
(1988) 1 GLJ 299 : (1988) 2 GLR 441

Gauhati High Court

Case No: Criminal Revision No. 59 of 1985

A.R.Laskar

APPELLANT

Vs

Dwijendra Kumar Das

RESPONDENT

Date of Decision: March 7, 1988

Acts Referred:

- Assam Repealing Act, 1986 - Section 197(3), 197(3), 197(5)(b), 197(5)(b)

Citation: (1988) 1 GLJ 299 : (1988) 2 GLR 441

Hon'ble Judges: S.N.Phukan, J

Bench: Single Bench

Advocate: L.Talukdar, B.Dutta, A.Sharma, Advocates appearing for Parties

Judgement

1. This Petition is directed against the order dated 12.10.84 passed by the learned Additional Chief Judicial Magistrate, Gauhati in Case No. 163C of 1983.

2. The petitioner who is an accused in the above noted case is a member of the Assam Civil Service. In the year 1982 he was posted at Rangiya as SubDeputy Collector being a Member of Assam Civil Service Class II and he was also parttime Executive Officer of the Rangiya Municipal Board. It is alleged that on 14.10.81 at about 6 30 P.M. while the Respondent was preparing molasses for the purpose of feeding cattle the petitioner along with C.R.P.F, personnel entered into the premises of the respondent with a revolver in his hand and asked the Respondent to come out with boiled molasses in cauldron and made him to stand with the said boiled cauldron on the P W.D. Road. The respondent started crying and thereafter the petitioner took the respondent to his house and again brought him to the P.W.D. Road with the cauldron of molasses and compelled him to eat the said molasses which was meant for cattle feed before public. It is further alleged that the petitioner started beating with a cane rod and also threatened to kill the respondent with his revolver.

3. Being aggrieved, the Respondent filed a complaint petition before the learned Chief Judicial Magistrate, Kamrup Gauhati and the learned Court made an enquiry U/S 202 Cr. P.C and after being satisfied that a prima facie case against the petitioner under Sections 342 and 506 1PC was made out, directed issuance of processes against the petitioner. The petitioner took the plea that sanction U/S 197 Cr. P.C. was necessary as he was acting in discharge of his official duty. At the relevant time Section 197 Cr. P.C. was amended and a new Subsection, namely, Subsection (5) was added and in view of the aforesaid Subsection, the learned Court stayed the proceeding for making a reference to the State Government. Being aggrieved,, the opposite party approached this Court by invoking revisional jurisdiction and this petition was registered as Criminal Revision No. 31 of 1984. This Court by an order dated 7584 passed in the above Criminal Revision set aside the order of the learned trial Court and directed the learned trial Court to decide the question whether sanction under Section 197(1) was required. After hearing both the parties and considering materials on record the learned Court by the impugned order held that in the present case also reasonable connection cannot be help to be present between the act of the accused and discharge of official duty. To force the complainant to hold the cauldron of boiled molasses on the road for a certain time, to force him to swallow some boiled molasses,, to beat him by cane on his refusal to take any further, cannot be considered to be the act done in discharge of official duty. Accordingly, the learned Court held that sanction under Section 197 Cr, P.C. was not necessary. The learned Court, however, allowed the present petitioner to place materials on record during the course of trial for showing what was his duty as public servant and also that the alleged acts were related with his official duty. Being aggrieved, the petitioner has approached this Court.

4. By the Criminal Procedure Code (Assam Amendment) Ordinance, 1983 (Assam Ordinance III of 1983) which was published in the Gazette on 7th July. 1983 some Sections of the Code of Criminal Procedure were amended including Section 197. Two subsections, namely, subsections (5) and (6) were inserted in Section 197. For the present purpose subsection (5) is relevant and is reproduced below :

197½(5). Notwithstanding anything contained in this Code :

(a) where a complaint is made to a Court against a public servant belonging to any class or category specified under subsection (3) alleging that he has committed an offence, the Court shall postpone the issue of process against the accused and make a reference to the State Government; or

(b) where an accused, either by himself or through a pleader, claims before a Court that he belongs to any class or category specified under subsection (3) and that the offence alleged to have been committed by him arose out of any action taken by him while acting or purporting to act in, or in connection with, the discharge of his official duty, the Court shall forthwith stay further proceeding and make a reference to the State Government."

Subsequently the Criminal Procedure Code (Assam Amendment Act, 1983 (Assam Act III of 1984) which received the assent of the President was enacted and the said Act was published in the Gazette on 8th February, 1984. By this Act the above subsection (5) was introduced as a new subsection along with subsection (6) to Section 197 of the Code of Criminal Procedure.

5. From reading Clauses (b) and (b) to subsection (5) it appears that the present case comes under Clause (b) as the occurrence took place prior to the promulgation of the Ordinance, i.e., 7th July, 1983 and the complaint petition was filed on 22.1.82. This amendment, viz., Act III of 1984 was repealed by the Assam Repealing Act 1986 (Act VI of 1986) which was published on 27th June, 1986.

6. From Clause (b) of subsection (5) of Section 197 Cr. P.C., it appears that the protection given to any public servant is available provided he belongs to any class or category specified under subsection (3). It is, therefore, necessary first to consider whether the present petitioner comes under the said category before I proceed to consider the effect of the Repealing Act of 1986.

7 Subsections (2) and (3) of Section 197 Cr. P.C. as it stood prior to the amendments made by the State of Assam are as follows :

"(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty except with the previous sanction of the Central Government."

"(3) The State Government may, by notification, direct that the provisions of subsection (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that subsection will apply as if for the expression "Central Government" occurring therein the expression "State Government" were substituted".

, Subsection (3) was first amended by the Code of Criminal Procedure (Assam) (Amendment) Ordinance, 1980 (Ordinance No, IX of 1980) and subsequently this Ordinance was replaced by the Code of Criminal Procedure (Assam) (Amendment) Act, 1980 (President's Act No. III of 1980) and this amendment was given effect to from 5th June, 1980. By the above Act subsection (3) of Section 197 Cr.P.C. was substituted by inserting the following subsection (3) :

"3. In the principal Act for subsection (3) of Section 197, the following subsection shall be substituted, namely :

(3) The State Government may, by notification, direct that the provisions of subsection (2) shall apply

(a) to such class or category of the members of the Forces charged with the maintenance of public order, or

(b) to such class or category of other public servants (not being persons to whom the provisions of section (1) or subsection (2) apply) charged with the maintenance of public order, as may be specified in the notification, wherever they may be serving, and thereupon the provisions of subsection (2) shall apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted."

From the above amendment it is clear that the above subsection shall not apply to public servants who were already covered by subsection (1) or subsection (2) of Section 197 Cr.P.C. Admittedly, the petitioner who is a member of the Assam Civil Service was not removable from his office save by or with the sanction of the Government, and as such, his case was not covered by the amended subsection (3) as his case is covered by subsection (1) of Section 197 Cr. P.C. Accordingly, in Criminal Revision No. 31 of 1984 by the order dated 7.5.84 this Court held as follows :

"Now, there is no dispute that in so far as the opposite party No. 1 is concerned, his case is covered by Section 197(1) as admitted by Shri Bhattacharyya appearing for O.P. No. 1 as he said to belong to Assam Civil Service II In view of this matter, no question of reference to the State Government U/S. 197(5)(b) would have arisen".

Accordingly, this Court directed the learned trial Court to consider the case of the present petitioner as to whether sanction under subsection (1) of Section 197 Cr. P.C. was required or not.

8. However, subsection (3) of Section 197 Cr. P.C. was again amended by the Criminal Procedure (Assam Amendment) Act, (Assam Act XX of 1984) and following subsection was inserted as subsection (3) :

"(3) The State Government may, by notification, direct that the provisions of subsection (2) shall apply (a) to such class or category of the members of the Forces charged with the maintenance of public order, or

(b) to such class or category of other public servants charged with the maintenance of public order, as may be specified in the notification, wherever they may be serving, and thereupon the provisions of subsection (2) shall apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted."

This Act Was given retrospective effect and the above amendment came into force on and from 5th day of June, 1980.

9. Mr. Talukdar has drawn my attention to notification No. PLA. 95/8 /29 issued by the Government of Assam and published in the Gazette on 17th June, 1980. By this notification the Government directed that subsection (2) of Section 197 Cr. P.C shall

apply to the members charged with maintenance of public order mentioned in the said notification and under item No. 3 of the said notification all Executive Magistrates and Special Executive Magistrates within their respective jurisdiction were also covered by the said notification. Mr. Talukdar has also drawn my attention to Notification No. AAP.261/78/179 dated 29th June, 1981 by which the Government of Assam appointed all members of Assam Civil Service Class 11 as Executive Magistrates within the local limits their jurisdiction for a period of six months from Third July, 1981 to Second January, 1982. According to Mr. Talukdar as on the alleged date of occurrence the petitioner was an Executive Magistrate by virtue of the above notification he is covered under subsection (2) of Section 197 Cr.P.C. and consequently the provisions of Clause (b) of the newly inserted subsection (5) will come into operation in his case.

10. Clause (b) of subsection 197 Cr.P.C. is applicable to any class or category of public servant specified under subsection (3) of Section 197 Cr P.C. There is no dispute that on the date of occurrence subsection "(3) was not applicable to the present petitioner However, by virtue of the Code of Criminal Procedure (Assam Amendment) Act, 1984 (Assam Act XX of 1984) subsection (3) (was amended and this amendment was given retrospective effect from>5th day of June, 198& From the language of Clause (b) of the said newly, inserted sub section, (this clear that sub section (2) of Section 197 may be made applicable to any class or category of public servants charged with the maintenance of public order, in view of the notification of the Govt. of Assam No. PLA. 95/80/29 published on 17th June, 1980 in the Gazette subsection (2) of Section 197 would apply to the petitioner as he was an Executive Magistrate provided he was charged with maintenance of public order in the State. As this amendment of subsection (3) was made by Act XX of 1984 the protection contained therein was not applicable to the petitioner when the Criminal Revision No. 31 of 1984 was disposed of by this Court on 7.5.84 and accordingly this Court held that no reference under Clause (b) of sub section (5) of Section 197 Cr. P.C. need be made to the State Govt. But in view of the aforesaid amendment the situation has changed and the petitioner is entitled to protection contained in Clause (b) of subsection (5) of Section 197.

11. To attract provisions of Clause (b) of subsection (5) of Section 197 Cr. P. C., two conditions must be fulfilled, namely, accused either by himself or through a pleader has to claim Before a Court that he belongs to any category specified under subsection (3) of the said Section and that offences alleged to have been committed by him arise out of any action taken by him while acting or purporting to act in or in connection with the discharge of his official duty. The claim made by the present petitioner under the above Clause(b) was rejected by this Court in the aforesaid Criminal Revision No. 31 of i984 with a direction to the learned lower Court to decide whether sanction is necessary under subsection (1) of Section 197 Cr. P. C. As stated earlier this was done as because at the relevant time the Assam Act XX of 1984 was not in the statute book. After this Act came into force the present petitioner did not put in any fresh claim under the aforesaid Clause (b) and now he cannot put in any such claim as the subsection (5) of Section 197 Cr. P.C.

has been repealed by the Repealing Act of 1986. Regarding the second condition of Clause (b) that the alleged offence was committed while acting or purporting to act in discharge or in connection with his official duty the claim put forward should be bonafide and genuine and not fanciful and the court has jurisdiction to enquire into the matter for prima facie satisfaction?) In the present case while (considering the question of sanction under subsection (1) of Section 197 Cr. P. C. the learned trial Court has clearly held that :there is no reasonable connection between the act alleged to ,have been committed by .the petitioner and discharge of his official duty. Assuming that petitioner can claim protection under Clause (b) of subsection (5) of Section 197 Cr. P. C. though this subsection has been repealed. I do not find any material for allowing the petitioner to claim the protection in view of the above finding J of the learned trial Court.

12. Mr. Talukdar submits that the Assam Repealing Act, 1986 was not given retrospective effect, and as such, all matter which are pending prior to the aforesaid Act shall be governed by the provisions of Section 197 Cr. P. C. as it stood prior to coming into force of the said Repealing Act Section 3 of the Repealing Act runs as follows :

"3. Notwithstanding any order passed by any authority under the Act repealed, all cases will be deemed to have been pending before the Court competent to try such cases under the Code of Criminal Procedure Act, 1973 and the said case to in and with other or said authority any Act, provisions accordance such under 1973.İ½< Procedure Criminal Code cases try proceed shall 1973 competent transİ½ferred stand before Magistrate Executive

(emphasis supplied)

13. From the said Section 3 of the Repealing Act the intention of the legislature is clear that all pending cases shall be tried by the Court in accordance with the provisions of the Criminal Procedure Code, 1973. In other words, the Court shall try the case as if Criminal Procedure (Assam Amendment) Act, 1983 (Assam Act III of 1984) was not in the statute book. The present dispute is pending for trial and in view of the above clear provision in Section 3 of the Repealing Act the petitioner, cannot claim any protection whatsoever under subsection (5) of Section 197 Cr. P. C. So, the contention of Mr. Talukdar has no force.

,14. . Mr. Talukdar submits that by the Assam Repealing Act. 1986 the Act of Criminal Procedure (Assam Amendment Act of 1984) (Assam Act XX of 1984) was tot repealed, and as such the petitioner is entitled to get the benefit under the aforesaid Act. By this amendment power was given to the State Govt. to apply the provisions of subsection (2) to any class or category of public servant charged with the maintenance of public order. Subsection (2) of Section 197, inter alia, provides that no Court shall take cognizance of any offence against members of the Armed Forces of the Union while acting or purporting to act in discharge of official duty without previous sanction. Reading subsections (2) and (3) it is clear that only protection the petitioner can get is protection of previous sanction

from the Government if the alleged offence was committed in discharge of his official duty. Even otherwise the petitioner gets the protection of previous sanction under subsection (1) of Section 197 Cr. P. C as he is not removable from office save by or with the sanction of the Government as he is a member of the Assam Civil Service.

15. Situated thus I hold that the present petitioner is not entitled to get protection under the repealed provisions of Clause (b) of subsection (5) of Section 197 Cr. P. C. and that only protection the petitioner is entitled to get is the protection provided under sub section (1) of Section 197 Cr. P. C.

16. The contention of Mr. Talukdar, learned counsel for the petitioner is that the petitioner who was appointed as the Executive Officer of the Municipal Board had all powers of the said Municipal Board, and as such, keeping in view the provisions of Section 227 of the Assam Municipal Act, 1956 and Section 2 of the Prevention " of Food Adulteration Act, 1954 it was the official duty of the petitioner to prevent sale etc of adulterated food. Section 227 of the Assam Municipal Act, 1956 only empowers the Municipal Board to appoint an Inspector and entrust him with powers as prescribed by Rules under the Prevention of Food Adulteration Act, 1954. There is nothing on record to show that the petitioner was so entrusted under the aforesaid Section 227 of the Municipal Act. Nothing has been brought to my notice that under the above two Acts or Rules framed thereunder the petitioner had any duty to perform under the Prevention of Food Adulteration Act, 1954. So, at this stage I cannot accept the contention of Mr. Talukdar.

17. In the case in hand the learned trial Court relying on the decisions of the Apex Court held that sanction to prosecute the petitioner is not necessary as according to learned lower Court there was no nexus between the alleged offence and the discharge of official duty by the petitioner.

18. This Court in K. P. S. Gill and another vs. Dimbeswar Sarma and others, (1983) 1 GLR (NOC) 31 exhaustively dealt with the provisions of Section 197 Cr. P. C. and laid down the criteria where such sanction is necessary. This Court held, inter alia, that the crucial question is whether the acts constituting the offence were committed by the accused in his capacity as a public servant and the question of sanction cannot arise unless the act complained of is an offence; the offence alleged must have something to do with or must be related in some manner with the discharge of his official duties, i.e. there must be some, reasonable connection between the Act and the official duty In MATAJOG DO BEY vs. H. C." BHARI, AIR 1986 S. C. 44, the Apex Court while considering Section 197 Cr. P. C. held as follows:

"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 pretending or fanciful claim; that he did it in the course of the performance of his duty."

19. The allegation of forcing the Respondent to remain standing on the public road by holding the boiled cauldron of molasses by hand and thereafter forcing the Respondent to swallow the molasses which was prepared as cattlefeed and also beating the respondent by the petitioner can by no stress of imagination be said to have any relation with the discharge of official duty of the petitioner.

I am, therefore, of the opinion that the learned trial Court rightly held that sanction under Section 197 Cr. P. C. is not necessary in the present case

20. I do not find that the impugned order suffers from any illegality or irregularity, and as such the present petition is liable to be dismissed, which I here by do.

In the result, the petition is dismissed and the Rule is discharged.