

SUPREME COURT OF INDIA

Jotish Chandra Chaudhury

Vs.

State of Bihar

Crl.A.No.1 of 1968

(S. M. Sikri and R. S. Bachawat, JJ.)

26.04.1968

JUDGEMENT

SIKRI, J.:-

1. In this appeal by special leave Jotish Chandra Chaudhury, hereinafter referred to as the appellant, challenges the order of a Division Bench of the Patna High Court in Criminal Appeal No. 4 of 1967, refusing to interfere with the order of the learned Single Judge directing the prosecution of the appellant under Section 199 and S. 200 of the Indian Penal Code or such other sections as may be found to be applicable.

2. In order to appreciate the contentions of the learned counsel for the appellant it is necessary to set out the relevant facts. The appellant with his five sons constituted a joint Hindu family. In 1952 partition took place. At that time three sons were minor while two were major. As a result of the partition joint family business, which was then being carried on under the name and style 'Ramnath Sarjug Prasad' was allotted exclusively to the appellant and his three minor sons. The appellant filed a suit (Suit No. 5 of 1958) for damages against M/s. Lakshmi Bombay Thread Factory and others on

the ground that the defendants had infringed certain trade marks registered under the Trade Marks Act, 1940. This suit was decreed by the District Judge, Patna, on March 31, 1962. The defendant filed an appeal against the said decree. This appeal was numbered First Appeal No. 227 of 1962. In the suit one contention of the defendants was that the suit was not maintainable because although the suit had been instituted by the appellant in his capacity as proprietor of the firm Ramnath Sarjug Prasad, his three minor sons, who were also proprietors of the firm according to the partition deed dated November 2, 1962, had not been impleaded. The learned District Judge held on this point that it was open to the plaintiff to sue on behalf of the entire family comprising himself and his minor sons as karta of his family without impleading the minors. In the course of the hearing of the appeal before the learned Single Judge, the appellant filed a petition under Order 1, Rule 10, Cr. P. C., on May 1, 1967, for addition of parties. On the same day the learned Single Judge directed the appellant to file an affidavit by May 2, 1967, giving the respective dates of birth of his three minor sons who were to be added as parties to the said appeal. The appellant, who has a large family, did not remember the exact dates of birth of his sons and sought information from the school authorities. The appellant received information from the Principal, Ram Mohan Roy Seminary, Patna, on May 2, 1967, that the date of birth of Subhash alias Ashok Kumar Jayaswal was June 9, 1954. On the same date the appellant swore and filed an affidavit stating therein the above date of birth of Subhas alias Ashok Kumar Jayaswal. The learned Single Judge in the judgment disposing of Appeal No. 227 of 1962 observed:

"In conclusion, I would like to mention that the statement made by plaintiff-respondent Jotish Chandra Choudhury in the affidavit sworn and filed by him in this Court on 2-5-1967 about the date of birth of his youngest son Subhas being 9th June, 1954 appears to be false to his knowledge, as shown by the fact that this plaintiff-respondent himself was one of the executants in the Partition Deed (Ext. B) which is dated 2-11-1952 and he executed the same for himself as well as guardian of his three minor sons including the aforesaid Subhas. He is therefore directed to show cause by 11-7-1967 as to why he shall not be prosecuted for committing offences under Sections 199 and 200 of the Indian Penal Code or such other sections as may be found to be applicable."

The learned Single Judge, on cause being shown, was unable to accept the plea of the appellant that the date of birth of Subhas had been wrongly mentioned due to a bona fide mistake. We may mention that Subhas was actually born on December 12, 1951, and not on June 9, 1954. The learned Single Judge observed:

"This plea about bona fide mistake does not appear to be all convincing or acceptable. As it is well known that the entries in the School Registers regarding the dates of birth are often wrong being based upon wrong information given at the time of admission of the students and Jotish Chandra Choudhary being himself the father of the boy and being a party to the aforesaid deed of partition could not be unaware of the fact that the date of birth as entered in the School Register was not correct. In this connection, it may be mentioned that he is not an illiterate villager but a business man living in Patna City and running a business since a long time.

On a consideration of all the above aspects, I am quite unable to accept the plea about the date of birth having been wrongly mentioned in the affidavit due to bona fide mistake and it is evident that this date was deliberately given as it was thought that time that this version could be supported by the certificate obtained from the school and the fact that could be detected by reference to the registered deed of partition which has been executed in 1952, had been overlooked at that time."

3. With respect to the learned Judge, he has not considered whether any advantage was likely to accrue to the appellant for giving the date of birth of his son Subhas as June 9, 1954, instead of December 12, 1951. As far as the appeal pending before the learned Single Judge was concerned, it is not disputed that this change did not make any difference to the decision of the question of impleading the minor son as a party or the decision on the question whether the suit was maintainable or not. Before a person can be punished under Section 199, I. P. C., it as to be proved inter alia, that the false statement is 'touching any point material to the object for which the declaration is made'. There is no suggestion that the change of the date of birth touched any material point in F. A. No. 227 of 1962. One of the ingredients of an offence under Section 200, I. P. C., is that the declaration should be used or attempted to be used corruptly. It has not been explained to us how the declaration was used 'corruptly'. Considering that the date of birth was obtained from the school records, and that the appellant stood to gain no advantage by giving a wrong date, the learned Single judge should not in our view, have directed the lodging of complaint under Sec, 199 or Section 200, I. P. C. It is not clear that other section of Indian Penal Code the learned Single Judge had in view.

4. In view of the above conclusion it is not necessary to consider whether the judgment directing the filing of complaint was in contravention of Sec. 479A (6), Cr. P. C.

5. In the result the appeal is allowed and the orders of the Division Bench and the learned Single judge set aside and the complaint, which is stated to have already been filed, quashed.

Appeal allowed.