(2000) 09 CAL CK 0045

Calcutta High Court

Case No: C.R.R. No. 235 (A) of 1989

Dilip Kumar Dey		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: Sept. 7, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197
- Penal Code, 1860 (IPC) - Section 147, 224, 323, 379, 427

Citation: (2002) 1 ILR (Cal) 191

Hon'ble Judges: Joytosh Banerjee, J

Bench: Single Bench

Advocate: C.R. Das and R.C. Das, for the Appellant;

Judgement

Joytosh Banerjee, J.
This is a proceeding for quashing C.R. Case-no. 18/88 pending before the court of Judicial Magistrate (1st Class), Nabadwip in the District of Nadia and this has been initiated at the instance of the Petitioner, who at the relevant point of time was the Inspector-in-charge, Nabadwip Police Station in the District of Nadia and who was made an accused in the aforesaid complaint case.

2. Briefly stated the facts leading to the aforesaid proceeding are as follows:

3. One Smt. Gopa das wife of Sri Gopal Das filed complaint case No. 18/88 under Sections 147/447/323 and 427 of the Indian Penal Code on May 3, 1988 against 1he Petitioner and others in the court of the aforesaid Judicial Magistrate, on the allegation that the Petitioner with his subordinates in connivance with the other accused persons attempted to evict the said complainant from a house belonging to accused No. 1 and 2. On the basis of the alleged complaint, the learned Magistrate sent the case for the purpose of investigation to Sri Ranjan Kundu, Commissioner of Nabadwip Municipality, after postponing the issuance of summons. It is alleged that the accused No. 2, Joydeb

Agarwal, on May 2, 1988 filed a written complaint against the said Gopal Das, the husband of the complainant of the aforesaid complaint case. The said complaint was received by Sub-Inspector, Makhanlal Brahma of Nabadwip P.S. who has been made accused No. 4 and on the basis of the said F.LR. the Nabadwip P.S. case No. 2 dated May 2, 1988 under Sections 448/224/379 Indian Penal Code was started against the said Gopal Das. In the case, it was alleged that accused Gopal Das broke the locks of the house belonging to the informant and forcibly took possession of the same. It is further alleged that the said Ranjan Kundu to whom the case was referred to by the learned Magistrate for the purpose of investigation, was not an impartial man as his own brother Madan Kundu was involved in many criminal cases in Nabadwip P.S. and the said Madan Kundu was found absconding. It is the allegation of the Petitioner that he along with his subordinates are public servants and the Petitioner in course of lawful discharge of his official duty acted in good faith in connection with the investigation of some offences alleged to have been committed by Shri Gopal Das, the husband of the complainant and therefore under the provisions of the Police Regulation of Bengal (P.R.B.) and also under Code of Criminal Procedure, no Criminal case can be started against the Petitioner and his subordinate without prior permission from the concerned Government.

4. I have heard the learned Advocate for the Petitioner, but in spite of the notice none has appeared on behalf of the Opposite Parties. The only point which has been urged before me in this proceeding is that the complaint has been lodged against the Petitioner and his subordinate accused No. 4, S.I., Makhanlal Sana without the necessary sanction of the Government and in this way at the time of taking cognizance of the offence complained of, the learned Magistrate has over looked the specific Provision contained in Section 197 of the Code of Criminal Procedure.

5. Before I proceed further the relevant portion of Section 197 of Code of Criminal Procedure should be looked into in order to see whether in the facts and circumstances of the case any previous sanction of the State Government was necessary for the purpose of prosecuting the Petitioner and his subordinate accused No. 4, S.I. Makhanlal Saha. The relevant portion of Section 197 reads as follows:

Section 197. Prosecution of Judges and Public Servants-(1) When any person who is or was a Judge or Magistrate, or a public servant not removable from his office save by or with the sanction of the Government 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- (a)... (b) in the case of a person who is employed or as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State of the State Government.

From the aforesaid provision to attract the provisions of Section 197, the following conditions must be satisfied (i) the person concerned must be a Judge or Magistrate or public servant (ii) the offence alleged to have been committed by such person must .be

so committed while acting or purporting to act in the discharge of his official duty, (iii) in case of a public servant such public servant must not be removable from his office save by or with the sanction of the Government.

6. In the instant case, at the very outset I must point out that through the proceeding, the Petitioner wants to quash such proceeding. But having regard to the specific allegation made regarding absence of any sanction from the Government as required u/s 197 of Code of Criminal Procedure or under the provisions of Police Regulation of Bengal, it should be considered as the prayer for quashing the proceeding against the Petitioner and his subordinate a Sub-Inspector of Police attached to the same police station. At the time of advancing his argument, to learned Advocate for the Petitioner has not drawn my attention to any specific provision of Police Regulation of Bengal. At that time he has only drawn my attention to the specific provision of Section 197 of Code of Criminal Procedure. Now from the requisite conditions I find that it is not applicable to the Sub-Inspector of Police who cannot be said to be a public servant, not removable from his office save by or with the sanction of the Government, Admittedly S.I. of Police being an erstwhile non-gezetted Officer whose Appointing Authority is the superior police officer and not the Government. Even if that is not the case, no argument has been placed in this regard in respect of the said S.I. and it is evident that the Petitioner here is the Inspector-in-Charge of the Nabadwip P.S. who has challenged the cognizance of the offence on this specific ground of violation of the provision contained in Section 197 Code of Criminal Procedure. It is to be noted here that the Inspector of Police being erstwhile gazetted post, is not removable from such post without the sanction of the Government.

7. Now admittedly the Petitioner being the Inspector-in-Charge of a police station, is the public servant and from the materials placed before this Court it further transpires that on the self-same day that is to say on August 2, 1988 when according to the complaint case, the .incident complained of took place, there was an F.I.R. lodged by one of the accused before the Inspector-in-Charge of Nabadwip Police Station alleging, inter alia, that the husband of the complainant Shri Gopal Das forcibly took possession of his house by breaking the padlock. It further transpires from the complaint case that complainant took the plea that her husband was staying, in that house with the family as a tenant at a rental of Rs. 5.00 only for a considerably period of time. But at the same time she took the further plea that no rent receipt was granted for payment of rent. So as the matter stood at the time of the alleged offence, there was an F.I.R. lodged by the admitted landlord of the house and the accused and theaet used Petitioner went to the spot for the purpose of investigation. It is nobody''s case that in the facts and circumstances as stated above, any sanction was taken from the State Government as required under s.197(i) (b) of Code of. Criminal Procedure. It is well settled that the object of Section197 is to guard against the vexatious proceeding against public servants and to secure the opinion of superior authority whether, it is desirable, in the facts and circumstances of the case that there should be a prosecution. This section is not only there to screen such type of proceeding against the public servant but it also gives protection to such public servant so that no

proceeding is started against him unless there are good reasons to suppose that there is some foundation for the charges. Here the most relevant condition for the purpose of getting protection against such type of prosecution is that the person concerned must be accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act was such as to lie within the scope of his official duty. In the instant case, the Petitioner admittedly at the relevant point of time was the Inspector-in-Charge of the Nabadwip Police Station and he had the power to go to the spot for the purpose of making investigation and for the purpose of any other enquiry as to the truth of such F.I.R. So it can be said without hesitation that his act was such as to lie Within the scope of his official duty.

8. In this way I find that while launching prosecution against the Petitioner, in the facts and circumstances of the case, a previous sanction from the State Government was absolutely necessary under the above quoted provision of the Code of Criminal Procedure and that being not done the court below took the cognisance of the offence against the Petitioner illegally, disregarding the specific provision of Section 197(i)(b) of Code of Criminal Procedure.

9. In the result I hold that the cognizance taken here against the Petitioner has been vitiated due to absence of any sanction from the State Government. Therefore, the proceeding in C.R. Case No. 18 of 1988 is quashed against the Petitioner/accused No. 3 of the case.

10. Let the L.C.R. along with a copy of this order be sent down to the court below with a direction to complete the hearing of the case and to dispose of the same within 6 months from the date of receipt of the record.