**Pp Unnikrishnan And Another vs Puttiyottil Alikutty Anr Another on 5 September, 2000**

## Bench: K.T. Thomas, J., R.P. Sethi, J.

PETITIONER:

PP UNNIKRISHNAN AND ANOTHER

Vs.

RESPONDENT:

PUTTIYOTTIL ALIKUTTY ANR ANOTHER

DATE OF JUDGMENT: 05/09/2000

BENCH:

K.T. THOMAS, J. & R.P. SETHI, J.

JUDGMENT:

T THOMAS, J.@@ JJJJJJJJJJ Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T..J Two cops who are caught in the dock of a criminal court want to pre-empt the trial on the ground of limitation. But the trial court and the High Court did not accede to their plea. Hence they are now before the Supreme Court challenging the order of the High Court. How they got themselves

enmeshed in the cobweb of the criminal proceedings can be narrated in brief: First appellant was the Sub-Inspector of Police and second appellant was a Police Constable attached to Perambra Police Station situated in a moffusil centre within the Calicut district (Kerala). First respondent, a middle aged shopkeeper of Perambra, was living with his wife and three children within the limits of the said Police Station. On 1.9.1995 the first respondent (hereinafter referred to as the complainant) filed a complaint against the two appellants before the Judicial Magistrate of First Class Perambra complaining that the appellants have committed offences under Sections 325, 342, 330 and 506(1) IPC. The First Class Magistrate after examining the complaint on oath and after taking cognizance of the said offences issued process to the appellants. They entered appearance in the Magistrates court and raised preliminary objection that the magistrate should not have taken cognizance of the offences in view of the bar contained in Section 64(3) of the Kerala police Act (for short the KP Act) which fixed a period of six months from the date of commission of the offence for taking cognizance thereof. The magistrate over-ruled the objections. Appellants then moved the High Court underSection 482 of the Code of Criminal Procedure (For short the Code) for quashing the criminal proceeding initiated by the complainant. They contended that the Magistrate could not take cognizance of the offences as the complaint was filed only after the expiry of six months of the alleged commission of the offences. A learned single judge of the High Court dismissed the petition as per the impugned order.

For dealing with the question raised in this appeal it is necessary to extract, at least briefly, the allegations made in the complaint. They are the following:

On the evening of 23.12.1994 the complainant was called to the police station, he was asked to remain therein till the arrival of the first appellant. But appellants did not arrive at the police station on that evening nor was the complainant permitted to leave the police station. Hence he had to remain inside the police station overnight. On the next morning, both the appellants reached the station. They put the complainant in the lock up room, and first appellant asked him did you not steal the articles from the next shop? and so asking he started beating the complainant. Thereafter both the appellants together showered a volley of blows all over his body. He fell down. Appellants kept him inside the lock-up room and left the police station. By evening they returned to the police station and resumed their assault operation during which they inflicted lots of blows on different portions of his body by uttering the words if you do not tell the truth you will be killed. Thereafter the complainant was asked to sit on the floor and then both the appellants stood on his legs and in that posture they inflicted blows on him with hands as well as lathi. He again fell down and this time he became unconscious. He was kept in the lock up room from 24th December, 95 till the morning of 27th December, 95. He was released from the confinement of police station on the morning of 27th after administering a warning that if he divulged to any person outside of what happened he would be trapped in a false case. The above is in substance the allegations in the complaint.

Section 64 of the K.P.Act deals with initiation of legal proceedings against police officers or magistrates. The first two sub-sections are intended to afford protection against any penalty or action for damages on account of any act, done by such officers in good faith in pursuance of any duty imposed or any authority conferred. Sub-section (3), which is relied on by the appellants as the sheet anchor for their safety, is extracted below:

No court shall take cognizance of any suit or complaint, in respect of any offence or wrong alleged to be committed or done by a Magistrate, Police Officer or other person on account of any act done in pursuance of any duty imposed or authority conferred on him by this Act or any other law for the time being in force or any rule, order or direction lawfully made or given thereunder unless the suit or complaint is filed within six months of the date on which the offence or wrong is alleged to have been committed or done.

Learned Single Judge of the High Court repelled the contention based on the sub-section on two premises. For the first premise he made the following observations:

From the allegation made in the Annexure-A complaint it is clear that the allegation made against the petitioner are with regard to the commission of several offences punishable under the IPC. By no stretch of imagination it can be said that the offence alleged to have committed is in the discharge of the official duties of the petitioners so as to attract the protection under sec.64 (3) of the Police Act in favour of the petitioners. Therefore, the contention of the petitioners that

since Annexure-A complaint is barred by time the cognizance of the offence taken by the learned Magistrate is illegal, is not sustainable.

The second premise is based on Section 473 of the Code. Learned Single Judge has observed thus on that aspect:

Under Sec.473 of the Cr.P.C. the courts have got jurisdiction not only in cases where applications are filed to condone the delay by explaining the delay occurred properly but also in appropriate cases even without any application to condone the delay in order to meet the ends of justice. In this case the petitioner has alleged the reasons for the delay in filing the complaint. It is for the trial court to consider whether there are sufficient reasons to condone the delay in filing the complaint at the appropriate stage merely because of the fact that the complaint was filed after the lapse of six months from the date of alleged offence committed or acts done the complaint filed against the police officials cannot be thrown out under Section 64(3) of the Police Act. If such contention is accepted, the unscrupulous police officials can drag the investigation for six months and contend that the complaint filed subsequent thereto is barred by time.

Section 473 of the Code is the last of the provisions subsumed in Chapter XXXVI of the Code. The title of that Chapter is Limitation for taking cognizance of certain offences. The Chapter contains a fasciculus of only seven sections starting with Section 467. It is necessary to extract that commencing provision which is as under:

467. Definitions.- For the purpose of this Chapter, unless the context otherwise requires, period of limitation means the period specified in section 468 for taking cognizance of an offence.

It is clear from a reading of the said opening provision that the entire Chapter concerns only with the period of limitation prescribed in the succeeding provisions. Of course the usual play at the joints is provided therein by using the words unless the context otherwise requires. But on reading Section 473 it would become crystally clear that it is intended to be applied only with reference to the period fixed in Section 468 of the Code. Now we extract below Section 473 of the Code:

473. Extension of period of limitation in certain cases. - Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

The extension of period contemplated in the said Section is only by way of an exception to the period fixed as per the provisions of Chapter XXXVI of the Code. Section 473 of the Code therefore cannot operate in respect of any period of limitation prescribed under any other enactment. Hence we are unable to uphold the view adopted by the learned Single Judge of the High Court that Section 473 of the Code can appropriately be invoked by the complainant for circumventing the bar contained in Section 64(3) of the K.P. Act.

Shri L.N. Rao, learned counsel for the complainant made an endeavour to support the impugned order of the High Court by contending that the bar contained in Section 64(3) of the K.P. Act would be restricted to the offences specified in that Act and it cannot encompass any other offence under any enactments, particularly the penal code offences.

To bolster up the contention learned counsel invited our attention to the decision of this Court inMaulud Ahmad vs. State of Uttar Pradesh {1963 Supp.(2) SCR 38}. In that case one Police Head constable challenged his conviction and sentence under Section 218 of the IPC. As the High Court confirmed the conviction he approached this Court by special leave. One of the grounds urged in this Court was based on Section 42 of the Indian Police Act which says that all actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police powers hereby given shall be commenced within three months after the act complained of shall have been committed, and not otherwise.

Subba Rao, J. (as the learned Chief Justice then was) felt that Section 42 of the Indian Police Act does not apply to prosecutions against any person for anything done under the provisions of any other Act. The reasoning for adopting the said legal position is quite obvious from the section itself. Learned Judge has stated as follows:

Under S.36 nothing contained in the Police Act shall be construed to prevent any person from being prosecuted under any Regulation or Act for any offence made punishable by this Act or for being liable

under any other Regulation or Act or any other or higher penalty or punishment than is provided for such offence by this Act. This section makes it clear that the provisions of the Act including s.42 do not preclude a person from being prosecuted for an offence under any other Act. A combined reading of these provisions leads to the conclusion that s.42 only applies to a prosecution against a person for an offence committed under the Police Act.

The aforesaid provision is not identically worded as Section 64(3) of the K.P. Act. The words any offence mentioned in the said sub-section indicate that the provision is not restricted to the offences specified in the K.P. Act. It is advantageous in this context to refer to Section 2(n) of the Code which is the definition for the word offence. It means any act or omission made punishable by any law for the time being in force.

Even otherwise there is nothing in Section 64 (3) of the KP Act which would warrant a construction that the ban therein is intended only with reference to the offences mentioned in that Act.

Ms.M. Jayshree, learned counsel for the appellants contended that Section 64(3) of the K.P. Act contains words which are analogous to the words employed in Section 197(1) of the Code and on that premise learned counsel requested us to follow certain decisions for understanding the scope of the sub-section concerned in the K.P. Act. Even assuming that the words employed in those two different sub-sections (one in the K.P. Act and the other in the Code) are the same it has to be pointed out that the context envisaged in Section 197(1) of the Code or the purpose of providing a filter therein is demonstrably

different from the object of Section 64(3) of the K.P. Act. Section 197(1) of the Code does not impose any absolute ban against taking cognizance of the offence, but it only says that the sanction contemplated therein is a condition precedent for taking such cognizance. It obviously is for preventing public servants from being subjected to frivolous prosecutions for discharging their official duties. On the other hand, Section 64(3) of the K.P. Act incorporates an absolute ban against taking cognizance of the offences of the type mentioned therein on the expiry of the period specified therein.

That apart the words used in Section 197(1) of the Code for qualifying the offence are seemingly wider. Those words are these: any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. In Section 64(3) of the K.P. Act the offence is qualified as the offence committed by a police officer on account of any act done in pursuance of any duty imposed or authority conferred on him, by this Act or any other law for the time being in force or any rule, order of direction lawfully made or given thereunder.

The commission of an offence, while acting or purporting to act in the discharge of his official duty is of a wider radius when compared with an offence committed on account of an act done in pursuance of any duty or authority. In the latter, the act done itself should be an exercise in discharge of his duty or authority and that act should amount to an offence. It is not enough that the act complained of was only purported to be in exercise of his duty though it maybe sufficient under the former. So the scope under Section 64(3) of the K.P. Act is much narrower than the amplitude of Section 197(1) of the Code for a public servant to claim protection.

Even under Section 197 of the Code no protection has been granted to public servants for the type of acts alleged in the case against the appellants. Decisions are a legion relating to the scope of the protection under Section 197(1) of the Code. In Matakpg Dpneu vs. H.C. Bhari{1955 (2) SCR 925} this Court made a slight deviation from the view adopted by the Judicial Committee of the Privy Council in Gills case (1948 Law Reports 75). This Court after referring to earlier decisions summed up the scope of Section 197(1) of the Code thus:

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, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

While following the said decision this Court has found, on a subsequent occasion, that a superior officer who assaulted his subordinate for defying his orders could not be said to have acted in the course of performance of his duty, (vide Pukhraj vs. State of Rajasthan and Anr. {1974 (1) SCR 559}.

If a police officer dealing with law and order duty uses force against unruly persons, either in his own defence or in defence of others and exceeds such right it may amount to an offence. But such offence might fall within the amplitude of Section 197 of the Code as well as Section 64(3) of the K.P. Act. But if a police officer assaults a prisoner inside a lock-up he cannot claim such act to be connected with the discharge of his authority or exercise of his duty unless he establishes that he did such acts in his defence or in defence of others or any property. Similarly, if a police officer wrongfully confines a person in

the lock-up beyond a period of 24 hours without the sanction of a magistrate or an order of a court it would be an offence for which he cannot claim any protection in the normal course, nor can he claim that such act was done in exercise of his official duty. A policeman keeping a person in the lock-up for more than 24 hours without authority is not merely abusing his duty but his act would be quite outside the contours of his duty or authority.

Ms. M. Jayshree, learned counsel for the appellants, made a last attempt to salvage the appellant from criminal proceedings on the strength of a recent decision rendered by this Court in K.K. Patel & anr. vs. State of Gujarat & anr. {2000 (6) SCC 195}. That decision was rendered in consideration of Section 161(1) of the Bombay Police Act. The phraseology used in that sub-section is far wider than Section 64(3) of the K.P. Act. Under the former protection is given for acts done under colour or in excess of duty or authority by providing that action should be initiated within a particular period and if it is not so initiated within that period the action can be initiated only with the sanction of the Government. The said decision is of no help to the appellants as the sub-section (3) of Section 64 of the K.P. Act is differently worded.

If sub-section (3) of Section 64 of the K.P. Act is given the interpretation sought for by the learned counsel for the appellants, it may give rise to calamitous consequences, e.g. if a police officer inflicts torture on a prisoner inside the lock up and he knows that the right of the prisoner to move within the time prescribed for such acts would stand permanently debarred after the expiry of six months, he might inflict such sorts of physical harm to the prisoner as to disable him

from moving out for the next 6 months so that the offending policeman would stand permanently immuned from any prosecution proceedings in respect of the offences committed by him. This may be only an illustration in fiction but such fiction may turn out to be reality, at least in exceptional cases. So the interpretation which may lead to such dangerous consequences should be averted.

For the aforesaid reasons we are not inclined to afford the benefit envisaged in Section 64(3) of the K.P. Act to the appellants. The appeal is hence dismissed.