

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1918 OF 2013
(Arising out of SLP(Cr1.) No.9968/2011)

PHILOMENA DHANIN (DEAD) BY L.RS.

Appellant(s)

:VERSUS:

STATE OF RAJASTHAN & ORS.

Respondent(s)

O R D E R

Heard Mr. Amit George, learned counsel in support of this appeal, Mr. Ram Naresh Yadav, learned counsel for the State of Rajasthan and Mr. Rishabh Sancheti, learned counsel appearing for the contesting respondent No.3. Leave granted.

2. The appellant herein has grievance against respondent No.3 who is the Sarpanch of Village Dhanin, District Rajsamand in the State of Rajasthan. It is the case of the appellant that her restaurant was demolished by respondent No.3 and her husband the second respondent herein. Therefore, she initiated necessary proceedings before the

Magistrate's Court. Respondent Nos.2 & 3 filed a petition under Section 482 of the Code of Criminal Procedure before the Rajasthan High Court being Criminal Miscellaneous Petition No.758 of 2007, for quashing the proceedings initiated before the Magistrate's Court, contending that as far as respondent No.3 is concerned, the demolition was in discharge of the official duties of respondent No.3 as a public servant and prior sanction of the State Government was to be obtained and therefore she could not be prosecuted. The High Court quashed the proceedings as against respondent No.3. The High Court, however, held that the matter will proceed against respondent No.2, husband of respondent No.3.

3. Being aggrieved by that order passed by the High Court, this appeal has been filed. Learned counsel for the appellant pointed out that protection under Section 197 of Cr.P.C. is not available against illegal acts. It is available only to the public servant who cannot be removed from the office except with prior sanction of the State Government. The respondent No.3 would not fall under this category.

4. Learned counsel appearing for respondent No.3 contended that under the State Amendment to Section 21 of the Indian Penal Code, a Sarpanch is to be considered as a public servant. Counsel for the appellant on the other hand, pointed out that the removal of respondent No.3 can be done by passing a resolution in the Panchayat under Section 37 of the Rajasthan Panchayats Act. That being so, in our view, the High Court erred in passing the order. We set aside the order passed by the High Court. The proceeding arising out of FIR No.111 of 1997 under Sections 447, 336, 426 & 120 of the Indian Penal Code initiated by the appellant against respondent No.3 will be restored and decided on its own merits. The appeal is allowed accordingly.

.....J
(H.L. GOKHALE)

.....J
(J. CHELAMESWAR)

New Delhi;
November 11, 2013.