

DATTATRAYA NARAYAN PATIL

A

v.

STATE OF MAHARASHTRA

April 16, 1975

[N. L. UNTWALIA AND S. MURTAZA FAZAL ALI, JJ.]

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I.P.C. Sec. 21, 353, 355—Public servant—Duty assigned to a public servant by an executive order whether public duty.

Shri Antulay, a Minister presided over a meeting of the District Advisory Committee. The appellant attended that meeting as an M.L.A. and his brother attended as a Sabha-Patai of the Building Department of the Zila Parishad. According to the prosecution, the appellant and his brother assaulted Shri Antulay, a public servant in the execution of his duty, as such public servant within the meaning of Sec. 353 of the Code. The Magistrate held that Shri Antulay was a public servant and that, therefore, the charge could be framed under Section 353. On revision, the Sessions Court held that charges could be framed against the appellant under Sec. 353 and 355 of the Code. A revision petition filed by the appellant in the High Court was dismissed. On appeal by Special Leave, it was contended before this Court by the appellant:

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(1) That the District Advisory Committee is not a Statutory Committee. It was constituted under an administrative order of the Government. It exercised no Governmental authority. Its function is only to make recommendations to the Government.

(2) The Chairman presiding at a meeting of the Committee is not acting as a Public servant.

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(3) When an assault was made or criminal force was used against the Chairman as alleged by the prosecution at such a meeting it was directed against the person presiding at the meeting and not against a public servant.

(4) A Minister may be a public servant but while presiding over a meeting of the Advisory Committee he was not functioning as a Minister but as a Chairman.

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(5) That the Judicial Magistrate committed an error of law in treating the chargesheet as a complaint and framing the charge against the appellant for a non-cognizable offence under section 355/511 of the Code.

Dismissing the appeal,

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HELD : The District Advisory Committee was constituted by a notification of the Government of Maharashtra for the purpose of reviewing the work of Zila Parishad and Panchayat Samities. The Minister a public servant was the Chairman of the Committee. The Divisional Commissioner was to be the convenor and the Deputy Commissioner was to act as the Secretary. They were all public servants. The duty assigned to a public servant by his master whether under a statute or by the executive order, will assume the character of public duty provided the duty assigned is not illegal or against the public policy. [148B-C, 149-B-C]

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Shri Antulay, therefore, was a public servant.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 257 of 1972.

- A** Appeal by special leave from the judgment and order dated the 29th June, 1972 of the Bombay High Court in Criminal Revision Appln. No. 1129 of 1971.

M. C. Bhandare, R. Nagaratnam and Manju Jaitley, for the appellant.

- B** *H. R. Khanna, for the respondent.*

The Judgment of the Court was delivered by

- C** UNTWALIA, J.—This is an appeal by special leave. The question which falls for determination is whether a charge could be legally and validly framed on the facts alleged by the prosecution against the appellant under section 353 of the Indian Penal Code—hereinafter called the code.

- D** An incident is said to have taken place in a meeting of the District Advisory Committee of Kolaba District held on the 22nd of August, 1970 at about 3.00 p.m. in a pandal near the Nehru Hall at Alibag under the Chairmanship of Shri A. R. Antulay—a Minister of the Government of Maharashtra. The appellant was a member of the Legislative Assembly and his brother was the Sabhapati of the Building Department of the Zilla Parishad. Both of them attended the meeting.
- E** Certain incidents took place in that meeting, which according to the prosecution, amounted to assault or use of criminal force by the appellant to the Minister—a public servant—in the execution of his duty as such public servant within the meaning of section 353 of the Code. It was further alleged that the action of both the brothers also amounted to assault or use of criminal force to Shri Antulay intending thereby
- F** to dishonour him, otherwise than on grave and sudden provocation given by that person, within meaning of section 355. A complaint of the incident was lodged with the police. Investigation was made and Charge-sheet was submitted in the court of the Judicial Magistrate at Alibag against both the accused for offences alleged to have been committed by them under sections 353 and 355 read with section 34 of the Code. On perusal of the papers in accordance with section 251A
- G** of the Code of Criminal Procedure, 1898 and after hearing the arguments the Magistrate found that Shri Antulay, being a Minister, was a public servant. In that capacity he was presiding over the meeting of the District Advisory Committee of Kolaba District. He, however, held that the meeting of the Committee was illegal because it was not convened at the instance of the Commissioner of the Division as required by the Rules. He also held that the appellant who was accused no. 1,
- H** at the most, had prepared to assault the Minister and not actually assaulted or used criminal force. The appellant was discharged by the Magistrate in relation to the charge under section 353, but a charge under section 355 read with section 511 was framed against him. His brother, accused no. 2, was however completely exonerated and discharged.

Two revisions were filed before the Sessions Judge, Kolaba—one by the State and the other by the appellant. The State wanted charges to be framed against the appellant under sections 353 and 355 and also against accused no. 2. The appellant, however, wanted the Sessions Judge to quash the charge framed against him under section 355/511 of the Code. The learned Sessions Judge allowed the revision filed by the State in part and dismissed the one filed by the appellant. He directed the framing of charges against the appellant under both the sections, viz. 353 and 355 of the Code. The discharge of accused no. 2 was, however, maintained. The matter was taken further in revision before the Bombay High Court by the appellant only. The High Court has directed the framing of the charge against the appellant both under section 353 and 355 of the Code. Hence this appeal by special leave.

Learned counsel for the appellant did not canvass before us the justification of the discharge of the appellant for the offence under section 353 of the Code on the ground of the allegedly illegal convening of the meeting of the Advisory Committee. We are, therefore, not called upon to express any opinion of ours in this judgment in that regard. Nor should we be deemed to have expressed any opinion, even by implication, as to the truth or falsehood of the allegations made against the appellant, or, whether the prosecution by its evidence will be able to prove the charge against the appellant. We confine our judgment to the decision of the only question which falls for our determination.

Learned counsel for the appellant submitted :

(1) That the District Advisory Committee is not a Statutory Committee. It was constituted under an administrative order of the Government. It exercised no Governmental authority. Its function is only to make recommendations to the Government.

(2) The Chairman presiding at a meeting of the Committee is not acting as a public servant.

(3) When an assault was made or criminal force was used against the Chairman as alleged by the prosecution at such a meeting it was directed against the person presiding at the meeting and not against a public servant.

(4) A Minister may be a public servant but while presiding over a meeting of the Advisory Committee he was not functioning as a Minister but as a Chairman.

(5) That the Judicial Magistrate committed an error of law in treating the Charge-Sheet as a complaint and framing the charge against the appellant for a non-cognizable offence under section 355/511 of the Code.

The decision on the last point urged on behalf of the appellant would have been necessitated provided the argument advanced on his behalf in relation to the charge of the cognizable offence under section

- A 353 of the Code would have been well-founded and correct; otherwise not. Since in our opinion it is not so we do not deal with the last point and take up the discussion of the first four points together, as really speaking, they are all off-shoots of one and one point only, namely, whether while presiding over the meeting of the Advisory Committee the Minister was executing or discharging his duty as a public servant.

C As stated in the judgment of the High Court the District Advisory Committee was constituted by a notification of the Government of Maharashtra, Cooperation and Rural Development Department dated 5-8-1964 for the purpose of reviewing the work of Zilla Parishads and Panchayat Samitis. The circular Ext-15 issued by the Maharashtra Government on 5-8-1964 was obviously not in exercise of any statutory power. It was in exercise of the executive power which is co-extensive with the legislative power of the State. In the circular it is stated :

D "For quite some time Government has had in view the question of reviewing the working of Zilla Parishads and Panchayat Samitis (Plan and Development Works) in the State as a regular feature. It is, therefore, felt that this object in view can be substantially achieved by holding six-monthly meetings of Regional Officers, District Officers, Office-Bearers of Zilla Parishads and Panchayat Samitis and M.Ps., M.L.Cs., and M.L.As., under the Chairmanship of the Minister in-charge of the District. Government has, therefore, decided that such meetings should be convened twice a year in each of the Districts in the Revenue Division by the Divisional Commissioner in consultation with the Minister in charge of the District. The meetings should be held at the Headquarters of the District concerned. The Deputy Commissioner (Development) of the Division concerned should work as the Secretary of the Committee. The work pertaining to these meetings should be carried out by the Development Branch of the Commissioner's Office and various actions to be taken as a result of deliberations in these meetings should be pursued by the Deputy Commissioner (Development) under the guidance and supervision of the Divisional Commissioner."

The terms of reference for the working of the Committee as also its composition were indicated in the subsequent part of the circular.

H Under the orders of the Government, therefore, its officers including the Minister of the District were to carry out certain public duties in connection with the reviewing of the working of Zilla Parishads and Panchayat Samitis which, of course, were constituted under the statutes. The Minister, a public servant, was to be the Chairman of the Committee. The Divisional Commissioner was to be the convener of the meeting. The Deputy Commissioner (Development) of the Division concerned was to act as the Secretary. They were all

public servants. Is it possible to take the view that the Divisional Commissioner or the Deputy Commissioner while performing the functions aforesaid under orders of the Government conveyed in the circular dated 5-8-1964 were performing any private functions and not public duty? Obviously it was a part of the public duty assigned to them by the Government. The duty assigned to a public servant by his master, be it be under a statute or by an executive order, will assume the character of public duty, provided the duty assigned is not illegal or against public policy. Will it make any difference in the case of a Minister? In our judgment, not. The Minister is a public servant—not disputed. In accordance with the instructions issued by the Government he was to preside over the meetings of the Advisory Committee. He was doing so as a Minister and in execution and discharge of his duty as such public servant. It is no doubt true that non-official office bearers and members of the Committee could not be public servants. Non-officials appointed to a Committee constituted under a statute may, under certain circumstances, become public servants within the meaning of section 21 of the Code; but surely non-official members of the Committee in question could not be so. Yet it is wrong to say that the officials and persons who were public servants discharging their duties as office-bearers and members of the Advisory Committee were not performing any duty as such public servants. Any person who was not a public servant appointed as a Chairman of the Committee may not be a public servant because the office of the Chairman of the Advisory Committee is not such that would make him a public servant. But the matter is different when a public servant, under the executive instructions of the Government, is appointed the Chairman of the Committee.

Learned counsel for the appellant in support of his submissions placed reliance upon two decisions of this Court viz. *Padam Sen and another v. The State of Uttar Pradesh*⁽¹⁾ and *The State of Gujarat v. Manshankar Prabhasankar Dwivedi*⁽²⁾. Neither of them is apposite and helps the appellant. In the case of *Padam Sen* the appointment of the Commissioner by the Additional Munsif was found to be null and void; yet it was argued with the aid of Explanation 2 to section 21 of the Code that he was a public servant. The argument was repelled by Raghubar Dayal, J. delivering the judgment on behalf of the Court at page 890 thus :

“We do not agree with this contention, and are of opinion that the Explanation applies only when there be a post in existence. The Explanation does not apply when there is no pre-existing post or when the person appointing has no authority to appoint.”

In the case of *State of Gujarat v. Dwivedi*⁽²⁾ the question arose in relation to an offence said to have been committed by the respondent under section 161 of the Code and section 5(2) read with section

(1) [1961] 1 SCR 884.

(2) [1973] 1 SCR 313.

- A 5(1)(d) of the Prevention of Corruption Act, 1947. Dwivedi was a senior lecturer at a Government College. In that capacity, undoubtedly, he was a public servant. He is alleged to have accepted the gratification of Rs. 500 other than legal remuneration for showing favour to a candidate in his capacity as Examiner for Physics Practical in the examination held by the Gujarat University. He was
- B appointed an examiner by the University and not by the Government. In such circumstances it was held that Dwivedi as an examiner of the University was not a public servant as it had no connection with his being a Government servant.

- C For the reasons stated above we hold that no interference is called for by this Court in the framing of the charge against the appellant as per the directions of the High Court. The appeal is, therefore, dismissed.

P.H.P.

Appeal dismissed.