

fit for annulment would become sanctified beyond challenge and be rendered irrevocable by a solitary act of sexual intercourse without more.

10. The learned Single Judge had attempted to draw some inspiration from a passing observation in *Kunta Devi v. Siri Ram Kalu Ram* (2). The point before us did not directly arise in the said case. Indeed, the issue therein had arisen from a petition for restitution of conjugal rights only under Section 9 of the Act. The learned Judge therein indeed held that no valid marriage had been performed between the parties. The observation that in the said case the marriage had not been ratified by voluntary cohabitation which might have neutralised the effect of earlier coercive and fraudulent acts, in our view, does not aid the case of the respondent-wife.

11. To conclude, we would render the answer to the question posed at the outset in the negative and with the greatest respect hold that the finding of the learned Single Judge is not sustainable. The appeal is, therefore, allowed and the judgment under appeal is set aside and that of the trial-court restored. There will be no order as to costs.

S. C. Mittal, J.—I agree.

S.C.K.

Before Ajit Singh Bains, J.

BUDHI PARKASH YADAV,—*Petitioner*

versus

K. C. SHARMA and another,—*Respondents.*

Criminal Revision No. 147 of 1981.

June 4, 1981.

Code of Criminal Procedure (II of 1974)—Sections 197 (2), 200 and 202—Complaint against public servants—Process to the accused not yet issued—Such accused—Whether have a right to participate in the enquiry proceedings—Serious allegations of having

(2) AIR 1963 Punjab 235.

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assaulted, beaten and abused the complainants made against the public servants—No reasonable nexus between the alleged illegal acts and the discharge of official duties by the public servants—Sanction to prosecute—Whether necessary under section 197(2).

Held, that an accused named in the complaint has no right to take part in the proceedings at the enquiry stage. At the enquiry stage, it is the duty of the trial Court to elicit all facts not merely with a view to protect the interests of absentee accused persons, but also with a view to bring to book a person or persons against whom grave allegations are made and if on the facts so elicited the trial Court finds that the complaint is frivolous, it can dismiss the complaint at that stage and if it finds that *prima facie* a case is made out, it will proceed against the accused persons in accordance with law. If the accused is permitted to take part in the proceedings at the enquiry stage, it would amount to frustrating the enquiry itself. If the accused are summoned, it is open to them at the later stage to plead that the act was done by them in the discharge of their official duties.

(Para 8).

Held, that if there is no nexus or reasonable connection between the alleged act and the official duty, then the question of sanction does not arise. Apparently, there seems to be no nexus between official duties assigned to the respondents and the alleged acts purported to have been done by them. There is no material other than the complaint, which is to be taken into consideration at this stage. Allegations in the complaint *prima facie* show that the accused had indulged in illegal acts which cannot be considered as purporting to have been done in the performance of their official duty. It cannot be the official duty of a public servant to beat any person or to assault him or to abuse him. This cannot be the duty of any public servant muchless the duty of the Deputy Commissioner and the Superintendent of Police.

(Paras 11, 17 and 18).

Petition for the revision of the order of the court of Shri O. P. Gupta, Additional Sessions Judge, Narnaul, dated 15th October, 1980 dismissing the complaint against S/Shri K. C. Sharma, Deputy Commissioner and L. D. Narwal, Superintendent of Police and the same to come up for the statement of the complainant and his preliminary evidence against the remaining accused on 5th December, 1980 as prayed.

D. N. Rampal, Advocate, for the Petitioners.

U. D. Gaur, Advocate-General, Haryana, for the Respondents.

JUDGMENT

Ajit Singh Bains, J.

(1) These two criminal revisions Nos. 147 of 1981 and 234 of 1981 will be decided together by this common judgment as these arise out of the same incident and the same order of the trial Court.

(2) The facts giving rise to these petitions are as follows :—

(3) Budhi Parkash Yadav and Om Parkash, complainants, are both Advocates practising at Rewari. They filed separate complaints under sections 323, 324, 342, 504, 506, 147, 148, 140 and 120-B, Indian Penal Code, which are pending in the Court of Additional Sessions Judge, Narnaul. It is alleged that on 20th of February, 1980, Surat Ram Girdawar was caught red handed while taking bribe from the persons who had come to get their mutation sanctioned within the premises of the tehsil through Shri Om Parkash, Advocate and a case was registered against the Girdawar. The Sub-Divisional Officer (Civil) had interfered illegally; that when the complainant Om Parkash asked the Sub-Divisional Officer (Civil) to allow the law to take its own course; and that the Sub-Divisional Officer (Civil) misbehaved with them and threatened them to take them in custody and he got a false case registered against the complainants.

(4) On February 20, 1980, the Advocates decided not to appear in the Court of Sub-Divisional Officer (Civil) for an indefinite period as a result of which he became more enraged and after instigation joined with him, Patwari union and the Deputy Commissioner; that on February 23, 1980, at about 4 p.m., on the invitation of the Deputy Commissioner, the complainants and other advocates reached PWD Rest House and found that the Sub-Divisional Officer (Civil) along with Naib-Tehsildar and 60/70 persons were already present there in addition to the police in large number along with Superintendent of Police.

(5) The complainants and other Advocates who were 25 in number asked the Deputy Commissioner that all that was done had been done according to his instructions but instead a false case had been registered against them as a reward, that the Deputy

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Commissioner in a loud voice said that they were speaking lie in order to defame the department and that he was not prepared to listen to their Advocate type talks and that they would have to face consequences for their nefarious act; that the complainants and their colleagues with folded hands replied that such talks would not be desirable from the mouth of such a high officer as a result of which all the respondents attacked Om Parkash, Advocate and gave beating to him with fists and slaps and tore his black coat and treated him like animal; that Rajinder Parsad Sethi uprooted the hair of the head of Om Parkash; that Shri K. C. Sharma, Deputy Commissioner gave *danda blow* on the left hip of Om Parkash and Satbir Singh, Sub-Inspector gave a *danda blow* on the left eye and Bishambhar Nath Bakshi gave *danda blow* on the joint of thumb of his right foot and Mohinder Parkash, Sub-Divisional Officer (Civil) gave him kick blow with shoe on his right foot after giving abuses by mother; that all the accused gave joint beating to Om Parkash with fists, slaps and *dandas* and Kishen Chand Sharma, Deputy Commissioner stated that fire should be opened and that he would see to the consequences that how many Advocates had been set right by him; that Budhi Parkash Yadav was also beaten by the respondents. Respondent No. 1 also gave beating to Rao Nihal Singh, President, Bar Association and abused him and Lachhman Dass Narwal, Superintendent of Police and Mohinder Parkash Bidlan, Sub-Divisional Officer (Civil) also gave him and his colleagues filthy abuses by mother and sister. Thereafter, Lachhman Dass asked his subordinate officers that the women-folk and daughters of the complainant and their colleagues should be brought by the evening as otherwise their services would not remain any more and that Ram Singh, Dharampal and other Advocates and their Clerks who were present at the spot witnessed the occurrence.

(6) It was further alleged that he complainant and two other colleagues Om Parkash and Rao Nihal Singh were made to sit there and after two hours they were sent to the police station and arrested on the next day and released on bail by the Duty Magistrate. This complaint was presented on 26th of February, 1980 before the Duty Magistrate. Shri K. C. Sharma, District Magistrate, L. D. Narwal, Superintendent of Police, and Mohinder Parkash Bidlan, Sub-Divisional (Civil) submitted an application on 29th of February, 1980, just three days after the filing of the complaint

through District Attorney, Narnaul, and Additional District Attorney, Rewari, that in view of the provisions of section 197 of the Code of Criminal Procedure the Court had no jurisdiction to entertain any complaint against them. This application was allowed by the Additional Sessions Judge,—*vide* his order dated 15th October, 1980 and the complaint against Sarvshri K. C. Sharma, Deputy Commissioner and L. D. Narwal, Superintendent of Police was dismissed and the case was adjourned for preliminary evidence against the remaining accused. It is this order which has been challenged by the complainants.

(7) Two questions arise in the case—whether the respondents Deputy Commissioner and Superintendent of Police could be joined at the enquiry stage through the District Attorney and secondly, whether here was a reasonable nexus or reasonable connection between the alleged act of assault and confinement and the duty or authority imposed on these officers under the law which act may be said to have been committed while acting or purporting to act in the discharge of their official duty and the Court could not take cognizance of the complaint without the compliance of section 197(2) of the Code of Criminal Procedure.

(8) So far as the first question is concerned, it has to be answered in the negative. The Deputy Commissioner and the Superintendent of Police had no *locus standi* to join the proceedings at the enquiry stage when even preliminary evidence was not recorded by the trial Court. Even the trial Court has held in the preliminary objection raised by the counsel for the complainants that the Public Prosecutor could not appear on behalf of the accused. The allegations as contained in the earlier part of the judgement are very serious against the Deputy Commissioner and also against the Superintendent of Police. In my considered view, the accused named in the complaint had no right to take part in the proceedings at the enquiry stage. At the enquiry stage, it is the duty of the trial Court to elicit all facts not merely with a view to protect the interests of an absentee accused persons, but also with a view to bring to book a person or persons against whom grave allegations are made and if on the facts so elicited the trial Court finds that the complaint is frivolous, it can dismiss the complaint at that stage and if it finds that *prima facie* a case is made out, it will proceed against the accused persons in accordance with law. If the accused is

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permitted to take part in the proceedings at the enquiry stage. It would amount to frustrating the enquiry itself. After holding that there is no judicial precedent to permit the intervention of the Public Prosecutor at the enquiry stage, the learned Additional Sessions Judge, has fallen into legal error in permitting the Public Prosecutor to appear and raise the objections. If the accused are summoned, it is open to them at the later stage to plead that the act was done by them in the discharge of their official duties.

(9) In *Chander Deo Singh v. Prakash Chandra Bose and another*, (1), it was observed by their Lordships as under :—

“The entire scheme of Ch. XVI of the Code of Criminal Procedure shows that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued: nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go.”

From the aforesaid observations of the Supreme Court it is plain “that the accused cannot participate in the proceedings before the process is issued against him. However, he can be present or his counsel can be present to watch the proceedings. But he cannot be allowed to ask questions or to take any other objection before the process is issued.” Thus, the answer to the first question is in the

(1) AIR 1963 S.C. 1430.

negative that the accused person cannot be allowed to participate before the process is issued against them.

(10) So far as the second question is concerned, it has also to be answered in the negative.

(11) Allegations in the complaint *prima facie* show that the accused had indulged in illegal acts which cannot be considered as purporting to have done in the performance of their official duty. It cannot be the official duty of a public servant to beat any person or to assault him or to abuse him. This cannot be the duty of any public servant much less the duty of the Deputy Commissioner and the Superintendent of Police. Both these officers hold prestigious posts in the district. They are responsible for law and order and general administration. Deputy Commissioner is overall incharge of the district entrusted with the sacred duty in the district to hear to the genuine grievances of the public and to maintain tranquility. The Superintendent of Police is also the custodian of law and order. All the Station House Officers and other police officials are under his control. They have to see that there is no lawlessness; that the offenders are apprehended and the peaceful citizens are protected. If the persons holding such posts themselves indulge in lawlessness, start beating and assaulting the Advocates and their families, then it would result in chaos.

(12) Both, the Deputy Commissioner and Superintendent of Police are the public servants. They cannot behave as public bosses. Their every activity is towards the service of the people. While performing their duty, they had to perform it in accordance with law and for the welfare of the citizens. The duty of the public servants during colonial regime of Britishers was different. At that time, they were to serve the interest of the foreign rulers but now they are public servants of a socialist, secular, democratic and welfare State. Our country is still under developed and every organ of the State must work in order to remove the grievances of the public towards the attainment of the welfare of the citizens. Half of the population is still deprived of the basic needs of shelter, food and minimum clothing. They are living below poverty line according to the figure of the Planning Commission. In such a state of affairs, every effort has to be made by a public servant to discharge his duty in such a manner that he contributes

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towards the welfare and not towards adding more misery to the people by their conduct. Public servant is to be very courteous, numble and live like hermits and work like horse. He must live a life of *Satvik* and not *Rajas*. Lord Denning in his book 'Due Process of Law' while commenting on the role of the police observed as follows:—

"In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of the police whom it can trust and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice. ..

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants."

The Advocates on the whole are the law abiding citizens. They are more respectful to the Presiding Officers and men in authority. They are most hard working class amongst the professions. They live hard life. Their life is of constant struggle. They are the officers of the Court and are a part and parcel of the administration of justice. They contribute a lot towards the maintenance of rule of law. In the absence of a strong Bar there cannot be any rule of law. Some time they help the down trodden in pleading their cases free. But they are allergic to injustice and high-handedness. They come and express against that public servant who is unjust or whose behaviour is rude towards them. A perusal of the complaint in the present case would show that it was the indulgence of the corrupt revenue officer which was taken note of by complainant Budhi Parkash Yadav, Surat Ram Girdawar (Revenue Officer) was caught red handed while taking bribe from persons who had gone to get their mutation sanctioned within the premises of the tehsil by the complainant. A case was registered against the Revenue Officer in which the Sub Divisional Officer (Civil) interfered illegally. If the allegations in the complaint are correct, the Sub Divisional Officer (Civil), the Deputy Commissioner and the

Superintendent of Police should have helped the complainant in eradicating corruption but instead they indulged in lawlessness as is apparent from the allegations in the complaint. Lawlessness has no connection with the duty. Crime cannot be defended by taking the plea that it was committed during the performance or discharge of their official duty. As observed earlier, nobody can be permitted to indulge in crime while discharging his official duty.

(13) In *Nagraj v. State of Mysore*, (2), it was held :—

“It is well settled that the jurisdiction of the Court to proceed with the complaint emanates from the allegations made in the complaint and not from what is alleged by the accused or what is finally established in the case as a result of the evidence recorded.”

In *Giani Ajmer Singh v. Ranjit Singh Grewal*, (3) it was held as follows:—

“If the allegations made in the complaint do not attract the protection of section 197 or section 132, Criminal P.C., then the Court cannot throw out the complaint for want of sanction merely because the accused public servant might possibly successfully establish that he had done the act complained of in the discharge or purported discharge of his official duty.”

In *Pukhraj v. State of Rajasthan and another*, (4), their Lordships observed as follows:—

“The mere fact that the accused proposes to raise a defence of the act having purported to be done in execution of duty could not in itself be sufficient to justify the case being thrown out for want of sanction. At this stage we have only to see whether the acts alleged against the second respondent can be said to be in purported execution of his duty. But facts subsequently coming to light during the course of the judicial enquiry or during the

(2) A.I.R. 1964 S.C. 269.

(3) A.I.R. 1965 Punjab 192.

(4) A.I.R. 1973 S.C. 2591.

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course of the prosecution evidence at the trial may establish the necessity for sanction. Whether sanction is necessary or not may have to depend from stage to stage. The necessity may reveal itself in the course of the progress of the case also it was pointed out that it would be open to the appellant to place the material on record during the course of the trial for showing what his duty was and also that the acts complained of were so inter-related with his official duty so as to attract the protection afforded by section 197, Cr. P.C.”

(14) Reliance was placed by Mr. Gour, the Advocate-General Haryana, appearing for the Deputy Commissioner and the Superintendent of Police on *Baijnath v. State of Madhya Pradesh*, (5), wherein the minority view of A. K. Sarkar, J. is that the sanction has to be obtained before cognizance of an offence has been taken. But the facts of this authority are distinguishable from the facts of the present case as it related to criminal misappropriation. However, as per majority view, it was observed as under:—

“It is not every offence committed by a public servant that requires sanction for prosecution under section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties.”

“that sanction of the State Government was not necessary for the prosecution of G under S. 409 of the Penal Code. because the act of criminal misappropriation was not committed by him while he was acting or purporting to act in the discharge of his official duties and that offence had no direct connection with the duties of G as a public servant and the official status only furnished him with an occasion or an opportunity of committing the offence.”

(15) Reference was also made to *State of West Bengal v. Bejoy Kumar Bose, etc. etc.* (6). This authority is not applicable to the facts of the present case.

(5) A.I.R. 1966 S.C. 220.

(6) A.I.R. 1978 S.C. 188.

(16) Lastly *S. B. Saha and others v. M. S. Kochar* (7) was cited. Here it was observed as under:—

“The question of sanction under S. 197 can be raised and considered at any stage of the proceedings. In considering the question whether or not sanction for prosecution was required, it is not necessary for the Court to confine itself to the allegations in the complaint. It can take into account all the materials on the record at the time when the question is raised and falls for consideration”.

This authority can hardly help the respondents. It is no doubt true that the objection with regard to the question of sanction under section 197 can be raised at any stage of the proceedings but in any case not before the process is issued by the Court. The trial Court fell in error in allowing the respondents to participate in the proceedings even when preliminary evidence was not recorded by it.

(17) From a close scrutiny of the aforesaid authorities, it is plain that the accused cannot be allowed to participate in the proceedings before the process is issued: secondly the question of sanction can be taken at any stage of the proceedings after the process is issued, and thirdly, if there is no nexus or reasonable connection between the alleged act and the official duty, then the question of sanction does not arise.

(18) Apparently, there seems to be no nexus between official duties assigned to the respondents and the alleged acts purported to have been done by them. There is no material other than the complaint which is to be taken into consideration at this stage. The complaint was filed on 26th of February, 1980 and the Public Prosecutor was allowed to raise the objection of sanction on 29th of February, 1980, just after three days when even the preliminary evidence was not led by the complainants. Hence it is held that there was no nexus or connection between the alleged acts of assault and confinement and official duties assigned or performed by the respondents. The finding of the trial Court are set aside and the question is answered in negative.

(19) It is highlighted that it took eight months to decide the matter by the trial Court which again is not very laudable. It has

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come to our notice that the trial Courts treat the complaints specially against the public servants in a most casual manner. It is desirable that in such complaints where the aggrieved persons are not even heard by the police, the Courts had to take very serious view and should proceed with the complaint promptly and without causing any delay in determining the matter.

(20) No other point was urged.

(21) For the foregoing reasons, I am of the view that the order of the learned trial Court in dismissing the complaint against the Deputy Commissioner and the Superintendent of Police for want of sanction is not at all justified and is consequently set aside. The learned trial Court is directed to proceed against them in accordance with law.

S. C. K.

Before M. M. Punchhi, J.

WORKMEN OF THE PUNJAB STATE ELECTRICITY BOARD,—
Petitioners.

versus

HARYANA STATE ELECTRICITY BOARD and others,—
Respondents.

Civil Writ Petition No. 589 of 1969.

July 13, 1981.

Industrial Disputes Act (XIV of 1947)—Section 25-FF—Transfer of an Undertaking—Workmen paid compensation on transfer by the transferor and some of them employed afresh by the transferee—Rights and liabilities of such workmen—Transferee of the undertaking—Whether a successor-in-interest of the transferor qua such rights and liabilities.

Held, that on transfer of an Undertaking without the undertaken obligation of the transferee to retain the workmen, the employment of the workmen with the transferor comes to an end giving rise to their claim for retrenchment compensation and if that is