CASE NO.:
Appeal (crl.) 1368 of 2004

PETITIONER:
Jayasingh

RESPONDENT:
K.K. Velayutham & Anr.

DATE OF JUDGMENT: 25/04/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

This appeal is directed against a judgment and order dated 19.11.2003 passed by the High Court of Judicature at Madras in Crl.R.C.No.1465 of 2003, whereby and whereunder the revision petition filed by the Appellant herein against an order dated 25.8.2003 was dismissed. The wife of the respondent No.2 was running a kiosk in the hospital premises. The Government of Tamil Nadu had taken a policy decision to remove all kiosks, bunks and tea stalls, etc. from the hospital premises as they were causing inconvenience to the public and as food stuffs were also supplied from the said kiosks, bunks and tea stalls which were prepared in unhygienic conditions causing health hazards. A Government order was issued for removing all the said kiosks on 30.10.1987. The Public Works Department thereafter issued directions to the Executive Engineer to take steps for removal thereof on or about 9.5.1996. The Chief Engineer also directed the Executive Engineer to take steps in furtherance of the said G.O.M.No.2055 dated 30.10.1987. The wife of the respondent herein, who had been running a tea stall in the said premises, was requested through a letter by the Executive Engineer to remove the same as the Dean of Kilpauk Medical College had made such a request in that behalf. Admittedly, a direction was also issued to the Appellant herein by the Executive Engineer to remove the said tea stall. Pursuant to or in furtherance of the said direction, the Appellant herein requested the Assistant Commissioner of Police, Kilpauk to give police protection for the purpose of causing such removal.

A writ petition was filed by the wife of the respondent No.1 herein, which was disposed of by the High Court with certain directions. In the meanwhile, however, the said tea stall was removed whereupon a contempt petition was filed against the Appellant. The said contempt petition was dismissed. The matter thereupon came before this Court. This Court in N. Jagadeesan & Ors. vs. District Collector, North Arcot & Ors. [since reported in (1997) 4 SCC 508], opined:

"We are of the opinion that the appellants-petitioners can have no legitimate grievance against the action taken to remove their bunks/kiosks inasmuch as the removal is confined only to (1) hospitals and medical institutions and (2) road margins of main thoroughfares, viz., three specified thoroughfares in Madras City and one each in Vellore and Tiruppur. The reasons given by the State for removing them are reasonable and acceptable. It is also specifically averred by the State that they are not removing any bunk with a view to allow some other person to install a bunk in that place. The

removal is only for the purpose of removal of health hazard or in the interests of smooth and unobstructed flow of traffic. Indeed, the Government has offered to consider the applications, if any, made by the evicted persons for locating them on other road margins or premises, as the case may be."

It was further observed :

"\005\005..In our opinion, by seeking to remove the bunks and kiosks located within the hospital premises or within the premises of other medical institutions or their removal from the road margins of important and busy thoroughfares in the aforesaid three cities in Tamil Nadu, the respondents are not acting in any manner, inconsistent with the propositions enunciated in the said judgment. We are not able to say that the reasons assigned are neither relevant nor germane nor is it possible to say that reasons given are only a make-believe."

The said decision was rendered by this Court on 21st February, 1997. A Complaint Petition was filed by the respondent No.1 herein, who is the husband of the said owner of the tea stall against the Dean of Kilpauk Medical College and Hospital, Chennai purported to be under Sections 166, 448, 427, 380, 392 and 506(II) of the Indian Penal Code on 3rd September, 1997. The Metropolitan Magistrate, Egmore, Chennai sent the Complaint Petition for inquiry to the police authority whereupon a First Information Report (FIR) was lodged. It is not disputed that during investigation the name of the Appellant was taken by one Thiru V. Ramarajan, Executive Engineer, P.W.D., North Presidency Division, Chepauk, Chennai, who alleged:

"I am working as an Executive Engineer in P.W.D. The Kilpauk Medical College wing comes under my jurisdiction, wherein inside the campus, Tmt. Lakshmi Velayutham ran a tea-shop on lease agreement and as the Dean of the Medical college did not give no objection certificate to the Shop from 1992, the lease agreement period was not extended. Further the Dean of the college wrote several letters stating that due to the tea-shop, health hazards are caused and therefore requested to remove the said shop. Further, I adviced to make arrangements to evict the shop of Tmt. Velayutham from the college campus subject to rules. Accordingly, the Asst. Engineer, Thiru. R. Jayasingh, BE., MBA., P.W.D. KMC wing, Kilpauk, Chennai-10 who was in charge of KMC area, informed in his letter No.16K/97 dt. 2.7.97, that he removed the shop of said Lakhsmi Velayutham on 1.7.97. The Asst. Engineer engaged men on his own supervision and removed the shop. Today, 26.4.2000, you the Inspector of G3 Kilpauk P.S. enquire me and I narrated the above details."

Relying on or on the basis of the said statement, the Appellant herein was made an accused and a charge-sheet was filed by the Investigating Officer also against him stating:

"In the said case, it was ordered that the tea-shop which is in possession of the PW1 should be vacated subject to Rules and Regulation. On obtaining such court order, A1 and A2 even after knowing the order, with the

intention to cause loss to the complainant, on 2.7.97 at about 11.00 a.m., A1 Thiru. Ganesan former dean of KMC and A2 Thiru. Jayasingh, former Asst. Engineer, PWD Kilpauk, Hospital wing with the help of some unknown hooligans, went to the tea shop of the complainant which was functioning inside the Kilpauk Medical College Hopsital campus, and without taking any legal steps as per the Court order, they trespassed the tea\026shop and the adjoining fancy stones and removed the refrigerator, Mixie, Stone, Biscuit which were kept for business and A1 Thiru. Ganesan look those articles in his custody and with the help of the hooligans, he demolished the tea-shop built by the complainant PW1 in his own cost which was situated in the car shed, in the Hospital which came under A1's jurisdiction and caused damages to PW1 to an extent of Rs.3 Lakhs, and he removed the aforesaid valuables belonging to PW1 with the help of unknown persons from the car-shed inside the campus and misappropriated the same and thereby caused loss illegally to PW1 to an extent of Rs.4 Lakhs."

In the said charge-sheet only the allegations made in the complaint petition were repeated. What transpired during investigation had not been disclosed. The learned Magistrate took cognizance against the Appellant herein on the basis of the said purported charge-sheet. The Investigating Officer noticed that removal of the tea shop was effected as per an order of a Court of law. Validity or otherwise of the action on the part of the appellant is not in question. An application for discharge was filed before the learned Metropolitan Magistrate by the Appellant, inter alia, on the ground that no sanction was obtained as was required mandatorily in terms of Section 197 of the Criminal Procedure Code, which plea came to be accepted by the learned Metropolitan Magistrate by an order 25th August, 2003, opining:

"I opine that the argument on the side of the petitioner that the act of the petitioner was so, in order to execute the order given to him, but the nature of the case filed against him M/s. 166, 448, 427, 380, 392 and 506 (II) IPC are baseless, is acceptable. Further the nature of the act of the 2nd accused/petitioners and what offence he committed, had not been stated in the case. The petitioner is a Govt. Servant. No permission has been obtained to prosecute him. The procedures to be followed u/s. 197 Cr.P.C. had not been followed in this case."

The revision petition filed by the respondent No.1 herein before the High Court against the said order, however, was allowed, stating:

"On a complaint given by the petitioner herein, a case was registered against A-1 only on the specific allegations that the bunk stall of the petitioner was damaged and was removed, thereby causing damages to the tune of Rs.7 lakhs. It is pertinent to point out that the Executive Engineer at the time of investigation, has categorically spoken to the fact that it was A-2, who wrote a letter to the said official that it was he who was responsible for the removal of the bunk stall. Under the stated circumstances, it has become necessary for the police agency to include the first respondent/second accused. This Court is at a loss to understand as to why not the case be proceeded against A-2. Hence, the lower court has taken an erroneous view that there is no prima facie case against A-2 was not mentioned. There is no legal impediment to add a person, if he was actually

involved in the crime, though his name was not found in the complaint.

The next contention as to the lack of sanction order is concerned, the lower court can well go into the question as to the availability of sanction and if necessary in the instant case, it could be decided at the time of trial. Under the stated circumstances, the order of the lower court has got to be corrected only by upsetting the same. The order of the lower court is set aside. The lower court is directed to proceed against the second accused also along with the other accused. This petition is ordered accordingly."

Mr. M.N. Rao, learned Senior Counsel appearing on behalf of the Appellant would contend that in view of the fact that Appellant removed the tea stall pursuant to the order passed by the Government in terms of its policy decision, it was obligatory on the part of the prosecution to obtain prior sanction therefor as was mandatorily required under Section 197 of the Criminal Procedure Code.

Mr. Subramonium Prasad, learned counsel appearing on behalf of the State, on being questioned, very fairly submitted that apart from the statement made by the Executive Engineer, as noticed hereinbefore, no other material exists as against the Appellant.

Mr. V. Krishna Murthy, learned counsel appearing on behalf of the respondent No.1, on the other hand, would submit that from a perusal of the charge-sheet it would be evident that the Appellant herein had caused huge loss and damages to the respondent No.1 herein.

The basic fact of the matter is not in dispute. The fact that the wife of the respondent No.1 herein was running a tea stall is admitted. It further more stands admitted that the Government of Tamil Nadu issued a Government Order containing a policy decision to remove all such kiosks, tea stalls and bunks from the hospital premises in public interest, inter alia, on the ground that food prepared in such tea stalls in unhygienic conditions and the same had otherwise been causing nuisance to others. No court has declared such a policy decision to be ultra vires. We have noticed hereinbefore that, in fact, the validity of such a policy decision has been upheld by this Court in Jagadeesan (supra).

If, in the aforementioned situation, the Appellant herein only complied with the order of the Executive Engineer asking him to remove the said tea stall; we are of the opinion that thereby he cannot be said to have committed any offence whatsoever. The name of the appellant was taken by the Executive Engineer himself, under whose direction he acted. He, in his statement made before the police, merely stated that the Appellant by his letter dated 2.8.1997 intimated to him that the tea stall had been removed. On the basis of the said statement no inference could be drawn that the Appellant committed an offence purported to be under Section 427 of the Indian Penal Code. From a perusal of the charge-sheet, as also the materials which are available on record, it does not appear that there is anything to show as to how and in what manner the Appellant could be said to have committed a mischief or how the ingredients of the said provision stood satisfied.

The statement of the Executive Engineer, on the basis whereof the Appellant had been charge-sheeted, even if given face value and taken to be correct in its entirety does not disclose an offence. The respondent No.1 herein filed a complaint. He, in view of the fact that a contempt petition was filed against the Appellant, presumably knew him personally. Despite the same, he had not been named in the complaint petition. No allegation had been made against him either in his complaint or in his statement under

Section 161 of the Code of Criminal Procedure that he had transgressed his authority or committed the alleged crime. In the aforementioned provisions, we are of the considered view that the prosecution should have obtained an order of sanction in terms of Section 197 of the Code of Criminal Procedure.

In Matajog Dobey vs. H.C. Bhari [(1955) 2 SCR 925] a Constitution Bench of this Court held that the provisions of Section 197 of the Criminal Procedure Code would be attracted if the offence alleged to have been committed [by the accused] must have something to do or must be related in some manner with the discharge of official duty. There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim), but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

Whether for prosecution of a public servant sanction is necessary to be obtained or not would depend upon the facts and circumstances of each case. Similarly, whether in view of the allegations made in the complaint an order of sanction would be essential or not would again depend upon facts and circumstances of each case.

In Romesh Lal Jain vs. Naginder Singh Rana & Ors.[(2006) 1 SCC 294] a Bench of this Court, of which one of us (Sinha, J. was a member), relying upon Matajog Dobey (supra) and various other decisions, opined :

"The question as to whether an order of sanction would be found essential would, thus, depend upon the facts and circumstances of each case. In a case where ex facie no order of sanction has been issued when it is admittedly a pre-requisite for taking cognizance of the offences or where such an order apparently has been passed by the authority not competent therefor, the court may take note thereof at the outset. But where the validity or otherwise of an order of sanction is required to be considered having regard to the facts and circumstances of the case and furthermore when a contention has to be gone into as to whether the act alleged against the accused has any direct nexus with the discharge of his official act, it may be permissible in a given situation for the court to examine the said question at a later stage.

We may hasten to add that we do not intend to lay down a law that only because a contention has been raised by the complainant or the prosecution that the question as regard necessity of obtaining an order of sanction is dependent upon the finding of fact that the nexus between the offences alleged and the official duty will have to be found out upon analysing the evidences brought on record; the same cannot be done at an earlier stage. What we intend to say is that each case will have to be considered having regard to the fact situation obtaining therein and no hard and fast rule can be laid down therefor."

It was held therein that the question as to whether sanction is necessary or not that may be appropriately raised at different stages of the stage depending upon the allegations made in the complaint.

Yet again, in Rakesh Kumar Mishra vs. State of Bihar & Ors. [(2006) 1 SCC 557], this Court held:

"Use of the expression "official duty" implies that

the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty; that is under the colour of office. Official duty, therefore, implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in the discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that an act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in the discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in the course of service but not in the discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. ..\005. There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim), but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

[See Sankaran Moitra vs. Sadhna Das & Anr. (JT 2006 (4) SC 34.]

In view of the aforementioned authoritative pronouncements, as noticed hereinbefore, we are of the opinion that the impugned order cannot be sustained as:

(i) no case was made out to frame charges against the Appellant herein.

(ii) Even if the statement of the Executive Engineer on the basis whereof the chargesheet has been filed against the Appellant is accepted to be correct, sanction for his prosecution, as envisaged under Section 197 of the Code of Criminal Procedure, in the facts and circumstances of this case was necessary.

The High Court, therefore, was not correct in allowing the Revision Case filed by the respondent No.1 herein setting aside the order dated 25.8.2003 of the Metropolitan Magistrate. The impugned order is set aside. The appeal is allowed accordingly.