

**(1995) 05 AHC CK 0043****Allahabad High Court****Case No:** Criminal Miscellaneous Application No. 950 of 1995

Virendra Pratap Shahi

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision:** May 23, 1995**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 199(4)
- Penal Code, 1860 (IPC) - Section 500, 504, 506

**Hon'ble Judges:** K.L.Sharma, J**Final Decision:** Dismissed**Judgement**

K.L. Sharma, J.

In this application under Section 482, Or. P.C. the applicant has challenged the validity of prosecution sanction according by the Government for the offences under Sections 500, 504 and 506,I.P.C. and of the order dated 1821995 passed by the Sessions Judge, Gorkahpur pending before him whereby the application of the applicant for dismissing the complaint against him was rejected.

2. I have heard Mr. A.D. Giri, senior Advocate for the applicant as well as learned Additional Public Prosecutor for the State and perused the material brought on record.

3. The learned senior Advocate Mr. Giri has contended that the prosecution sanction has been mechanically granted with out applying mind and does not disclose the authority who has accorded the sanction and as such it is illegal and cannot be made a foundation for prosecution before the learned Sessions Judge, Gorakhpur. In support of his contention Mr. A.D. Giri has invited my attention to the decision of Hon"ble the Supreme Court in the case of P.C. Joshi v. State of U.P. A.I.R. 1961 S.C. 387. The relevant paragraph 4 is reproduced below:

It is not disputed that the Home Secretary was authorised to sanction a complaint for defemation of a Minister of the Government of Uttar Pradesh. The evidence clearly disclose that the Home Secretary had applied his mind to all the material facts before him and had then granted the sanction. Mere production of a document which sets out the names of the persons to be contravened and the purporting to prosecute and the provisions of the statute alleged to be contravened, and purporting to bear the signature of an officer competent to grant the sanction where such sanction is a condition precedent to the exercise of jurisdiction does not invest the court with jurisdiction to try the offence. If the facts which constitute the charge do not appear on the face of the sanction, it must be established by extraneous evidence that those facts were placed before the authority competent to grant the sanction and that the authority applied his mind to those facts before giving sanction. In the present case, the facts constituting the charge appear on the face of the sanction and evidence has also been led that the facts were placed before the sanctioning authority, that the authority considered the facts and sanctioned the prosecution.

4. Mr. AD. Giri cited another decision seeking support for his contention of Punjab and Haryana High Court in the case of *Manmdhan Singh Johal v. State*, AIR 1969 Punj & Har 225. In this case sanction of Government for prosecution was challenged on the ground that it was made by the person not authorised and the order made by the Home Secretary without reference to Minister In charge of the department was declared invalid. The Hon'ble single Judge examined the rules of business framed by the Governor of the State and came to the conclusion that the Home Secretary has not been delegated the power to transact the business without reference to the Minister In charge of that department and there are no Standing Order or direction issued by the Minister In charge authorising the Home Secretary to accord sanction for prosecution. The Hon'ble Single Judge reached inescapable conclusion that the Home Secretary could not will with this policy decision in the case and accord necessary sanction under Section 196A(2) of the Code of Criminal Procedure (1898) on behalf of the Government with a reference to the Minister In charge of the department.

5. The contention whether sanction has been accorded by the Joint Secretary or by the Government can be appreciated only in the light of the contents of the order, Therefore, it is necessary to reproduce the alleged sanction contained in Annexure 3 to this present proceedings. It reads as follows:

6. On bare reading of this sanction letter it is crystal clear that Joint Secretary to the U.P. Government has merely conveyed the decision of the Government to the District Magistrate, Gorakhpur on the subject relating to the sanction for prosecution of Sri Virendra Pratap Shahi and others at Gorakhpur. The language used by the Joint Secretary speaks that the Government has no objection to the prosecution of Sri Virendra Pratap Shahi, Yogendra Chauhan and Tribhuwan Mishra.

It is not correct on the part of the learned Advocate to say that the Joint Secretary has issued this letter on his own authority. In fact, the Joint Secretary to the Government is an officer authorised by the Governor of the State by a notification issued under Article 299 of the Constitution of India to authenticate and communicate the orders passed by the Government. There is nothing to the contrary on record and therefore, I do not find substance in this contention.

7. As regards the nonapplication of mind, I find that this contention is also without substance. The sanction letter issued by Sri Jivesh Nandan, Joint Secretary to the District Magistrate, Gorakhpur reads that the decision has been taken by the Government after proper consideration of the material for prosecution of Sri Virendra Pratap Shahi, Yogendra Chauhan and Tribhuwan Mishra. Annexure2 is the letter dated 5th November, 1994 sent by District Magistrate, Gorakhpur to the Principal Secretary, Home Department, Government of U.P, Lucknow for sanction of prosecution under Section 199 (2) to (5) of the Cr. PC. In this letter he has mentioned all the necessary facts and has also enclosed with the letter the copies of speeches made by Sri Virendra Pratap Shahi and his associates and letter of Additional District Magistrate (City) for due consideration of the Government. He has sought permission of the Government for prosecution. This permission has been conveyed by the Joint Secretary to the Government in the form of "no objection by the Government".

8. Mr. A.D. Giri has strenuously made effort to persuade this Court in support of his contention that mere "no objection" by the Government" means mechanical action and no application of mind. This is a manner of expression and its language varies from one person to another. The reply has to be understood with reference to the question. If the meaning becomes clear, then the mode of expression or the use of particular word does not make the reply invalid I do not consider it necessary to cite examples of various kinds of reply which the people give in their day to day correspondence with regard to a particular subject. Therefore I am not able to accept the contention of Mr. Giri that by using the words "no objection by the Government" prosecution sanction becomes wanting and cannot be a foundation in the complaint lodged by the Public Prosecutor, Gorakhpur in the court of Sessions Judge, Gorakhpur.

9. Mr. A.D. Giri learned Counsel for applicant further challenged the validity of the order dated 1821995 passed by the learned Sessions Judge, Gorakhpur in Special Trial No. 3 of 1995, whereby he has been pleased to reject the application of the applicant for quashing the complaint filed by the public prosecutor for offences under Section 500 (504) 506,I.P.C. Mr. Giri has contended that learned Sessions Judge has not applied his judicial mind to the points raised by the applicant in his application for quashing the complaint against the applicant. I have perused the copy of the order dated 2821995 passed by the learned Sessions Judge, Gorakhpur which is contained as Annexure5 to this application. I find that the applicant moved an application for dismissal of the complaint on the ground that there is no proper

sanction for filing complaint as required by Section 199(4), Cr. PC. This order shows that the learned Counsel for the parties have been heard at length and the material filed on the record has also been examined by the learned Sessions Judge, not only in support of the complaint but also in support of the application. The learned Sessions Judge considered in detail all the contention raised by the learned Counsel for the applicant. He has given his reasons for rejecting all the contentions raised by the learned Counsel for the applicant. The contentions raised by the learned Counsel for the applicant before the learned Sessions Judge, Gorakhpur are one and the same as have been urged by Senior Advocate Mr. AD. Giri before this Court. I am happy to see that learned Sessions Judge has properly considered each and every contention in the light of material on record. He has also further considered the decision of the Hon'ble Supreme Court cited before him and also before this Court. The learned Sessions Judge has rightly understood the principle of law enunciated by Supreme Court in para 4 of the judgment in AIR 1961 S.C. 387. He has properly applied the same principle to the facts of the present case. He has rightly held that the letter of sanction is presumed to be officially correct in view of the legal presumption under Section 114 Illustration (e) of the Indian Evidence Act. He has rightly observed that at the initial stage this presumption has to be raised by the court but it is open to the other party to show to the contrary by adducing evidence during course of trial and if ultimately the legal presumption is rebutted satisfactorily on the basis of evidence the court could have no alternative except to dismiss the complaint on the ground of invalid sanction. The reasons recorded by the learned Sessions Judge in rejecting the contention raised before him are perfectly valid. I do not see any reason to disagree with him. Mere this contention has been raised by Mr. AD. Giri senior advocate of this Court in the present proceeding under Section 482, Cr. P.C. and this Court has also reached the conclusion that no interference is called for, so it cannot be said that the learned Sessions Judge, Gorakhpur has not applied his judicial mind in passing the impugned order dated 1821995 or he has passed the order in a mechanical manner. In my assessment the learned Session Judge has passed the impugned order after proper consideration and hearing and by applying his judicial [mind in accordance with law and in the light of facts and circumstances of the case. Therefore, this contention also does not succeed.

10. After duly considering the submission made by the Senior learned Advocate Mr. Giri I reach the conclusion that the prosecution sanction does not suffer from any infirmity either on the ground of no application of mind or on the ground of lack of authority. No interference with sanction of prosecution is called for. The Government has accorded no objection to the prosecution of the applicant and his two associates after considering the materials received from the District Magistrate, Gorakhpur. The decision of the Government has been properly and legally communicated by the Joint Secretary to the Government. The impugned order dated 1821995 passed by the Sessions Judge, Gorakhpur in Special Trial No. 3 of 199 has been passed after

proper consideration and hearing on the contention raised by the applicant in his application and the learned Sessions Judge has exercised his judicial mind and the order has not been passed in a mechanical manner. This application under Section 482, Cr. P.C. is hereby dismissed.