(1977) 08 BOM CK 0021

Bombay High Court (Nagpur Bench)

Case No: Criminal Revision Application No. 126 of 1976

Vithalrao Madhaorao Walke		APPELLANT
	Vs	
Gulabrao Baliraji Barai and another		RESPONDENT

Date of Decision: Aug. 25, 1977

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197, 200, 202, 203
- Penal Code, 1860 (IPC) - Section 120B, 323, 341, 348, 420

Citation: (1977) MhLj 862

Hon'ble Judges: M.D. Kambli, J

Bench: Single Bench

Advocate: G.M. Joshi, for the Appellant; B. P. Jaiswal, for non-applicant No. 1 and M.P. Badar, Asstt. Government Pleader, for non-applicant No. 2, for the Respondent

Final Decision: Dismissed

Judgement

M.D. Kambti, J.

The applicant-original complainant Vithalrao Madhorao Walke, ex-Judicial Clerk, Co-operative Court, Nagpur, challenges in this petition, the dismissal of his complaint by Additional Chief Judicial Magistrate, Nagpur, on the ground that there was no previous sanction for instituting the complaint u/s 197 of the Code of Criminal Procedure.

2. The facts giving rise to the complaint filed by the petitioner are as follows : At the material time the petitioner was working as the Head Clerk-cum-Judicial Clerk of the Co-operative Court, Nagpur. The non-applicant No. 1 Shri Gulabrao Baliramji Barai was a Judge of the Co-operative Court, Nagpur, appointed by the Government of Maharashtra vide the Gazette Notification dated 15-2-1975. Dr. Radhakrishnan, the Ex-President of India, died on 17-4-1975. It appears that the State of Maharashtra

had declared the next

day i. e. 18-4-1975 as holiday on that account. It is the case of the petitioner-complainant that as 18-4-1975 was declared a holiday, he went to the office of the Co-operative Court on that day at 10-30 a. m. He declared the holiday to the staff under him and affixed a notice regarding holiday for that day. While lie was going out of the gallery outside the Court, the non-applicant No. 1 Shri Barat, the Judge of the Co-operative Court came there. According to the petitioner-complainant, he (the petitioner) gave him the idea of what he did. Then the non applicant No. 1 put his hand into the pocket of the pant of the petitioner to snatch away the keys, but the petitioner resisted. According to the petitioner, the non-applicant No. 1 pressed his throat and on that account the petitioner sustained nail injuries on the throat. Some persons mentioned in the complaint intervened and the quarrel came to an end. The petitioner stales that thereafter he reported the matter to the Police on the very day, however, the Police did not take any action against the non-applicant No. 1. He, therefore, filed a complaint in the Court of the Judicial Magistrate, First Class, Nagpur on 14-7-1975.

3. The complainant was examined by the learned Magistrate on 17-7-1975 as required by section 200 of the Code of Criminal Procedure. The Magistrate then ordered the complaint to be registered under sections 323 and 341 of the Indian Penal Code. Notice was directed to be issued to the non-applicant No. 1. This was on 17-7-1975.

4. At this stage it may be noted that the petitioner-complainant did not mention in the complaint that the non-applicant No. I-accused was the Judge of the Co-operative Court. It appears that the verification i. e. the examination u/s 200 of the Code of Criminal Procedure also did not bring out the fact that non-applicant No. 1-accused was the Judge of the Co-operative Court. Ultimately on 10-9-1975 the non-applicant No. I-accused moved an application before the learned Magistrate praying therein that the complaint be dismissed as being untenable in view of the provisions in section 197 of the Code of Criminal Procedure Code. It was pointed out in that application that the complainant had initially described in the complaint this non-applicant No. 1-accused by his description "Presiding Officer, Co-operative Court, Nagpur", but later on he scratched that portion from the copy which was filed by him in the Court to be served upon the accused. According to the non-applicant No. 1-accused, the complainant had intentionally suppressed the material fact that the non-applicant No. 1 was the Judge of the Co-operative Court, Nagpur, with a view to secure registration of the complaint in contravention of section 197 of the Code of Criminal Procedure, 1973. In his said application the non applicant No. I submitted that the alleged incident had taken place. While the non-applicant No. 1 had gone to the premises of the Co-operative Court, in his capacity as the Judge of the Co-operative Court, acting or purporting to act in the discharge of his official duties. It was further submitted that the non-applicant No. 1 had on the day of the

alleged incident gone to the Court to adjourn the cases and give suitable dates to the lawyers present and the litigants coming from far off places. It was contended in the said application that no cognizance of the complaint against the non-applicant No. 1 could be taken without previous sanction of the State Government and that the complaint was, therefore, liable to be dismissed forthwith.

5. After hearing the parties, the learned Additional Chief Judicial Magistrate, Nagpur, found that the non-applicant No. 1 who was occupying the position of the Judge of the Co-operative Court, Nagpur, at the material time had complete control over the staff of his Court, that he had every right to demand and take keys of the Court from the complainant, that the complainant according to the contents of his own complaint resisted the attempt of the non-applicant No. 1 to take keys and that therefore, the non-applicant No. 1 was justified in using the requisite force to compel the complainant to deliver the keys. According to the learned Magistrate, the non-applicant No. 1 accused could very well be said to have acted in the discharge of his official duties when the complainant-petitioner was not obeying his superior officer and was not giving the keys to him. The learned Magistrate further observed that assuming that the accused exceeded his right of using some force, it could be said that while discharging his duty he exceeded his right; but even then the nexus is not lost and even for such offence the previous sanction would be necessary. It appears that the case of the Supreme Court in Pukhraj Vs. State of Rajasthan and Another, was cited before the learned Magistrate. The learned Magistrate observed that he need not wait further to find out whether there was sufficient material on record to come to the conclusion whether sanction u/s 197, Criminal Procedure Code was necessary and that the complaint was liable to be thrown out at that very stage. Being aggrieved, the petitioner-complainant has preferred this application in revision,

6. Mr. Joshi, (he learned counsel for the petitioner-complainant, contended that the day of the alleged incident viz. 18-4-1975 was a holiday and that therefore, the non-applicant No. 1 Judge was not performing or was not required to perform any official duty on that day. He further contended that the non-applicant No. 1-accused had not shown that at the material time he was acting or purporting to act in the discharge of his official duties. According to him, the non-applicant No. 1-accused had not made out any case in that behalf and that therefore, the learned Magistrate was in error in dismissing the complaint.

7. On the other hand Mr. Jaiswal, the learned counsel for the non-applicant No. 1 (the original accused) submitted that 18-4-1975 was abruptly declared a holiday on account of the demise of Dr. Radhakrishnan, Ex-President of India. That was a day being not a usual holiday. The lawyers and litigants must have come to the Court. It was necessary, therefore, to adjourn the cases and give suitable dates to the lawyers and the litigants, especially those coming from far off places. As the petitioner had closed the premises it was necessary for the non-applicant No. 1 to

open the premises and do his official work. It was, therefore, necessary for him to obtain the keys. Mr. Jaiswal submitted that it is clear from the recitals in the complaint itself that the petitioner did not want to give the keys. If under such circumstances the non-applicant No. 1 demanded and tried to obtain the keys and if in that process some incident as is alleged in the complaint has happened without admitting the same, still it will have to be said that the non-applicant No. 1 was acting or purporting to act in the discharge of his official duties and that therefore, no Court could take cognizance of the offence alleged. Mr. Jaiswal placed reliance upon the rulings of the Supreme Court in Shreekantiah Ramayya Munipalli Vs. The State of Bombay, , Matajog Dobey Vs. H.C. Bhari, and Som Chand Sanghvi Vs. Bibhuti Bhusan Chakravarty, . Mr. Badar, the learned counsel for the State supported the submissions made on behalf of the non-applicant No. 1 and argued that the impugned order passed by the learned Magistrate is correct.

8. It would be convenient and proper at the outset to refer to the observations of the Supreme Court in the cases relied upon for the parties. It has been observed by the Supreme Court in Shreekantiah Ramayya''s case (supra) that if section 197, Criminal Procedure Code is construed too narrowly it can never be applied, for of course it is no part of an official''s duty to commit an offence and never can be. In Matajog Dobey''s case (supra) the Supreme Court has observed:

The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise u/s 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What the Court must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.

9. The facts in Somchand Sanghvi''s case (supra) were that in pursuance of an investigation into a complaint made by M against the appellant and two others in respect of offence u/s 120B read with section 420, Indian Penal Code and section 420, Indian Penal Code the appellant was arrested, kept in police lock up and eventually produced before the respondent, the Assistant Commissioner of Police, Calcutta. When an application for release on bail was made on behalf of the appellant, the respondent refused to grant him bail unless he settled the matter with M and paid him a certain sum of money. The appellant then filed a complaint against the respondent u/s 348, Indian Penal Code and a process was issued against the respondent. It was held by the Supreme Court that the sanction of the appropriate authority for the respondent''s prosecution was necessary u/s 197,

Criminal Procedure Code and that, therefore, the process issued against him without such sanction has to be quashed. Whether the person charged with an offence should or should not be released on bail was a matter within the discretion of the respondent and if while exercising a discretion he acted illegally by saying that bail would not be granted unless the appellant did something which the appellant was not bound to do, the respondent cannot be said to have acted otherwise than in his capacity as a public servant.

10. Now it is obvious that the rule of sanction incorporated in section 197 of the Code of Criminal Procedure, is based on the principle that public servant should be protected from malicious and irresponsible prosecution. This rule acts as a brake on the course of the general law and the sanctioning authorities alone can unloosen this brake. The sanctioning authority is placed somewhat in the position of a centime on the dome of Criminal Courts in order that no irresponsible or malicious prosecution is instituted against a public servant. As observed by the Supreme Court in Shreekantiah Ramayya''s case (supra), if section 197, Criminal Procedure Code, is construed too narrowly it can never be applied, for of course it is no part of an official''s duty to commit an offence and never can be. It is true that the offence alleged to have been committed must have something to do or must be related in some manner with the discharge of official duty. No question of sanction would arise u/s 197, unless the act complained of is an offence. The only point to determine is whether it was committed in the discharge of official duty. If it is established that there was a reasonable connection between the act and the official duty, sanction u/s 197, Criminal Procedure Code would be necessary even if the act exceeds what is strictly necessary for the discharge of duty, as this question will arise only at a later stage when the trial proceeds on merits. What is necessary to be found out is whether the alleged act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.

11. Now the question for consideration would be whether in the instant case the non-applicant No. 1 Judge of the Co-operative Court was acting or purporting to act in the discharge of his official duties when he demanded the keys from the petitioner-complainant and further question would be whether, if while trying to obtain the keys, there was some incident as is alleged in the complaint and the complainant sustained some injury, sanction for the prosecution of the non-applicant No. I u/s 197, Criminal Procedure Code was or was not necessary. Applying the principles of law as enumerated above, it will have to be held that the learned Magistrate was right in holding that sanction to prosecute non-applicant No. 1 was necessary in view of the facts of this case. Mr. Joshi, the learned counsel for the petitioner-complainant, placed reliance upon the ruling of the Supreme Court in Pukhraj v. State of Rajasthan. That was a case where in a complaint filed by a clerk of the Head Post Office it was alleged that at the time of arrival for inspection

the Post Master General kicked the complainant and abused him when the complainant was submitting his representation for cancellation of his transfer. It was held that the acts of the public servant viz. Post Master General, so alleged could not be said to have been done in purported exercise of his duty. It was observed in this case:

Mere fact that the accused proposes to raise a defence of the act having purported to be done in exercise of duty will not in itself be sufficient to justify the case being thrown out for want of sanction. Facts subsequently coming to light during the course of the trial may establish the necessity for sanction. Whether or not sanction is necessary will depend from stage to stage.

12. The question for consideration, therefore, would be whether the facts that appeared on the record, before the learned Magistrate passed the impugned order, established the necessity for sanction. Now in his application for dismissing the complaint for want of sanction u/s 197 of the Criminal Procedure Code, the non-applicant No. 1 stated that he had on the day of the alleged incident gone to the Court to adjourn the cases and give suitable dates to the lawyers present and the litigants coming from far off places. Without giving further details the non-applicant No. 1 wanted to rely upon the contents of the complainant itself. Now if we go to the contents of the complainant, it would be clear that the petitioner complainant on the day in question went to the premises of the Court, told the staff that it was a holiday and put up a notice probably on the Court premises that it was a holiday and he closed the Court premises and was coming out. While he was coming out, according to the version in the complaint itself, non-applicant No. 1 the Judge of the Co-operative Court came there. It is stated in the complaint that the complainant gave the Judge the idea of what steps he had taken. However, the Judge (non-applicant No. 1) without hearing him further obstructed him and tried to snatch the keys from his pocket. He (the complainant) therefore, put up a resistance. It therefore appears from these recitals in the complaint itself that the non-applicant No. 1 must have asked for the keys of the office premises and the complainant must have refused to part with the keys. Assuming for the sake of argument that the non-applicant No. 1 thereafter forcibly took the keys from the complainant, can it not be said that there was reasonable connection between the act and the official duty. As observed by the Supreme Court in Matajog Dobefs case (supra), it would not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. It being a day which was declared as holiday abruptly, it was necessary for the Judge to go to the Court premises and to adjourn the cases and to give further dates to the lawyers and the litigants. It was, therefore, necessary for him to obtain the keys of the premises which was closed by the petitioner-complainant. If the petitioner did not give the keys and if the non-applicant, therefore, tried to obtain the keys from the petitioner, it would certainly be an act in the discharge of official duties, and even if there was some incident as is alleged in the complaint and even if

it is held that the non-applicant No. 1 exceeded what was strictly necessary, sanction for the prosecution of non-applicant No. I would still be necessary. As observed by the Supreme Court in Matajog Dobey''s case (supra), what the Court has to find out is whether the act and the official duty is so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty though possibly in excess of the needs and requirements of the situation.

13. It was alleged by the petitioner-complainant in his complaint that after he resisted the attempt of non-applicant No. 1 to take the keys, the non applicant No. 1 pressed his throat. It is important to note that what the complainant alleges in his complaint is that as a result of the pressing of the throat by non-applicant No. 1, he happened to sustain nail injuries. It is clear from the recitals in the complaint that the non-applicant No. 1 did not intentionally cause nail injuries. Apart from this, it is not clear from the complainant whether the complainant, who says had gone to the Police immediately got himself examined from any medical officer and got himself treated for the injuries. A question therefore, would be whether the complainant had in fact sustained any injuries. I have already pointed out that the complainant in his complaint filed in the Court took care to conceal the fact from the Court that the accused was the Judge of the Co-operative Court. This would induce one to hold that no safe reliance can be placed upon the mere recitals in the complaint. There is no guarantee that; the complainant did not indulge in any exaggerations. Now coming to the offence of wrongful confinement, what the complainant alleges is that non-applicant No. 1 obstructed him and tried to take the keys from his pocket. Assuming that he was so obstructed, it was done with a view to take the keys. The act would, therefore, clearly fall within the purported discharge of official duty. In this view of the matter assuming it is held that some incident took place at the time non-applicant No. 1 tried to take the keys from the petitioner-complainant, it cannot be said that the acts attributed to non-applicant No. I were not inter-related and had no connection with the official duty. In view of this position it will have to be held that the order passed by the learned Magistrate dismissing the complaint for want of sanction u/s 197, Criminal Procedure Code need not be interfered with.

14. Mr. Joshi, the learned counsel for the petitioner, submitted that the non-applicant No. 1 had not shown that he was acting or purporting to act in the discharge of his official duty; the stage had, therefore, not come for deciding whether the complaint should be dismissed for want of sanction. It is not possible to accept this submission. As is pointed out above, it is clear from the complaint itself that after the complainant closed the Court premises, he was going out of the premises, that non-applicant No 1 met him while the complainant was leaving the premises, that he must have asked for the keys and the complainant must have resisted. It is submitted by Shri Joshi that the keys which the non-applicant No 1 wanted to take from the complainant, might have been the keys of the complainant himself. If the complainant is read as a whole, it is clear that the keys must be of the Court premises. If, therefore, non-applicant No. 1 wanted to go to the Court

premises and discharge some official work, it can legitimately be said that he was acting or purporting to act in the discharge of his official duty. In view of this material on record, it cannot be said that there was no stage for dismissal of the complaint at the stage when the impugned order was passed.

15. Mr. Joshi also relied upon the decision of this Court in Namdeo Kashinath Aher Vs. H.G. Vartak and Another, . It is a case where a Minister of State Cabinet was addressing a gathering on certain occasion when the complainant rose and put certain questions to the Ministers. The Minister got enraged and called the complainant a "goonda". It was held that although the question put by the complainant was irrelevant to the occasion, it was no part of the official duty of the Minister to call the complainant a goonda. It was further observed that even assuming that the Minister merely exceeded the limits of official duty, the excess was so blatant as to lose the colour of office and also the protection available u/s 197. Clearly, the facts of this case are distinguishable from the facts of the case with which we are concerned.

16. Before parting with this case, I may observe that the complainant as indicated above, did not disclose in his complaint in clear terms that non-applicant No. 1 was the Judge of the Co-operative Court. It is likely that he wanted to conceal that fact from the Court so that there would be no possible difficulty in obtaining the order of summons against the accused. Now section 200 of the Criminal Procedure Code, provides that a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any. Now in this case there was such examination. However, it appears that this examination is a reproduction of a few sentences from the complaint. Obviously, one of the objects of examining the complainant u/s 200 of the Criminal Procedure Code is to find out whether there as prima fade truth in the complaint and whether the Magistrate should proceed further in the matter. Section 202 of the Criminal Procedure Code confers a discretion on the Magistrate to postpone the issue of process against the accused and make enquiry into the case himself or direct an investigation to be made by a Police Officer, etc. for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate would have examined the complainant carefully in the light of the allegations made in the complaint, perhaps, the Magistrate would have found that the accused was the Judge of the Court and might not have issued process against the accused u/s 203 of the Criminal Procedure Code, and perhaps would have thought it fit to proceed tinder section 202 of the Code. Now in this case the process was issued against the non-applicant No. I who was a Judge of the Co-operative Court and it is after the non-applicant made an application to the Court that the facts which ultimately led the Magistrate to dismiss the complaint came to light. All that I have to emphasise is that if the Magistrate would have undertaken the careful examination of the complainant u/s 200 of the Criminal Procedure Code, the proceedings would possibly have been curtailed. It is with a view to enable the Magistrate to determine whether the

Magistrate should proceed further and issue process against the accused, that the Code of Criminal Procedure has made ample provisions under -sections 200 and 202, and it is necessary for the Magistrate that these provisions should be carefully followed and utilised in proper cases before issuing the process.

17. In the result, the revision application fails and is dismissed. Rule discharged.