A BAKHSHISH SINGH BRAR

v.

SMT. GURMEJ KAUR AND ANR.

OCTOBER 12, 1987

B [SABYASACHI MUKHARJI AND M.M. DUTT, JJ.]

Criminal Procedure Code, 1973: ss, 196 & 197—Rationale of—Protection of public servants in discharge of official duties—Immunity from being harassed in criminal proceedings and prosecution—Citizens' rights—Protection of—Equally important.

C **The petitioner, a police officer, was charged by the Judicial Magistrate under ss. 148/302/149/325/149 and under ss. 323/149 of the Indian Penal Code for allegedly causing grievous injuries to the complainant and death of one of the alleged offenders during a raid and search for illicit liquor and unlicenced arms, and committed to the** D **Court of Sessions for trial. His contention was that under s. 196 of the Code of Criminal Procedure the cognizance of the offence could not be taken nor the trial proceeded with without the sanction of the appropriate authorities under s. 197 of that Code. The Sessions Court took the view that unless cognizance was taken and the facts and the circumstances and the nature of the allegations involved in the case** E **were gone into, it would not be possible to determine whether or not the raiding party exceeded its limits or power while acting in the discharge of official duties.**

The High Court dismissed the application under s. 482 of the Code of Criminal Procedure for staying further proceedings in the F **Sessions Court.**

In the special leave petition to this Court on the question: Whether without the sanction under s. 197 of the Code of Criminal Procedure the proceedings could go on.

G **Dismissing the special leave petition,**

HELD: 1. The order passed by the Sessions Court was proper and the High Court was right in not interfering with the same. [455G]

H **2. Criminal trials should not be stayed in all cases at the prelimi-**

nary stage because that will cause great damage to the evidence. It is necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, that is the rationale behind ss. 196 and 197 of the Criminal Procedure Code. But it is equally important that rights of the citizens should be protected and no excesses should be committed. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have, therefore, to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. [455F, C-E]

Pukhraj **v.** *State of Rajasthan and Anr.,* **[1974] 1 S.C.R. 559, referred to.**

In the instant case, it is alleged that grievous injuries were inflicted upon the complainant and as a result of injuries one of the alleged accused had died. The question is while investigating and performing his duties as a police officer was it necessary for the petitioner to conduct himself in such a manner which would result in such consequences. Therefore, the trial should proceed. If necessary the question of sanction under s. 197 of the Criminal Procedure Code may be agitated after some evidence have been noted by the Sessions Court. [455C, H]

CRIMINAL APPELLATE JURISDICTION: Special Leave Petition (Crl.) No. 419 of 1987.

From the Judgment and Order dated 11.12.1986 of the Punjab and Haryana High Court in Criminal Miscellaneous No. 7421-M of 1986.

R.K. Garg, Ms. Suman Kapoor and R.P. Singh for the Petitioner.

P.N. Puri, R.S. Sodhi and R.S. Suri for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is a petition for leave to appeal under Article 136 of the Constitution against the judgment and order of the High Court of Punjab and Haryana dated 11th of December, 1986. By the order the High Court has dismissed the applica-

A tion under section 482 of the Code of Criminal Procedure praying that further that proceedings be stayed in Sessions Case No. 1 of 25th of March, 1985 under sections 148/302/325/323/149/120-B of the I.P.C. The High Court dismissed this petition because it found no merit in the same.

B The petitioner, herein alongwith 14 more persons were charged by an order dated 30th of May, 1986 under sections 148/302/149/325/149 and under sections 323/149 of the I.P.C. for allegedly causing death of one Ajit Singh and for causing hurt to Smt. Gurmej Kaur, the complainant. The case was committed to the Court of Sessions by the Judicial Magistrate 1st Class, Kapurthala vide order dated 20.2.1985. As per the case set up by the complainant Smt. Gujmej Kaur, her son Ajit Singh since deceased was involved in a murder case pertaining to the murder of head constable Bagga Singh of Police Station Dhalwan. That case was registered in police station Bhogpur, District Jalandhar and Ajit Singh was tried alongwith other persons and was sentenced by the Additional Sessions Judge but he was acquitted by the High Court. D The complainant further states that Ajit Singh was also involved by the police in a case of dacoity of police station Kotwali Kapurthala and police station Dhilwan during investigation of the murder case in question. Ajit Singh was also convicted in those cases but acquitted by the High Court. It is the case of the complainant that Ajit Singh was allegedly involved in some other murder and dacoity case by the police E which was tried in Himachal Pradesh and Ajit Singh was acquitted by the Himachal Pradesh High Court. Mohinder Singh and Des Raj also co-accused in this case allegedly investigated cases of Kapurthala and Ajit Singh was tortured by Des Raj and the leg of Ajit Singh was broken. Ajit Singh then filed complaint against Des Raj (also accused in this case) and he was summoned by the Judicial Magistrate 1st F Class, Kapurthala and thus the relation between Ajit Singh and Kapurthala Police Station had become very strained. Ajit Singh had then settled in U.P., according to the allegations in the complaint, out of fear of the police. It is stated that on or about 7th of April, 1983 at about 3 p.m. all the accused including present petitioner went to village Bhandal Bet. They went to the house of the complainant where G she was present alongwith her sons Ajit Singh and Manjit Singh and other members of the family. Manjit Singh and Ajit Singh, it was alleged, were surrounded by the police officials and Manjit Singh and Ajit Singh protested against this. Then Bakshish Singh accused, petitioner, directed his companions to arrest Ajit Singh and Manjit Singh and tie them with ropes and put them in the truck for the purpose of H throwing them in the river Beas. It was further alleged that Manjit

Singh and Ajit Singh ran to save themselves but they were attacked by the police officials. The complainant also received injuries in the course of this occurrence when she was given dang blows. Ajit Singh and Manjit Singh were given blows by the police officals on the asking of the appellant herein Bakhshish Singh Brar, who is the Deputy Superintendent of Police. A hue and cry was raised. Other persons came, Ajit Singh and Manjit Singh became unconscious and then they were taken away in the truck for the purpose of throwing them in the river, according to the complaint. The case of the complainant further was that Ajit Singh and Manjit Singh were then got admitted by the police in Civil Hospital, Kapurthala as indoor patients and Ajit Singh died as a result of injuries on 8th of March, 1983. It was further alleged that the accused who are the police officials fabricated false evidence in order to make out a defence and registered two false cases one under section 61(1)(a) of the Punjab Excise Act, F.I.R. No. 70 dated 7th of April, 1983 and the other under section 307, I.P.C. F.I.R. No. 71 dated 7th April, 1983.

On the other hand, the case of the respondents was that the police party headed by the petitioner including 13 of his subordinates went to the Haveli of Jit Singh alias Jita, situated in village Bhandel Bet in connection with raid on secret information to the effect that he is indulging in illicit liquor and unlicenced arms. There were two First Information Reports one under section 61(1)(14) of the Punjab Excise Act and the other under section 25(54)(59) of the Arms act were recorded in Police Station Dhilwan. That on the same date the police party raided the Haveli of Jit Singh alias Jita, where Manjit Singh, Jasbir Singh, Balwant Singh, Chhinda and Majwi, residence of village Bullowal and Gurdev Singh resident of village Ucha were present there. It is further alleged that seeing the police party, Jasbir Singh fired at Ajit Singh, who saved himself by hiding himself behind a wall. The other persons armed with dangs and dhope attacked the police party.

There are rival versions involved in this case. The question was whether without the sanction under section 197 of the Code of Criminal Procedure the proceedings could go on. It is quite apparent that as a result of the alleged search and raid, which was conducted by the petitioner in discharge of his official duties certain injuries, which are described as grievous, injuries had been inflicted on the complainant and one of the alleged offenders had died. In this case, admittedly, the petitioner is a Government servant. Admittedly, there was no sanction under section 197 of the Cr. P.C. had been taken. The trial in this case

A is one of the offences mentioned under section 196 of the Cr. P.C. The contention of the petitioner was that under section 196 of the Cr. P.C. the cognizance of the offence could not be taken nor the trial proceeded without the sanction of the appropriate authorities. The learned Additional Sessions Judge, Kapurthala after consideration of the facts and circumstances of the case in view of the observations of B this Court in *Pukhraj* v. *State of Rajasthan and another,* [1974] 1 S.C.R. 559 that unless cognizance is taken and the facts and in the circumstances and the nature of the allegations involved in this case are gone into the question whether the raiding party exceeded its limits or power while acting in the official duties cannot be determined. The learned Judge observed after gathering the materials and some evidence, it would be possible to determine whether the petitioner while C acting in the discharge of his duties as a police officer had exceeded the limit of his official capacity in inflicting grievous injuries on the accused and causing death to the other accused.

This Court in the aforesaid decision had occasion to consider this aspect. The case is instructive and illustrative how a balance has to be D struck between the need for speedier trial of criminal offenders and at the same time protecting public servants or police officials in the discharge of their duties without obstructions. There the appellant had filed a complaint against his superior officer, in the Postal Department under sections 323 and 502 of I.P.C. alleging that when the appellant went with a certain complaint to the second respondent, the said E respondent kicked him in his abdomen and absued him by saying "Sale, gunde, badmash ...." The said respondent filed an application under section 197 of the Cr. P.C. praying that the Court should not take cognizance of the offence without the sanction of the Government, as required by section 197 of the Cr. P.C. It was further contended that the alleged acts, if at all done by the accused were done F while discharging his duties as a public servant. The trial Magistrate dismissed the application. The High Court allowed the revision application of the said respondent. This Court on appeal held that at that stage, the Court was concerned only with one point, viz., whether on facts alleged in the complaint, it could be said that the acts were done in purported exercise of his duties. Applying the test laid down in the G decisions of the Federal Court and this Court to acts complained of, viz., kicking the complainant and abusing, could not be said to have been done in the course of the performance of the duty by the said respondent. The facts subsequently coming to light during the course of the judicial enquiry or during the course of the prosecution evidence at the trial might establish the necessity for sanction, it was observed. H This Court noted that it might be possible for the said respondent to

place mterials on record during the course of the trial for showing what his duties were 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 of the Cr. P.C. This Court reiterated that the question whether sanction was necessary or not might have to depend upon from stage to stage having regard to the facts and circumstances of the case. This Court allowed the appeal and allowed the trial to proceed without the sanction.

In the instant case, it is alleged that grievous injuries were inflicted upon the complainant and as a result of injuries one of the alleged accused had died. The question is while investigating and performing his duties as a police officer was it necessary for the petitioner to conduct himself in such a manner which would result in such consequences.It is necessary to protect the public servant in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, that is the rationale behind section 196 and section 197 of the Cr. P.C. But it is equally important to emphasise that rights of the citizens should be protected and no excesses should be permitted. "Encounter death" has become too common. In the facts and circumstance of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence.

In that view of the matter we are of the opinion that the order passed by the learned Additional Sessions Judge, Kapurthala, in the facts of this case, was proper and the High Court was right in not interfering with the same. We, therefore, dismiss this petition.

We, however, direct that the trial should proceed as expeditiously as possible. We further record that if necessary the question of sanction under section 197 of the Cr. P.C. may be agitated after some evidence have been noted by the learned Additional Sessions Judge.

P.S.S. Petition dismissed.