Harbhajan Singh

Vs

State of Punjab

Criminal Appeal No. 53 of 1961

(CJI P. B. Gajendragadkar, Raghuvar Dayal, V. Ramaswami – I JJ)

02.03.1965

JUDGMENT

GAJENDRAGADKAR, C.J. -

By this appeal, which has been brought to this Court by special leave, the appellant Harbhajan Singh challenges the correctness of his conviction for an offence under s. 500 of the Indian Penal Code, and the sentence imposed on him for the said offence. The criminal proceedings against the appellant were started on a complaint filed by Surinder Singh Kairon, son of S. Partap Singh Kairon, who was at the relevant time the Chief Minister of the State of Punjab., In his complaint, the complainant Surinder Singh alleged that the appellant had published in the Press a statement against him which was highly defamatory of him. The said statement was published in the "Blitz", which is a weekly magazine of Bombay, on July 23, 1957, and extracts from it were given publicity in the "Times of India" and certain other papers. According to the complaint, the defamatory statement was absolutely untrue and by publishing it, the appellant had rendered himself liable to be punished under s. 500, I.P.C.

It appears that on July 22/23, 1957, the Punjab Government issued a Press note in which it was averred that certain Urdu Dailies from Jullundur were indulging in mischief and false propaganda, alleging complicity of a Minister's son in smuggling on the border. The Press note alleged that this was done with a view to malign the Government and to cause suspicion in the mind of public. The Punjab Government categorically denied the said allegation. The Press note added that the papers which were publishing the said false reports should come out openly with the name of the son of the Minister instead of repeatedly publishing things in a vague and indirect manner, and that they should not take shelter behind anonymity and should not be afraid of the consequences of the publication of these allegations. The Press note concluded with the Statement that the Punjab Government had already taken steps to curb smuggling and they were determined to put it down with a firm hand.

It was in response to the challenge thus issued by the Punjab Government in its Press note that the appellant published the impugned statement which reads :

> "My attention has been drawn to a Punjab Government Press Note categorically denying the complicity of a Minister's son in smuggling. That Press Note also throws a challenge to some Urdu Dailies "to come out openly with the name of the son of the Minister" and then fase the consequences. I don't know whether the newspapers concerned will take up this challenge of the Punjab Government or not, but as one of those who have been naming that son of the Minister as one of the leaders of the

> smugglers from Public platform, I hereby name that son as Surinder Singh Kairon son of S. Partap Singh Kairon, Chief Minister. And I do so determined to face the consequences of the charge being openly levied by me. I further allege that the son of our Chief Minister is not only a leader of smugglers but is responsible for a large number of crimes being committed in the Punjab. But because the culprit happens to the Chief Minister's son the cases are always shelved up.
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> If the Punjab Government accepts this challenge, it should do so by appointing an independent committee of impartial Judges from outside the Punjab and then let us see who has to face the consequences. If the Punjab Government dare not do so, I would not mind serving a term in Jail for having had the courage to come out with the truth. May I bring it to the notice of Punjab Government that Chief Minister's son is being discussed in almost every Punjabi house, but people are afraid of talking about him in public leat they be punished for that."

It is this statement which has given rise to the present criminal proceedings.

After this statement was published, Mr. Ajaib Singh, Senior Superintendent of Police, Amritsar, issued a statement on the 25th July, 1957, which was published in the "Tribune" on the 26th July. By this statement, Mr. Ajaib Singh assured the people that persons concerned in smuggling cases had been interrogated and he was satisfied that the allegation that some Minister's son was involved in smuggling was false and inaccurate. To this statement, the appellant issued a rejoinder which was published in the "Hind Samachar", which is an Urdu Daily of Jullundur, on July 27, 1957. Then, followed the complaint which was filed by the complainant on August 17, 1957. That, shortly stated, is the background of the present criminal proceedings.

The complaint was filed in the court of the Magistrate, First Class, Tarn Taran. Thereafter, the appellant moved this Court under s. 527 of the Criminal procedure Code for the transfer of the said case from the court of the Magistrate where it had been filed. This Court directed on October 4, 1957, that the case in question should be remitted to the Punjab High Court so that it should be transferred by the said High Court from the court of the Magistrate at Tarn Taran to a court of Sessions in Delhi. That is how the case was transferred to the court of the Additional Sessions Judge, Delhi, and was tried by him.

In support of his complaint, the complainant examined himself and led evidence of three other witness. The purport of the oral evidence led by the complainant was to show that the complainant was a person of status and good reputation, was carrying on business and had suffered in reputation and character by the defamatory statement published by the appellant.

When the appellant was examined under s. 342, Cr.P.C., he told the learned Judge that he would prefer to file a detailed written statement. Later, he did file his written statement and made several pleas against the charge levelled against him by the complainant. In substance, he alleged that the allegations made by him in his impugned statement were true and he had published the said allegations in the interest of public good. In other words, he claimed the protection of the First Exception to s. 499, IPC. He also pleaded that the imputation which he had made against the complainant had been made in good faith and for public good. Thus, he also claimed the protection of the Ninth Exception to s. 499, IPC.

In support of his defence the appellant wanted to summon 328 witnesses and a large number of

documents. The trial court allowed him summon 35 witnesses in all, but eventually be examined only 20 defence witnesses. He also produced several documents.

After considering the oral and documentary evidence produced before him, the learned trial Judge came to the conclusion that the words used by the appellant in his statement, which was published in the Papers, were defamatory per se, and he held that the appellant had failed to make out a case either under the First Exception or under the Ninth Exception. In the result, he convicted the appellant and sentenced him to one year's simple imprisonment.

The appellant then preferred an appeal before the Punjab High Court, challenging the correctness and propriety of the order of conviction and sentence passed against him by the learned trial Judge. Before the appellant Court, the appellant claimed the protection of the Ninth Exception only and did not press his case that he was entitled to the protection of the First Exception as well. He also urged that he had been materially prejudiced inasmuch as the trial Judge had not given him a fair and proper opportunity to lead his evidence both oral and documentary. The learned single Judge, who heard his appeal, considered the arguments urged before him on behalf of the appellant and came to the conclusion that the appellant had failed to prove his claim that the impugned statement fell within the scope of the Ninth Exception to s. 499, IPC. He took the view that the appellant had "completely failed to substantiate the plea of good faith." The material which had been placed before the trial Judge in support of defence of good faith was, according to the High Court, of a very filmsy character and could not sustain the plea. It may be pointed out at this stage that the High Court found that in case the appellant had proved his good faith, it would not have felt any difficulty in coming to the conclusion that the publication of the impugned statement was for the public good. But since, according to the High Court, good faith had not been proved, the appellant was not entitled to claim the protection of the Ninth Exception. Then, as regards the grievance made by the appellant that he had not been given a reasonable opportunity to lead his evidence, the High Court held that the said grievance was not well-founded. In that connection, the High Court referred to the fact that though the trial Judge had allowed the appellant to examine 35 witnesses, the appellant examined only 20 witnesses, and it observed that the large mass of documentary evidence which had been produced by the appellant did not serve and useful or material purpose even for the defence of the appellant; and so the contention that prejudice had been caused to him by the failure of the learned trial Judge to give him a reasonable opportunity to lead evidence was rejected by the High Court. In the result, the High Court confirmed the order of conviction passed against the appellant by the trial Judge, but ordered that instead of undergoing one year's simple imprisonment, the appellant shall undergo three months' simple imprisonment and pay a fine of Rs. 2,000. In default of payment of fine, he was directed to undergo three months' simple imprisonment. It is against this order that the appellant has come to this Court by special leave.

Normally, we would not have examined the correctness of the finding recorded by the High Court in respect of the appellant's plea of good faith, because that is a finding made by the High Court on appreciating oral and documentary evidence and as it happens, the said finding confirms the view taken by the trial Judge himself. Whether or not good faith has been proved by an accused person who pleads in his defence the Ninth Exception to a charge of defamation under s. 500, IPC, would be a question of fact and even if it is assumed to be a mixed question of fact and law, if the courts below make a concurrent finding on such a question, this Court generally does not re-examine the matter for itself while exercising its jurisdiction under Art. 136 of the Constitution. But in the present case, we cannot accept the finding of the High Court, because it is plain that in dealing with the question of good faith the High Court has misdirected itself materially on point of law.

Section 499 of the Code defines defamation. It is unnecessary to set out the said definition, because it is common ground that the impugned statement published by the appellant is per se defamatory, and so, we must proceed to deal with the present appeal on the basis that the said statement would harm the reputation of the complainant. Exception 9 to s. 499 provides that it is not defamation to make an imputation on the character of another, provided the imputation be made in good faith for the protection of the interest of the person making it, or for any other person, or for the public good. In the present case, the ingredient of public good is satisfied, and the only question which arose for decision in the court below and which arises before us, is whether the imputation can be said to have been made in good faith. There is no doubt that the requirements of good faith and public good have both to be satisfied, and so, the failure of the appellant to prove good faith would exclude the application of the Ninth Exception in his favour even if the requirement of public good is satisfied. This position is not disputed by Mr. T. R. Bhasin who appears for the appellant.

Mr. Bhasin, however, contends that in appreciating the evidence of the appellant and his arguments in respect of his good faith, the High Court has clearly misdirected itself, because it has expressly observed that in discharging the onus of providing good faith, it is necessary to remember that the plea of good faith must be proved "as strictly as if the complainant were being tried for the offences imputed to him." The High Court has added that the accused pleading justification virtually becomes the accuser, and that is why the burden has been placed by law upon him both in England and in India. The learned Judge of the High Court made his point still clearer with the observation that in cases of criminal defamation, an accused has not only to justify the whole of his libel, but the plea taken has to be proved as strictly as if the complainant was being prosecuted for the offence. The same observations have been repeated by the learned Judge in several places in his judgment. Mr. Bhasin contends that the approach which the learned Judge has adopted in dealing with the plea raised by the appellant under Exception 9 is clearly erroneous. In our opinion, Mr. Bhasin is right.

It is true that under s. 105 of the Evidence Act, if an accused person claims the benefit of Exceptions, the burden of proving his plea that his case falls under the Exceptions is on the accused. But the question which often arises and has been frequently considered by judicial decisions is whether the nature and extent of the onus of proof placed on an accused person who claims the benefit of an Exception is exactly the same as the nature and extent of the onus placed on the prosecution in a criminal case; and there is consensus of judicial opinion in favour of the view that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That, no doubt, is the test prescribed while deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but that is not a test which can be applied to an accused person who seeks to prove substantially his claim that his case falls under an Exception. Where an accused person is called upon to prove that his case falls under an Exception, law treats the onus as discharged if the accused person succeeds "in proving a preponderance of probability." As soon as the preponderance of probability is proved, the burden shifts to the prosecution which has still to discharge its original onus. It must be remembered that basically, the original onus never shifts and the prosecution has, at all stages of the case, to prove the guilt of the accused beyond a reasonable doubt. As Phipson has observed, when the burden of an issue is upon the accused, he is not, in general, called on to prove it beyond a reasonable doubt or in default to incur a verdict of guilty; it is sufficient if he succeeds in proving a preponderance of probability, for then the burden is shifted to the prosecution which has still to discharge its original onus that never shifts, i.e., that of establishing, on the whole case, guilt beyond a reasonable doubt.

It will be recalled that it was with a view to emphasising the fundamental doctrine of criminal law

that the onus to prove its case lies on the prosecution, that Viscount Sankey in Woolmington v. Director of Public Prosecutions [[1935] A.C. 452] observed that "no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained." This principle of common law is a part of the criminal law in this country. That is not to say that if an Exception is pleaded by an accused person, he is not required to justify his plea; but the degree and character of proof which the accused is expected to furnish in support of his plea, cannot be equated with the degree and character of proof expected from the prosecution which is required to prove its case.

In this connection, it may be relevant to refer to the observations made by Humphreys J. in R. v. Carr-Braint [[1943] 2 All. E.R. 156] : "Lord Hailsham, L.C., [in Sodeman v. R. [1936] 2 All E.R. 1138] was in agreement with the decision of the majority of the Supreme Court of Canada, in R. v. Clark [(1921) 61 S.C.R. 608] where Duff J., in the course of his judgment, expressed the view that the necessity for excluding doubt contained in the rule as to the onus upon the prosecution in criminal cases might be regarded as an exception founded upon considerations of public policy. There can be no consideration of public policy calling of similar stringency in the case of an accused person endeavouring to displace a rebuttable presumption." In R. v. Corr-Braint [[1943] 2 All. E.R. 156], a somewhat similar question arose before the Court. In that case, the appellant was charged with the offence of corruptly making a gift or loan to a person in the employ of the War Department as an inducement to show, or as a reward for showing, favour to him. This charge was laid under the Prevention of Corruption Act, 1916, and in respect of such a charge, s. 2 of the Prevention of Corruption Act, 1916, had provided that a consideration shall be deemed to be given corruptly unless the contrary is proved. The question which arose before the Court was; what is the accused required to prove if he wants to claim the benefit of the exception ? At the trial, the Judge had directed the jury that the onus of proving his innocence lay on the accused and that the burden of proof resting on him to negative corruption was as heavy as that ordinarily resting on the prosecution. In other words, the Judge in substance told the jury that the accused had to prove his innocence beyond a reasonable doubt. The Court of Criminal Appeal held that this direction did not correctly represent the true position in law. According to the Court of Appeal, the onus on the accused was only to satisfy the jury of the probability of that which he was called upon to establish, and if he satisfied the jury that the probability was that the gift was made innocently, the statutory presumption was rebutted and he was entitled to be acquitted.

What the Court of Criminal Appeal held about the appellant in the said case before it is substantially true about the appellant before us. If it can be shown that the appellant has led evidence to show that he acted in good faith, and by the test of probabilities that evidence proves his case, he will be entitled to claim the benefit of Exception Nine. In other words, the onus on an accused person may well be compared to the onus on a party in civil proceedings, and just as in civil proceedings the court trying an issue makes its decision by adopting the test of probabilities, so must a criminal court hold that the plea made by the accused is proved if a preponderance of probability is established by the evidence led by him. We are, therefore, satisfied that Mr. Bhasin is entitled to contend that the learned Judge has misdirected himself in law in dealing with the question about the nature and scope of the onus of proof which the appellant had to discharge in seeking protection of Exception Nine.

There is another infirmity in the judgment of the High Court, and that arises from the fact that while dealing with the appellant's claim for protection under the Ninth Exception, the learned Judge has inadvertently confused the requirements of Exception One with those of Exception Nine. The First Exception to s. 499 is available to an accused person if it is shown by him that the impugned

statement was true and had been made public for the public good. In other words, the two requirements of the First Exception are that the impugned statement must be shown to be true and that its publication must be shown to be for public good. The proof of truth which is one of the ingredients of the First Exception is not an ingredient of the Ninth Exception. What the Ninth Exception requires an accused person to prove is that he made the statement in good faith. We will presently consider what this requirement means. But at this stage, it is enough to point out that the proof of truth of the impugned statement is not an element of the Ninth Exception as it is of the First; and yet, in dealing with the appellant's case under the Ninth Exception, the learned Judge in several places, has emphasised the fact that the evidence led by the accused did not prove the truth of the allegations which he made in his impugned statement. The learned Judge has expressly stated at the commencement of his judgment that the appellant had not pressed before him his plea under the First Exception, and yet he proceeded to examine whether the evidence adduced by the appellant established the truth of the allegations made in his impugned statement as though the appellant was arguing before him his case under the First Exception. In dealing with the claim of the appellant under the Ninth Exception, it was not necessary, and indeed it was immaterial, to consider whether the appellant had strictly proved the truth of the allegations made by him.

That takes us to the question as to what the requirement of good faith means. Good faith is defined by s. 52 of the Code. Nothing, says s. 52, is said to be done or believed in 'good faith' which is done or believed without due care and attention. It will be recalled that under the General Clauses Act, "A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not." The element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition of the Code; and we are governed by the definition prescribed by s. 52 of the Code. So, in considering the question as to whether the appellant acted in good faith in publishing his impugned statement, we have to enquire whether he acted with due care and attention. There is no doubt that the mere plea that the accused believed that what he stated was true by itself, will not sustain his case of good faith under the Ninth Exception. Simple belief or actual belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role. If it appears that before making the statement the accused did not show due care and attention, that would defeat his plea of good faith. But it must be remembered that good faith does not require logical infallibility. As has held by the Calcutta High Court in the matter of the Petition of Shibo Prosad Pandah [I.L.R. 4 Cal. 124], in dealing with the question of good faith, the proper point to be decided is not whether the allegations put forward by the accused in support of the defamation are in substance true, but whether he was informed and had good reason after due care and attention to believe that such allegation were true.

Another aspect of this requirement has been pithily expressed by the Bombay High Court in the case of Emperor v. Abdool Wadood Ahmed [I.L.R. 31 Bom. 293]. "Good faith", it was observed "requires not indeed logical infallibility, but due care and attention. But how far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and intelligence of the person whose conduct is in question." "It is only to be expected", says the judgment, "that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of precise reasoning. At the same time, it must be borne in mind that good faith in the formation or expression of an opinion, can afford no protection to an imputation which does not purport to be based on that which is the legitimate subject of public comment."

Thus, it would be clear that in deciding whether an accused person acted in good faith under the Ninth Exception, it is not possible to lay down any rigid rule or test. It would be a question to be considered on the facts and circumstances of each case - what is the nature of the imputation made; under what circumstances did it come to be made; what is the status of the person who makes the imputation; was there any malice in his mind when he made the said imputation; did he make any enquiry before he made it; are there reasons to accept his story that he acted with due care and attention and was satisfied that the imputation was true ? These and other considerations would be relevant in deciding the plea of good faith made by an accused person who claims the benefit of the Ninth Exception. Unfortunately, the learned Judge has rejected the plea of the appellant that he acted in good faith, at least partly because he was persuaded to take the view that the evidence led by him did not tend to show that the allegations contained in his impugned statement were true. This naturally has, to some extent, vitiated the validity of his finding.

It also appears that the learned Judge was inclined to take the view that the elaborate written statement filed by the appellant nearly ten months after he had been examined under s. 342, should not be seriously considered, and that the appellant failed to make out his case of good faith at the early stage of the trial. Indeed, the learned Judge has passed severe strictures against the contents of the written statement and has blamed the appellant's lawyer for having advised him to make these contentions. In support of his finding that written statements of this kind should be discouraged and cannot be seriously taken into account, the learned Judge had referred to two decisions of this Court. One is the case of Tilkeshwar Singh and others v. The State of Bihar [[1955] 2 S.C.R. 1043], where this Court was called upon to consider the validity of the argument urged before it that there had not been a proper examination of the appellants under s. 342, and so, their conviction should be quashed. In rejecting this argument, this Court pointed out that when the appellants were examined under s. 342, they said they would file written statements, and in the statements subsequently filed by them, they gave elaborate answers on all the points raised in the prosecution evidence. That is why this Court observed that the appellants had not at all been prejudiced by reason of the fact that all the necessary questions were not put to them under s. 342. It is in this connection that this Court incidentally observed that s. 342 contemplates an examination in court and the practice of filing statements is to be deprecated. But that is not a ground for interference unless prejudice is established. The learned Judge has read this observation as laying down a general principle that the filing of a written statement by an accused person should be deprecated and the plea made by him in such a written statement need not, therefore, be seriously considered, because they are generally the result of legal advice and are no better than afterthoughts. We do not think that the observation on which the learned Judge has based himself in making this criticism justifies his view. In many cases, the accused person would prefer to file a written statement and give a connected answer to the questions raised by the prosecution evidence. Indeed, s. 256(2) of the Cr.P.C., provides that if an accused person puts in a written statement, the magistrate shall file it with the record. If the written statement is filed after a long delay and contains pleas which can otherwise be legitimately regarded as matters of after-thought, that no doubt would affect the value of the pleas taken in the written statement. But we do not think that it would be possible to lay down a general rule that the written statement filed by an accused person should to receive the attention of the court because it is likely to have been influenced by legal advice. In our opinion, such a distrust of legal advice would be entirely unjustified.

The other decision the learned Judge has referred to is in the case of Sidheswar Ganguly v. State of West Bengal [[1958] S.C.R. 749]. In that case, this Court has observed that there is no provision in the Code of Criminal Procedure for a written statement of the accused being filed at the Sessions stage, and it is in respect of written statement filed at the Sessions stage that it has made the further

comment that in a case tried by the learned Sessions Judge with the help of the Jury, if such a statement is allowed to be used by the Jury, it may throw the door open to irrelevant and inadmissible matter and thus throw an additional burden on the presiding Judge to extricate matter which was admissible from a mass of inadmissible statements which may have been introduced in the written statement. In the present case, we are not dealing with a statement filed at the Sessions trial properly so called, and so, we need not pause to consider the effect of these observations.

In the present case, the written statement is an elaborate document and it gives the version of the appellant in great detail. In considering the question as to whether the allegations made in the written statement could be dismissed as no more than an afterthought, we cannot ignore the fact that at the very commencement of the proceedings, the appellant gave a list of 328 witnesses and called for a large number of documents, and as we will presently point out the witnesses whom he examined and some of the documents which he had produced, tend to show that the appellant had revived information at the relevant time which supported his plea that the allegations which he was making against the complainant appeared to him to be true; otherwise, it is not easy to understand how the appellant could have given a list of witnesses and called for documents to show either that the allegations made by him were true, or that in any event, in making the said allegation he acted in good faith and for the public good. If the evidence led by the appellant as well as the nature of the cross-examination to which he subjected the complainant and his witnesses are taken into account, it would be difficult, we think to reject his plea of good faith on the ground that the written statement was filed very late and the pleas taken in it are an after-though. It is because of these infirmities in the judgment under appeal that we allowed Mr. Bhasin to take us through the evidence in this case. We ought to add that Mr. Anand, who appeared for the complainant, fairly conceded that having regard to the fact that the learned Judge had misdirected himself in law, the appellant would be entitled to request this Court to examine the evidence for itself before it accepted the conclusion of the learned Judge on the question of appellant's good faith.

Before we proceed to refer to the broad features of the evidence, it would be relevant to mention one fact. The appellant was at the relevant time the State Secretary of the Punjab Praja Socialist Party. He is a public worker and belongs to an active political party. He had stated that there was no animus in his mind against the complainant and his father, and that is not seriously disputed. Malice in that sense must, therefore, be eliminated in dealing with the appellant's plea. It is quite true that even if the appellant was not actuated by malice, it would not be possible to sustain his plea of good faith merely because he made the impugned statement as a public worker and he can claim that he was not actuated by personal malice against the complainant. Absence of personal malice may be a relevant fact in dealing with the appellant's plea of good faith, but its significance or importance cannot be exaggerated. Even in the absence of personal malice, the appellant will have to show that he acted with due care and attention.

There is another fact which must also be borne in mind. The statement which the accused published was in response to the challenge issued by the Government of Punjab. It is not easy to understand why the Punjab Government thought it necessary to issue a Press statement in regard to allegations which were made by the Urdu papers against a Minister's son. But the Punjab Government appears to have entered the arena and issued a challenge to the newspapers in question, and it was in response to this challenge that the appellant published the impugned statement. In this statement, the appellant requested the Punjab Government to appoint an independent Committee of impartial Judges to investigate the matter, and he undertook to prove the truth of his charge if an independent committee was appointed. In that connection, he stated that he wished to bring it to the notice of the Punjab Government that the Chief Minister's son is being discussed in almost every Punjabi house,

but people were afraid of talking about him in public lest they be punished for that. That is the genesis of the impugned statement.

The two defamatory statements made by the appellant are that the complainant is the person against whom the allegations are made in the Press, and that he is not only a "leader of smugglers but is responsible for a large number of crimes being committed in the Punjab." The statement added that "because the culprit happens to be the Chief Minister's son, the cases are always shelved up." The question which calls for our decision is : has the appellant shown that he acted in good faith when he made an imputation against the complainant that he was the leader of the smugglers and was responsible for a large number of crimes being committed in Punjab ? In dealing with this question, we ought to take a broad survey of the evidence led by the appellant and the background in which the impugned statement came to be made. It appears that before the impugned statement was made, newspapers had been publishing reports against a Minister's son without naming him. Some Members of the Punjab Legislative Assembly had also made similar statements on the floor of the House.

The appellant examined some witnesses. Jagat Narain, who is an M.L.A., was one of them. He stated that in the year 1956, gold smuggling had increased on the Amritsar border and that he derived his knowledge from the newspapers. He said he had received complaints orally and in writing about the gold smuggling on the border and these suggested the complicity of a Minister's son in smuggling. When he was asked whether he could name the informants, he stated that he would not like to name them lest they get into trouble.

Sajjan Singh is another witness whom the appellant examined. He was the Parliamentary Secretary of the Praja Socialist Party. He stated that the appellant had visited Amritsar area in 1957 and he had told the appellant about the large scale smuggling in the border area. He had also told him that Hazara Singh, Shinghara Singh, Budha Singh and Tara Pandit were smugglers and some of the Members of the Legislative Assembly were helping the smugglers and that the police did not take any action against Hazara Singh because of his connection with the complainant. This witness had seen Hazara Singh and the complainant moving together in connection with the election campaigns of 1952 and 1957. The election of 1957 took place some time in February, 1957; and so, the evidence of this witness shows that he had given the information about the complainant's conduct in respect of Hazara Singh and other matters in about February, 1957.

That takes us to the evidence of Kulwant Rai of village Sirhali, District Amritsar. Against this witness, cases were pending under s. 8(1) of the Foreign Exchange Regulation Act, s. 5(3) of the Land Customs Act and s. 19 of the Sea Customs Act. It has also been alleged against him that 140 tolas of smuggled gold had been found in his possession. He was also prosecuted by Mr. Dhir, Magistrate, Tarn Taran, under the Indian Arms Act, and prosecution under the Indian Opium Act was also pending against him. It appears that two cases against him were withdrawn because a communication dated May 18, 1957, was addressed by the Home Secretary to the Punjab Government to the District Magistrate Amritsar, directing him to withdraw the two cases pending against him. The letter required the District Magistrate to take action in that behalf immediately. It is remarkable that an affidavit was filed by Kulwant Rai dated May 21, 1957, wherein he stated that the Chief Minister had passed an order on May 7, 1957, for the withdrawal of the cases against him and that the Government order in that behalf would be received by the court very soon. This means that Kulwant Rai knew about the decision of the Government to withdraw cases against him even before the said decision was communicated to the District Magistrate and then to the trial Magistrate. It is also significant that on June 9, 1957, when the proceedings under s. 514 Cr.P.C.,

were fixed for hearing against Kulwant Rai, he was absent from court and a telegram was received by the Magistrate that Kulwant Rai was ill and his absence should be excused. This telegram was sent not by Kulwant Rai but by the complainant. The complainant no doubt denied that he had sent such a telegram, but the High Court has found that in all probability, the telegram had been sent by the complaint. The complainant also did not admit that he was a friend of Kulwant Rai. There again, the High Court was not prepared to accept the complainant's version.

On this evidence, it seems plain that the complainant knew Kulwant Rai very well and did not stop short of helping him actively by sending a telegram to the Magistrate to excuse Kulwant Rai's absence on the date of hearing of the case against him. From the evidence of Kulwant Rai whom the appellant had to examine to support his plea of good faith, it is not difficult to infer that Kulwant Rai was charge-sheeted in respect of several offences, and an allegation had been made against him that he was connected with gold smuggling. If the appellant knew that the complainant was friendly with such a character, would he be justified in claiming that in giving expression to his belief that the complainant was hand in glove with Kulwant Rai, a gold smuggler, he was acting in good faith ? That is the question which has to be answered in the present case.

In dealing with this aspect of the matter, the learned Judge no doubt found that the material on the record was enough to justify the conclusion that there was friendship between Kulwant Rai and the complainant and that the complainant had sent a telegram to the Magistrate on Kulwant Rai's behalf, but he thought it had not been proved that in fact, Kulwant Rai had been engaged in gold smuggling. No doubt, a case was pending against him for gold smuggling; but the learned Judge held that the pendency of a criminal case does not necessarily prove that the charge levelled against Kulwant Rai was in fact true. It is this approach which is substantially responsible for the learned Judge's conclusion that good faith is not proved in respect of the allegations made by the appellant that the complainant was a friend and leader of gold smugglers. The learned Judge overlooked the fact that in dealing with this aspect of the matter, the pertinent enquiry is not whether, in fact, the charge of gold smuggling had been proved against Kulwant Rai and whether it is shown satisfactorily that the complainant was assisting him in that behalf. What is pertinent to enquire is, if the appellant knew about this evidence at the relevant time and he believed that the complainant was assisting Kulwant Rai in respect of his gold smuggling activities, could he be said to have acted in good faith or not when he published the statement in that behalf ?

We may incidentally point out that we cannot overlook the fact that the appellant experienced some difficulty in proving his case in the present proceedings, because witnesses were not willing to come out and give evidence, though they may have given that information to the appellant before he made his statement. Take for instance, the case of Hardin Singh of village Patti. It appears that this witness was arrested by the police on June 19, 1959 as a suspect smuggler and he was kept in the lock-up from June 19 to June 25, 1959 and was thereafter let off. According to him, he was arrested because he had been summoned as a defence witness in the present case.

Let us then consider the case of Hazara Singh and the association of the complainant with him. Hazara Singh comes from the same village to which the family of the complainant belongs, and yet, he was not prepared even to admit that he knew the complainant or his family. The learned Judge realised that Hazara Singh was not prepared to speak the truth at least on some points, and so, he observed that he was willing to accept the appellant's case that the complainant, Sadhu Singh and Major Naurang Singh, Senior Superintendent of Police were on friendly terms. He, however, thought that it was not clearly shown on the record whether Hazara Singh was entered as a badmash in the police registers and that there was also no convincing evidence on record to show that Hazara

Singh was a gold smuggler. The learned Judge referred to the evidence which showed that the complainant and Hazara Singh were moving together during the election days and were friendly with each other; but that, according to the learned Judge, did not prove the truth of the statement that Hazara Singh was a gold smuggler and that the complainant was his friend. This approach again is partly based upon importing into the discussion the consideration about the truth of the statement which would be relevant under the First Exception but which is not material under the Ninth Exception.

In connection with Hazara Singh, and Kulwant Rai, there are two documents to which our attention has been invited by Mr. Bhasin. These documents show that Kulwant Rai was treated on the Police record as a notorious smuggler and habitual offender, and Hazara Singh was treated as a bad character and his name was borne on register No. 10, and his history sheet was opened at No. 110A Basta Alif. There has been some argument before us at the Bar on the question as to whether these two documents are duly proved. Mr. Anand for the complainant has strongly urged that these documents are not proved, and in any event, no reliance was placed on them in the courts below. This latter contention is undoubtedly true; but the contention that the documents were not proved in the present case strikes us as none too strong, because these documents have been included in the paper book after the lists made by the respective advocates for the parties were exchanged and the index was finally settled with their approval in the Punjab High Court. The learned Advocate for the State or the complainant did not object to the inclusion of these two documents in the record, and this showed that they were treated as duly forming part of the record. It does appear that Mr. Dhir, the Resident Magistrate, Kaithal (D.W. 27) has produced the whole file of the case in respect of the proceedings taken under s. 514. Cr.P.C., and Mr. Bhasin contends that along with the file, the two documents in respect of Kulwant Rai were received. Mr. Anand no doubt suggested that it was not shown under what statutory provision these documents are kept; but since the admissibility of these documents does not appear to have been challenged in the courts below, we think it is too late to raise this technical point at this stage. However, in dealing with the appeal, we are prepared to exclude from our consideration evidence furnished by these two documents. Even without them, there is enough evidence to show that the complainant was friendly with Kulwant Rai and Hazara Singh, and on the whole, we are inclined to take the view that if the appellant knew about the complainant's friendship and active association with these two persons and had other information about the activities of these two persons, it cannot be said that he did not act in good faith when, in response to the challenge issued by the Punjab Government, he came up with the impugned statement and sent it for publication in the Press.

Then, in regard to the other allegation that the complainant was concerned with the commission of offences in Punjab, we may refer to the evidence led by the appellant to show that in making this charge, he acted in good faith. The witness to whose evidence reference has been made by Mr. Bhasin in respect of this part of the case is Mr. K. K. Dewett, who was the Principal of the Punjab University College, Hoshiarpur, between June, 1952 and April, 1958. The incident to which this witness deposed took place in 1953. At this time, the complainant had left the college at Hoshiarpur. On January 19, he went to that college to get his certificate Principal Dewett in his evidence did not support the appellant in his suggestion that the complainant had behaved in a criminal way and had threatened to assault the students in the college on that occasion. But the confidential report made by him on January 22, shows that in the witness-box Principal Dewett hesitated to disclose the whole truth. This report unambiguously indicates that the complainant threatened several students with a stick, and it speaks of two or three incidents that took place which created a considerable excitement and commotion among the student community in the college. In this report, the Principal, in fact, describes the situation as very ugly, and he refers to the fact that the students went

on strike and passed resolution, demanding the rustication of the complainant from the University and also protesting against inaction and partiality of the Principal himself. This confidential report was further enquired into, and the documents in respect of this enquiry are also on the record. The students seem to have demanded that the complainant should be arrested, because they were afraid that he would collect his friends and cause mischief to them. Ultimately, the Vice-Chancellor made a report to the Chancellor that having examined the matter, he came to the conclusion that the complainant was "a bit bumptious and throws his weight about in a way which fellow-students find irritating". He added "How one wishes that the sons of men holding exalted offices in the State would behave in a way consistent with the dignity of their parents". The learned Judge does not appear to have taken into account these reports, but has substantially relied on the oral evidence of the Principal himself. Even so, he has recorded his conclusion that the evidence shows juvenile indiscipline on the part of the complainant but no juvenile delinquency and certainly no "crime in the sense of the libellous imputation made". In dealing with this part of the imputation again, the learned Judge should have asked himself the question as to whether on the material of the kind disclosed by the confidential report made by the Principal, would a person of ordinary prudence acting bonafide in good faith be not justified in coming to the conclusion that the complainant was not only throwing his weight about, but was also threatening assaults in the college, because he thought he would be immune from legal process by virtue of his position ? The fact that the appellant called for several documents and gave a list of witnesses as soon as he entered on his defence, shows what he knew at the relevant time, and his plea that he acted in good faith has to be judged on the basis that he made the imputations because he had material of this kind in his possession.

It is true that the appellant has stated in his written statement that several persons came and reported to him against the complainant, and amongst them were included some high police officials as well; but having regard to the fact that the complainant's father occupied the position of the Chief Minister of Punjab, they were not willing to come forward and give evidence in court. In fact, the appellant had requested the Punjab Government in his impugned statement to appoint a commission of inquiry and had stated that if a commission of inquiry was appointed, he would prove his charges against the complainant. It is in the light of these circumstances, that we have to decide whether the appellant has proved that he acted in good faith or not. In dealing with this question, we cannot overlook or ignore the probabilities on which the appellant relies, the surrounding circumstances to which he has referred and the actual evidence which he has led.

Incidentally, we may mention two other documents on which Mr. Bhasin has relied. On February 20, 1957, the complainant wrote a letter to 'Major Sahib' (SSP). In that letter, he told the Major Sahib to grant leave to S. Gurdial Singh No. 1725 posted at Chowki Khosa Burj, and he added that it was very urgent, and asked him to do it immediately. Similarly, on June 3, 1956, the complainant wrote a letter to the Executive Officer, Taran Taran, in which he stated "our 10/12 trucks loaded with wood will be reaching Taran Taran one or two daily. Therefore, you please instruct your Moharrir on the Jandiala-Amritsar road that he should not create any obstruction regarding octroi". It would be noticed that the complainant had been writing to Government servants in respect of matters falling within their authority as such servants; and that shows, according to Mr. Bhasin, that the complainant was throwing his weight about even in matters with which he had no connection at all.

We have carefully considered the evidence to which our attention was drawn by Mr. Bhasin as well as Mr. Anand, and we have come to the conclusion that the High Court was in error in holding that the appellant had failed to show that he acted in good faith when he published the impugned

statement. As we have already stated, it has been found by the High Court and it is not disputed before us that the publication of the impugned statement was for the public good; and so, our conclusion is that the appellant is entitled to claim the protection of the Ninth Exception.

Before we part with this appeal, we ought to add that this matter came before this Court for hearing on the 1st September, 1964, and an interlocutory judgment was delivered by which certain documents were called for. On that occasion, Mr. Bhasin had pressed before this Court his contention that the trial Judge was in error in not calling for certain documents which the appellant wanted to rely on, and in upholding the plea of privilege made by the State Govt. in respect of certain other documents. We wanted to satisfy ourselves whether the documents on which Mr. Bhasin wanted to rely were relevant and whether the plea of privilege claimed by the State was justified. Some of these documents have been received by this Court in pursuance of our interlocutory judgment. But we do not think it necessary to consider this matter, because the documents which Mr. Bhasin wanted to be produced or proved might at best, if they are admitted, be of help to him to show that the allegations made by the appellant are true. That however is a plea which falls under the First Exception and since the appellant did not claim the benefit of that Exception in the High Court, we do not think it would be open to the appellant to press his point that we should examine the question as to whether the trial Judge erred in not allowing the appellant to bring these documents on the record. That is why we did not look at these documents and have not considered the question raised by Mr. Bhasin at the time when the interlocutory judgment was delivered in this case. In other words, the appellant is not allowed to raise his plea that the allegations made by him in the impugned statement are true.

Even so, in view of our conclusion that the appellant has succeeded in showing that he is entitled to the protection of the Ninth Exception to s. 499, the appeal must be allowed and the order of conviction and sentence passed against the appellant set aside. If the fine imposed on the appellant has been paid by him, the same should be refunded to him.

Appeal allowed.

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