Gour Chandra Rout & Another

Vs

The Public Prosecutor, Cuttack

Criminal Appeal No. 61 of 1960

(Syed Jafar Imam, K. Subha Rao, N. Rajgopala Ayyangar, J.R. Mudholkar JJ)

23.11.1962

JUDGMENT

MUDHOLKAR, J. –

This is an appeal by a certificate granted by the High Court of Orissa, which dismissed an appeal preferred by the appellants from their convictions under s. 500 and s. 501, Indian Penal Code, respectively and the sentences or fine imposed upon each of them.

The appellant No. 1, Gour Chandra Rout, is the editor of an Oriya Daily Newspaper called "Matrubhumi" while the other appellant, Ram Chandra Kar, is the printer and publisher of that newspaper. In the Issue of May 31, 1958, the views expressed by Dr. Ram Manohar Lohia concerning the political situation created in Orissa by reason of the resignation of the Congress Ministry and the immediate non-acceptance of the resignation by the Governor were published. During the Press Conference addressed by Dr. Lohia he remarked that the Governor Mr. Sukthankar had played as a toy in the hands of the Congress and that a near relation of the Governor had obtained a job carrying a handsome salary, with a British Oil Company in Assam and that, therefore, the Governor was under an obligation to the Congress. The suggestion clearly was that the near relation of the Governor had secured employment with the help of the Congress Party. After the aforesaid publication came to the notice of the Governor he had a translation made of it in English and he sent that translation to the Government of Orissa for taking such action as may be necessary. Shortly thereafter the Home Secretary to the Government of Orissa passed an order in the following terms :

> "Whereas 'the Matrubhumi' an Oriya Daily published from Cuttack in its daily edition dated May 31, 1958, knowing or having reason to believe that such a matter is defamatory of the Governor of Orissa, published a statement alleged to have been made by Dr. Ram Manohar Lohia to the effect that the Governor of Orissa in consideration of his obligations towards the Congress Government in securing a well paid job for a near relation of his in an Oil Company in Assam favoured the Congress Party to be in power in the last political crisis in Orissa.
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> Whereas the said statement reflects on the conduct of the Governor of Orissa in the discharge of his public function, it constitutes an offence committed by the Editor and publisher of the Matrubhumi punishable under section 501, I.P.C.
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> Whereas the Secretary to the Home Department has been authorised by the Governor in this behalf under Section 198-B, (3)(a) to accord sanction to a complaint being

made by the Public Prosecutor, Cuttack, against the Editor and Publisher of the said newspaper, Matrubhumi for the aforesaid offence.

Now, therefore, in pursuance of the aforesaid authority I, Shri P.N. Mohanti, Secretary to the Government of Orissa in the Home Department do hereby accord sanction for the aforesaid complaint being made by the Public Prosecutor."

This order purports to be a sanction under s. 198-B of the Code of Criminal Procedure for the prosecution of the appellants for offences under s. 500 and s. 501, I.P.C. respectively. In pursuance of this sanction the Public Prosecutor lodged a complaint on the basis of which the appellants were tried by the Sessions Judge, Cuttack. The learned Sessions Judge held both the appellants guilty of the offences with which they were charged and convicted them of those offences and charged and convicted them of those offences and sentenced them to pay certain fine, as already stated. Their appeals against their conviction and sentences were dismissed by the High Court.

Section 198 of the Code prohibits a court from taking cognizance of certain offences, including those under ss. 500 and 501, I.P.C. except upon a complaint made by a person aggrieved by such an offence. Therefore, the normal procedure is that where a person complains of being defamed he himself has to make a complaint to the court in order to make it possible for the court to take cognizance of the offence complained of. When the Code was amended by Act 26 of 1955, among other provisions, a new one, s. 198-B was added to it. The relevant part of that section runs thus :

198-B (1). - Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (other than the offence of defamation by spoken words) is alleged to have been committed against the President, or the Vice-President, or the Governor or Rajpramukh of a State, or a Minister, or any other public servant employed in connection with the affairs of the Union or of a State, in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor.

... ...##

(3) No complaint under sub-section (1) shall be made by the Public Prosecutor except with the previous sanction, -

(a) in the case of the President or the Vice-Precedent or the Governor of a State of any Secretary to the Government authorised by him in this behalf;

(b) in the case of a Minister of the Central Government or of a State Government, of the Secretary to the Council of Ministers, if any, or of any Secretary to the Government authorised in this behalf by the Government concerned;

(c) in the case of any other public servant employed in connection with the affairs of the Union or of a State of the Government concerned."

This provision was enacted for the specific purpose of allowing the State to prosecute a person for defamation of a high dignitary of a State of a public servant, when such defamation is directed against the conduct of such person in the discharge of his public functions. It is common ground that the alleged defamation of the Governor Mr. Sukthankar does concern his conduct in the discharge of his public functions and consequently the Public Prosecutor could file a complaint. But the

provisions of sub-s. (3) make it clear that the Public Prosecutor cannot lodge a complaint without, in the case of a Governor, the previous sanction of a Secretary to the Government authorised by the Governor in this behalf. We have already quoted the sanction given by the Home Secretary. But that sanction will avail provided the Home Secretary had been previously authorised to accord a sanction to the lodging of a complaint. In order to prove authorisation by the Governor reliance is placed on behalf of the respondent State firstly on the evidence of the Governor himself. It seems to us, however, that the evidence of the Governor instead of supporting the contention, goes directly against it. Mr. Sukthankar has stated in his evidence categorically : "I did not ask the Government to start this case. They did so after consultation with me. I sent the translation to the Government telling them that the facts were untrue and to take such action as deemed proper. I did not direct Government to start a case for defamation. I gave no specific written directions to Government to start this case." What s. 198-B(3)(a) requires is that the Governor should authorise a Secretary to lodge a complaint. Mr. Sukthankar did not even purport to deal with the Secretary but with the Government. Further, he did not ask the Government to lodge a complaint but on the other hand left it to the Government to decide in their discretion whether a complaint should be lodged or not. We are, therefore, unable to hold from the evidence of the Governor that he in fact authorised even the Government to lodge a complaint. The mere circumstance that the Government held consultation with the Governor before filing the complaint does not amount to authorisation of a Secretary by the Governor. It seems plain that there are two restrictions placed upon the power of the public Prosecutor to lodge a complaint with respect to defamation of a high dignitary such as the Governor. The first is that he must have been given a sanction to lodge such complaint and the other is that the sanction should be accorded by a Secretary to the Government, authorised by the Governor in this behalf. This means that the Governor has first to consider for himself whether the alleged defamatory statement being is of a kind of which he should take notice and seek to vindicate himself or whether the defamatory statement being of a trivial nature or having been made by an irresponsible person or for some other reason should be ignored. This decision has to be taken by the Governor himself and as we read the section, we are unable to say that he can leave it to some other person or an authority like the Government to decide whether a complaint should be lodged or not. It was, however, urged by Mr. Prem who appears for the State that it was enough for the Governor to say that he had no objection to the lodging of a complaint and that Mr. Sukthankar's statement that he left it to the Government to decide what action should be taken and that the Government had consulted him before it decided to take action, therefore, meets the requirements of the provisions of cl. (O) of sub-s. (3) of s. 198-B, Code of Criminal Procedure. He points out that since a sanction has to be given by a Secretary it is the Secretary who has to apply his mind to all the relevant facts and come to a decision whether it is in the public interest to lodge a compliant and it he finds that it is in the public interest that a complaint be lodged then to accord his sanction. The Secretary, as he rightly points out, does not merely perform a ministerial act in according the sanction and, therefore, it is enough that the Governor says that he leaves the matter to the Government meaning thereby that he would have no objection to the lodging of a complaint. While it is no doubt true that it is the sanctioning authority which has to apply its mind to the facts of a case before according sanction and that in performing the function of according the sanction the Secretary does not merely perform a ministerial act, we are clear that initiative has to be taken by the Governor by indicating unequivocally that he desires action to be taken and that the authorisation by him is not an idle formality. So when the Governor says, as Mr. Sukthankar has done in this case, that he leaves it to the Government to take such action as it thinks fit the inference must be that he is personally indifferent whether a complaint is lodged or not. When such is the attitude of the Governor it would be futile to suggest that he has authorised the lodging of a complaint. It is no doubt possible that even though the Governor may have authorised sanction to be

accorded to the lodging of a complaint the Secretary may think otherwise and decline to sanction the lodging of a complaint and that it can be said that in a sense the Secretary sits in judgment over the views expressed by the Governor which is implicit in an authorisation made by him. In our opinion the legislature had good reasons for leaving it to the Secretary to decide whether the lodging of a complaint by the Public Prosecutor should be sanctioned or not. The Secretary is expected to look at the question objectively and decide whether it is in the public interest to take notice of the alleged defamatory statement and prosecute the person whom made it. A person who is directly aggrieved by the statement may not be in a position to take an objective view of an alleged defamatory statement and since the expenses for the prosecution will have to be borne by the State the legislature evidently felt that there was a good reason for leaving the final decision to a third person rather than with the aggrieved person. All the same the initiative to lodge a complaint must be taken by the Governor himself and unless he has, in pursuance of his decision to lodge a complaint authorised a Secretary to sanction its being lodged the Secretary gets no power to accord his sanction. This authorisation by him is as important as the sanction of the Secretary.

The High Court, however, has held that authorisation by the Governor is established by the evidence of P.W. 2, P.K. Sarangi. This person is an Assistant in the Home Department of the Orissa Secretariat who had placed the papers concerning the sanction before his superior officer in the Home Department and who claims to be familiar with the papers in the file. What he has stated in his examination-in-chief is that the Home Secretary had been authorised by the Governor to sanction the prosecution. When he was asked in his cross-examination whether the authorisation was on the file he stated that he was not in a position to say whether it was on the file or not. It appears that he had brought the file "showing the authorisation of the Governor" but he did not produce it as he had not been permitted to produce it. Whether sanction was authorised by the Governor could be proved either from the evidence of the Governor himself or from any writing emanating from the Governor in which the Governor has said that he has authorised the lodging of a complaint. From the evidence of the Governor which we have already quoted it would be clear that there was no express authorisation of the Secretary by the Governor. The mere face that Sarangi says that sanction to the prosecution was authorised by the Governor means nothing as he has not produced the file showing the Governor's authorisation. In the circumstances we must hold that the High Court was in error in reading the evidence of P.W. 2, Sarangi, as proving authorisation by the Governor. The High Court has further relied upon the evidence of the Deputy Secretary, Home Department. This evidence is not included in the paper book and in our opinion it has been rightly excluded. The evidence was given by the Deputy Secretary not at the trial but in a revision petition before the High Court. This revision petition was preferred by the appellants challenging the validity of the sanction. It appears that in that petition the appellants had contended that the sanction had not been authorised allowed additional evidence to be led to prove the authorisation and one of the witnesses examined before the High Court was the Deputy Secretary. We are unable to appreciate how evidence tendered before another court and in other proceedings could be treated as evidence at the trial. Moreover, that evidence does not appear to have been put to the appellant when they were examined under s. 342, Cr.P.C. In these circumstances we must hold that the High Court could not place any reliance on the evidence of the Deputy Secretary.

Finally the contention of Mr. Prem is that there was a general authorisation by the Governor in the year 1956 and that authorisation was sufficient. The authorisation relied upon by him is in the following terms :

> "In exercise of the powers conferred by clause (a) of sub-section (3) of section 198-B of the Code of Criminal Procedure, 1898 (V of 1898), the Governor hereby

> authorises the Secretary to Government of Orissa in the Home Department to accord previous sanction to the making of complaints under sub-section (1) of the said section in case where such complaints are made of an offence alleged to have been committed against the Governor."

The question is whether s. 198-B(3)(a) contemplates a general authorisation. In support of his contention he first relies upon the decision in Gour Chandra Rout v. Public Prosecutor [A.I.R. 1960 Orissa 116.]. That in fact is the decision of the High Court in the Revision Petition preferred by these very petitioners in which they challenged the validity of the sanction. The learned Chief Justice, who decided the application has, however, not decided the point as to whether a general authorisation of the kind contained in the notification quoted above meets the requirements of the law. He dismissed the revision petition on the basis of the additional evidence recorded by him.

It has to be borne in mind that sub-s. (3) of s. 198-B speaks of a complaint under sub-s. (1) and the complaint under sub-s. (1) is a specific complaint in writing made by the Public Prosecutor. Therefore, reading the two sub-sections together it would be clear that the authorisation by the Governor is of the sanction with respect to a specific complaint. A general sanction can, therefore, not be of any avail. The High Court has relied upon s. 14 of the General Clauses Act in support of its conclusion that a general authorisation would meet the requirements of cl. (a) of sub-s. (3) of s. 198-B, Cr.P.C. That section deals with the exercise of a power successively and has no relevance to the question whether the power claimed can at all be conferred. We may further point out that cl. (a) contemplates authorisation by the Governor defamed and, therefore, an authorisation of the type which we have here made by someone else in 1956 can be of no avail. Indeed, considering the nature of the offence it is difficult to appreciate how an authorisation in advance to sanction the making of a complaint of defamation can at all be given. If such authorisation were good in law, the Secretary authorised can suo motu sanction the making of a complaint, without reference to the Governor. This may lead to the astounding result that even where a high dignitary wanted to ignore a defamatory statement because it is beneath notice or because it may lead to embarrassment to him the Secretary can set the law in motion and either make a mountain out of a mole hill or embarrass the Governor himself. Such a construction would defeat the very object which the legislature had in view when it enacted the provision. We, therefore, reject the argument of learned counsel and hold that the sanction given by the Secretary, Home Department was not duly authorised by the Governor.

Upon this view it is not necessary to consider some other points raised by learned counsel for the appellants. We, therefore, allow the appeal and set aside the conviction and sentences passed on each of the appellants and direct that the fines if paid, be refunded.

Appeal Allowed.

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