

SAMBHOO NATH MISRA

A

v.

STATE OF U.P. AND ORS.

MARCH 14, 1997

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

B

*Code of Criminal Procedure, 1973 :*

*S. 197—Sanction for prosecution of public servant—Complaint against Government servant for offences u/ss. 409, 420 IPC etc. alleging that he fabricated signatures of complainant, withdrew and misappropriated the amount due to complainant—Magistrate dismissed the complaint holding that sanction u/s 197 was not obtained—High Court upheld the order holding that the offence alleged to have been committed by the employee was related with the discharge of his official duty—Held, it is not the official duty of the public servant to fabricate false record and misappropriate public funds in furtherance or in discharge of his official duties—Discharge of official duty is not integrally connected nor is it inseparably interlinked with the crime committed in the course of same transaction—Order of Magistrate dismissing the complaint is set aside—Complaint stands restored—Magistrate would deal with the case on merits.*

C

D

E

*Hari Ram v. Emperor, 1939 F.C.R. p. 159; Orill's case, 1948 Law Reporter 75 Indian Appeal 41 and B. Saha v. M.S. Kochhar, (1979) A.C.C. (16) 318, cited.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 318 of 1997.

F

From the Judgment and Order dated 31.7.95 of the Allahabad High Court in CrI. R. No. 985 of 1993.

P.N. Singh, Mohan Pandey for the Appellant.

G

M.C. Dhingra, Kamakshi Singh Mehlwal for the Respondents.

The following Order of the Court was delivered :

Leave granted. We have heard learned counsel on both sides.

H

A This appeal by special leave arises from the judgment and order of the learned Single Judge of Allahabad High Court, made on September 31, 1995 in Criminal Revision No. 985 of 1993.

B The appellant had laid a private complaint against R.D. Tripathi, the second respondent, for offences under Section 409, 420, 465, 468, 477A and 109 I.P.C., after examination, alleging that the second respondent and the Cashier had fabricated his signatures, drawn and misappropriated and amount of Rs. 443.90 which was due and payable to him. On the basis thereof, after recording his evidence and also of the court witness under Section 202 Cr. P.C. 1973, the Magistrate dismissed the complaint holding C that the sanction under Section 197 of the Cr. P.C. was not obtained. Aggrieved by the order, the appellant went in revision before the High Court. The High Court recorded the finding that the second respondent was discharging his duties as a Government servant and was alleged to have misappropriated the amount in question by forging the signature of the D appellant in the payment register. The High Court further observed that "the offence alleged to have been committed by the respondent is related in some manner with the discharge of his official duties. There is reasonable connection between the act and discharge of his official duty. Under these circumstances, sanction under Section 197, Cr. P.C., is necessary before prosecution of this accused". In support of it, the learned E Judge relied upon *Hari Ram v. Emperor*, (1939) F.C.R. p. 159, *Orill's case* [1948 Law Reporter 75 Indian Appeal 41] and the case of *B. Saha v. M.S. Kochhar*, (1979) A.C.C. (16) 318. The question is : whether the view taken by the trial Court as upheld by the High Court for the aforesaid reason is correct is law?

F Section 197 (1) postulates that "when any person who is 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 G sanction of the appropriate Government/authority". 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's act is in furtherance of the H performance of his official duties. If the act/omission is integral to perfor-

mance of public duty, the public servant is entitled to the protection under Section 197 (1) of Cr. P. C. without previous sanction, the complaint/charge against him for alleged offence cannot be proceeded with in the trial. The sanction of the appropriate Government or competent authority would be necessary to protect a public servant from needless harassment or prosecution. The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer. The requirement of sanction by competent authority of appropriate Government is an assurance and protection to the honest officer who does his official duty to further public interest. However, performance of Official duty under colour of public authority cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The Court to proceed further in the trial or the enquiry, as the case may be, applies its mind and records finding that the crime and the official duty are not integrally connected.

The question is : when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc., can he be said to have acted in discharge of his official duties? It is not the official duty of the public servant to fabricate the false record and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of same transaction, as was believed by the learned judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial Court on the question of sanction is clearly illegal and cannot be sustained.

The learned counsel for the respondent, Mr. Dhingra, has contended that the Magistrate came to the conclusion that it was not a part of the duty of the respondent to deal with either the preparation of the record or payment thereof. It was the duty of the cashier and therefor, the learned Magistrate was right in his conclusion that the respondent had not committed any offence. We desist to go into that aspect. It is made clear that we have not expressed any opinion on merits of the case. We have only dealt with the contention as the need for sanction and as to whether the sanction becomes necessary under Section 197 (1) of Cr. P. C.

A The appeal is accordingly allowed to the above extent. The order of the Magistrate dismissing the complaint is set aside. The complaint stands restored. The Magistrate is directed to proceed further in accordance with the law and deal with the case on merits.

R.P.

Appeal allowed.