

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.3899 of 2016

ORDER :

The petitioner are the A.1 and A.2 in C.C.No.185 of 2016 on the file of the Judl.Magistrate of First Class, Srikakulam, taken cognizance for the offences punishable u/ sec.500 and 506 IPC. The 2nd respondent-complainant is a Practising Advocate in the private complaint against the petitioners/ A.1 and A.2 no other than by then working Joint Collector and District Collector of Srikakulam District, for the alleged offence on 29.09.2015 in the office of the petitioners the District Collectorate, Srikakulam.

2. The sum and substance of the accusation is that in the year, 2013 workers working in Gas supply Agencies i.e., at Amadalavalasa H.P Gas Agency, Devi Prasad Enterprises (H.P Gas Agency) and Vedamatha Enterprises, Srikakulam approached him and expressed their deplorable conditions and organized into two Unions, one at Srikakulam and another at Amadalavalasa, to guide them for the statutory benefits such as minimum wages and other benefits. So far as the Vedamatha Enterprises, the owner did not agree even to implement the benefits at least on par with other Agencies though Devi Prasad Enterprises chosen to implement. The complainant being Advocate filed minimum wage cases on behalf of the workmen. The authorities in those cases expressed openly that his superior State Officer is insisting him to dismiss the cases stating that the owner's relative is an IAS Officer having friendship with the Labour Commissioner. Suddenly, the minimum wages authority was transferred to far off place i.e. Kurnool and appointed another DCL and one Asst.Labour Officer, Vasantha Rao, as Asst.Commissioner of labour, who is not competent to be appointed. The

owner of Vedamatha Enterprises did not appear before the Labour Department officials and also used to avoid or refuse to receive notices sent to him and the Agency, against the Rules, stopped supplying gas cylinders and entrusted to another agency. The A.1-Joint Collector-Vivek Yadav, refused even to look into the decision of the Apex Court and insisted the then Dy.Commissioner of Labour to change his proceedings to mention that the owner can engage any workers at his will and got changed the previous letter in which he advised to employ existing workers and intentionally supported the owner of the gas agency and left the families of the 23 workers on roads. For the owner of the Vedamatha Enterprises in the last week of September, 2015 did not allow the existing workers and started bringing outsiders. The complainant being an Advocate, sent a slip to meet the District Collector, with a representation of the workers at 5.30p.m. and met the District Collector-A.2 at 8-00PM and the A.2 sent the complainant along with the workers to the A. 1-Joint Collector by talking over phone with A.1 and at 8-30PM, when the complainant and workers went into the chambers of A.1 to complain the incident, he talked in abusive and insulting manner in Hindi as *"Thu Paagal Hogaye Kya?"* (In Telugu, it means *Nuvvu Pichchi Ayipoyava emiti?*) and *"Maar Donga Saala"* (In Telugu, it means *Thanthaanu naa koduka*) and held the hand of a worker-LW-1-Jagannada Rao by raising from his chair and asked him to sit in his chair and pulled him forcibly by addressing them as *"All these fellows are useless fellows"*, thereby committed an offences u/ sec.500 and 506 of IPC.

3. Aggrieved by the same, the complainant along with the workers went to the A.2 to complain about the same and at 10.30PM when complained about the usage of abusive language by the A.1-Joint

Collector, he expressed that the North people will behave like that and they will use such language and by saying so, refused to take written complaint and advised not to precipitate the issue and not to confront with IAS officials and commented that the IAS officials are having big lobby and all will unite and they won't leave till the lawyers bands are removed and also further commented as "*don't you know the same even you became grey haired*" As such even A.2 not only insulted the complainant but also insulted the entire Advocate community, in the presence of L.W.1 and other visitors. After watching the news published in Dailies, several known persons called the complainant over phone and enquired about the same and it caused much mental agony to the complainant. The complainant lodged a complaint with I-town police station, Srikakulam and they issued a receipt and on 01-10-2015, he complained the same to Bar Association at Srikakulam & Amadalavalasa. The attitude of the Joint Collector-A.1 and the District Collector-A.2, Srikakulam is condemned by the District Bar Association, Srikakulam, Amadalavalasa and the Bar Associations throughout the State. All the Advocates throughout the State of Andhra Pradesh given call to agitate on 05-10-2015 and the same is published in several news papers including 'Hindu' daily. The complainant also sent written representation to the Hon'ble President of India, Bar Council of A.P and other concerned officials on 4-10-2015. The Amadalavalasa Bar Association submitted a representation dt.8-10-2015 before the Tahasildar, Amadalavalasa condemning the attitude of the accused. Both the A. 1 and A.2, being District Heads, who are supposed to hear the grievances, not only failed to discharge the obligation but insulted and caused humiliation in the presence of labour for whose grievances regularly used to represent. The utterances of A.1 and A. 2 disclose that they do not relate to discharge

of official duties and does not warrant sanction U/ Sec.197 of CrPC as per the decision reported in G.Haritha Vs. Director General of Police, Government of Andhra Pradesh rep.by Public¹.

4. The learned Magistrate taken cognizance from recording the sworn statements of the 4 witnesses including the complainant by the impugned order dt.03.03.2016 which reads the facts supra and on the point as to sanction is required or not observed that Manmadha Rao, one of the witnesses, stated that bands of Advocates would be removed and IAS officers got big lobby for the words uttered by N.Jagannadha Rao and Purushotham Rao, in their statements also stated that the incident occurred before the Joint Collector and it makes out prima facie case and the decision in G.Haritha supra says that for the officials committing acts not in discharge of their duty, Section 197 CrPC won't attract, and further held as per the decision of the Apex Court in Inspector of Police Vs. Battenapaka Venkata Ratnam² want of sanction can be raised at the stage of trial and not for cognizance and thereby taken cognizance.

5. The counsel for the 2nd respondent and also the learned Public Prosecutor for the 1st respondent-State supported the order of the learned Magistrate. Heard the learned counsel for the petitioners/accused who impugned the same not only on the sanction but also on no merits to make out any case u/ sec.506 and 500 IPC.

6. Heard and perused the material on record.

7. From the very complaint averments, there is nothing but criminal intimidation defined u/ sec.503 IPC punishable u/ sec.506IPC against any of the petitioners so far as the defacto-complainant concerned for not even his case from the averments but for if at all the A.1 asked one of the workers to sit in the chair and pulled him. So far as

¹ 2014(1) ALD (Cri.) Pg.258(AP)

² 2015(5) Scale 253

the offence u/ sec.500 IPC concerned, there is nothing so far as against the A.2 concerned defame even taken on the face value of the complaint and the so called statement of one of the witnesses, Manmadha Rao of even taken as true that the so called utterances of IAS officers got lobby and if they complained, bonds of Advocates would be removed is concerned, the question of disciplinary action for any misconduct of Advocate to remove the bands arises only under the Advocates Act for that if there is a complaint with substance the lobbying is immaterial as if anybody complains with substance disciplinary proceedings lies. Thus prima facie there is no case against the A.2-District Collector made out even on merits from the face value in the complaint and in the sworn statement the same was missed consideration by the learned Magistrate in taking cognizance. Coming to the so called abusive language used by the A.1-Joint Collector concerned, the A.1 is the IAS officer direct Recruittee undisputedly and the complainant along with workers allegedly went to the A.1 while he was discharging his official duties to complain about Vedamatha Enterprises not allowing regular workers to engage outsiders in their Gas Agency. It is hardly believable of simply because the complainant entered along with the workers, the petitioner-A.1 abusing as stated supra and even so far as the "*Maar Donga Saala*" (In Telugu, it means Thanthaanu naa koduka) concerned, it is against the worker holding his hand that is stated by L.W.11 in para-5 of the complaint and not against the complainant. Unless there is something in provoking by the complainant and the workers, the questions of their revolt if any does not arise even to believe on face value. Leave it as it is even taken as face value of the averments, the A.1 and the A.2 were discharging their official duties and the complainant along with workers went to complain

but not individually to inter-connect with the discharge of their official duties and even if they exceeded any of their limitation in discharge of their official duties, sanction is required under Section 197 CrPC. What the expression referred by the learned Magistrate in Haritha supra as the alleged act committed by the officials not in discharge of their duty sanction is not required, here it is not the case as what is stated is when the complainant to have for any justice in discharge of their official duties, the alleged occurrence taken place. Thus, in the decision, the principle laid down therein has no application to the case that was not properly considered by the learned Magistrate. Coming to the 2 Judge Bench expression of the Apex Court in Inspector of Police supra what is referred in the order is the question of requirement of sanction can be raised later during trial. What is observed of learned Magistrate of the question of sanction required or not need not be considered in taking cognizance is not correct therefrom. In fact, as per the 3 Judge Bench expression of the Apex Court in Abdul Wahab Ansari Vs. State of Bihar³, it is very clear that the accused is entitled to raise a plea of sanction required at any stage of the proceedings. It is also observed that the alleged offences committed by the accused were while in discharge of their official duty where also discharge Sub Divisional Executive Magistrate in removing of the encroachments ordered to points fired on the mob at the site held sanction is required. For more clarity the law of the land as on date reiterating the above principle is as follows:-

8. Before coming to any other facts, it is necessary to refer that in Rakesh Kumar Mishra Vs. State of Bihar & Ors⁴ it was held by the Apex Court in this regard and on the scope of Section 197 CrPC, referring to

³ (2000) 8 SCC 500

⁴(2006) 1 SCC 557

Bakhshish Singh Brar v. Smt. Gurmej Kaur⁵ that 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 sanction. Further, the words "when any person who is or was a public servant" employed in 197 CrPC were based on the observation at paragraph 15.123 of the 41st Report of the Law Commission of "it appears to us that protection under the Section is needed as much after retirement of the public servant as before retirement. The protection afforded by the Section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant". It is the above position that was highlighted in R.Balakrishna Pillai Vs State of Kerala⁶ and reiterated in the later expressions in State of M.P. vs. M.P. Gupta⁷, State of Orissa through Kumar Raghvendra Singh and Ors. vs. Ganesh Chandra Jew⁸ and Shri S.K. Lutshi and Anr. vs. Shri Primal Debnath⁹.

8(a). As per Section 197(1) supra the sanction is mandatory from the government concerned of the public servant, the accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of official duty and without such

⁵ AIR (1988) SC 257

⁶ 1996 AIR 901=1996 SCC (1) 478

⁷ [2004] 2 SCC 349

⁸ [2004] 8 SCC 40

⁹ [2004] 8 SCC 31

previous sanction, no Court shall take cognizance such alleging offences.

8(b). On the scope of sanction whether required or not to decide for prosecution on the acts alleged as offence committed by a public servant were in discharge of official duty to decide with reference to facts of each case and the stage when to raise and the way how to understand the expressions with reference to facts, the Apex Court in N.K. Ganguly Vs. CBI, New Delhi¹⁰, while saying a decision is an authority for what it actually decides and reference to a particular sentence in the context of the factual scenario cannot be read out of context, held referring to the earlier expressions right from that of Federal Court in Hori Ram Singh¹¹, of Privy Council in H.H.B. Gill¹², of Calcutta High Court in Abani Kumar Benarji¹³, of the Apex Court in R.R.Chari-I¹⁴, also of the Apex Court in Sreekantaiah¹⁵, also of the Apex Court (3JB) in Amrik Singh¹⁶, also of the Apex Court (5JB) in Matajog Dobey¹⁷, also of the Apex Court in K.Satwanth Singh¹⁸, also of the Apex Court in R.R.Chari-II¹⁹, also of the Apex Court in Bajnath²⁰, also of the Apex Court in B.Saha²¹, also of the Apex Court in R.S.Nayak²², also of the Apex Court in R.Balakrishna Pillai²³, also of the Apex Court in Abdul Wahab Ansari²⁴, also of the Apex Court in Rakesh Kumar Mishra²⁵, also of the Apex Court in Sankaran Moitra²⁶, also of the Apex Court in Prakash Singh Badal supra and also of the Apex Court in Sheetla Sahai

¹⁰ 2016(2)SCC 143

¹¹ AIR 1939 43

¹² AIR 1948 128

¹³ AIR 1950 437

¹⁴ AIR 1951 207

¹⁵ AIR 1955 287

¹⁶ AIR 1955 309

¹⁷ AIR 1956 44

¹⁸ AIR 1960 266

¹⁹ AIR 1962 1573

²⁰ AIR 1966 220

²¹ 1979 (4) SCC 177

²² 1984 (2) SCC 183

²³ 1996 (1) SCC 478

²⁴ 2000 (8) SCC 500

²⁵ 2006 (1) SCC 557

²⁶ 2006 (4) SCC 584

supra and by quoted with approval Hori Ram Singh supra among other including Amrik Singh supra and of the Constitution Bench in B.Saha supra that the issue of requirement of prior sanction under Section 197 of CrPC can be raised at any stage of the proceedings. It was also held referring to the above among other including H.H.B.Gill supra, three judge bench in Baijnath supra and another Constitution bench in Matajog Dobey supra, that Prior sanction for taking cognizance is required in the three situations of, a) the act complained of attached to the official character of the person doing it; b) cases in which the official character of the person gave him an opportunity for the commission of the crime; and c) the offence was committed while the accused was actually engaged in the performance of official duties. It can be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. No doubt, there must be a reasonable connection between the act and the discharge of official duty to have the protection. If the act complained of is directly concerned with his official duties so that, if questioned it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted.

8(c). The three judge Bench expression of Apex Court in P.K.Pradhan Vs. State of Sikkim Rep. by the CBI²⁷ held at paras-5 to 16 by referring to several of the earlier expressions right from Hori Ramsingh, HHB Gill, Amrik Singh, Sreekantiah Ramayya Munipalli,

²⁷ AIR 2001 SC 2547

Matajog Dobey, Omprakash Gupta, B.Saha, Baijnath Gupta, Abdul Vahab Ansari, K.Satwant Singh (supra), that the legislative mandate engrafted in sub section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the Statute from taking cognizance. It is well settled that the question of sanction u/ sec. 197 of CrPC can be raised at any time after the cognizance, may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well, in appeal.

8(d). In Rajib Ranjan (supra) at paras 14 to 18, it is observed that sanction is necessary if the offence alleged against the public servant is committed by him while acting or purporting to act in discharge of his official duties as held in Buddi Kota Subba Rao Vs. K.Prakasham at para-6 of the act or omission on facts found a reasonable connection to the discharge of his duty by the accused, sanction is required.

8(e). In Om Prakash V. State of Jharkhand and Kailashpathi Singh V. Rajiv Ranjan Singh²⁸(common order) in relation to the encounter killings from the attack against police, it was observed on the scope of Section 197 Cr.P.C that prior sanction is a pre-condition for taking cognizance of offences against the police officials and there is no requirement for such accused officials to wait till framing of charges to raise the plea.

²⁸ (2012) 12 SCC 72

8(f). In Punjab State Warehousing Corp. Vs. Bhushan Chander²⁹ referring to earlier expressions including of Sreekantiah Ramayya Munipalli supra, it was held that it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. On facts it was held that the accused is or was not a public servant to get protection of Section 197 CrPC.

8(g). In Anil Kumar vs M.K. Aiyappa³⁰, it was observed referring to Subramaniam Swamy supra that the expression “cognizance” which appears in Section 197 CrPC came up for consideration before a three-Judge Bench in State of Uttar Pradesh v. Paras Nath Singh³¹, and this Court expressed the following view:

“6.....So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, ‘no court shall take cognizance of such offence except with the previous sanction’. Use of the words ‘no’ and ‘shall’ makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black’s Law Dictionary the word ‘cognizance’ means ‘jurisdiction’ or ‘the exercise of jurisdiction’ or ‘power to try and determine causes’. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.”

8(h). In the case of General Officer, Commanding v. CBI³², the Apex Court held that- if the law requires sanction and the court proceeds against a public servant without sanction; the public

²⁹ AIR 2016 SC 3014

³⁰ 2013(4) RLW 3604 (SC)

³¹ (2009) 6 SCC 372

³² [2012] 5 SCR 599

servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio.

9. The learned counsel for the petitioner placed reliance on the expression of the Apex Court in D.T. Virupakshappa Vs. C.Subash³³ referring to Om Prakash supra held as follows:

“The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh). The protection given under Section 197 of the Code 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.”

As referred in Anil Kumar supra, it is very clearly laid down that no cognizance could be taken without sanction on the private complaint against a public servant.

10. Having regard to the above, the cognizance taken by the Magistrate is unsustainable.

11. In the result, the Criminal Petition is allowed quashing the proceedings in C.C.No.185 of 2016 on the file of the Judl.Magistrate of First Class, Srikakulam against the petitioners/ A.1 and A.2 and they are acquitted and their bail bonds shall stand cancelled. Pending miscellaneous petitions, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:10.12.2018
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³³ AIR 2015 SC 2022