

(119) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-11791-2015(O&M)
Date of Decision: 16.03.2022

Kamaljit Singh Bhatia

... Petitioner

Versus

Jyoti Sarup & others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. M.S. Sachdev, Advocate for the petitioner.

Mr. Surinder Sharma, Advocate for respondent No.1.

JASJIT SINGH BEDI, J.

The challenge in this petition is to the order dated 06.10.2014 (Annexure P-1) passed by the learned Additional Sessions Judge, Jalandhar, vide which the revision preferred by the petitioner against the order dated 09.09.2013(P-2) passed by the learned Judicial Magistrate, 1st Class, Jalandhar, summoning the petitioner along with others, to face trial in criminal complaint No.237/2013 dated 31.01.2013 titled Jyoti Sarup vs Kamaljit Singh Bhatia and others, under Sections 452, 166, 167, 427, 382, 388, 511, 411, 414, 201, 506, 148, 149 and 120-C IPC, has been dismissed.

2. The brief facts of the case, as would emanate from the record of the learned trial Court, are as under:-

1. The complainant filed a complaint against the accused under Sections 452, 166, 167, 427, 382, 388, 511, 411, 414, 201, 506, 148, 149 120-B IPC with the allegations that the complainant was a co-owner in possession to the extent of 2½ mls of property bearing No.WM.243, Basti Guzan, Jalandhar. It has further been stated that the complainant

was running her business under the name and style of M/s Oriental Tools Corporation for the last 50 years. The son of the complainant was also running his business from a portion of the demised property. It was further stated that accused no.1-petitioner Kamaljit Singh Bhatia was an elected representative i.e. he was a Municipal Councilor, Municipal Corporation, Jalandhar and also a Senior Deputy Mayor of the Municipal Corporation, whereas the accused no.2 to 5 (since discharged) were government servants and also associates of the accused no.1. It was further stated that complainant had instituted a Civil Suit for permanent Injunction against the Municipal Corporation, Jalandhar and details of the said civil proceedings were enumerated in the complaint. It was further stated that the brother of the complainant, Shri Sharan Kumar. inducted one Ms. Pinky as a tenant in a portion of his share and she was not paying rent to the legal heirs of the said brother of the complainant. Accused no.1/petitioner was inimical towards the complainant as Sharan Kumar was demanding rent from the said Ms. Pinky who was being favored by the petitioner. On 22.9.2010 at about 4 PM. the accused no.1/petitioner accompanied by his associate gunman etc. along with a Ditch Machine owned by the Municipal Corporation, Jalandhar demolished a portion of the building premises bearing no.WM 243, Basti Guzan, Jalandhar. The reason behind the high handedness of the accused was that the complainant had refused to please the petitioner by providing water and electricity supply for the said Pinky. Again on 25.10.2010 at about 12.30 PM the accused No.1/petitioner and accused 2 to 5 who were government servants (since discharged) alongwith accused No.6 to 8 and a gang of muscle men descended on the demised property bearing No.WM- 243 Basti Guzan, Jalandhar alongwith a ditch machine and weapons and

started demolition of the property once again. The gates were cut using a gas cutter. After committing theft of different articles, the accused disposed off the stolen goods with the assistance of accused No.6 to 8, who took the stolen goods to their shop and from there the stolen goods were disposed off. The act of the accused was without any authority of law or without having obtained any sanction from the Commissioner, Municipal Corporation, Jalandhar. The accused caused a loss of Rs.2 Lacs approximately to the business establishment of the complainant. The complainant immediately gave complaints to the police on 25.10.2010 but the police failed to initiate any action against the accused. Hence the complaint came to be filed.

3. Pursuant to the recording of preliminary evidence, all the accused persons came to be summoned under Sections 452, 166, 167, 427, 382, 388, 511, 411, 414, 201, 506, 148, 149 and 120-B IPC vide order dated 09.09.2013. Three summoned accused namely, Rahul Gupta, the then Joint Commissioner, Municipal Corporation, Jalandhar, Hemant Batra, the then M.T.P., Municipal Corporation, Jalandhar and Rajiv Rishi, the then Inspector, Municipal Corporation, Jalandhar filed their revision petitions against the summoning order dated 09.09.2013. The Court of learned Additional District Judge, Jalandhar came to the categorical conclusion that the petitioners therein (accused No.2, 3 and 5 in the complaint) had acted in the discharge of their official duty. Since they had acted in their discharge of official duty, the Court could not have taken cognizance of the complaint in the absence of sanction under Section 197 Cr.P.C. Therefore, the summoning order qua the said three accused was set aside and they were discharged vide order dated 06.10.2014 (P-10). Para Nos.6 and 7 of the order dated 06.10.2014 are reproduced herein below:-

“6. I found force in the contentions of learned counsel for the revisionists because it has come on the record that the area in which the property in dispute falls was acquired through award No.1 of 15.09.1986 for public purpose i.e. providing sewer, streets etc. for easing out the traffic congestion and possession was also handed over to Municipal Corporation, Jalandhar. Subsequently some area was exempted and the remaining was used for providing sewer and street etc. Thereafter on 07.02.1992 it was reported by the building inspector of the area that Jyoti Saroop complainant/respondent is raising unauthorised construction and on the report a notice under section 269 of the Act was served. On further verification it was found that the unauthorised construction raised by the complainant was encroachment upon the street area by 10 feet X 21 feet and said street vests in the municipal corporation, Jalandhar and a notice under section 246(1) of the Act was served on 12.02.1992 and complainant filed a suit for permanent injunction regarding the property in dispute. The said suit was decreed vide judgment and decree dated 04.06.1998 by the court of Sh. Naginderjit Singh Additional Civil Judge (Senior Division), Jalandhar and then Municipal Corporation, Jalandhar filed a regular civil appeal against the said judgment and decree. The appeal was accepted and suit was dismissed vide order dated 09.04.2002 passed by Sh. Surinder Gupta the then Additional District Judge, Jalandhar. Thereafter the notice was issued by then Assistant Town Planner Dharam Pal exercising the delegated powers of Commissioner Municipal Corporation, Jalandhar for removal of encroachment and on non-compliance thereof the demolition was carried out by the officials of Municipal Corporation, Jalandhar in discharge of their official duties as per the orders of then Municipal Town Planner Hemant

Batra revisionist No.2. The revisionists have done all these acts in the discharge of their official duty. I am of the view that when the acts have been done by any public official in the discharge of his official duty, then the jurisdiction of the court is expressly barred under the provisions of section 197 of Cr.P.C. and it being mandatory to obtain sanction from the government before proceeding against the accused. In this connection I am fortified with the case law 2004(2)RCR(Criminal) titled State of Orissa through Kumar Raghvendra Singh Vs Ganesh Chandra Jew wherein it has been observed as under:-

Criminal Procedure Code, Section 197- Complaint against Public Servant 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-Bar on the exercise of power by the court to take cognizance of any offence is absolute and complete-Very cognizance is barred-That is the complaint, cannot be taken notice of.

In the case law titled Vinod Krishna Kaul Vs S.A.Khan 2006(1) Judicial Reports(Criminal) page 14, it has been observed as under:-

Criminal Procedure Code, 1973, Section 197- Penal Code, 1860, Section 500- Sanction for prosecution-Offence committed during by official during the course of his official duties-Prior sanction from the Govt. u/s 197 Cr.P.C. required Court debarred from taking cognizance of the alleged offence for want of sanction.

The above said case law is fully applicable to the facts of the present case. I am of the view that without sanction under section 197 Cr.P.C.the case cannot be continue.

7. In view of my above discussion, relying upon the case law referred above the present revision petition is accepted. The order dated 09.09.2013 whereby the learned trial court has summoned the revisionists No.1 to 3 to face trial under section 452/ 166/ 167/ 427/ 382/ 511/ 411/ 414/ 201/ 506/ 148/149/ 120-B IPC is set aside and the accused/ revisionists No.1 to 3 namely Rahul Gupta, Hemant Batra and Rajiv Rishi are ordered to be discharged. Lower Court record be sent back and revision files be consigned to the record room."

4. The petitioner herein, who was the then Senior Deputy Mayor, also preferred a revision petition against the order of summoning. However, the said revision petition was dismissed on 06.10.2014 (Annexure P-1) itself, on the ground that the petitioner being a Municipal Councilor and at that time being a Senior Deputy Mayor in the Municipal Corporation, Jalandhar, was not a public servant. Paras 6 to 8 of the order dated 06.10.2014 is as under:-

"6. The revisionist is a Municipal Commissioner and is at present Senior Deputy Mayor in Municipal Corporation, Jalandhar. I am of the view that he is not a public servant as per Section 21 of IPC. It has been held in Ramesh Balkrishna Kulkarni vs. State of Maharashtra, AIR 1985 SC 1655 that "Municipal Commissioner Whether public servant?- A "public servant" is an authority who must be appointed by Government or a semi-governmental body and should be in the pay or salary of the same and must discharge his duties in accordance with the rules and regulations made by the Government. A Municipal Councilor does not owe his appointment to any governmental authority. He does not answer the test of a public servant."

7. So far as case law referred by the counsel for the revisionist is concerned, the same is not applicable to the facts of the present case because in the present case the revisionist is not a public servant.

8. I am of the view that since revisionist is not a public servant, sanction under Section 197 Cr.P.C is not required before summoning the accused. As such, I do not find any merit in this revision and the same is dismissed. The Lower Court file be returned with copy of this judgment. The parties directed to appear before the learned lower Court on 10.11.2014. Ahlmad is directed to send the file immediately and criminal revision file be consigned to the record room.”

5. The present petition has been filed challenging the impugned order dated 06.10.2014 (Annexure P-1) passed by the learned Additional Sessions Judge, Jalandhar as also the order of summoning (Annexure P-2) dated 09.09.2013.

6. The learned counsel for the petitioner firstly contends that all the accused persons acted in the discharge of their official duties and this finding recorded by the Revisional Court in the order of discharge of some of the accused (Annexure P-10), remains unchallenged. He, thus, prays that the protection under Section 197 Cr.P.C. be accorded to him as well and that as per Section 417 of the Punjab Municipal Corporation Act, 1976, every Councilor, Commissioner and Corporation officer and employee of every Councilor, Commissioner and other employee is deemed to be a public servant under Section 21 IPC. He thus, submits that by virtue of Section 417 Cr.P.C., the petitioner, who was the then Senior Deputy Mayor of the Municipal Corporation, Jalandhar, was a public servant as defined under Section 417 read with Section 21 IPC.

7. On the other hand, the learned counsel for the complainant contends that the petitioner being a Senior Deputy Mayor could not be a public servant, who was to get the protection under Section 197 Cr.P.C. He relies upon Ramesh Balkrishna Kulkarni Vs. State of Maharashtra, AIR 1985 SC 1655.

8. I have heard the learned counsel for the parties at length.

9. Before proceeding further in the matter, it would be useful to refer to the relevant provisions of law, for the proper adjudication of the present case.

Section 21 IPC reads as under:-

“Public servant”.—The words “public servant” denote a person falling under any of the descriptions hereinafter following; namely:-

*(Second)—Every Commissioned Officer in the Military, [Naval or Air] Forces [***] of India];*

(Third)—Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]

(Fourth)— Every officer of a Court of Justice [(including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

(Fifth)— Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

(Sixth)— Every arbitrator or other person to whom any cause or matter has been referred for decision or report by

any Court of Justice, or by any other competent public authority;

(Seventh)—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(Eighth)— Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(Ninth)— Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of or to make any survey, assessment or contract on behalf of or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of, or to make, authenticate or keep any document relating to the pecuniary interests of, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

(Tenth)— Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

(Eleventh)—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;]

(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).]

Illustration

A Municipal Commissioner is a public servant.

Explanation 1 —Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

[Explanation 3.—The word “election” denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.] ”

Section 197 Cr.P.C. reads as under:-

“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 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 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] or section 509 of the Indian Penal Code (45 of 1860).]

Section 417 of the Punjab Municipal Corporation Act, 1976, reads as under:-

“417. Councilors and Corporation Officers and employees to be public servants:- Every Councilor, the Commissioner, and every Corporation Officer and other Corporation employees shall be deemed to be a public servant within the meaning of Section 21 of the IPC, and in the definition of 'Legal remuneration' in Section 161 of that Code the word 'Government' shall for the purpose of this Section, be deemed to include the Corporation.”

10. So far as, the law relating to sanction for prosecution is concerned, the various judgments of the Hon'ble Apex Court as also this Court are categorical to the effect that cognizance of an offence cannot be taken without their being prior prosecution sanction under Section 197 Cr.P.C., where the officer concerned has acted in the discharge of his official duties.

The Hon'ble Supreme Court in 'State of Orissa Through Kumar Raghvendra Singh & others Vs. Ganesh Chandra Jew, 2004(2) RCR (Criminal) 663 in Para Nos.9, 11 and 12, held as under:-

“9. So far 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' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. 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 committed during discharge of his official duty.

11. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by

this Court in *Matajog Dobey v. H.C. Bhari (AIR 1956 Supreme Court 44)* thus :

"The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty .. there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

12. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to official to which applicability of Section 197 of the Code cannot be disputed."

This Court in *Vinod Krishna Kaul Vs. S.A. Khan, 2005(4) RCR*

(Criminal) 490 in para Nos. 10 and 11 of the judgment, held as under:-

"10. The aforesaid facts have not been disputed by the respondent as no reply has been filed. In view of the aforesaid undisputed facts, it appears that whatsoever prima-facie the petitioner had done, that was done in discharge of his official duties. In these facts, if the respondent alleges that some offence was committed by the official during the course of his official duties, then prior sanction from the Government under Section 197 Criminal Procedure Code was required and the Court was debarred from taking cognizance of the alleged offence for want of sanction.

11. In the above facts and circumstances, prima facie, it appears to this Court that the alleged acts on the part of the petitioner were purported to have been done in exercise of

his official duties. Therefore, taking cognizance of the alleged offence without prior sanction and continuation of such proceedings is without jurisdiction and abuse of the process of the law.

Similarly, in 'Lakshmi Narain Vs. Mohan Lal, RCR (Criminal) 607', the prosecution of the President of the Municipal Committee was quashed on account of the fact that under Section 21 of the Punjab Municipal Act, 1976 the President of the Municipal Committee was deemed to be a public servant.

11. A perusal of the relevant provisions of law as also the aforementioned judgments would show that once the accused had acted in the discharge of their official duties, then they were liable for the protection accorded under Section 197 Cr.P.C. In the present case, admittedly, some of the accused have also been discharged from prosecution. So far as the present petitioner is concerned, the finding against him was that he could not be accorded the protection under Section 197 Cr.P.C. as he was not a public servant. That finding is contrary to law as a combined reading of Section 417 of the Punjab Municipal Corporation Act. along with Section 21 IPC and Section 197 Cr.P.C., would clearly show that the petitioner was a public servant, who allegedly committed the offence in the discharge of his official duties (a finding of fact which has remained unchallenged) and was prosecuted without sanction under Section 197 Cr.P.C..

12. The judgment in 'Ramesh Balkrishna Kulkarni's case' (supra) would not come to the aid of the complainant because the Punjab Municipal Corporation Act makes every officer a public servant under Section 21 IPC, something which was not the case in 'Ramesh Balkrishna Kulkarni's case' (supra).

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13. Thus, keeping in view the aforementioned discussion, the law as laid down as also the provisions of Section 21 IPC, Section 197 Cr.P.C. and Section 417 of the Punjab Municipal Act, 1976, the order of summoning and the order in revision are liable to be set aside.

14. Therefore, the present petition is allowed and the order of summoning dated 09.09.2013 (Annexure P-2) passed by the learned Judicial Magistrate 1st Class, Jalandhar and the order in revision dated 06.10.2014 (Annexure P-1) passed by the learned Additional Sessions Judge, Jalandhar, are hereby quashed qua the petitioner only.

(JASJIT SINGH BEDI)
JUDGE

16.03.2022
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No