

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1533 of 2018
Date of Decision: 25.04.2018

Pardeep Kumar

.....Petitioner

Vs.

Daleep Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Petitioner Pardeep Kumar in person.

AMOL RATTAN SINGH, J. (ORAL)

1. By this petition, the petitioner has challenged the order of the learned Judicial Magistrate Ist Class, Amritsar, dated 31.01.2017, by which the complaint filed by the petitioner under Section 190 (1) (a) of the Cr.P.C., against the respondent in the complaint, i.e. Sh. Daleep Kumar, Judicial Magistrate Ist Class, Amritsar, has been dismissed.

He has also further challenged the order of the learned revisional Court (Additional Sessions Judge, Amritsar), dated 29.07.2017, dismissing the revision petition filed against the aforesaid order of the JMIC.

Still further, he has also challenged the order of the learned Sessions Judge, Amritsar, dated 22.09.2017, by which an application filed by the petitioner under Section 409 (2) Cr.P.C., praying therein for recalling of CRR No. 242 of 2017 from the Court of Sh. H.S. Lekhi, Additional Sessions Judge, Amritsar, has also been dismissed.

2. The complaint by the petitioner against the JMIC named therein as a respondent, was that the said JMIC (respondent in the complaint) had dismissed a

complaint earlier filed by the petitioner under Section 190 (1) (a) Cr.PC., bearing no. COM1/222/14 dated 26.04.2014, the said order of dismissal having been passed on account of non-appearance of the petitioner (the complainant) (with the complaint therefore, having been dismissed-in-default) on 15.03.2016.

The allegation of the petitioner in his complaint against the JMIC, was that though he had deposited the fee under the rules, the dismissal for non-appearance of the complainant, vide the said order dated 15.03.2016, was in violation of Section 256 Cr.P.C., with an intent to cause injury to the complainant and therefore, the JMIC had “framed incorrect document dated 15.03.2016”, in order to save the accused in the earlier complaint, from punishment.

Therefore, according to the petitioner, the JMIC being a public servant, had committed an offence punishable under the IPC, and hence, it was prayed that action be taken against the JMIC and he be penalized, accordingly.

3. That complaint (against the JMIC), having come up before another JMIC, has been dismissed on 31.01.2017 on the ground that, firstly, any Judge acting as such Judge, would not be committing an offence, even in terms of Section 77 of the IPC, with the said provision reading as follows:-

“Act of Judge when acting judicially.—Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.”

It was also held vide the impugned order dated 31.01.2017, that no cognizance can be taken against a judicial officer, even in terms of Section 3 of the Judges (Protection) Act, 1985, which reads as follows:-

3. Additional protection to Judges.—

“(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2),

no Court shall entertain or continue any civil or criminal

proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.”

Thirdly, it was held in the said impugned order that no sanction had been obtained in terms of Section 197 (1) Cr.P.C. before instituting the complaint and therefore, the complaint could not be entertained.

Section 197 of the Cr.P.C., reads as follows:-

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-

(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:

¹[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the

expression" State Government" occurring therein, the expression" Central Government" were substituted.]

[Explanation--- For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, Section 376-A, Section 376-C, Section 376-D or Section 509 of the Indian Penal Code (45 of 1860).]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression" Central Government" occurring therein, the expression "State Government" were substituted.

[(3A)] Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act,

alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

Consequently, the complaint filed by the petitioner against the Judicial Magistrate Ist Class who had dismissed his earlier complaint on 15.03.2016, was dismissed.

4. That order having been challenged by way of CRR No. 3341/242 of 2017, before the Sessions Judge, it came up before the Additional Sessions Judge, Amritsar, who after noticing the grievance of the petitioner in respect of the order dated 15.03.2016, also noticed his arguments, including an argument to the effect that as per the Cr.P.C., only the Sessions Judge has the jurisdiction to hear and decide a revision petition, with an Additional Sessions Judge having no such jurisdiction and therefore, entrustment of the revision petition by the Sessions Judge to the Additional Sessions Judge was not maintainable in law.

After also noticing that the complainant-petitioner had contended that the commission of the offence was duly supported by his statement recorded in Court and was against the provisions of Section 256 of the Cr.P.C., the revision petition was also dismissed, giving essentially the same reasoning as was given by the learned trial Court, i.e. by citing Section 77 of the IPC and Section 3 of the Judges (Protection Act), 1985, as also by reference to Section 197 (1) of the

5. As regards the argument of the petitioner to the effect that the power of revision could only be exercised by the Sessions Judge, Sections 399 and 400 of the Cr.P.C. were reproduced in his judgment by the Additional Sessions Judge, which provisions are again being reproduced as follows:-

399. Sessions Judge's powers of revision:-“(1) *In the case of any proceeding the record of which has been called for by himself, the Sessions judge may exercise all or any of the powers which may be exercised by the High Court under sub- section (1) of section 401.*

(2) *Where any proceeding by way of revision is commenced before a Sessions Judge under sub- section (1), the provisions of sub- sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub- sections to the High Court shall be construed as references to the Sessions Judge.*

(3) *Where any application for revision is made by or on behalf of an person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by Way of revision at the instance of such person shall be entertained by the High Court or any other Court.*

400. Power of Additional Sessions Judge:- *An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.”*

Hence, in view of what is stipulated in Section 400 of the Cr.P.C., that contention of the petitioner with regard to revisional powers not being vested in an Additional Sessions Judge, was also rejected and the revision petition dismissed on 29.07.2017.

6. Finally, the petitioner filed an application on 13.09.2017 (as recorded in the order of the learned Sessions Judge dated 22.09.2017), before the Sessions Judge, Amritsar, under Section 409 (2) Cr.P.C., seeking recalling of the revision

petition from the Court of Sh. H.S. Lekhi, Additional Sessions Judge, as already noticed hereinabove, with that application also having been dismissed vide the order dated 22.09.2017 passed by the Sessions Judge, on the ground that the provisions of Sections 406 to 409 of the Cr.P.C pertain to transfer of a criminal case, and the revision petition before the learned Additional Sessions Judge already having been decided on 29.07.2017, it could not be, at a subsequent stage, transferred by the Sessions Judge to any other Court.

7. Before this Court, the petitioner, who is appearing in person, has submitted, firstly, that neither the bar contained in Section 3 of the Judges (Protection Act), 1985, nor the provisions of Section 197 Cr.P.C., would stand in the way of a Magistrate taking cognizance of the complaint filed by him against the Act of another Magistrate, with the Magistrate seized of such subsequent complaint, duly empowered under Section 190 of the Cr.P.C. to take such cognizance (of any complaint as is made to him).

He further submits that as regards what is contained in Section 197 of the Cr.P.C., there is a difference between a Court and a Magistrate and therefore, the bar on any Court taking cognizance against a complaint against a Judge, without sanction of the competent authority (the State Government in this case), cannot operate to override what is contained in Section 190 of the Code.

He has also relied upon a judgment of this Court in **M/s Tata Steel Ltd.** vs. **M/s Atma Tube Products Limited and others**, 2013 (2) RCR (Criminal) 1005, wherein it was held as follows:-

107. *“The Supreme Court in a catena of decisions has ruled that the intention of the Legislature is generally gathered from the language used and the words chosen by it to express its intentment. Conventionally, the Court would not add or mend the language of the Statute or read words into it by substituting some other words or otherwise. Similarly, the Court should endeavour to give meaning to*

*each and every word used by the Legislature as neither the words in a Statute can be brushed aside being surplusage nor they be construed to render a part of the Statute blank. Rather, the Courts always believe that the legislature has inserted every part of the Statute for a purpose and words are not there for mere fustian eloquence. Any construction which renders a word or a provision of a Statute redundant needs to be avoided unless there are compelling reasons. 108. The propounders of the rule of literal interpretation always insist that the words of a Statute should first be understood in their natural, ordinary or popular sense and the phrases and sentences be construed according to their unambiguous literal meaning unless such a recourse leads to some absurdity or where the object of the Statute suggests to the contrary. The strict literal expression of the words has thus been taken as the safest key to open up the true intentment of a Statute. 109. In those cases where the language used in a Statute is capable of bearing more than one construction, the Court in its attempt to find out the true meaning shall have due regard to the consequences of alternative constructions so as to avoid the resultant hardship, serious inconvenience, injustice, absurdity, inconsistency or a 'straight clash' between two Sections of the same Act. In Venkataramana **Devaru vs. State of Mysore**, AIR 1958 SC 255, the Supreme Court held that "the rule of construction is well-settled that when there are in an enactment two provisions which cannot be re-conciled with each other, they should be so interpreted that, if possible, effect should be given to both."*

He has further cited a judgment of the Supreme Court in **Dinesh Chander Sangma vs. State of Assam** AIR 1978 SC 17, to submit that as a matter of fact the learned revisional Court has imputed/read something extra into the complaint of the petitioner, by observing in paragraph 12 of its judgment to the effect that "mere dismissal of a complaint for want of prosecution does not constitute any offence", and therefore, no offence as alleged by the complainant,

8. Having considered the arguments of the petitioner, in the opinion of this Court, this petition, even invoking jurisdiction under Section 482 of the Cr.P.C., is not sustainable as regards the orders impugned before this Court, such orders not being in the context of the dismissal of the first complaint of the petitioner for want of prosecution, but in regard to dismissal of his complaint filed against the action/act of the JMIC, thereby imputing a motive to the JMIC for dismissing the earlier complaint in-default.

In the opinion of this Court, in fact what has been cited by the petitioner as regards the judgments on nothing extra to be read into a statute, (which is of course a well established principle of law), has to be taken against the petitioner, in the context of both, Section 3 of the Judges (Protection Act, 1985), as also Section 197 of the Cr.P.C.

Even presuming (though not observing to that effect) that the dismissal of the original complaint of the petitioner (bearing no. 56/3641 of 2014), vide the order of the JMIC dated 15.03.2016 was an unsustainable order, imputing motives to the JMIC to do so could only have been done after seeking sanction on that ground from the competent Government, i.e. the State Government, and if such sanction had been received, the petitioner may have been entitled to institute the complaint, subject even then to the bar contained in the Act of 1985. (Though, if sanction in terms of Section 197 Cr.P.C. is obtained, whether the Judges Protection Act would still apply or not would be a matter of debate).

9. However, in the present case in any case, I do not see how the petitioner can override the provisions of Section 3 of the Judges (Protection Act), 1985, which stipulates to the effect that no Court shall entertain or continue any civil or criminal proceedings against any person, who is acting as a Judge, for any act, thing or word committed, done or spoken by him in the course of acting or

purporting to act in the discharge of his official or judicial duty or function.

10. Therefore, no matter what the merits of the case of the petitioner against the order dated 15.03.2016, which would be gone into by the competent Court in the proceedings instituted by the petitioner against that order, wholly on its own merits, the complaint filed by the petitioner against the JMIC for dismissing his earlier complaint for want of prosecution, was a non-maintainable complaint which has been correctly dismissed by the learned trial Court, with that order correctly upheld by the revisional Court.

11. As regards the impugned order of the learned Sessions Judge, dated 22.09.2017, on the application filed by the petitioner under Section 409 (2) Cr.P.C., I wholly agree with the order of that Court, as by the time the application came to be filed on 13.09.2017, about 01 months and 20 days had already elapsed after the judgment had been pronounced by the revisional Court and therefore naturally, at that stage, the Sessions Judge was *functus officio* as regards of exercise of power for withdrawing or transferring a case pending before any Court within his jurisdiction.

11. The petitioner has also referred to shorts notes from the edition of the Cr.P.C. with him, citing from Rakesh Kumar Mishra vs. State of Bihar (2006) 1 SCC 557 and Centre for Public Interest Litigation vs. Union of India AIR 2005 SC 4413, to submit that the protection available under Section 197 is available only when the alleged act by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing an objectionable Act and that the said provision does not get immediately attracted on institution of a complaint case, and further, that “official duty” implies that the act or omission must have been done by the public servant in discharge of his duty.

Having considered the above, again reiterating that without going into

the merits of the correctness or otherwise of the dismissal of the petitioners' first complaint by the JMIC, vide his order dated 15.03.2016, in my opinion, the act of such dismissal was an act discharged by the judicial officer in the course of his duties, and therefore the bar contained in Section 197 (1) Cr.P.C. would very much apply even in this case, and the Courts below have not erred in dismissing the complaint on that ground, as also by citing Section 3 of the Judges (Protection Act), 1985.

13. As regards the contention of the petitioner with regard to the word "Court" having been used in Section 197 (1) and therefore the said provision not being applicable to a Magistrate, that contention is also rejected, with the Magistrate of course holding Court while considering any such complaint and therefore, the Court of the Magistrate also being a Court within the ambit of the expression itself, as contained in Section 197 of the Cr.P.C.

Consequently, finding no merit in this petition, it is dismissed in *limine*.

14. However, even having dismissed the petition, though this petition does not challenge any order passed in the appeal stated to have been filed against dismissal of complaint no.COM/222/14 dated 26.04.2014, vide the order dated 15.03.2016, yet the complaint in question in the present petition essentially having been instituted against the learned Magistrate who dismissed COM/222/14 dated 26.04.2014, vide the aforesaid order dated 15.03.2016, and the present petition being one invoking jurisdiction of this Court under Section 482 Cr.P.C., the appellate Court seized of the said appeal is directed to decide the appeal within a period of three months from today, if not already decided, as it is the specific contention of the petitioner that the said appeal has remained pending for more than one and a half years now.

Accordingly, the Registry of this Court is directed to send a copy of this order to the learned Sessions Judge, Amritsar, for onward conveyance to the appellate Court where the said appeal against the order dated 15.03.2016 is contended to be pending.

If of course the appeal has already been decided, a report in that regard would be sent to this Court by the learned Sessions Judge, Amritsar.

April 25, 2018

nitin/dinesh

(AMOL RATTAN SINGH)

JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No.