

N.K. Sharma vs Abhimanyu on 7 October, 2005

Equivalent citations: AIR 2005 SUPREME COURT 4303, 2005 (13) SCC 213, 2005 AIR SCW 5233, 2005 (2) UJ (SC) 1385, (2006) 1 JCR 135 (SC), 2005 UJ(SC) 2 1385, 2005 (9) SRJ 558, 2006 (2) SCC(CRI) 135, 2005 (7) SLT 583, (2005) 35 ALLINDCAS 107 (SC), 2005 (35) ALLINDCAS 107, 2005 (8) SCALE 313, 2006 ALL MR(CRI) 4 NOC, (2006) SC CR R 514, (2005) 4 CRIMES 153, (2005) 4 CURCRIR 113, (2005) 7 SUPREME 104, (2005) 53 ALLCRIC 776, (2006) 1 CHANDCRIC 182, (2005) 4 ALLCRILR 790, (2005) 3 ALLCRIR 3137, (2006) 1 EASTCRIC 64, (2005) 4 KER LT 738, (2005) 32 OCR 698, (2005) 4 RECCRIR 469, (2005) 7 SCJ 415, (2005) 4 RECCIVR 424, (2005) 8 SCALE 313, 2006 (1) ANDHLT(CRI) 59 SC

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Bench: S.B. Sinha, R.V. Raveendran

CASE NO.:

Appeal (crl.) 514 of 2001

PETITIONER:

N.K. Sharma

RESPONDENT:

Abhimanyu

DATE OF JUDGMENT: 07/10/2005

BENCH:

S.B. Sinha & R.V. Raveendran

JUDGMENT:

JUDGMENT S.B. SINHA, J :

Whether a Class I Officer of the State Government (Haryana) deputed to work as Managing Director of a Co-operative Society is entitled to protection under Section 197 of the Code of Criminal Procedure is in question in this appeal which arises out of a judgment and order dated 14.7.2000 passed by the High Court Punjab and Haryana at Chandigarh.

The fact of the matter, shorn of all unnecessary details is as under :

The Respondent herein was working as Land Valuation Officer under one Dalip Singh, Manager, Primary Agricultural Land Development Bank, Dabwali, a branch office of the Cooperative Society wherein the Appellant was the Managing Director.

A Veterinary Doctor V.K. Mittal was arrested by the Vigilance Bureau on or about 29.3.1995, allegedly while accepting illegal gratification of Rs.700/- from a farmer. The said doctor made an allegation that out of the said amount of Rs. 700/-, a sum of Rs.400/- was to be paid to the Manager. Dalip Singh, on the basis of the said statement, was arrested. He was later on, however, acquitted.

The District Manager, Sirsa, in charge of the Circle, by a letter dated 12.4.1995 brought to the Appellant's notice that a relative of the Respondent, working as Inspector in Vigilance at the instance of the Respondent, got the said Manager arrested as he had been nursing a grudge against him having been transferred from Dabawali on his recommendation. Upon receipt of the said letter, the Appellant addressed a letter dated 19.4.1995 to the Director General of Police, Vigilance Department, Haryana, Chandigarh, requesting him to look into the matter personally. The letter contained a statement "Later on with the connivance of Shri Abhimanyu, Land Valuation Officer and his one relative who is in Haryana Police, has falsely implicated Shri Dilip Singh .The Manager has been implicated due to personal difference with Shri Abhimanyu " The said letter was published in a newspaper, whereafter the Respondent filed a complaint against the Appellant herein in the Court of the Chief Judicial Magistrate, Sirsa, purported to be for commission of an offence under Section 500 of the Indian Penal Code (for short, IPC), on the ground that by reason thereof his prestige got lowered in the general public as also amongst his relatives.

The Appellant was summoned in the said case by the Chief Judicial Magistrate by an order dated 13.7.1998.

The Appellant herein filed an application before the said Court on 30.4.1999 on the ground that no sanction in terms of Section 197 Cr. PC having been obtained, the entire proceeding was vitiated in law as, according to him, the aforementioned DO letter was issued by him in his official capacity. It was further contended that the said letter has been procured by some persons wherewith the Appellant has no concern.

The said application, however, was dismissed by the Chief Judicial Magistrate by an order dated 14.8.1999. Aggrieved thereby the Appellant filed an application under Section 482 of the Code of Criminal Procedure praying therein for quashing the order dated 13.7.1998 whereby he had been summoned. By reason of the impugned order, the said application was dismissed holding that as the Appellant was working on deputation in the Cooperative Housing Federation at the relevant time, he was not entitled to get the protection under Section 197 Cr.PC. Being aggrieved, the Appellant is before us.

Mr. Vijay Kumar, the learned counsel appearing on behalf of the Appellant, would submit that the Appellant being a Class-I Officer of the State Government was entitled to the said protection in terms of the provisions of the Haryana Civil Services (Punishment or Appeal) Rules, 1987 as also the Haryana Cooperative Societies Act, 1984.

Sanction for prosecution of a public servant, the learned counsel would contend, is a valuable right. It was submitted that the High Court committed a manifest error in dismissing the Appellant's application under Section 482 Cr.PC. relying on or on the basis of a decision of this Court in Mohd. Hadi Raja vs. State of Bihar and Another [(1998) 5 SCC 91] without taking into consideration paragraph 25 thereof wherein it is laid down that such protection can be afforded by any statute or statutory rules framed by the State.

Mr. Mahabir Singh, the learned counsel appearing on behalf of the Respondent, on the other hand, would contend that in absence of any statutory provision, the question as to whether an officer deputed to work in a cooperative society is a 'public servant' or not must be determined strictly in terms of Section 21 of IPC.

It was submitted that the provisions of the Haryana Civil Services (Punishment or Appeal) Rules, 1987, referred to above, are wholly inapplicable inasmuch as the definition of 'public servant' contained therein is meant to be applied for the purpose of the said rules only.

As regards the availability of protection under Section 123 of the Haryana Cooperative Societies Act, 1984, the learned counsel for the Respondent would contend that only those employees who come within the purview of Section 123 thereof would be 'public servant' and not others and the Appellant herein does not answer the description of the employees specified therein.

Indisputably the underlying object in enacting Section 197 of the Cr.PC is to protect a public servant from a frivolous prosecution. The said provision, however, although may not be construed too narrowly, as was held in Shreekantiah Ramayya Munipalli vs. State of Bombay [1955 (1) SCR 1177], whereupon the learned counsel for the Appellant placed reliance, cannot be interpreted liberally so as to bring within its purview other officers who are not so protected. Section 197 of the Code of Criminal Procedure, inter alia, protects the public servants. 'Public Servant' has been defined in Section 21 of the IPC, clause 12 whereof is as under :

"Twelfth Every person

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)"

Admittedly the salary of the Appellant is not paid by the Government. He at the relevant time was not in the service of the State. Prosecution against an officer of the Government company or a public undertaking would not require any sanction under Section 197 Cr. PC .

It has not been denied or disputed before us that the Appellant herein does not answer the description of a public servant within the meaning of the provision of Section 21 of IPC. What is contended is that he continues to be a public servant within the meaning of the Haryana Civil Services (Punishment or Appeal) Rules, 1987, Rule 2(D) whereof is as under :

"2(D) government employees : means any person appointed to any civil service or post in connection with the affairs of the State of Haryana Explanation :A govt. employee whose services are placed at the disposal of a company, corporation or organization or a local authority or university by the Govt. shall for the purpose of these rules be deemed to be a government employee serving under the government notwithstanding that his salary is drawn from sources other than the consolidated fund of the State."

The said rule had been made in terms of proviso appended to Article 309 of the Constitution of India. An employee of the State, whose services have been placed at the disposal of a company, corporation or organization or a local authority or university would be deemed to a Government employee despite the fact that his salary has been drawn from sources other than the consolidated fund of the State, for the purpose of the said rules. The definition of the 'Government employee' cannot be extended for purposes other than sought to be achieved thereby. Provisions of the said rules, therefore, cannot be invoked for affording protection under Section 197 of the Code of Criminal Procedure.

Reliance has also been placed upon Sections 118 and 123 of the Haryana Cooperative Societies Act, 1984, which read as under :

"S. 118. Cognizance of offence

- i) No court inferior to that of Judicial Magistrate of the First Class shall try any offence under this Act .
- ii) No prosecution shall be instituted without the sanction of the Registrar and such sanction shall not be given without giving to the person concerned a reasonable opportunity to represent his case.

S. 123.. Employees etc. to be public servants : - Any employee of cooperative society engaged in the recovery of loans under the provisions of this Act or rules or any person appointed as liquidator or arbitrator shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code."

[Emphasis supplied] Section 117 of the said Act enumerates offences. Section 118 limits taking of cognizance of offences which come within the purview of the said Act, as would be evident from clause (i) thereof, and not under the provisions of the Indian Penal Code or any other statute. The said provision, therefore, has no application. In terms of Section 123, only an employee who is engaged in the recovery of loans or a person who has been appointed as a liquidator or an arbitrator only shall be treated as a public servant. By reason of the said provision, a legal fiction has been created. A legal fiction, as is well known, is created for a specific purpose and, thus, applicability thereof cannot be extended for a purpose other than those for which it has been created. As the Managing Director of the Haryana State Cooperative Land Development Bank Ltd., the Appellant was not engaged in the recovery of loans or appointed as a liquidator or an arbitrator and in that view of the matter, the limited purpose for which the legal fiction has been created would have no application in the instant case.

The views we have taken find support from a decision of this Court in *S.S. Dhanoa vs., Municipal Corporation, Delhi and Others* [(1981) 3 SCC 431] wherein, this Court noticed a well marked distinction between a body created by a statute and a body coming into existence and governed in accordance with the provisions of a statute. In that case the Appellant therein, was a member of the Indian Administrative Service. His services were placed at the disposal of Cooperative Stores Ltd., a society registered under the Bombay Cooperative Societies Act. He was prosecuted under Section 7 of the Prevention of Food Adulteration Act, 1954. Rejecting a contention that he was entitled to protection under Section 197 of Cr. PC, it was observed :

"5. The short question that falls for our determination in this appeal is whether a member of the Indian Administrative Service, whose services are placed at the disposal of an organisation which is neither a local authority, nor a corporation established by or under a Central, Provincial or State Act, nor a Government Company, by the Central Government or the Government of a State, can be treated to be a 'public servant' within the meaning of clause Twelfth of Section 21 of the Indian Penal Code for purposes of Section 197 of the Code of Criminal Procedure, 1973. The answer to the question turns on the construction of clause Twelfth of Section 21 of the Indian Penal Code, 1860 and Section 197 of the Code of Criminal Procedure, 1973 "

It was opined :

" By no stretch of imagination, could it be said that the appellant was employed in connection with the affairs of the Union within the meaning of Section 197 of the Code of Criminal Procedure, 1973. The Super Bazaars are not owned by the Central Government. They are owned and managed by the Cooperative Store Limited. Pursuant to an agreement executed between the Cooperative Store Limited and the Union of India, the Central Government has advanced a loan of Rs 40,00,000 to the Society for establishment and management of the Super Bazaars, and the Central Government also holds more than 97 per cent shares in the total shareholding of the Society. Clause 6 of the Agreement provides:

"That the incumbents of supervisory and other key posts including those of General Manager, Deputy General Manager, Finance Manager, Assistant General Manager, Purchase Manager, Sales Manager and Accounts Manager, by whatever other designation they may be known shall not be appointed or removed from their posts by the debtor except with the prior approval of the creditor in writing."

The Super Bazaar at Connaught Place and at various other places are run by the Cooperative Store Limited under the control of the Ministry of Agriculture (Department of Cooperation). The incumbents of supervisory and other key posts including that of the General Manager cannot be appointed or removed without the prior approval of the Central Government. The whole purpose of clause 6 of the Agreement in the matter of appointment of General Manager and other incumbents holding key posts is to safeguard the interests of the Central Government. Legally speaking, the Super Bazaars are owned and managed by the Society and not by the Central Government and, therefore, the appellant was not employed in connection with the affairs of the Union within the meaning of Section 197 of the Code of Criminal Procedure, 1973."

We may, however, notice that therein a distinction between a company engaged under the Act and the Company which comes into existence in accordance with the Act was noticed relying on or on the basis of a decision of this Court in Sukhdev Singh vs. Bhagatram Sardar Singh Raghuvanshi [(1975) 1 SCC 421]. The Court therein also relied upon Sabhajit Tewary vs. Union of India [(1975) 1 SCC 485]. The said decision, however, has been reversed by a Seven Judge Bench of this Court in Pradeep Kumar Biswas & Ors. vs. Indian Institute of Chemical Biology & Ors. [JT 2002 (4) SC 146]. In this case, we are not, however, concerned with the said issue.

The said decision has been followed in Mohd. Hadi Raja (supra) whereupon reliance has been placed by the High Court, observing :

"21. It is to be noted that though through the contrivance or mechanism of corporate structure, some of the public undertakings are performing the functions which are intended to be performed by the State, ex facie, such instrumentality or agency being a juridical person has an independent status and the action taken by them, however important the same may be in the interest of the State cannot be held to be an action taken by or on behalf of the Government as such within the meaning of Section 197 CrPC."

It was further observed :

"23. The importance of the public undertaking should not be minimised. The Government's concern for the smooth functioning of such instrumentality or agency can be well appreciated but on the plain language of Section 197 of the Code of Criminal Procedure, the protection by way of sanction is not available to the officers of the public undertaking because being a juridical person and a distinct legal entity, such instrumentality stands on a different footing than the government departments.

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25. It will be appropriate to notice that whenever there was a felt need to include other functionaries within the definition of "public servant", they have been declared to be "public servants" under several special and local acts. If the legislature had intended to include officers of an instrumentality or agency for bringing such officers under the protective umbrella of Section 197 CrPC, it would have done so expressly."

We have noticed hereinbefore that the petition does not come within the purview of Section 123 of the Act.

At this juncture, we may notice that in B.S. Sambhu vs. T.S. Krishnaswamy [(1983) 1 SCC 11], this Court emphasized there must be a reasonable connection between the act and the discharge of official duty by the accused.

The learned counsel for the Appellant submitted that the allegations made by the Respondent herein even if given face value and taken to be correct in its entirety would not attract the mischief of Section 499 of IPC in view of several exceptions carved out therein. From the judgment of the High Court it does not appear that such a question was raised therein.

We have noticed hereinbefore that the Appellant filed an application purported to be under Section 203 of the Cr. PC before the Chief Judicial Magistrate. Such an application was not maintainable in view of the decision of this Court in Adalat Prasad vs. Rooplal Jindal and Others [(2004) 7 SCC 338], wherein it has been held :

"15. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code."

[See also Poonam Chand Jain vs. Fazru - (2005) SCC (Cri) 190] For the reasons aforementioned, we do not find any merit in this appeal, which is dismissed accordingly.

However, the Appellant shall be at liberty to raise other contentions in an appropriate proceeding.