

(2009) 10 MAD CK 0278

Madras High Court

Case No: Criminal O.P. No"s. 5186/04, 10996/03, 15166/04 and Cr. MP. No"s. 3714/03, 1622/04 and 5356/04

Sakthivel and Others

APPELLANT

Vs

S. Kalasthiri

RESPONDENT

Date of Decision: Oct. 21, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197, 197(1), 197(2), 197(3)
- Penal Code, 1860 (IPC) - Section 147, 148, 166, 341, 380
- Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 - Section 3

Hon'ble Judges: Aruna Jagadeesan, J

Bench: Single Bench

Advocate: V. Jeevagiridharan, in Criminal O.P. 5186/04, 15166/04 and T.R. Ravi, in Criminal O.P. 10996/03, for the Appellant; K. Umar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Aruna Jagadeesan, J.

These Criminal Original Petitions are filed seeking to quash proceedings in PRC. No. 3 on the file of the learned Judicial Magistrate II, Tirupathur, Vellore District.

2. The Petitioner in Cr.OP. No. 5186/04 is A1, the Petitioners in Cr.OP.10996/03 are A10 and A11 and the Petitioners in Cr.OP.15166/04 are A2 to A9 in the private complaint lodged by the Respondent which has been taken cognizance in PRC. No. 3/2003 by the learned Judicial Magistrate II, Tirupathur for the alleged offences under Sections 147, 148, 451, 427, 341, 166, 380 of IPC and Section 3 of the TNPPD Act in regard to an incident that is said to have occurred on 16.11.2002.

3. A1 is the Block Development Officer and A2 is the Assistant of Kadili Panchayat Union, A3 is the District Councillor of Veppampalampatti Village, A4 is the Vice

President of Udayamuthur Panchayat, A5 to A9 are the Councillors, A10 is the Village Administrative Officer and A11 is the Assistant Block Development Officer.

4. It is alleged by the complainant/President, Udayamuthur Panchayat, Tirupathur Taluk, Vellore District that the accused have conducted a grama sabha meeting in his absence on 16.11.2002 and to conduct the same, they broke open the almirah of the Panchayat with lethal weapons and took away records. Further, they threatened the staff by name Gunasundari and compelled her to write the resolution as expressed by them and thus contravened the provisions of the Tamil Nadu Panchayat Act (herein after referred to as the Act) and various other Government Orders made in this regard.

5. Mr. V. Jeevagiridharan and Mr. T.R. Ravi, the learned Counsel for the Petitioners submitted that the Vice President[A1] is empowered under the provisions of the Act and various Government Orders to conduct the grama sabha meetings, if the President failed to conduct the same on improper reasons and in the present case, as the Respondent/President adamantly refused to conduct the grama sabha meeting as scheduled, it resulted in problems and the people resorted to road roko agitation and the officials were made to wait from morning till evening and in such circumstances, as the President failed to conduct the meeting, the Vice President[A1] and other Petitioners/accused have conducted the said meeting to satisfy the village people and therefore, there is no illegality or violation of any rule made under the Act.

6. The learned Counsel for the Petitioners would further submit that the complaint is a sheer abuse of process of law and that no cognizance could be taken without a sanction of the Government as required under Sub-section (2) of Section 197 of the Code of Criminal Procedure, when the Petitioners were discharging their official duty as the President failed to conduct the grama sabha meeting as scheduled on 16.11.2002.

7. The learned Counsel for the Petitioners placed reliance on the decision of the Honourable Supreme Court rendered in the case of N.K. Ogle v. Sanwaldas @ Sanwalmal Ahuja CDJ 1999 SC 175 wherein the Honourable Supreme Court had observed that before coming to a conclusion as to whether the provision of Section 197 of Code of Criminal Procedure will apply, the Court must come to a conclusion that there is a reasonable connection between the act complained of and the discharge of official duty; the act must bear such relation to the duty that the accused lay a reasonable claim that he did it in the course of the performance of his duty.

8. The learned Counsel for the Petitioners would further submit that applying the aforesaid ratio to the case on hand, the act of the Petitioners in conducting the grama sabha meeting in the absence of the President and doing some acts which is complained of as amounting to commission of certain offence was in discharge of

their official duty which they were required to do in order to satisfy the people who had gathered there to participate in the said meeting and in such circumstances, the said act cannot be said to have been done not in discharge of their official duty.

9. The learned Counsel for the Petitioners also referred to a decision of this Court rendered in the case of *J. Murugesan v. The State* by Deputy Superintendent of Police CBCID CDJ 2004 MHC 874 that the accused need not wait till quashing the cognizance taken by the learned Magistrate, when there was no sanction till the stage of framing charges and has held that it is a prohibition imposed by the Statute from taking cognizance for the alleged acts committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty.

10. On the other hand, the learned Counsel for the Respondent relied on the decision of the Honourable Supreme Court rendered in the case of [Shambhoo Nath Misra Vs. State of U.P. and others](#), . The Honourable Supreme Court, while considering a case as to whether the accused was discharging his duties as a Government Servant when he was alleged to have misappropriated the amount in question by forging the signatures of the complainant, though held that misappropriation of public fund and fabrication of record cannot be said that the accused have acted in discharge of his official duties, as it is not the official duty of the public servant to fabricate the false record and misappropriate the funds in furtherance of or in the discharge of his official duty, but it laid stress on the point that the essential requirement postulated for sanction to prosecute a 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. It held thus:

4. ...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 that the public servant's act is in furtherance of his performance or his official duties. If the act/ omission is integral to performance of public duty, the public servant is entitled to the protection u/s 197(1) of Cr.PC. Without previous sanction, the complaint / charge against him for the alleged offence cannot be proceeded with the trial.

11. In the decision of the Honourable Supreme Court rendered in the case of [Rizwan Ahmed Javed Shaikh and Others Vs. Jammal Patel and Others](#), the Honourable Supreme Court has held thus:

15. The real test to be applied to attract the applicability of Section 197(3) is whether the act which is done by a public officer and is alleged to constitute an offence was done by the public officer whilst acting in his official capacity though what he did was neither his duty nor his right to do as such public officer. The act complained of may be in exercise of the duty or in the absence of such duty or in dereliction of the duty, if the act complained of is done while acting as a public officer and in the

course of the same transaction in which the official duty was performed or purported to be performed, the public officer would be protected.

12. The real test to be applied to attract the applicability of Section 197(3) is as to whether the act which is done by a public servant and is alleged to constitute an offence was done whilst acting in his official capacity, though what he did was neither his duty nor his right to do as a public servant. It is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it.

13. In the case of [Bhagwan Prasad Srivastava Vs. N.P. Mishra](#), the Honourable Supreme Court has laid emphasis on the "act" and not duty which required examination to decide whether the act must fall within the scope and range of the official duties of the public servant concerned. The essential requirement is reasonable connection between the act and official duty and it does not matter if the act exceeds what is strictly necessary for discharge of the duty. The said view is stressed by the Honourable Supreme Court in the decision rendered in the case of [B. Saha and Others Vs. M.S. Kochar](#), which is extracted below:

18. The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the Section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be." In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. As pointed out by Ramaswami, J. in [Bajinath Gupta and Others Vs. The State of Madhya Pradesh](#), at p 222 "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 contemplated by Section 197 of the Code of Criminal Procedure will be attracted."

19. In sum, the sine qua non for the applicability of this section is that the offence charged be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.

14. It is settled by the aforesaid pronouncements of the Honourable Supreme Court that when a public servant is charged with an offence, whether sanction is or is not necessary must be determined with reference to the allegation in the complaint. A

good test will be whether the public servant if challenged can reasonably claim that what he did, he did it in virtue of his office.

15. In the case on hand, from the facts alleged in the complaint, a case is made out ipso facto that the Petitioners have acted or purported to act in the discharge of their official duties and in doing so had committed some acts complained of as offence. On facts and circumstances of the case, I am of the considered view that the learned Magistrate ought not to have entertained the complaint unless it appears that the sanction to prosecute them has been obtained. Therefore, the cognizance of offences taken by the learned Magistrate against the Petitioners without sanction u/s 197 of the Code of Criminal Procedure is illegal and liable to be set aside and accordingly, it is set aside.

16. In the result, these Criminal Original Petitions are allowed. No costs. Consequently, the connected MPs are closed.