

Neutral Citation No. - 2024:AHC-LKO:18069

Court No. - 27

Case :- APPLICATION U/S 482 No. - 1687 of 2024

Applicant :- Executive Officer, Nagar Palika Parishad, Balrampur
Rakesh Kumar Jaiswal And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Govt. Of U.P.
Civil Sectt. Lko. And Another

Counsel for Applicant :- Ankit Mishra, Mohd. Ali

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Mohd. Ali, the learned counsel appearing for the applicants and Sri Anant Pratap Singh, the learned AGA for the State and perused the record.
2. By means of the instant application filed under Section 482 Cr.P.C., the applicants have challenged the validity of the order dated 10.05.2022 passed by the Chief Judicial Magistrate, Balrampur in Complaint No. 678 of 2021, whereby the Magistrate has taken cognizance of offences under Sections 323, 504, 506 IPC on the basis of a complaint filed by the opposite party no. 2. The applicant has also challenged the validity of the judgment and order dated 25.01.2024 passed by the Sessions Judge, Balrampur dismissing Criminal Revision No. 67 of 2022 filed against the aforesaid order dated 10.05.2022 and affirming the order.
3. The opposite party no. 2 filed an application under Section 156(3) Cr.P.C. alleging that his father had died on 04.10.2012 and he had applied for mutation of his name in the record of Nagar Palika Parishad, Balrampur and had deposited house-tax and water-tax on 22.01.2015 and he had also deposited Rs. 500/- towards mutation charges. He had submitted all the relevant documents to the Nagar

Palika Parishad, Balrampur on 10.09.2015, which included a recommendation made by the corporator. Even after it, on 28.09.2016, the Executive Officer of Nagar Palika Parishad (the applicant no. 1) uploaded information on the web portal that recommendation of corporator was not attached to the application.

4. When the complainant sought information under the Right to Information Act, 2005, on 18.12.2020 he was informed that a final order had been passed on his application, whereas the house continued to be recorded in the name of the complainant's deceased father. When the complainant contacted the applicants to know the cause of the aforesaid fact, both of them abused him and threatened to assault him and pushed him outside the office.
5. The magistrate registered the application as a complaint by means of an order dated 20.03.2021. Thereafter statement of the complainant was recorded under Section 200 Cr.P.C. on 27.09.2021 and statements under Section 202 Cr.P.C. were recorded on 08.10.2021 and 22.10.2021 and thereafter the Magistrate has passed an order summoning the applicants to face the trial. It is recorded in the order dated 10.05.2022 that a perusal of the record prima facie indicates commission of offences under Section 323, 504, 506 IPC and summoned the applicants to face the trial.
6. In Criminal Revision No. 67 of 2022 filed by the applicant against the summoning order dated 10.05.2022, it was argued that the trial court could not have taken cognizance of the offences without previous sanction of the Government as provided under Section 197 Cr.P.C. The Session Judge held that the offences alleged were not committed by the applicants while exercising their official duties and, therefore, no previous sanction was required in respect of those offences. The learned Sessions Judge further held that at the stage of taking cognizance of the offences and summoning the accused persons merely a prima facie satisfaction is required to be recorded for trial of the accused persons and a thorough scrutiny of the offences is not

required to arrive at a satisfaction that there is sufficient material for conviction of the accused person. Accordingly, the Sessions Judge dismissed the revision.

7. While assailing the validity of both the aforesaid orders, the learned counsel for the applicants has submitted that C.L. No. 53/2007Admin(G):Dated: 13.12.2007 issued by this Court mandates that all the Magistrates to record statements under Section 200 Cr.P.C. in their own handwriting, whereas in the present case the statement has been transcribed by the reader of the Court.

8. C.L. No. 53/2007Admin(G):Dated: 13.12.2007 reads as follows: -

“The Hon’ble Court has been pleased to observed that section 200 Cr.P.C. mandates that the substance of the information/statement only is required to be recorded by the magistrate which should be done by him in his handwriting as that should facilitate in pinpointing the controversy and check frivolous complaints.

Therefore, in continuation of earlier Circular letter no. 6 Admin. (B) dated 1st May 1971, I have been directed to say that all the Magistrate working under your administrative control may please be directed to record statements under Section 200 Cr.P.C. in their own handwriting.

I am, further, to request you to kindly bring the contents of this Circular letter to all the Judicial Officers working under your administrative control for strict compliance”

9. From a bare reading of the aforesaid circular letter, it is not clear as to whom the aforesaid communication was addressed and there is nothing on record to indicate as to whether the authority to whom this communication was addressed, had actually issued any such direction to the Magistrate or not and whether in fact such direction was communicated to the Magistrate who has recorded the statement in question or not. Moreover, the mere violation of any executive instruction by a Magistrate will not vitiate the validity of the criminal proceedings, unless there is violation of any provision of Cr.P.C. in conducting the proceedings.

10. The Court cannot ignore the ground reality that all the Magistrates are working under immense work pressure and, in these circumstances,

11. The learned counsel for the applicant next submitted that the Magistrate has not conducted an inquiry as mandated by Section 202 Cr.P.C. and in support of this contention, he has relied upon a judgment rendered by a coordinate Bench of this Court in **Hamid Ali v. State of U.P.**, 2020 SCC OnLine All 1567, wherein it was held that: -

13. As held by the Courts as above, the passing of order of summoning any person as accused is a very important matter, which initiates criminal proceeding against him. Such orders cannot be passed summarily or without applying judicial mind.”

“19. Section 190(1)(a) CrPC provides for cognizance of complaint. Section 190(1)(b) CrPC deals with taking cognizance of any offence on the basis of police report under Section 173(2) CrPC. “Complaint” is defined in Section 2(d) CrPC which reads as under:

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that some person, whether known or unknown, has committed an offence, but does not include a police report.”

The procedure for taking cognizance upon complaint has been provided under Chapter XV — Complaints to Magistrates under Sections 200 to 203 CrPC. A complaint filed before the Magistrate may be dismissed under Section 203 CrPC if the Magistrate is of the opinion that there is no sufficient ground for proceeding and in every such case, he shall briefly record his reasons for so doing. If a complaint is not dismissed under Section 203 CrPC, the Magistrate issues process under Section 204 CrPC. Section 204 CrPC is in a separate chapter i.e. Chapter XVI — Commencement of Proceedings before Magistrates. A combined reading of Sections 203 and 204 CrPC shows that for dismissal of a complaint, reasons should be recorded. The procedure for trial of warrant cases is provided in Chapter XIX — Trial of Warrant Cases by the Magistrates. Chapter XIX deals with two types of cases — A-Cases instituted on a police report and B-Cases instituted otherwise than on police report. In the present case, cognizance has been taken on the basis of police report.

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22. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 CrPC is not the same at the time of framing the charge. For issuance of summons under Section 204 CrPC, the expression used is “there is sufficient ground for proceeding...”; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is “there is ground for presuming that the accused has committed an offence...”.

13. The Magistrate after recording statement of the complainant under Section 200 Cr.P.C. has recorded statements of two witnesses of the complaint under Section 202 Cr.P.C., who stated that they were accompanying the complainant at the time of the incident. The Magistrate has made a mention of these statements, which were available on record, in the order dated 10.05.2022, wherein he has recorded that he has perused the record. In view of the law laid down by the Hon’ble Supreme Court in **Afroz Mohammed Hasanfatta** (Supra) the aforesaid enquiry is sufficient for the Magistrate to arrive at a conclusion that there is sufficient ground for proceeding. At this stage, the Magistrate is not required to evaluate the evidence and its

merits. Therefore, I find no merit in this submission of the learned Counsel for the applicants.

14. The learned Counsel for the applicants next submitted that the applicants are public servants and, therefore, the Court could not have taken cognizance of offences allegedly committed by them without prior sanction of the State Government.
15. Section 197 (1) Cr.P.C. reads as under: -

197. Prosecution of Judges and public servants.—(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 save as otherwise provided in the Lokpal and Lokayuktas Act, 2013—*

(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;

(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:

Provided that... ”

16. In **Shadakshari v. State of Karnataka**, 2024 SCC OnLine SC 48, the Hon’ble Supreme Court held that: -

“21. The ambit, scope and effect of Section 197 Cr. P.C. has received considerable attention of this court. It is not necessary to advert to and dilate on all such decisions. Suffice it to say that the object of such sanction for prosecution is to protect a public servant discharging official duties and functions from undue harassment by initiation of frivolous criminal proceedings.

***22. In State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40, this court explained the underlying concept of protection under Section 197 and held as follows:**

“7. 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 of 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 this 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.”

23. This aspect was also examined by this court in **Shambhu Nath Misra** [(1997) 5 SCC 336]. Posing the question as to whether a public servant who allegedly commits the offence of fabrication of records or misappropriation of public funds can be said to have acted in the discharge of his official duties. Observing that it is not the official duty to fabricate records or to misappropriate public funds, this court held as under:

“5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction,”

24. Even in D. Devaraja [(2020) 7 SCC 695] relied upon by learned counsel for respondent No. 2, this court referred to Ganesh Chandra Jew (supra) and held as follows:

“35. In State of Orissa v. Ganesh Chandra Jew this Court interpreted the use of the expression “official duty” to imply that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. Section 197 of the Code of Criminal Procedure does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty.”

25. Thus, this court has been consistent in holding that Section 197 Cr. P.C. does not extend its protective cover to every act or omission of a public servant while in service. It is restricted to only those acts or omissions which are done by public servants in the discharge of official duties.”

17. The act allegedly committed by the applicants, i.e. abusing, threatening and manhandling the complainant, was in no way connected with the discharge of public duty of the applicants and in view of the law propounded by the Hon’ble Supreme Court in the above mentioned cases, there is absolutely no requirement of obtaining a prior sanction for prosecuting the applicants for such offences and Section 197 Cr.P.C. would not apply in such a situation.
18. In view of the aforesaid discussion, there appears to be no illegality in the order dated 10.05.2022 taking cognizance of the offence and the summoning the accused to face the trial and in the judgment and order dated 25.01.2024 passed by the Sessions Judge, Balrampur in

Criminal revision No. 67 of 2022, affirming the aforesaid order dated 10.05.2022.

19. The revision lacks merit and the same is accordingly *dismissed*.

Order Date :- 28.02.2024

Pradeep/-