

DR. LAKSHMANSINGH HIMATSINGH VAGHELE
v.
NARESH KUMAR CHANDRASHANKAR JHA AND ANR.

JULY 24, 1990

[T.K. THOMMEN, KULDIP SINGH AND
M. FATHIMA BEEVI, JJ.]

Code of Criminal Procedure 1973—Section 197—Sanction to prosecute—When necessary for—‘Public servant’—‘Public analyst’—Sanction to prosecute—Whether necessary.

The appellant, an employee of the Municipal Corporation Ahmedabad was holding the post of Laboratory Officer and while he was so holding the post, he by a Notification dated 21.12.1966, issued by the State Government, was appointed as a Public Analyst for the local area within the municipal limits of the Corporation. The respondent filed a complaint before the Magistrate for offences punishable under Sections 465, 468 and 201, I.P.C. alleged to have been committed by the appellant while exercising his functions as a Public Analyst. The appellant moved the High Court under Section 482, for quashing the criminal proceedings sought to be initiated against him by the said complaint. His principle contention was that he being a public servant removable from office only by the State Government, the magistrate could not take cognizance of the alleged offences and that previous sanction of the State Government as contemplated under section 197, Cr.P.C. was necessary. The High Court rejected the contention of the appellant and dismissed the petition. He has filed this appeal after obtaining special leave from the Court.

Dismissing the appeal, this Court,

HELD: The privilege or immunity from prosecution without sanction extends only when the accused is a public servant of the kind mentioned in Section 197, Cr.P.C. He must be a public servant as defined in Section 21 of the Indian Penal Code and not removable from his office save by or with the sanction of the State Government or the Central Government as the case may be. The offence must also be one committed by the accused while acting or purporting to act in the discharge of his official duty. Section 197, Cr.P.C. clearly intends to draw a line between public servants and to provide that only in the case of the higher ranks should the sanction of the Government to their prosecution be necessary. [513C-D, H]

- A** The words “removable from office” occurring in Section 197 signify removal from the office one is holding. [514B]

- B** In the instant case, the appellant was not holding any public office in connection with the affairs of the State. The State Government had merely entrusted him with the functions of a Public Analyst which could be granted and taken by an administrative Act. It was on account of his being employed by the Municipal Corporation that he was appointed as a Public Analyst in the cadre against any post. The Prevention of Food Adulteration Act also does not contain any deeming provision to treat the Public Analyst as a public servant. [514D-E]

- C** The appellant is not therefore a public servant removable only by the State Government. [514G]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 387 of 1990.

- D** From the Judgment and Order dated 12.1.1984 of the Gujarat High Court at Ahmedabad in Misc. CrI. Application No. 48 of 1982.

S.H. Sheth and S.C. Patel for the Appellant.

- E** B. Datta, Sunil Dogra and P.H. Parekh for the Respondents.

The Judgment of the Court was delivered by

FATHIMA BEEVI, J. Leave granted.

- F** The appellant is aggrieved by the judgment of the High Court holding that sanction of the State Government as required under Section 197, Cr.P.C., is not necessary for taking cognizance of the offences against the appellant on the basis of the complaint filed by the respondent. The appellant is an employee of the Municipal Corporation, Ahmedabad. While holding the post of Laboratory Officer, the State Government by a Notification dated 21.12.1966 under Section 8 of the Food Adulteration Act, 1954 appointed the appellant as a Public Analyst for the local area comprised within the limits of the Corporation. The complaint was filed by the respondent before the Magistrate for the offences punishable under Sections 465, 468 and 201, I.P.C., alleged to have been committed by the appellant while exercising the functions as Public Analyst.
- H**

The appellant moved the High Court under Section 482, Cr.P.C., for quashing the criminal proceedings on the ground that, he being a public servant removable from office only by the State Government the Magistrate could not take cognizance of the offence alleged to have been committed while discharging the duties as Public Analyst without the requisite sanction under Section 197, Cr.P.C. The High Court rejected this contention and dismissed the petition.

Under Section 197(1), Cr.P.C., when 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 of the Government. The section extends immunity from irresponsible, frivolous and vexatious prosecution. The privilege of immunity from prosecution without sanction extends only when the accused is a public servant of the kind mentioned therein. He must be a public servant as defined in Section 21 of the Indian Penal Code and not removable from his office save by or with the sanction of the State Government or the Central Government as the case may be. The offence must also be one committed by the accused while acting or purporting to act in the discharge of his official duty. Section 21, I.P.C., reads as under:

21. "Public servant"—The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:

.....

 Twelfth.—Every person—

- (a) in the service or pay of the Government or remunerated by fess 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).

Section 197, Cr.P.C., clearly intends to draw a line between public servants and to provide that only in the case of the higher ranks

- A should the sanction of the government to their prosecution be necessary. While a public servant holding an office of the kind mentioned in the Section is as such public servant appointed to another office, his official acts in connection with the latter office will also relate to the former office. The words "removable from office" occurring in Section 197 signify removal from the office he is holding. The authority mentioned in the section is the authority under which the officer is serving and competent to terminate his services. If the accused is under the service and pay of the local authority, the appointment to an office for exercising functions under a particular statute will not alter his status as an employee of the local authority.
- B

- C The appellant herein is admittedly the Laboratory Officer in the service and pay of the Municipal Corporation of Ahmedabad. The appointment as Public Analyst by the Government does not confer on him the status of a public servant or an officer under the service and pay of the Government. He is not remunerated by any fee by the Government. The appellant was not the employee of the State Government and was not employed in connection with the affairs of the State. He was not holding any public office in connection with the affairs of the State. The State Government had merely entrusted him with the functions of a Public Analyst which could be granted and taken by an administrative act. It was on account of his being employed by the Municipal Corporation that he was appointed as a Public Analyst by the Government. He is not appointed as Public Analyst in the cadre against any post. The Prevention of Food Adulteration Act also does not contain any deeming provision to treat the Public Analyst as a public servant.
- D
- E

- F The appellant is holding an office from which he is removable by the Local Authority and not by the Government. The cancellation of the appointment as Public Analyst would not amount to removal from office. Section 197, Cr.P.C., in this context contemplates the removal of the appellant from the office of the Laboratory Officer and not his transfer or removal from the office of the Public Analyst. The removal of the appellant from the office of Public Analyst would not affect his office as a Laboratory Officer under the Local Authority and would not amount to removal from office. The appellant is not therefore a public servant removable only by the State Government. The High Court was right in its view. We accordingly dismiss the appeal.
- G