

**IN THE HIGH COURT OF UTTARAKHAND AT****NAINITAL****Criminal Misc. Application No.284 of 2017**

Dr. Suraj Soni

.... Applicant

Versus

State of Uttarakhand and another Respondents

Present:-

Mr. Devansh Kaushik, learned counsel for the applicant.

Mr. Vipul Panuli, learned AGA for the State.

Mr. Dharmendra Barthwal, learned counsel for respondent no.2.
-----**Hon'ble Siddhartha Sah, J. (Oral)**

By means of the present criminal miscellaneous application under Section 482 of the Code of Criminal Procedure, the applicant has sought quashing of the summoning order dated 06.08.2016 passed by the Sessions Judge, Haridwar, in Criminal Case No. 214 of 2015, *Ishwar Chand Vs. Dr. Suraj Soni*, under Section 135 of the Electricity Act, P.S. Buggawala, District Haridwar, whereby the final report submitted by the Investigating Officer was rejected and the applicant was summoned to face trial. The applicant has also sought quashing of the entire proceedings of the criminal



case pending before the court of the Sessions Judge, Haridwar.

2. Brief facts of the case are that the applicant was working as a Medical Officer at the Primary Health Centre, Buggawala, where he joined on 01.01.2012. The Primary Health Centre had a valid electricity connection issued by the Uttarakhand Power Corporation Limited (in short, "UPCL"). It is further the case of the applicant that the electricity bill had been due even before his joining, inasmuch as a notice had been sent on 29.08.2011 for payment of the dues. Thereafter, on 01.05.2012, an FIR was lodged against the applicant alleging that, during a routine inspection conducted on 25.04.2012, theft of electricity was detected at the Primary Health Centre, Buggawala campus. The said FIR was registered at P.S. Buggawala, District Haridwar, as Case Crime No. 18 of 2012, under Section 135 of the Electricity Act.

3. In pursuance of the aforesaid FIR, the investigation ensued and culminated in the submission of a final report. In the final report, it was stated that upon investigation, inspection of the place of occurrence, and on the basis of the statements of the witnesses and other documentary evidence, no evidence could be



collected to establish the offence under Section 135 of the Electricity Act against the applicant, Dr. Suraj Soni. The Sessions Judge, Haridwar, issued notice to respondent No. 2 upon the submission of the aforesaid final report. Against the aforesaid final report, respondent No. 2, the informant, who was posted as the Junior Engineer in the Electricity Department, submitted his objection and, while basically reiterating the FIR version, contended that the Investigating Officer had not investigated the matter properly. He, therefore, sought rejection of the final report submitted by the Investigating Officer and summoning of the accused Dr. Suraj Soni. The District and Sessions Judge, Camp Court, Roorkee, District Haridwar, vide the impugned order dated 06.08.2016, came to the conclusion that since the matter pertained to the consumption of theft of electricity in a government property, and on the date of the incident the accused, Dr. Suraj Soni, was the In-charge of the Government Health Centre, he appeared to be prima facie responsible for the said offence. In such circumstances, the final report submitted by the Investigating Officer deserved to be rejected, and accordingly, vide the impugned order dated 06.08.2016, the court rejected the final report and summoned the accused/applicant to face trial.



4. Assailing the aforesaid impugned order dated 06.08.2016 passed by the District and Sessions Judge, Camp Court, Roorkee, District Haridwar, learned counsel for the applicant submits that no prima facie case is made out against the applicant and that there was no rhyme or reason to reject the final report merely on the premise that the applicant was the In-charge of the Government Health Centre. He further submits that the applicant is admittedly a government servant, and the provisions of Section 197 of the Cr.P.C. provide protection to a public servant. In the affidavit filed in support of the criminal miscellaneous application, it has categorically been pleaded that there is no sanction of the Government under Section 197 of the Cr.P.C. for launching prosecution against the present applicant. Hence, the learned trial court has committed an illegality in taking cognizance of the offence in the absence of appropriate sanction under Section 197 of the Cr.P.C. He would thus submit that, on the aforesaid grounds, the impugned order dated 06.08.2016, having been passed without the sanction contemplated under Section 197 of the Cr.P.C., is bad in law and deserves to be quashed.

5. Per contra, learned counsel for respondent No. 2 would submit that, admittedly, during his tenure as In-



charge Medical Officer at the Primary Health Centre, Buggawala, theft of electricity was committed. Admittedly, the electricity connection stood in the name of the In-charge Medical Officer. The applicant, as the In-charge Medical Officer, was also receiving recovery notices. On the date of the incident, when a regular inspection of the premises in question was carried out by the lineman, SDO, and the JE of the UPCL, it was found that the Primary Health Centre was obtaining electricity through a 22-metre-long three-phase cable. Admittedly, there was no electricity meter.

6. Learned counsel for respondent No. 2 would further submit that the applicant had been instructed thrice to install the meter, but he refused to do so. He would further submit that, at the time of the regular inspection, the cable was taken into possession and sealed, and that the offence is cognizable.

7. Learned counsel for respondent No. 2 has relied upon the judgment of the Hon'ble Apex Court in *Shambhoo Nath Misra v. State of U.P.*, reported in (1997) 5 SCC 326, and has referred to paragraph 5 thereof, which is extracted hereinunder:



“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, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained.”

8. Learned counsel for respondent no.2 has also relied upon another judgment of the Hon'ble Apex Court in the case of Devinder Singh v. State of Punjab, reported (2016) 12 SCC 87, and has referred to paragraph 23 thereof, which is extracted hereinunder:-

“23. In P.K. Pradhan v. State of Sikkim [P.K. Pradhan v. State of Sikkim, (2001) 6 SCC 704 : 2001 SCC (Cri) 1234] this Court considered the



provisions contained in Section 197(1) of the Code of Criminal Procedure whether an offence committed “while acting or purporting to act in the discharge of his official duty” and laid down that the test to determine the aforesaid is that the act complained of must be an offence and must be done in discharge of official duty. In any view of the matter there must be a reasonable connection between the act and the official duty. It does not matter that the act exceeds what is strictly necessary for the discharge of the official duty, since that question would arise only later when the trial proceeds. However, no sanction is required where there is no such connection and the official status furnishes only the occasion or opportunity for the acts. The claim of the accused that the act was done reasonably and not in pretended course of his official duty can be examined during the trial by giving an opportunity to the defence to prove it. In such cases, the question of sanction should be left open to be decided after conclusion of the trial. The decision in Abdul Wahab Ansari [Abdul Wahab Ansari v. State of Bihar, (2000) 8 SCC 500 : 2001 SCC (Cri) 18] has also been taken into consideration by this Court.”



9. Learned counsel for respondent no.2 has also relied upon another judgment of the Hon'ble Apex Court in the case of Inspector of Police v. Battenapatla Venkata Ratnam, reported in (2015) 13, SCC 87, and has referred to paragraphs 7 and 11 thereof, which are extracted hereinunder:-

“7. No doubt, while the respondents indulged in the alleged criminal conduct, they had been working as public servants. The question is not whether they were in service or on duty or not but whether the alleged offences have been committed by them “while acting or purporting to act in discharge of their official duty”. That question is no more res integra. In Shambhoo Nath Misra v. State of U.P. [(1997) 5 SCC 326 : 1997 SCC (Cri) 676] , at para 5, this Court held that: (SCC p. 328)

“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, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained.”

11. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. Unfortunately, the High Court missed these crucial aspects. The learned Magistrate has correctly taken the view that if at all the said view of sanction is to be considered, it could be done at the stage of trial only.”

10. Learned counsel for respondent No. 2 would submit that the discharge of public duty would not include the theft of electricity. On the aspect of vicarious liability, learned counsel for respondent No. 2 would submit that the presumption of theft under Section 135 of the Electricity Act, 2003, operates strongly against the



person who is the consumer or is in active occupation, control, or possession of the premises in which the electricity was being consumed. In the present case, it would be the applicant who, as the In-charge of the Primary Health Centre, Buggawala, was admittedly in control and occupation of the premises and was using the electricity. Thus, he would be liable, as it is a government building.

11. Learned AGA for the State would adopt, by and large, the submissions made on behalf of respondent No. 2. In particular, he refers to the objections filed by respondent No. 2 before the Sessions Judge, Camp Court, Roorkee, District Haridwar, and reiterates the objections raised therein. He would further submit that, from a bare perusal of the FIR, it is clear that there was recovery of a cable from the staff of the Primary Health Centre and that, from a bare reading of the FIR, it is evident that theft of electricity was being committed. As such, the offence under Section 135 of the Electricity Act is established.

12. Having heard the learned counsel for the parties and after going through the record, it is clear that theft of electricity, as contemplated under Section 135 of



the Electricity Act, 2003, is attracted against the applicant. It is also clear from the record that the applicant was working in the capacity of a Medical Officer at the Primary Health Centre, Buggawala, and that he is a government servant.

13. Thus, in the aforesaid admitted situation that theft of electricity was committed by a government servant, the only question that arises for consideration in this criminal miscellaneous application under Section 482 of the Cr.P.C. is whether the applicant would be entitled to the protection envisaged under the provisions of Section 197 of the Cr.P.C. or not.

14. On one hand, learned counsel for the applicant has submitted that since the applicant is a government servant, he would be entitled to the benefit/protection under Section 197 of the Cr.P.C., and cognizance under Section 135 of the Electricity Act could not have been taken by the District and Sessions Judge, Camp Court, Roorkee, District Haridwar, in the absence of a valid sanction as contemplated under Section 197 of the Cr.P.C.



15. On the other hand, learned counsel for respondent No. 2/informant has submitted, while placing reliance upon the judgment of the Hon'ble Supreme Court in Shambhu Nath Mishra v. State of U.P. (supra) and the subsequent judgments following the said judgment, that where a public servant has exceeded his official duty, he would not be entitled to the benefit of Section 197 of the Cr.P.C.

16. Thus, the question is whether, in the facts and circumstances of the case, the applicant is entitled to the benefit of the provisions of Section 197 of the Cr.P.C. or not. In this context, it would be useful to refer to the judgment of the Hon'ble Supreme Court in R. Balakrishna Pillai v. State of Kerala, reported in (1996) 1 SCC 478, where the allegation was against a Minister for Electricity entering into a criminal conspiracy with the co-accused and illegally supplying electricity to an industry. In the said judgment, the Hon'ble Supreme Court came to the conclusion that the allegation was that, in pursuance of the said conspiracy, the Minister abused his official position and illegally supplied certain units of electricity to a private industry in Bangalore, Karnataka, which he did in the discharge of his duties as



a Minister. The relevant paragraphs 7 and 8 of the said judgment are extracted hereunder for ready reference:-

“7. In the present case, the appellant is charged with having entered into a criminal conspiracy with the co-accused while functioning as a Minister. The criminal conspiracy alleged is that he sold electricity to an industry in the State of Karnataka “without the consent of the Government of Kerala which is an illegal act” under the provisions of the Electricity (Supply) Act, 1948 and the Kerala Electricity Board Rules framed thereunder. The allegation is that he in pursuance of the said alleged conspiracy abused his official position and illegally sold certain units to the private industry in Bangalore (Karnataka) which profited the private industry to the tune of Rs 19,58,630.40 or more and it is, therefore, obvious that the criminal conspiracy alleged against the appellant is that while functioning as the Minister for Electricity he without the consent of the Government of Kerala supplied certain units of electricity to a private industry in Karnataka. Obviously, he did this in the discharge of his duties as a Minister. The allegation is that it was an illegal act inasmuch as the consent of the Government of Kerala was not obtained



before this arrangement was entered into and the supply was effected. For that reason, it is said that he had committed an illegality and hence he was liable to be punished for criminal conspiracy under Section 120-B, IPC. It is, therefore, clear from the charge that the act alleged is directly and reasonably connected with his official duty as a Minister and would, therefore, attract the protection of Section 197(1) of the Act.

8. For the above reasons, we are unable to accept the view taken by the High Court of Kerala insofar as the requirement of sanction under Section 197(1) of the Code is concerned, in relation to the charge of criminal conspiracy. We, therefore, allow this appeal, set aside the decision of the High Court insofar as that charge is concerned, and hold that sanction under Section 197(1) of the Code was a sine qua non.....”

17. In the aforesaid judgment, the Hon'ble Supreme Court, held that the sanction under Section 197(1) of the Code was a *sine qua non* and proceeded to set aside the decision of the High Court insofar as that charge was concerned.



18. A perusal of Section 197 of the Cr.P.C. would show that when a public servant 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.

19. In the present case, it is not the case of respondent No. 2 that the applicant committed the offence of theft of electricity while not acting or purporting to act in the discharge of his official duty. In fact, it is the consistent case of respondent No. 2 that, while posted as the In-charge Medical Officer, the applicant committed theft of electricity and thereby the offence under Section 135 of the Electricity Act was attracted.

20. A perusal of the judgment of the Hon'ble Supreme Court in *Shambhu Nath v. State of U.P.* (supra) would reveal that the said judgment stands on an altogether different footing. Paragraph 5 of the said judgment would show that it was a case where the public servant was alleged to have committed the offences of fabrication of records and misappropriation of public funds, and the Hon'ble Supreme Court thus had the



occasion to come to the conclusion that it is not the official duty of a public servant to fabricate false records or misappropriate public funds in furtherance of, or in the discharge of, his official duties. Therefore, in such circumstances, the benefit of Section 197 of the Cr.P.C. was refused. Thus, the judgment of the Hon'ble Supreme Court in *Shambhu Nath* (supra), being on an altogether different footing, would not be attracted in the present case.

21. The present case is directly covered by the provisions of Section 197 of the Cr.P.C. and, in particular, by the judgment of the Hon'ble Supreme Court in *R. Balakrishna Pillai v. State* (supra). Since there was no sanction for prosecution by the State Government, the impugned cognizance order dated 06.08.2016, being illegal, cannot be sustained.

22. Thus, in view of the aforesaid facts and circumstances of the case, the present criminal miscellaneous application under Section 482 of the Cr.P.C. deserves to be allowed, and the impugned summoning order dated 06.08.2016 passed by the District and Sessions Judge, Camp Court, Roorkee, District Haridwar, in Criminal Miscellaneous Case No.



214 of 2015 (Ishwar Chand v. Dr. Suraj Soni), is hereby quashed.

23. The criminal miscellaneous application is allowed in the aforesaid terms.

(Siddhartha Sah, J.)
10.07.2026

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