

V.V. Nagarkar Vs. M.R. Dhawan

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Court : Delhi

Decided On : Jul-23-1981

Reported in : 20(1981)DLT203; 1982(3)DRJ38; 1981RLR506

Judge : M.L. Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 197; [Indian Penal Code \(IPC\), 1860](#) - Sections 20B

Appeal No. : Civil Revision Miscellaneous (Main) Appeal No. 49 of 1981

Appellant : V.V. Nagarkar

Respondent : M.R. Dhawan

Judgement :

(1) On 4-6-80 Shri M. R. Dhawan one of the accused in R. C. 8/77 filed a criminal complaint against several persons including the petitioner herein, who is public servant for offences u/s 166/167/218/500/343 and 120B J.P.C. read with Sections 166/167/218/500/343 Indian Penal Code A question arose before the learned Magistrate whether any sanction for the prosecution was or was not necessary under Section 197 Criminal Procedure Code . before the court could proceed. The learned Magistrate after discussing the evidence concluded by his order of September 9, 1980 that prima facie there are grounds for summoning the accused and it appears from his order that he did not consider that any sanction for the prosecution was necessary. He issued process against all the accused under different sections. The petitioner however was summoned u/s 120B, 166, 157, 218, 343 and 500 Indian Penal Code The petitioner challenged this order in the High Court. It was mainly contended that the prosecution was barred for want of requisite sanction u/s 197 and 196 Criminal Procedure Code .

(2) Held that:- Just as a suit cannot be brought without a prior notice under Section 80 Civil Procedure Code against public officer 'In respect of any act purporting to be done by him in his official capacity', no cognizance of an offence can be taken except with the previous sanction of the appropriate Government against a public servant not removable from his office save by or with the sanction of such Government if the offence alleged to have been committed, was so committed by the public servant 'while acting or purporting to act in the discharge of his official duty'. These words have been subjected to continual construction right from date they were enacted and have since eluded a. precise elucidation ; 1939 F.C. 43; 1948 P. C. 128 ; 1955 S. C. 287, 1956 S. C. 44 : 1960 S. C. 266, 1969 S.C. 686 ; 1973 S. C. 2591 ; 1979 S.C. 1841 referred to). The section cannot be construed too widely to confer complete immunity on the public servants from any offences committed by them. On the other hand if it

is construed too narrowly, it can never be applied for it can never be a part of an official's duty to commit an offence. It is not the duty, therefore, which have to be examined so much as the act. There must be something in the nature of the act that attaches it to the official character of the person doing it. It must fall within the scope and range of his official duties. There are offences which are capable of being committed only by a public servant and by no one else, but that will be only one of the tests and not the sole test. It is also not intended to apply to acts done purely in a private capacity by a public servant. Nor can it be confined to only such acts as are done by a public servant negligently or in excess of the duty or situation or under a mistaken belief as to the existence of such duty. If the officer is acting in his official capacity, he need not resort to the defense that he bona fide, though erroneously, believed in the existence of such capacity. A person may act maliciously and yet act in the execution of his office. The significance of purporting to act is that the act must have been ostensibly done by him in his official capacity in execution of his duty or under the colour of his office. These words cannot that the public servant means or intends or purports to act as such, or that his action conveys to the mind of another that he is acting as such, 1918 Mad 62 referred to). It would not be so merely because it was done at a time when he held such office or was engaged in his official business, nor merely because the official status furnished an opportunity for commission of the offence. The test may well be whether the public servant, if challenged, can reasonably lay a claim, not a pretended or a fanciful one, that, what he did, he did in virtue of his office, irrespective of whether it is in fact a proper discharge of his duties or not. But official capacity will be involved in the very act complained of where that gravamen of the charge is that the public servant acted fraudulently, dishonestly or mala fide in the discharge of his official duty.

(3) In short, sanction will be required for prosecution if (1) the public servant is acting in execution of his official function or duty or which the public servant believed in good faith to be his official function or duty (2), the act complained of is an integral part of such execution, that is, it is inseparably attached or co-related or connected with such execution, and (3) the act is an offence.

(4) The counsel for the respondent contended that the duties of the Intelligence Bureau relates to collection, co-ordination and supply to all departments of information relating to the security of India. An investigation into the funds of the Congress Party did not relate to the security of India. therefore, the acts complained of cannot be considered to have been committed by the petitioner in the discharge of his official duties.

(5) Held that:-The Security of India is such a wide term which may include in its sweep the source of funds of any party, political or otherwise. Inflow of foreign money, or internal collection through any agency, may itself have a tendency to affect the security of the nation and it will be the duty of the Intelligence Bureau whether directed or not so to do, to be constantly on the watch and to inquire into these aspects of national security. Moreover, the Intelligence Bureau being a part of the Department, of Home Affairs can be entrusted by it with any other function of similar nature and the officers will be bound to carry out those functions. It cannot be denied that in view of rule 9, the functions of Intelligence Bureau have expanded to a great extent. therefore, when as directed from above, the petitioner entered upon collecting information he was acting or at any rate purporting to act in the discharge of his duties. Simultaneously, C.B.I, was also collecting information and if both the informations were pooled and discussed as to whether the facts constituted any

offence or not and whether any action could or could not be taken legally and if so, in what manner, then such a type of council, conference and discussion respecting exchange of information, ideas and implementation is necessarily in the discharge of official functions. Such consideration cannot be termed a criminal conspiracy. If the law of conspiracy were to cover such usual and frequent activities in Government offices, then no discussions will ever be held and the risk of leaving the matters to the discretion of some single individual officer will be far wider. But that does not give a right to any public servant to twist facts or to lodge, a false information against any person with the police in order to raid their homes, to detain them in confinement unlawfully and thereby damage their reputation.

(6) The complainant had himself alleged that acts complained of were done in the discharge of a duty to prepare an F.I.R. Indeed, the offences under Sections 166, 167 & 218, Indian Penal Code . are offences which relate to the manner of conduct of a public servants where a duty is cast upon them to obey the direction of law, or to prepare documents, record or other writings, previous sanction for presentation will be a must. 1953 Bom 177. and 1962 Bom 198 referred to). The grievance of the complaint (respondent) was that (1) the F.I.R. was false, (ii) searches and arrest were unjustified, and (iii) all was done by way of a conspiracy to cause injury and loss to his body, mind and reputation and also in property. Certainly these allegations do constitute offences. But since they were the integral part of the duties of the petitioner, the law provides him a protection from prosecution which can be denied to him by his employer alone. It was therefore held that no cognizance of the offence can be taken against the petitioner unless sanction of the appropriate Government is obtained.

(7) Impugned order was quashed in so far it related to the petitioner and the process issued against him.

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