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PRABHAKAR V. SINARI

v.

SHANKER ANANT VERLEKAR

November 29, 1968

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[J. C. SHAH AND A. N. GROVER, JJ.]

Code of Criminal Procedure, s. 197—Sanction for prosecution of public servant—Police Officer interfering in dispute over land and asking one party to take possession—Whether acts in discharge of official duty.

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A private complaint was filed against the appellant who was a Deputy Superintendent of Police. According to the statement of the complainant there was a dispute between him and certain hawkers who wanted to trespass on his land and at his instance the police was informed. The appellant came to the spot, threatened and assaulted him, and suggested to the hawkers to enter upon the land, whereupon the hawkers took possession of the land. The Magistrate after recording the statement of the complainant issued summons to the appellant and others for answering charges under ss. 149, 341, 342, 352, 500 and 504 of the Indian Penal Code read with s. 34 thereof. The appellant filed a petition for revision under s. 435 Cr. P.C. before the Sessions Judge in which the main point taken was that the previous sanction under s. 197 Cr. P.C. required for the prosecution of the appellant had not been obtained. The Sessions Judge ordered that the complainant be asked to obtain the required sanction before prosecuting the appellant. But the Judicial Commissioner's Court ordered that the order of the Magistrate issuing the summons be confirmed. In appeal to this Court by special leave,

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HELD : The language of s. 197 Cr. P.C. clearly is that no court can take cognizance of an offence alleged to have been committed by any person belonging to the categories mentioned in the section which would include the appellant when he is accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty.

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In the present case it was not clear in what capacity the appellant came to the spot. On the basis of the statement of the complainant it was not established that he came in the capacity of a police officer.

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Ordinarily if a person is in possession of some property and other persons are threatening to dispossess him it is no part of the duty of a police officer to take sides and decide the dispute in favour of one party or the other or to force one party to give up possession to the other, even if he was satisfied that the party seeking to take possession was lawfully entitled to do so. This the police officer could only do if there had been any direction by a competent court for rendering help in the matter of delivery of possession.

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[In dismissing the appeal the Court observed that it would be open to the appellant to establish during the course of further proceedings that the requisite sanction under s. 197 must be obtained.]

Ronald Wood Mathams v. State of West Bengal, [1955] 1 S.C.R. 216, *H. H. B. Gill v. The King*, 75 I.A. 41, *Phanindra Chandra Neogy v. The King*, 76 I.A. 10, *Matajog Dubey v. H. C. Bhari*, [1955] 2 S.C.R. 925,

934. *Amrik Singh v. State of Pepsu*, [1955] 1 S.C.R. 1302 and *Nagraj v. State of Mysore*, [1964] 3 S.C.R. 671, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 152 of 1967.

Appeal by special leave from the judgment and order dated November 19, 1966 of the Judicial Commissioner Court, Goa, Daman and Diu in Criminal Reference No. 103 of 1966.

R. N. Sachthey, for the appellant.

The respondent did not appear.

The Judgment of the Court was delivered by

Grover, J. The sole point for decision in this appeal by special leave is whether a complaint which had been filed against the appellant and four other persons by the respondent for various alleged offences could be entertained without necessary sanction being obtained for the prosecution of the appellant, who at the material time, was the Deputy Superintendent of Police, under s. 197 of the Criminal Procedure Code.

The original complaint is not before us as it has not been included in the appeal record but the allegations contained therein are given in the judgment of the learned Judicial Commissioner. The complainant alleged that on March 5, 1966 at about 4 p.m. accused Nos. 2 to 5 who were hawkers by profession and some other persons attempted to trespass on his land in Margao town with the intention of putting up stalls there. The complainant having been threatened by them, sent his brother to the police station. The police came and asked the hawkers to keep their handcarts at the place where they were kept before. Later on at about 5-30 p.m. the appellant came to the spot and spoke to the complainant in a very arrogant tone. The appellant informed the complainant that he was Deputy Superintendent of Police and that he had in his possession documents which proved that the land belonged to one Atma Ram. The appellant asked the complainant to produce his documents of title but the complainant replied that those documents had been produced by him in some litigation in the civil courts. The appellant is then alleged to have threatened the complainant that he would lock him up in case there was any interference with what the hawkers wanted to do. The appellant also beckoned accused Nos. 2-5 and other hawkers to enter upon the land. When the complainant protested he was warned by the appellant that if he talked he would be slapped. The appellant also assaulted him. Thereafter the possession of the land was taken over by the hawkers.

The magistrate to whom the complaint was presented examined the complainant under s. 200, Criminal Procedure Code

- A and issued summons to answer the charges under ss. 149, 341, 342, 352, 500, 503 and 504 read with s. 34 against the appellant and other accused persons requiring them to appear on April 19, 1966. The appellant filed a petition for revision under s. 435 of the Code before the learned Sessions Judge in which the main point taken was that the previous sanction under s. 197, Cr. P.C., to prosecute the appellant was required which had not been obtained. The learned Sessions Judge made an order recommending that the magistrate be directed to require the complainant to obtain the requisite sanction before prosecuting the appellant. This matter was heard by a bench consisting of the Judicial Commissioner and the Additional Judicial Commissioner. The Judicial Commissioner was of the view that there was no material on the record to come to the conclusion that the acts complained of would be protected by the provisions of s. 197(1) of the Code. The learned Additional Judicial Commissioner took a contrary view and held that sanction was necessary. The order of the court was that there being no third Judge to resolve the difference of opinion, the order of the learned magistrate issuing the summons be confirmed in terms of proviso to s. 7(2) of the Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963.
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- It may be mentioned that in the statement recorded under s. 200 of the Criminal Procedure Code, by the magistrate, the complainant made more or less the same allegations as were made in the complaint. According to the learned Additional Judicial Commissioner in the statement made in court it was not affirmed that the complainant had been wrongly retrained or confined nor was it mentioned that he was actually assaulted in the sense that physical force was used against him. The worst that could be said, according to the Additional Judicial Commissioner, was that the appellant had warned the respondent that he would be arrested if he interfered with the entry of the hawkers on the disputed land and that the appellant also made some gestures with the hand indicating threat of assault. In our opinion it is not necessary to go into the allegations in the original complaint. It would suffice to read the statement made by the complainant before the magistrate which is reproduced below :
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- "I confirm the matter in my complaint. On 5th instant, at about 4.00 p.m. the accused Nos. 2 to 5 attempted to trespass upon my plot situated near the market of this city with a view of setting upon thereon their mobile shops. I, therefore, sent my brother to the Police, who came to the spot and sent the vendors away. At about 5.30 p.m. on the same day Mr. Sinari, in civil dress turned up at that place. At that time, I was sitting in the verandah of the shop of one Kharan-
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gute situated at the same place. He called me near him. Thereafter he asked me whether I knew him, to this I replied in the affirmative. After this, he identified himself as Dy. Superintendent of Police and threatened me that if I interfered with vendors he would arrest me. Subsequently, he directed the vendors to enter my plot and warned me that he should slap me on my face. In case I oppose to this. He told me further that he was dealing with the case, when I brought to his notice that my documents were lying with the Municipality and with the Court. The same accused made some gestures of threats of assault with hands. I kept myself mum in view of this unusual attitude and the vendors' took possession of my property."

The learned Judicial Commissioner as also the Additional Judicial Commissioner have discussed the case law on the subject exhaustively and have also summarised the principles deducible from the various pronouncements. It seems to us that there is no difficulty in finding the true rule which has been laid down by numerous decisions including those of the Privy Council, Federal Court and this Court. It is only in the application of the settled rule that certain amount of difficulty may be experienced owing to the peculiar facts of a particular case. The language of s. 197, Cr. P. Code clearly is that no court can take cognizance of an offence alleged to have been committed by any person belonging to the categories mentioned in the section which would include the appellant when he is accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. This Court observed in *Ronald Wood Matham v. State of West Bengal*⁽¹⁾ that the question whether sanction under s. 197 was necessary for instituting proceedings on charges of conspiracy and of bribery stood concluded by the decisions of the Judicial Committee in *H. H. B. Gill v. The King*⁽²⁾ and *Phanindra Chandra Neogy v. The King*⁽³⁾ and must be answered in the negative, so far as the appellant in that case was concerned. After a full discussion of the case law the result was stated in *Matajog Dubey v. H. C. Bhari*⁽⁴⁾ : thus :

"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, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

(1) [1955] 1 S.C.R. 216.

(3) 76 I.A. 10.

(2) 75 I.A. 41.

(4) [1955] 2 S.C.R. 925, 934.

- A At an earlier stage it had been observed that it did not matter if the acts exceeded were strictly necessary for the discharge of the duty. What had to be found out was whether the act and the official duty were so inter-related that one could postulate reasonably that it was done by the accused in the performance of the official duty though possibly in excess of the needs and requirements of the situation. In *Amrik Singh v. State of Pepsu*⁽¹⁾, Venkatarama Iyer J. speaking for the Court summed up the result of the various decisions on the subject and said that it was not every offence committed by a public servant which required sanction for prosecution under s. 197(1) of the Code of Criminal Procedure nor even every act done by him while he was actually engaged in the performance of his official duties.
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- C But if the act complained of was 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 and that would be so, irrespective of whether it was in fact, a proper discharge of his duties or not.
- D Reference may be made to *Nagraj v. State of Mysore*⁽²⁾ in which the appellant, a Sub-Inspector of Police, was committed to Sessions Court for trial on a complaint that he and another person had severely beaten one T and when he was forcibly taking him away and was requested by K to excuse T he wantonly fired on two persons. Emphasis on the question of sanction has been laid on the rule that the jurisdiction of the court to proceed with the complaint emanates from the allegations made in the complaint and not from what is alleged by the accused or what is finally established in the case as a result of the evidence recorded.
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- F We are unable to agree with the learned Additional Judicial Commissioner that if the allegations of the complainant are taken to be correct it was established that the appellant held out threats to arrest the complainant or to give him a slap on his face in the discharge or purported discharge of his duties. There are many matters on which there is complete absence of any material or information. In the first place it is not clear in what capacity the appellant came to the spot. According to the complainant he sent his brother to the police station because the hawkers were attempting to trespass on his land. Normally it would be the officer-in-charge of the police station who would go to the spot to prevent any breach of peace or apprehended breach of peace. Even if the appellant who was a superior officer could come to prevent any ugly situation arising between the complainant and the hawkers. It is not established that the appellant came in the capacity of a police officer. On the contrary the necessary implication in the statement of the complain-
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(1) [1955] 1 S.C.R. 1302.

(2) [1964] 3 S.C.R. 671.

ant is that the appellant came in civil dress, wanted the hawkers to be put in possession of the disputed plot and actually directed them to enter the plot and warned the complainant that if he resisted he would be slapped in his face. Until some more material is placed on the record it cannot be held that it was any part of the duty of the appellant to ensure that the hawkers were put in possession of the disputed land. It may be that the appellant was entitled to interfere and take proper steps if he apprehended any breach of peace but there is nothing whatsoever in the complainant's statement which would show that any such situation existed which could justify interference by the appellant. Ordinarily if a person is in possession of some property and other persons are threatening to dispossess him it is no part of the duty of a police officer to take sides and decide the dispute in favour of one party or the other or to force one party to give up possession to the other, even if he was satisfied that the party seeking to take possession was lawfully entitled to do so. This the police officer could only do if there had been any direction by a competent court for rendering help in the matter of delivery of possession. Whatever way the matter is looked at we are unable to hold on the basis of the allegations contained in the statement of the complainant that the acts alleged against the appellant were such as could be regarded to have been committed by him while acting or purporting to act in the discharge of his official duties. It will be open to the appellant to establish during the course of further proceedings that the requisite sanction under s. 197 must be obtained; but at this stage we concur in the view of the learned Judicial Commissioner that no such sanction was necessary.

The appeal fails and it is dismissed.

G.C.

Appeal dismissed.