

Madan Lal Lamba *v.* Inderjit Mehta (Gopal Singh, J.)

which he has once dealt with. I, therefore, direct under section 24 of the Code of Civil Procedure that the suit in which the order under revision has been passed shall stand transferred to the Court of Shri Parkash Chand Nariala, Subordinate Judge, Second Class, Sirsa, who has the jurisdiction to try the suit, in view of the value of the suit for purposes of jurisdiction being only Rs. 540.

(15) Costs of this revision petition shall abide the decision of the trial Court on the application of the pre-emptors, dated April 9, 1969. Parties have been directed to appear before the transferee court on June 3, 1969.

K.S.K.

REVISIONAL CRIMINAL

Before Gopal Singh, J.

MADAN LAL LAMBA,—*Petitioner.*

versus

INDERJIT MEHTA,—*Respondent.*

Criminal Revision No. 25-R of 1968.

May 19, 1969.

Code of Criminal Procedure (V of 1898)—Section 197(1)—Indian Penal Code (XLV of 1860)—Section 218—Act of a public servant preparing false records constituting offence under section 218, Indian Penal Code—Such act—Whether amounts to official act of the public servant as contemplated by section 197(1), Criminal Procedure Code—Sanction of the State Government—Whether essential for prosecution of such public servant—Official acts of public servants under section 197(1)—Scope of—Stated.

Held, that the contents and nature of the ingredients of section 218, Indian Penal Code, leave no doubt that the act of public servant preparing false accounts falls within the scope of official acts contemplated by section 197(1) of the Code of Criminal Procedure. It is not material what mode is adopted for incorrect preparation of the record. The mere act of the public servant in preparing false record falls as much within the scope of section 197 Criminal Procedure Code as it does within the scope of section 218 Indian Penal Code. The public servant, therefore, cannot be prosecuted under section 218 I.P.C. unless sanction for his prosecution has been obtained under section 197 Criminal Procedure Code. (Para 14)

Held, that a public servant is treated to have acted or purported to act in the discharge of his official duty, if his official duties as a public servant enable him to justify the act falling within the scope of those duties. In

other words, the act should be integrally connected with the authority of his office and should fall within the periphery of prescribed duties. If there is reasonable nexus between the act and the official obligation to be discharged by the public servant, the act is regarded as an official act. If the act is entirely unconnected with his office, it cannot be deemed to be an official act within the scope of section 197(1), Criminal Procedure Code. There must be a logical relation of the act with the discharge of official duties, which the office of a public servant enjoins upon him. A different or out of the way manner of doing an act if otherwise it falls within the scope of official duties cannot be treated as alien to the scope of such duty. Whether the act is done rightly or wrongly, correctly or incorrectly, if it is done in the discharge of official duty, it will be covered by that section.

(Para 10)

Case reported under section 438 Cr. P. C. by Shri Muni Lal Verma, Sessions Judge, Bhatinda,—vide his order dated 28th December, 1967 for revision of the order of Shri Dina Nath, Judicial Magistrate 1st Class, Bhatinda, dated 6th February, 1967 dismissing the petition of the accused-petitioner for his discharge in a case under section 218 I.P.C.

D. C. AHLUWALIA, ADVOCATE, for the Petitioner.

K. C. PURI, ADVOCATE, for the Respondent.

JUDGMENT

GOPAL SINGH, J.—This is recommendation under section 438, Criminal Procedure Code made by the Sessions Judge, Bhatinda in a revision petition filed by Madan Lal Lamba, Sub-Divisional Officer against Inderjit Mehta, Contractor from the judgment, dated February 6, 1967 given by Shri Dina Nath, Judicial Magistrate, 1st Class, Bhatinda holding that sanction for prosecution of Madan Lal Lamba by a complaint filed by Inderjit Mehta for offence under section 218, Indian Penal Code was not necessary.

(2) Briefly stated, the facts are that Inderjit Mehta entered into a contract on April 25, 1964 for supply of stone ballast to the Public Works Department of the Punjab Government for construction of Lassara Nala and Bhatinda-Dabwali Road.

(3) Inderjit Mehta supplied 1,400 cubic feet of stone ballast to Madan Lal Lamba in his capacity as Sub-Divisional Officer in charge of the contract. The Sub-Divisional Officer checked the material on June 3, 1964. He made an entry at page 11 in the Officer's Note Book No. 35. The running bill of the amount thus due was drawn up on February 23, 1965. The payment of the amount due is said to have been postponed by the Sub-Divisional Officer on one pretext or

the other. On August 31, 1965 the Contractor came to know that the Sub-Divisional Officer had replaced page 11 of the Officer's Note Book by inserting in that book another leaf bearing that page number. The page replaced did not contain the entry pertaining to the supply of 1,400 cubic feet of stone ballast.

(4) The Contractor finding that the Sub-Divisional Officer had prepared the record in a manner knowing it to be incorrect with intent to cause loss to him and also had fabricated the record, filed on July 16, 1966 a complaint under sections 218, 465 and 467, Indian Penal Code against the Sub-Divisional Officer. The trial Court summoned the accused only for offence under section 218, Indian Penal Code. The accused made an application to the Court on December 12, 1966 contending that under section 197 of the Criminal Procedure Code, no sanction having been obtained for his prosecution, cannot be proceeded against under section 218, Indian Penal Code.

(5) It is admitted on behalf of the parties that the petitioner-accused is a public servant. It is contended on behalf of the petitioner that he having prepared incorrect record pertaining to the payment of price of the stone ballast supplied by the respondent while acting or purporting to act in the discharge of his official duty, the Court could not take cognizance of offence under section 218, Indian Penal Code unless the previous sanction of the State Government is forthcoming and no sanction having been obtained, the complaint deserves dismissal.

(6) Section 218, Indian Penal Code, under which the petitioner has been summoned, runs as follows :—

“Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

(7) It is admitted by both the parties that the petitioner in his capacity as Sub-Divisional Officer was charged with the preparation of the record or writing of the Officer's Note Book containing page 11. It is also conceded that whether it is the original leaf bearing page 11 or the one by which it has been substituted, both are written in the handwriting of the petitioner and were prepared by him. Thus, the preparation of page 11 as replaced with the entry pertaining to the supply of 1,400 cubic feet of stone ballast omitted thereon is the official act of the petitioner performed in the discharge of his official duty as Sub-Divisional Officer. If the facts alleged on behalf of the complainant for prosecution of the petitioner are correct and at this stage I have, for the purpose of determination of the question of applicability of Section 197, Criminal Procedure Code, to assume that they are, subject to the defence, which may be offered at a later stage, then the act of preparation of page 11, whether the earlier one or the subsequent one, falls within the scope of official duty of the petitioner. According to the complaint, the petitioner has framed that record or writing in a manner which he knew to be incorrect and he did it with intent or knowing that he is likely thereby to cause loss to the respondent.

(8) In order to find whether the act of preparation of the replaced page 11 of the Officer's Note Book in an incorrect manner falls within the ambit of Section 197, Criminal Procedure Code, it is necessary to consider the language of Section 197. Section 197(1), Criminal Procedure Code, which is relevant for the present case runs as follows :—

“197(1) When any person, who is a Judge within the meaning of Section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant, who is not removable from his office save by or with the sanction of a State Government or the Central 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) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and
- (b) in case of a person employed in connection with the affairs of a State, of the State Government.”

(9) The point of controversy hinges around the above underlined portion (In italics in this report) of Section 197(1), Criminal Procedure Code, *vis-a-vis* Section 218, Indian Penal Code.

(10) A public servant shall be treated to have acted or purported to act in the discharge of his official duty, if his official duties as a public servant enable him to justify the act falling within the scope of those duties. In other words, the act should be integrally connected with the authority of his office and should fall within the periphery of prescribed duties. If there is reasonable nexus between the act and the official obligation to be discharged by the public servant, the act shall be regarded as an official act. If the act is entirely unconnected with his office, it could not be deemed to be an official act within the scope of Section 197(1), Criminal Procedure Code. There must be a logical relation of the act with the discharge of official duties, which the office of a public servant enjoins upon him. A different or out of the way manner of doing an act if otherwise it falls within the scope of official duties could not be treated as alien to the scope of such duty. Whether the act is done rightly or wrongly, correctly or incorrectly; if it is done in the discharge of official duty; it will be covered by that Section.

(11) As referred to above; it was the official duty of the petitioner in his capacity as Sub-Divisional Officer to maintain the Officer's Note Book and to make correct entries representing the actual supplies of stone ballast made by the respondent in execution of his contract work. The petitioner prepared page 11 of the Officer's Note Book in his official capacity. If the petitioner while preparing page 11 of the Officer's Note Book or making entries therein made an incorrect entry, he had nonetheless so done while acting or purporting to act in the discharge of his official duty. If the petitioner either by erasure of an entry or by its omission prepared incorrect record, even then he would be acting within the scope of his official duty although he may be acting wrongly and not according to what he ought to act. If the petitioner after having prepared page 11 of the Officer's Note Book containing the entry pertaining to the supply of 1,400 cubic feet of stone ballast replaced the leaf bearing page 11 by another leaf and made all the entries on that page except the entry pertaining to the respondent, he has while acting in his official capacity omitted to make the entry, which he in that very capacity was under obligation to make. Omission to make entry by substitution of one folio for another is nothing but preparation of incorrect record.

(12) In order that Section 218, Indian Penal Code, may apply, the following three relevant essential ingredients of that Section must apply :—

- (i) the public servant must be charged with the preparation of any record or other writing;
- (ii) he must frame that record or writing in a manner, which he knows to be incorrect; and
- (iii) he has done it with intent to cause or knowing it to be likely that he will thereby cause loss or injury to public or to any person."

(13) For making Section 218, Indian Penal Code applicable, the preparation of record or other writing must be the official duty of the public servant. In the present case, there is no gain-saying the fact that according to the case of the prosecution, it is the petitioner, who was to prepare the record of the Officer's Note Book and he in fact according to the case, himself in his own handwriting made the entries on page 11, both before and after its substitution. Thus, according to the first ingredient of Section 218, the petitioner prepared page 11 by omission of the relevant entry pertaining to the supply of stone ballast by the respondent from that page. The petitioner has done it in no other capacity except in his capacity as Sub-Divisional Officer. That act of the petitioner falls within the scope of discharge of his official duty. While replacing previous page 11 by a subsequent one with the difference of the omission therefrom of the entry of supply of the commodity by the respondent to the Government, the petitioner has all the same prepared the record in his official capacity except that he has prepared it incorrectly. Simply because, there is an omission from page 11 by the petitioner, it does not imply that the act of the petitioner ceases to partake the character of an official act. The act remains to be the official act except the manner of doing that act has been altered by omission of the entry from the record so prepared. The content and nature of the first two ingredients of Section 218, Indian Penal Code, as referred to above, which are relevant for the purpose of the determination of the question whether the act falls within the ambit of Section 197(1), Criminal Procedure Code, leave no doubt that the case of offence against the petitioner under that Section falls within the scope of the official act contemplated by Section 197(1), Criminal Procedure Code.

Madan Lal Lamba *v.* Inderjit Mehta (Gopal Singh, J.)

(14) Shri K. C. Puri appearing on behalf of the respondent has contended that tearing of the leaf from the Officer's Note Book and its replacement amounts to commission of offence of preparation of false record and consequently the act does not fall within the scope of the official duty contemplated by Section 197, Criminal Procedure Code. I am concerned only with the offence under Section 218, Indian Penal Code, for which the petitioner is being prosecuted and not with the offence pertaining to the preparation of false record. Under Section 218, Indian Penal Code, it is not the replacement or substitution of one page by another, which is culpable or penal but it is the incorrect preparation or framing of the record or writing, which apart from the intention of causing loss for which the record is so prepared, makes the act penal. The second ingredient will be satisfied if the record prepared is erroneous. It is not material what mode is adopted for incorrect preparation of that record. Substitution of one leaf by another so as to omit a given entry from the page substituted is penal within the scope of second ingredient of Section 218. It will not be relevant to consider as to what method or means have been adopted for the incorrect preparation of the record to attain the end of omission of a given entry. Considering the scope of the two essential ingredients of Section 218, Indian Penal Code vis-a-vis Section 197(1), Criminal Procedure Code, the only view, in the premises of the facts of the present case, which these two Sections admit of, is that the petitioner acted or purported to act in the discharge of his official duty.

(15) The counsel for the petitioner principally relied on *Amrik Singh v. State of Pepsu* (1), in support of his contention, whereas the counsel for the respondent placed reliance mainly on *Baijnath v. State of Madhya Pradesh* (2). Both these decisions of the Supreme Court pertain to cases of breach of trust under section 409, Indian Penal Code. In the earlier decision, the view taken was that a Sub-Divisional Officer, who had shown in the acquittance roll drawn up by him payment of Rs. 51 to a labourer and affixed his own thumb-impression purporting to be the thumb-impression of that labourer and misappropriated the amount himself, did so in the discharge of his official duty. In the latter case, in which a Cashier instead of depositing certain items of money, which he had to deposit in the treasury, did not deposit the same and converted it to his own use, it was held that Section 197, Criminal Procedure

(1) A.I.R. 1955 S.C. 309.

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

Code did not apply as the act of misappropriation of Section 409, Indian Penal Code did not fall within the scope of his official duty.

(16) The facts of the present case are entirely different. The offence committed is not one under section 409, Indian Penal Code but is one under section 218, Indian Penal Code for which the petitioner is being proceeded against. The present case being distinguishable on the facts and dealing with entirely a different offence from the one with which these two Supreme Court decisions dealt, those cases are not analogous and applicable to the present case. As discussed above, the act of preparation of record by the petitioner and so also the act of preparation of incorrect record by him falls as much within the scope of Section 197, Criminal Procedure Code as it does within the scope of Section 218, Indian Penal Code. The petitioner having prepared the incorrect record while acting or purporting to act in the discharge of his official duty as Sub-Divisional Officer, he cannot be proceeded against for prosecution under section 218, Indian Penal Code unless sanction for his prosecution has been obtained under section 197, Criminal Procedure Code. The sanction being a condition precedent for his prosecution and no sanction having been obtained, the petitioner cannot be prosecuted. I accept the recommendation made by the Sessions Judge, though for different reasons, and set aside the order of the trial Court, dated February 6, 1967.

K. S. K.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and Ranjit Singh Sarkaria, J.

THE STATE OF HARYANA.—Appellant.

versus

DEV DUTT GUPTA AND ANOTHER,—Respondents.

Letters Patent Appeal No. 289 of 1968.

May 21, 1969.

Constitution of India (1950)—Article 311(2)—Officiating Government servant found unsuitable for the higher post—Reversion to the substantive rank—Such reversion—Whether casts a stigma on the Government servant amounting to 'reduction in rank'—Probationer Civil servant—Whether can claim substantive appointment by virtue of the probationary period being over.

Punjab Service of Engineers, Buildings and Roads Branch (Recruitment and Conditions of Service) Rules (1942)—Rules 3(b) and 4—Officiating