitation for the suit filed by the appellant against the respondent will have to be governed by Article 74 of the Limitation Act and if the limitation is computed in accordance with Article 74 of the Limitation Act, the suit was not barred by limitation. We do not find any substance in this contention. As indicated in the Preamble, the Limitation Act is an enactment which consolidates and amends the law for the limitation of suits and other proceedings connected therewith. It is a law which applies generally to all suits and proceedings. It is, therefore, in the nature of a general enactment governing the law of limitation. The Delhi Police Act has been enacted for the purpose of amending and consolidating the law relating to regulation of police in the Union Territory of Delhi. The Act is a special enactment in respect of matters referred to therein. Section 140 of the Act imposes certain restrictions and limitations in the matter of institution of suits and prosecutions against police officers in respect of acts done by a police officer under colour of duty or authority or in excess of such duty or authority. One such restriction is that such suit or prosecution shall not be entertained and if entertained shall be dismissed, if it is instituted more than three months after the date of the act complained of.

7. Section 29(2) of the Limitation Act provides as under:

> "(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

8. Since the Act is a special law which prescribes a period of limitation different from the period prescribed in the Schedule to the Limitation Act for suits against persons governed by the Act in relation to matters covered by Section 140, by virtue of Section 29(2) of the Limitation Act, the period of limitation prescribed by Section 140 of the Act would be the period of limitation prescribed for such suits and not the period prescribed in the Schedule to the Limitation Act. This means that if the suit filed by the appellant falls within the ambit of Section 140 then the period of limitation for institution of the suit would be that prescribed in Section 140 and not the period prescribed in Article 74 of the Limitation Act.

9. Shri Wad has invited our attention to the decision of the Allahabad High Court in Mohd. Sharif v. Nasir Ali' wherein it has been held that a suit for damages for malicious prosecution was governed by the general law of limitation in the Limitation Act and not by Section 42 of the Police Act, 1861. It was so held for the reason that part of Section 42 of the Police Act, 1861, which provides a period of three months for suits contemplated by it, was repealed on the passing of the Limitation Act, 187 1, and as a result such suits became subject to the general law of limitation contained in the Limitation Act and the special provision of limitation contained in Section 42 of the Police Act, 1861 ceased to be operative. The said decision has no application to the present case where there is no such repeat because the Delhi Police Act was enacted after the Limitation Act. This decision, however, shows that the Limitation Act is a general law and the Delhi Police Act is a special law and negatives the contention to the contrary urged by Shri Wad.

10. The next contention of Shri Wad was that the suit filed by the appellant does not fall within the ambit of Section 140 inasmuch as the acts of respondents 3 and 4 which have been complained of cannot be regarded as acts done under colour of duty or authority or in excess of such duty or authority. In support of this submission, Shri Wad has placed reliance on the decisions of this Court in State of A.P. v. N. Venugopa 12 and State Of Maharashtra v. Narharrao3.

11. In this context it may be mentioned that the original enactment governing the police is the Police Act, 1861. Section 42 of the Police Act, 1861 provides as under:

> "42. Limitation of actions.- All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police powers hereby given shall be commenced within three months after the act complained of shall have teen committed, and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an

> Assistant District Superintendent of the District in which the act was committed, one month at least before the commencement of the action. Tender of amends- No plaintiff shall recover in any action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, and, though a decree shall be given for the plaintiff in any such action, such plaintiff shall not 1 AIR 1930 All 742 : 1930 ALJ 1443 2 (1964) 3 SCR 742 : AIR 1964 SC 33 : (1964) 1 Cri LJ 16 3 (1966) 3 SCR 880: AIR 1966 SC 1783 : 1966 Cri LJ 1495 have costs against the defendant, unless the Judge before whom the trial is held shall certify his approbation of the action:
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> Proviso- Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act."

12. The said provisions are confined in their application to actions and prosecutions in respect of anything done or intended to be done under the provisions of the Police Act. They do not apply to a person who is being prosecuted for an offence under any other Act or an action being brought in respect of things or anything done under the provisions of any other Act. [See : Maulud Ahmad v. State of U. p. 41 Section 140 is based on Section 161 of the Bombay Police Act, 1951 and has a wider amplitude. The words "in any case of alleged offence", "or of a wrong alleged to have been done" and "by any act done" are also used in Section 161 of the Bombay Police Act. After referring to these words in Section 161 of the Bombay Police Act, 1951, this Court in Virupaxappa Veerappa Kadampur v. State of Mysore5 has held:

> "It appears clear that the legislature deliberately gave the protection of Section 161 (1) to offences against any law and there is no justification for our limiting that protection to offences under the Police Act only."(p. 16)

13. The expression "under colour of duty" are also contained in subsection (1) of Section 161 of the Bombay Police Act. Construing this expression, this Court in Virupaxappa Veerappa Kadampur v. State Of Mysore5 has laid down:

> "The expression 'under colour of something' or 'under colour of duty', or 'under colour of office', is not infrequently used in law as well as in common parlance. Thus in common parlance when a person is entrusted with the duty of collecting funds for, say, some charity and he uses that opportunity to get money for himself, we say of him that he is collecting money for himself under colour of making collections for a charity. Whether or not when the act bears the true colour of the office or duty or right, the act may be said to be done under colour of that right, office or duty, it is clear that when the colour is assumed as a cover or a cloak for something which cannot properly be done in performance of the duty or in exercise of the right or office, the act is said to be done under colour of the office or duty or right. It is reasonable to think that the legislature used the words 'under colour' in Section 16 1 (1) to include this sense." (pp. 11-1 2)

14. The Court has further observed that the words "under colour of duty" would include "acts done under the cloak of duty, even though not by virtue of the duty" and that the acts done in dereliction of duty must be held to have been done under colour of the duty (pp. 12-13). The Court rejected the view that if the alleged act is found to have been done in gross violation of the 4 1963 Supp 2 SCR 38, 45 5 1963 Supp 2 SCR 6 : AIR 1963 SC 849 :(1963) 1 Cri LJ 814 duty then it ceases to be an act done under colour of duty. It was observed that "it is only when the act is in violation of the duty, the question of the act being done under colour of the duty arises" and, therefore, "the fact that the act has been done under gross violation of the duty can be no reason to think that the act has not been done under colour of the duty" (p. 15). In that case, the allegation was that the appellant, a Police Head-Constable, had prepared a false panchnama and a false report with regard to seizure of ganja. It was held that the said preparation of the panchnama and report were acts done under colour of duty imposed upon the said Head-Constable by the Police Act.

15. In State of A. P. v. N. Venugopa 12 the Court was dealing with Section 53 of the Madras District Police Act, 1859, which contains provisions similar to those contained in Section 42 in the Police Act, 1861. The accused were a Sub-Inspector of Police, a Head Constable and a Constable. They were prosecuted for having caused injuries to a prisoner in custody for the purpose of extorting from him information which might lead to detection of an offence and restoration of stolen property, and also for having his body thrown at the place where it was ultimately found with the intention of screening themselves from punishment. Section 53 of the Madras District Police Act uses the words "anything done or intended to be done under the provisions of this Act". Construing the said expression this Court has observed: (AIR p. 37, para 14) "The Court has to remember in this connection that an act is not under' a provision of law merely because the point of time at which it is done coincides with the point of time when some act is done in the exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say that an act is done 'under' a provision of law, one must discover the existence of a reasonable relationship between the provisions and the act. In the absence of such a relation the act cannot be said to be done 'under' the particular provision of law." (p.

753)

16. The principles laid down in Virupaxappa Veerappa Kadampur v. State of Mysore5 were held applicable and it was observed that the acts complained of, viz., beating a person suspected of a crime or confining him or sending him away in an injured condition cannot be said to have any relation with any provision of law whether the Police Act or some other law. It was held that the acts complained of had no reasonable connection with the process of investigation.

17. In State of Maharashtra v. Narharrao3 a Head-Constable was charged under Section 161 IPC and Sections 5(1)(b) and 5(2) of the Prevention of Corruption Act, 1947 for accepting a bribe for weakening the prosecution case. The question was whether the said matter was governed by Section 161(1) of the Bombay Police Act, 1951. It was held that "unless there is a reasonable connection between the act complained of and the powers and duties of the office, it cannot be said that the act was done by the accused officer under the colour of the office" (p. 883). Applying the said test, this Court held that the alleged acceptance of bribe by the accused officer was not an act which could be

said to have been done under the colour of office or done in excess of his duty or authority within the meaning of Section 161 (1) of the Bombay Police Act. Reference has been made to the earlier decision in Virupaxappa Veerappa Kadiampur v. State of Mysore5 and it has been pointed out that in that case it was the duty of the Police Constable to prepare a panchnama and the act of preparation of false panchnama was done under the colour of his office and there was a nexus between the act complained of and the statutory duty that the Police Head Constable was to perform and the provisions of Section 161(1) of the Bombay Police Act were, therefore, applicable. (p. 884)

18. Similarly in State of Maharashtra v. Atma Ram6 it was held that the alleged act of assault and confinement of a suspect in police custody were not acts done under the colour of duty or authority since the said acts had no reasonable connection or nexus to the duty or authority imposed upon the officer under the Bombay Police Act or any other enactment conferring the powers on the police under the colour of which this act was done and that such acts fell completely outside the scope and duties of the respondent police officers and they are not entitled to the protection conferred by Section 161 (I) of the Bombay Police Act.

19. Having regard to the principles laid down in the aforementioned decisions of this Court on provisions contained in Section 161(1) of the Bombay Police Act, 1951 which are similar to those contained in Section 140(1) of the Act, we are of the view that the High Court was right in holding that the present case falls within the ambit of Section 140 of the Act. What is alleged against respondents 3 and 4 by the appellant in the plaint is that respondent 4, who was in charge of Mayapuri police post had registered a false, vexatious and malicious report against the appellant, and respondent 3, who was Station House Officer, P.S. Naraina, had filed the challan in the Court against appellant and other accused on the basis of the said report. The facts in the present case are similar to those in Virupaxappa Veerappa Kadampur v. State of Mysore' where the allegation was about the preparation of false panchnama and report of seizure of ganja. The said action of the appellant in that case was held to be done under the colour of duty since it was the duty of Police Head Constable to prepare a panchnama and for that reason it was held that there was a nexus between the act complained and the statutory duty that the Police Head Constable was to perform. Similarly in the present case it was the duty of respondent 4, being in-charge of Police Post Mayapuri, to record the report and so also it was the duty of respondent 3 the SHO of P.S. Naraina to file the challan in court. The acts complained of thus had a reasonable connection and nexus with the duties attached to the offices held by respondents 3 and 4. The acts complained of were, therefore, done under the colour of office of the said 6 AIR 1966 SC 1786 : 1966 Cri LJ 1498 respondents and fell within the ambit of Section 140(1) of the Act. It is not disputed that if Section 140(1) is found applicable the suit filed by the appellant, as against the respondents, was barred by limitation having been filed after the expiry of three months and it could not be entertained against them.

20. The appeal, therefore, fails and it is accordingly dismissed, but without any order as to costs.