

(1986) 04 MP CK 0005

Madhya Pradesh High Court (Indore Bench)

Case No: None

Kailashchandra

APPELLANT

Vs

Harbans Singh Chabra
and Others

RESPONDENT

Date of Decision: April 11, 1986

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197
- Penal Code, 1860 (IPC) - Section 109, 120B, 161, 219, 34

Citation: (1987) CriLJ 1423

Hon'ble Judges: K.L. Shrivastava, J

Bench: Single Bench

Judgement

K.L. Shrivastava, J.

This revision petition is directed against the order dated 30-9-82 passed by the Chief Judicial Magistrate. Dhar in Criminal Case No. 499 of 1982 holding that for want of sanction u/s 197(1)(b) of the CrP.C, 1973 (for short "the Code") cognisance of offences cannot be taken against the non-applicant Harbans Singh Chhabra, Tahsildar Badnawar, District Dhar.

2. The circumstances giving rise to the petition are these. The applicant filed a criminal complaint against the non-applicant Harbans Singh and three others for action under the Code in respect of offences under Sections 448, 219, 219/109, 506 and 427/34, I.P.C. on the ground that the said Harbans Singh in collusion with the other co-accused persons unauthorisedly issued a notice to him to close the ventilator of his residence and despite being told that under the M.P.L.R. Code, 1959, he had no jurisdiction to deal with the matter, got the said ventilator closed.

3. On service of summons, the non-applicant Harbans Singh raised a preliminary objection as to want of sanction as required u/s 197(1)(b) of the Code against cognisance of offences being taken against, him. The learned trial Magistrate

sustained the objection and hence this revision.

4. The non-applicant Harbans Singh as Tahsildar is a public servant not removable from his office save by or with the sanction of the State Government and according to Section 197(1)(b) if such a person 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 State Government.

5. The petitioner's contention is that the acts of the non-applicant Harbans Singh constituting the offences were completely outside the scope of his official duty and, therefore, there was no question of requirement of any sanction and the impugned order deserves to be set aside. Reliance was placed on the decision in AIR 1948 156 (Privy Council)

6. The contention sought to be canvassed on behalf of the non-applicant Harbans Singh is irrespective of any question of mala fides, as the offences complained of were committed by him purporting to act in the discharge of his official duty, sanction u/s 197(1)(b) of the Code is necessary. Reliance was placed on the decision in AIR 1945 21 (Federal Court) .

7. It is in public interest that public servants perform their duty fearlessly. As pointed out in the decision in Kulwant Singh's case (1986 Current Criminal Judgment Note 3) the provision regarding previous sanction being condition precedent for prosecution, affords the public servant the necessary safeguard of security by the Government so that sanction is granted only in deserving cases and vexatious prosecutions are avoided. The right approach to the import of the expression "any offence alleged to have been committed while acting or purporting to act in the discharge of his official duty" lies between the two extremes of construing it too narrowly or too widely. If construed too narrowly the provision would be rendered altogether sterile. It is not the duty so much the Act which requires examination.

8. Sanction is not always a pre-condition for prosecution of a public servant even if the act complained of is done by him while he is actually engaged in the performance of his official duty. It is only when the act complained of is directly connected with his official duty that sanction is necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties, the protection u/s 197 as to previous sanction is attracted. Where the official status only furnishes the accused an occasion or an opportunity of committing the offence, there is no necessity of sanction. In this connection the decision in [Bajinath Gupta and Others Vs. The State of Madhya Pradesh](#), may usefully be perused. In the decision in Kulwant Singh's case (supra) it has been observed as under:◆

In construing the provision pertaining to previous sanction a line has however to be drawn between the acts which fall within the narrow inner circle of strict official duties and acts outside the scope of official duties. As the acts falling in the inner

circle referred to above cannot by any stretch of imagination be said to constitute an offence, sanction would certainly be necessary but would generally not be granted. In respect of acts outside the scope of official duty and constituting an offence, no protection is available and, therefore there is no question of requirement of any sanction for prosecution. If these two categories of acts are represented as falling within the smallest and largest of three concentric circles, it is in respect, of the acts which fall within the circle in between these two circles and are alleged to constitute an offence that the question of sanction usually crops up. In other words, the acts which fall outside the strict official duties but are not outside the scope of such duties and are alleged to constitute an offence alone generally give rise to the question of previous sanction for prosecution.

9. It is true that an act merely because it was done negligently does not cease to be done or purporting to be done in execution of duty but where the act is not part of the official duty no sanction u/s 197 of the Code is necessary. Reference in this connection may usefully be made in the decisions in [Pukhraj Vs. State of Rajasthan and Another](#), and [Bhagwan Prasad Srivastava Vs. N.P. Mishra](#), . The last one is a case in which a superior officer having ill-will and malice had abused his junior officer. The act was held as not directly connected with his official duty.

10. In the decision in *Albert W.H.'s case* (1948-49 Cri LJ 660) (PC) (supra) the earlier decision of the Privy Council in AIR 1948 128 (Privy Council) has been referred to and the following excerpt from the portion of that judgment extracted in paragraph 20 is apposite : ◆

A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act; nor does a Government Medical Officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant if challenged, can reasonably claim that what he does, he does in virtue of his office. A public servant charged with an offence u/s 120B read with Section 161, Penal Code cannot justify his act of receiving bribe as an act done by him by virtue of the office that he held.

11. In the present case, it is clear that the non-applicant Harbans Singh cannot justify the acts complained of "as acts done by him by virtue of the office that he held". His merely saying that he had been acting by virtue of his office is in eye of law not sufficient to attract the protective provision embodied in Section 197(1)(b) of the Code.

12. It may be mentioned that the applicant has stated that he claims no relief against the other three non-applicants.

13. In the result, the revision petition is allowed. The impugned order is set aside and it is directed that the learned trial Magistrate, without any previous sanction u/s 197(1)(b) of the Code shall proceed to deal with the complaint against the non-applicant Harbans Singh according to law.