INDRA DEVI

v.

STATE OF RAJASTHAN & ANR.

(Criminal Appeal No. 593 of 2021)

JULY 23, 2021

[SANJAY KISHAN KAUL AND HEMANT GUPTA, JJ.]

Code of Criminal Procedure, 1973: s.197 – Sanction for prosecution – Case of complainant was that in a sale transaction, the purchaser fabricated the agreement with the intention to defraud her – This was allegedly done in collusion with the then executive officer of the municipality, junior engineer and the concerned clerk by enlarging the dimensions of the plot whch was sold to him with the intention to grab the land and house occupied by the complainant and her husband – Respondent no.2 was the concerned clerk during the relevant period though he was neither named in the FIR nor in the charge sheet – Respondent no.2 filed application u/s.197, however it was dismissed on the ground that he was liable to be prosecuted for having committed criminal offence of preparing forged lease – High Court, however, allowed s.482 application filed by respondent no.2 – On appeal, held: Superior officers, who had dealt with the file, were granted protection while the clerk, who did the paper work, i.e. Respondent No.2, was denied similar protection by the trial court even though the allegation was of really conspiring with his superior officers – Neither the State nor the complainant appealed against the protection granted u/s.197 qua *these two other officers – A similar protection ought to have been granted to Respondent No.2 as was done in the case of the other two officials – High Court was, therefore, right in holding that sanction u/s.197 was required before triggering prosecution.*

Dismissing the appeals, the Court

HELD: 1. Section 197 of the CrPC seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognisance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a

special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him "while acting or purporting to act in the discharge of his official duty" and in order to find out whether the alleged offence is committed "while acting or purporting to act in the discharge of his official duty", the yardstick to be followed is to form a *prima facie* view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. The real question, therefore, is whether the act committed is directly concerned with the official duty. [Para 9][28-E-H; 29-A-C]

2. The factum of Respondent No. 2 not being named in the FIR is not of much significance as the alleged role came to light later on. However, what is of significance is the role assigned to him in the alleged infraction, i.e. conspiring with his superiors. What emerges therefrom is that insofar as the processing of the papers was concerned, the Executive Officer, had put his initials to the relevant papers which was held in discharge of his official duties. Not only that, Junior Engineer who was part of the alleged transaction, was also similarly granted protection. The work which was assigned to Respondent No. 2 pertained to the subject matter of allotment, regularisation, conversion of agricultural land and fell within his domain of work. In the processing of application, the file was initially put up to the Executive Officer who directed the inspection and the inspection was carried out by the Junior Engineer and only thereafter the Municipal Commissioner signed the file. The result was that the superior officers, who dealt with the file, were granted protection while the clerk, who did the paper work, i.e. Respondent No. 2, was denied similar protection by the trial court even though the allegation was of really conspiring with his superior officers. Neither the State nor the complainant appealed against the protection granted under Section 197 of the CrPC qua these two other officers. The sanction

from competent authority would be required to take cognisance. [Paras 10, 11][29-C-H]

Devi Dan v. *State of Rajasthan* **Crim. Misc. Pet. No.2177/2013 decided on 10.10.2014;** *B. Saha & Ors. v. M.S. Kochar* **(1979) 4 SCC 177 : [1980] 1 SCR 111;** *State of Maharashtra v. Dr. Budhikota Subbarao* **(1993) 3 SCC 339 : [1993] 2 SCR 311;** *Subramanian Swamy v. Manmohan Singh* **(2012) 3 SCC 64 : [2012] 3 SCR 52 – referred to.**

Case Law Reference

[1980] 1 SCR 111	**referred to**	**Para 8**
[1993] 2 SCR 311	**referred to**	**Para 8**
[2012] 3 SCR 52	**referred to**	**Para 9**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 593 of 2021.

From the Judgment and Order dated 03.10.2017 of the High Court of Judicature for Rajasthan at Jodhpur in S. B. Criminal Misc (Pet.) No. 3138 of 2017.

With

Criminal Appeal No. 594 of 2021.

Dr. Manish Singhvi, Manoj Swarup, Sr. Advs., Arunava Mukherjee, Balaji Srinivasan, Sandeep Kumar Jha, H. D. Thanvi, Achal Singh Bule, Rishi Matoliya, Advs. for the appearing parties.

The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

1. Indra Devi, the appellant, is the complainant in FIR No.80 dated 23.02.2011 registered under Sections 420/467/468/471/120B of the IPC and Sections 3(1)(4)/3(15)/3(5) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act at P.S. Kotwali, Distt. Barmer. It was alleged that she and her husband Bhanwar Lal purchased two plots in Khasra No. 1179/03 located in Distt. Barmer. Out of these two plots, one plot was sold to one Megharam while another plot was sold to one Chetan Choudhary. In the plot purchased in the name of her husband, a residential house and shops are stated to have been made. Megharam is

A alleged to have tampered with and fabricated the agreement with the intention to defraud. This was allegedly done in collusion with the then executive officer of the Municipality, one Surender Kumar Mathur and "the concerned clerk and others", by enlarging the dimensions of the plot which have been sold to him with the intention to grab the land and house occupied by the complainant and her husband. The Khasra number B is also alleged to have been changed from 1179/03 to 1143/04. This fact is stated to have come to the notice of the complainant only when they were served with a court notice when they were in physical possession of the plot with the house and the shop. Her husband is stated to have gone to Jaipur for treatment of cancer. The accused persons are, thus, C alleged to have committed the offences of fraudulently making a scheduled caste women, her cancer diagnosed husband and other family members homeless. It may be noted that Respondent No.2 herein, Yogesh Acharya was not named in the FIR but, apparently, he is stated to be "the concerned clerk".

D 2. In pursuance of the investigation, a chargesheet was filed and charges were framed vide order dated 10.04.2012 against Megharam. Once again Respondent No.2 was not named in the chargesheet but a reference was made to Megharam acting in collusion with "co-accused persons".

E 3. The records placed before us do not reflect how Respondent No.2 was exactly roped in, but suffice to say, Respondent No.2 moved an application under Section 197 of the CrPC before the trial court stating that he was a public servant and what he did in respect of allotment of lease, that was executed in favour of Megharam, was done during the course of his official duty and thus he was entitled to protection under F the aforementioned provision. He also sought to assail the chargesheet as the same had been filed without obtaining sanction of the competent authority under Section 197 of the CrPC.

4. The trial court dismissed the application vide order dated 10.08.2017, while noticing that Respondent No.2 had not been mentioned G in the FIR. It was opined that it was the duty of Respondent No.2 to bring irregularities to the knowledge of the competent officers, i.e.Megharam had mentioned the wrong Khasra number in the lease but no documents of ownership of the land were produced. The trial court was of the view that had the discrepancies been brought to the knowledge H of the competent officers by Respondent No.2, the disputed lease would

not have been issued. The result of the failure to do so caused the forged lease to be prepared. Respondent No.2 had also drafted the disputed lease in which he failed to mention necessary details. It was, thus, opined that Respondent No.2 was liable to be prosecuted against for having committed criminal offence to procure a forged lease. What Respondent No.2 did was held not to be done by the public servant in discharge of his official duty and thus protection under Section 197 of the CrPC would not come to his aid.

5. Respondent No.2 thereafter filed a Crl. Misc. Petition No.3138/2017 under Section 482 of the CrPC before the High Court of Judicature at Jodhpur assailing the said order of the trial court. The High Court, vide impugned order dated 03.10.2017, allowed the petition. It was opined that the case was similar to the one of *Devi Dan*v. *State of Rajasthan*[1]. The High Court had opined therein that sanction under Section 197 of the CrPC was required before triggering any prosecution against the Station House Officer for filing/failing to file an FIR and for other criminal acts committed during the discharge of his duties. The complainant, aggrieved by the said judgment, has approached this court by filing a special leave petition. The State has also filed an SLP. Leave was granted in both the matters.

6. The appellant contended before us that the involvement of Respondent No.2 only came to light during investigation. He had failed to bring the irregularities to the knowledge of his superiors which was instrumental in issuing the forged lease. Thus, he had conspired with his superiors in dishonestly concealing the forgery, and intentionally omitting mentioning the date of the proceedings on the order sheet. Such action of forging documents would not be considered as an act conducted in the course of his official duties and, thus Section 197 of the CrPC would not give protection to Respondent No.2.

7. On the other hand, Respondent No.2 endeavoured to support the impugned judgment of the High Court by emphasising that in FIR only Megharam alongwith some unnamed officials were mentioned. Surender Kumar Mathur, the Executive Officer of the Nagar Palika, had filed a petition under Section 482 of the CrPC relating to the same transaction and the High Court had granted him protection under Section 197 of the CrPC vide order dated 22.02.2018. The conduct of putting his

[1] Crim. Misc. Pet. No.2177/2013 decided on 10.10.2014

A initials was held to be an act done in discharge of his duties. Similarly, Sandeep Mathur, a Junior Engineer, who was part of the same transaction, was granted protection by the Sessions Court vide order dated 19.03.2020, once again under the same provision, i.e., Section 197 of the CrPC. Both the orders remained unchallenged by the complainant and the State. Further, it has been argued that Respondent No.2 was B simply carrying out his official duty which is apparent from the work allotted to him that pertained to allotment, regularisation, conversion of agricultural land and all kinds of work relating to land and conversion. The application of Megharam was routed through the office, and the proceedings show that the file was initially put up before the Executive C Officer, who directed inspection, which was carried out by the Junior Engineer. Thereafter, file was placed before the Executive Officer again and only then was it signed by the Municipal Commissioner. The two key people involved in the process had already been granted protection and thus Respondent No.2 herein, who was merely a Lower Division Clerk, could not be denied similar protection.

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8. Learned counsel for Respondent relied upon the judgments of this Court in *B. Saha & Ors.* Vs. *M.S. Kochar*[2] and *State of Maharashtra* Vs. *Dr.Budhikota Subbarao*[3] to contend that Section 197 of the CrPC ought to be read in a liberal sense for grant of protection to the public servant with respect to actions, which though constitute an E offence, are "directly and reasonably" connected with their official duties.

9. We have given our thought to the submissions of learned counsel for the parties. Section 197 of the CrPC seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, F prohibits the court from taking cognisance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protectthem from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner G as to advance the cause of honesty, justice and good governance. [See *Subramanian Swamy* Vs. *Manmohan Singh*[4]]. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation

[2] (1979) 4 SCC 177
[3] (1993) 3 SCC 339
H [4] (2012) 3 SCC 64

cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him "while acting or purporting to act in the discharge of his official duty" and in order to find out whether the alleged offence is committed "while acting or purporting to act in the discharge of his official duty", the yardstick to be followed is to form a *prima facie* view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. [See *State of Maharashtra* Vs. *Dr.Budhikota Subbarao*][5]. The real question, therefore, is whether the act committed is directly concerned with the official duty.

10. We have to apply the aforesaid test to the facts of the present case. In that behalf, the factum of Respondent No.2 not being named in the FIR is not of much significance as the alleged role came to light later on. However, what is of significance is the role assigned to him in the alleged infraction, i.e. conspiring with his superiors. What emerges therefrom is that insofar as the processing of the papers was concerned, Surendra Kumar Mathur, the Executive Officer, had put his initials to the relevant papers which was held in discharge of his official duties. Not only that, Sandeep Mathur, who was part of the alleged transaction, was also similarly granted protection. The work which was assigned to Respondent No.2 pertained to the subject matter of allotment, regularisation, conversion of agricultural land and fell within his domain of work. In the processing of application of Megharam, the file was initially put up to the Executive Officer who directed the inspection and the inspection was carried out by the Junior Engineer and only thereafter the Municipal Commissioner signed the file. The result is that the superior officers, who have dealt with the file, have been granted protection while the clerk, who did the paper work, i.e. Respondent No.2, has been denied similar protection by the trial court even though the allegation is of really conspiring with his superior officers. Neither the State nor the complainant appealed against the protection granted under Section 197 of the CrPC *qua* these two other officers.

11. We are, thus, not able to appreciate why a similar protection ought not to be granted to Respondent No.2 as was done in the case of the other two officials by the Trial Court and High Court respectively. The sanction from competent authority would be required to take cognisance and no sanction had been obtained in respect of any of the

[5] supra

A officers. It is in view thereof that in respect of the other two officers, the proceedings were quashed and that is what the High Court has directed in the present case as well.

12. In view of the aforesaid, the appeals are dismissed leaving the parties to bear their own costs.

Devika Gujral Appeals dismissed.