

(2008) 08 P&H CK 0186

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-26098 of 2007

Basant Lal

APPELLANT

Vs

Sumedha Kataria Administrator
and Another

RESPONDENT

Date of Decision: Aug. 4, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 420

Citation: (2008) 28 CriminalCC 330

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Advocate: R.S. Mamli, for the Appellant; Balrm K. Gupta with Mr. Vikrant Hooda and S.S. Goripuria, DAG for the Respondent No. 1, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Kumar Jain, J.

This is a petition u/s 482 Cr.P.C. whereby the petitioner has prayed for setting aside the order dated 11.02.2006 passed by the Addl. Sessions Judge, Fast Track Court, Kurukshetra.

2. Briefly stated the facts of this case are that the petitioner filed a complain under Sections 420, 465, 467, 471, 466,468,167,120B, 109, 34 of IPC, Police Station City Thanesar before the Judicial Magistrate 1 st Class, Kurukshetra, who vide his order dated 21.04.2003, summoned respondent No. 1 along with order accused by passing the following orders:-

Heard. Careful consideration given to the contents of the complaint, preliminary evidence led by the complainant as well as document made available on the file, goes to prima-facie show that the accused of the present case have committed on offence punishable under Sections 420/467/468/167/120B of the Indian Penal Code.

No detailed reasons are required to be given in view of the law laid down by Hon"ble Apex Court in case of U.P. Pollution Control Board v. M/s. Mohan Meakins Ltd. and Others, 2000 (2) RCR 421. Accordingly, accused of the present case be summoned for 07.07.2003 for the commission of aforesaid offence, on filing of P.F, copies of complaint etc.

3. Respondent No. 1 preferred a Criminal Revision No. 21 of 2006, which has been allowed by the Addl. Sessions Judge, Fast Track Court, Kurukshetra, vide impugned order dated 11.02.2006.

4. The complainant/petitioner has filed the present petition alleging therein that father of the petitioner had died on 21.09.1987 and the entries have been changed in the name of his father Sada Ram, who was not even alive on that date. Therefore, the respondents have committed forgery.

5. Counsel for the respondents have argued that petitioner in the Civil Suit No. 670 of 1993 decided on 21.10.2000 filed an affidavit wherein he had himself claimed that the house in question is ancestral but he is claiming the entire property to be his own. It was also argued that the petitioner has not challenged the order passed by respondent No. 1 on 18.01.1994, either by way of appeal or revision. It is further argued that the respondents cannot be prosecuted without obtaining sanction u/s 197 IPC.

I have heard counsel for the parties and have perused the record with their-assistance.

6. The Addl. Session Judge has taken into account all the arguments raised by counsel for both the parties. Relevant portion of his findings is reproduced below:

From the aforesaid it is clear that it is a dispute inter-se between the brother regarding property coming from their father. During the course of arguments, it has also been brought to my notice that the complainant has not challenged the said order dated 18.11.1994. The counsel for the complainant has also failed to rebut this position. It is abundantly clear that the petitioner as administrator was competent and well within its jurisdiction to pass this administrative order and the same was subject to challenge in appeal under the provisions of Haryana Municipal Act, 1973, thus, even if the complainant is to be believed that the totally illegal and erroneous order was passed, even then the same can be challenged in appeal or revision or any order appropriate remedy in accordance with law and the Administrator cannot be held liable for criminal action. The complainant could not bring out any other personal interest of the Administrator in the present case except the vague allegation that she has done so in connivance with his brothers. Thought at this stage, this Court is not to go into the veracity of the affidavit or otherwise into the relative merits of the case because here only the prima facie case is to be seen on the basis of allegations made by the complainant and it is suffice to say that complainant could not even rebut the affidavit filed by him in the civil suit wherein

he himself has claimed the suit property to be ancestral. Without going into the facts of the case, the summoning order against the petitioner is liable to be quashed on the short ground that the petitioner is a public servant and she while acting as such passed an order in her official capacity in discharge of official duty, than in that case, previous sanction u/s 197(1) Cr.P.C. was mandatory. However, there is no such sanction on record.

7. It has been held in *Shambhoo Nath v. State of U.P. & Ors.*, 1997 ACJ 509 (S.C.) : 1997 Cri LJ 279 that Section 197 postulates that "when any person who is 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 appropriate government/authority". The essential requirement postulated for sanction to prosecute the public servant is that the offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. In such a situation, it postulates that the public servant act in furtherance of his performance or his official duty, the public servant is entitled to the protection u/s 197 Cr.P.C. Without previous sanction, the complaint/charge against him for alleged offence cannot be proceeded with the trial. The sanction of the appropriate Government or competent authority would be necessary to protect a public servant from needless harassment or prosecution. The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralizes the honest officer. The requirement of sanction by competent authority of appropriate Government is an assurance and protection to the honest officer who does official duty to further public interest. However, performance of public duty under colour of public duty cannot be camouflaged to commit crime, public duty may provide him an opportunity to commit crime the Court to proceed further in the trial or the enquiry, as the case may be, and filed its mind and records a finding that the crime and the official duty are intimately connected.

8. In view of Section 197 Cr.P.C. and the law laid down by the Hon'ble Court in string of cases, the sanction is mandatory and the bar of the exercise of power by the court to take cognizance of any offence is absolute and complete and the very cognizance is barred and the complaint cannot be taken notice of. Reliance in this regard can be placed on [State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew](#), in the present case, the complainant has miserably failed to show that there was any action on part of administrator to forge, fabricate, misappropriate, commit fraud etc. It may also be mentioned that it has also been held in case of [Dr. Awtar Singh Vs. State of M.P. and Others](#), that sanction is necessary if the alleged act is in discharge of official duty and whether the act is bona fide or mala fide, is not consideration for obtaining sanction. Thus any act done in discharge of official duty would not ipso facto invite criminal liability without

sanction once she has acted in discharge of official duty within its competent and jurisdiction while passing the impugned order. In these circumstances the summoning order dated 21.04.2003 qua petitioner Sumedha Kataria is set aside:

Thus, in view of the findings recorded by the Court below, I do not find any illegality or irregularity in the order of the revisional court, Therefore, the present petition being devoid of any merit is hereby dismissed.