

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1105 OF 2008

Kesav Raju Naidu ... Appellant

versus

Sheikh Basha & Anr. ... Respondents

O R D E R

The present appeal, by special leave, is directed against the order dated 21.12.2006 in Criminal Petition No.4526 of 2006 whereby the High Court declined to interfere in exercise of power under Section 482 of the Code of Criminal Procedure for quashing of the proceedings in Criminal Case No.26 of 2005 on the file of the Judicial Magistrate First Class, Palamaner on the ground that the learned Magistrate could have taken cognizance in respect of the offences, namely, under Section 448 and 506 of the Indian Penal Code despite lack of sanction as envisaged under Section 197 of the Code of Criminal Procedure inasmuch as the Sub-Divisional Police Officer (SDPO) had gone to the house of the complainant, the 1st respondent herein, to search and execute a non-bailable warrant of arrest issued by the competent court to apprehend one S. Mahaboob Basha but the appellant trespassed without any authority and humiliated the complainant.

The High Court adverted to the allegations made in the

complaint petition and came to hold that regard being had to the role ascribed in the complaint and the allegations made, the sanction under Section 197 was not necessary

We have heard Mr. Bharat Joshi, learned counsel for the appellant, Mr. Sridhar Potaraju, learned counsel for respondent no.1 and Mr. Guntur Prabhakar, learned counsel for the State of Andhra Pradesh.

It is submitted by Mr. Joshi, learned counsel for the appellant that the High Court has fallen into error in not quashing the proceedings inasmuch as the appellant was called by the Sub-Inspector who needed his help to execute the warrant of arrest, as there was obstruction by the complainant while he was engaged in discharge of his duty. It is urged by him that if the entire conduct of the complainant is perceived, it will go a long way to show that his intention is to harass the appellant and in such a circumstance, the sanction is absolutely necessitus. He has commended us to the decision rendered in Director of Inspection and Audit & Ors. vs. C.I. Subramaniam [1994 Supp.3 SCC 615].

Learned counsel for the 1st respondent, per contra, would submit that the appellant had no authority to enter inside his house, humiliate him and physically deal with him and all these acts do not come within discharge of the official duty. It is his further submission that his allegations when read in entirety, the

concept of sanction which engrafted under Section 197 of the Code to extend protection to an official would not be attracted. To bolster his submissions, he has placed reliance on Raj Kishor Roy vs. Kamleshwar Pandey & Anr. [(2002) 6 SCC 543] and Prakash Singh Badal vs. State of Punjab [(2007) 1 SCC 1].

Mr. Guntur Prabhakar, learned counsel for the State, in his turn, submitted that the appellant can raise the issue of sanction at the relevant time.

On a perusal of the complaint, order of cognizance and keeping in view the law laid down in B. Saha & Ors. vs. M.S. Kochar [(1979) 4 SCC 117] and Prakash Singh Badal (supra), we think it appropriate that the matter should be considered at a later stage by the Magistrate with regard to necessity of sanction.

With the aforesaid observations, the appeal stands dismissed.

.....,J.
(Dipak Misra)

.....,J.
(Adarsh Kumar Goel)

New Delhi;
February 11, 2015.

ITEM NO.1

COURT NO.6

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1105/2008

KESAVARAJU NAIDU

Appellant(s)

VERSUS

SHEIKH BASHA & ANR.

Respondent(s)

(With appln.(s) for stay)

Date : 11/02/2015 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s) Mr. Bharat J. Joshi, Adv.
Mr. G. Ramakrishna Prasad, Adv.

For Respondent(s) Mr. Sridhar Potaraju, Adv.
Mr. Gaichangpou Gangmei, Adv.
Mr. Arun Singh, Adv.
Mr. Mukunda Rao Angara, Adv.

Mr. Guntur Prabhakar, Adv.
Ms. Prerna Singh, Adv.

Mr. D. Mahesh Babu, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal stands dismissed in terms of the signed order.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)