

(2007) 02 CAL CK 0003

Calcutta High Court

Case No: C.R.M. No. 022 of 2007

Nelson

APPELLANT

Vs

Bijay Kumar Kar and Another

RESPONDENT

Date of Decision: Feb. 27, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197, 197(1), 482
- Penal Code, 1860 (IPC) - Section 156, 323, 34

Citation: 111 CWN 438

Hon'ble Judges: Ashim Kumar Banerjee, J

Bench: Single Bench

Advocate: D. Ilango, S.K. Mandal, for the Appellant; Arul Prasath, for the Respondent

Judgement

Ashim Kumar Banerjee, J.

The applicant before me is a Naval Police personnel. He has been implicated in a criminal case by the complainant on the allegations that the complainant was beaten up and was seriously assaulted by the accused named in the said complaint including the applicant. According to the applicant, he, while discharging his official duty as naval police personnel was investigating into the offence of theft. After primary investigation, the authority found that the complainant was involved in such theft and as such he took the complainant to the local police station to handover him as the offence was to be taken cognizance of by the civil police personnel. The applicant contended before the learned Magistrate that the case could not be proceeded with as against him as he was discharging official duty while carrying on such investigation and as such he enjoyed immunity granted u/s 197 of the Code of Criminal Procedure. The learned Magistrate by an order dated February 13, 2007 observed that there was a prima facie case as against the accused persons under Sections 156/323/34 of the Indian Penal Code. The learned Magistrate directed issuance of process.

2. The applicant approached the learned Sessions Judge by filing a criminal application. It was contended before the learned Sessions Judge on behalf of the applicant that since he was discharging his official duty no proceeding could be had as against him without prior sanction of the prescribed authority and as such he should be allowed to enjoy the immunity granted u/s 197 Criminal Procedure Code.

3. The learned Sessions Judge considered the said application as well as the complaint lodged as against the accused. The learned Sessions Judge came to a finding that the crime perpetrated by the accused persons could not be said to have any reasonable connection with the acts complained of in discharge of their official duty. The learned Sessions Judge also observed that the act of causing assault could not be said to be "supplementary to their duties".

4. The applicant cited Apex Court decision in the case of Sankaran Moitra vs. Sadhna Das & Anr., reported in (2006)4 SCC page 584, which was distinguished by the learned Sessions Judge, in my view, rightly.

5. The learned Sessions Judge ultimately dismissed the application. Against the order of dismissal of the revisional application filed before the learned Sessions Judge, the present application for revision has been made u/s 482 of the Criminal Procedure Code. Mr. D. Iango, learned counsel appearing in support of this application has drawn my attention to the Apex Court decision in the case of Sankaran Moitra(supra). The Three Judge bench decision of the Apex Court dealt with a case as against a police official who killed a private individual while controlling mob during the assembly election. The majority view of the Apex Court so expressed in paragraph 23 of the said judgement is quoted below :

"23. Coming to the facts of this case, the question is whether the appellant was acting in his official capacity while the alleged offence was committed or was performing a duty in his capacity as a police officer which led to the offence complained of. That it was the day of election to the State Assembly, that the appellant was in uniform; that the appellant traveled in an official jeep to the spot, near a polling booth and the offence was committed while he was on the spot, may not by themselves attract Section 197(1) of the Code. But, as can be seen from the facts disclosed in the counter-affidavit filed on behalf of the State based on the entries in the general diary of Phoolbagan police station at 1400 hours of some disturbance at a polling booth, that it took a violent turn and clashes between the supports of two political parties were imminent. It was then that the appellant reached the site of the incident in his official vehicle. It is seen that a case had been registered on the basis of the incidents that took place and a report in his behalf had also been sent to the superiors by the Station House Officer. It is also seen and it is supported by the witnesses examined by the Chief Judicial Magistrate while taking cognizance of the offence that the appellant on reaching the spot had a discussion with the officer in charge who was stationed at the spot and thereafter a lathi-charge took place or there was an attack on the husband of the complainant

and he met with his death. Obviously, it was part of the duty of the appellant to prevent any breach of law and maintain order on the polling day or to prevent the blocking of voters or prevent what has come to be known as booth capturing. It therefore emerges that the act was done while the officer was performing his duty. That the incident took place near a polling booth on an election day has also to be taken note of. The complainant no doubt has a case that it was a case of the deceased being picked and chosen for ill-treatment and he was beaten up by a police constable at the instance of the appellant and the officer in charge of Phoolbagan police station and at their behest. If that complaint were true it will certainly make the action, an offence, leading to further consequences. It is also true as pointed out by the learned counsel for the complainant that the entries in the general diary remain to be proved. But still, it would be an offence committed during the course of the performance of his duty by the appellant and it would attract Section 197 of the Code. Going by the principle, stated by the Constitution Bench in *Matajoy Dobey* it has to be held that a sanction u/s 197(1) of the Code of Criminal Procedure is necessary in this case."

6. The minority view of the Apex Court as expressed in paragraph 67 is also quoted below:

"67. From the aforesaid decisions, in my opinion, the law appears to be well settled. The primary object of the legislature behind Section 197 of the Code is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by a public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter u/s 197 of the Code. In other words, protection afforded by the said Section is qualified and conditional."

7. Mr. Ilango submits that since the majority view of the Apex Court upheld the contention of the police officer that he should enjoy the immunity u/s 197 Criminal Procedure Code such proposition of law should be applied in his case. Even if I accept the contention of Mr. Ilango on that score, I find from the paragraph quoted supra that the concerned police official was engaged in controlling the crowd which assembled during the assembly election. There had been tension and confrontation between two rival political parties and in the process of controlling the mob, lathi charge took place, which resulted in the death of the victim. Considering such facts, the majority view of the Apex Court was that the police official should be given the immunity u/s 197 Criminal Procedure Code and prior sanction should have been obtained.

8. In the instant case, no cognizance was taken by the civil police official as against the complainant on the issue of alleged theft. The complainant was mercilessly

beaten up as complained before the Magistrate. Mr. Ilango admits that the applicant was not entitled to take cognizance thereof and as such he went to the local police station to handover the accused. According to him, he only called the complainant for interrogation and after being prima facie satisfied that the complainant was involved in the theft case, he took him to the police station to handover him to the civil police authority so that appropriate cognizance could be taken by the civil police authority.

9. Paragraph 11 of the complaint being relevant herein is quoted below :

"11) That on 11-05-2005, the accused No. 1,2,3 called the complainant to NSRY and then referred the matter to PS Chatam. SHO PS Chatam came to NSRY with four persons. The accused persons took the complainant to PS Chatam and after reaching PS Chatam, Police Personnel asked the complainant to lie down on the floor and started to give fist and blows with lathi. The complainant was badly beaten on his back, thigh, legs, feet and the accused No. 1, 2 and 3 instructed the accused No. 4 to beat the complainant till he admits the guilt. The accused persons obtained a statement of the complainant by threat and force and forcibly obtained signatures on the said statement and signature of the complainant on blank paper."

10. I have considered the Apex Court decision. I have also considered the submissions of Mr. Ilango. I do not find any scope to interfere with the order of the learned Magistrate or the learned Sessions Judge. The case is at the initial stage of investigation. I, however, request the learned Magistrate to expedite the process of completion of the said case. With this observation, the criminal revisional application being CRM No. 002 of 2007 is disposed of without any order as to costs.