

R. K. Lakshmanan

Vs

A. K. Srinivasan and Another

Criminal Appeal No. 130 of 1975

(Y. V. Chandrachud, P. N. Bhagwati, R. S. Sarkaria JJ)

01.08.1975

JUDGMENT

SARKARIA, J. –

1. This appeal by special leave is directed against a judgment of the Kerala High Court rejecting the appellant's application under Section 561-A, Criminal Procedure Code for expunction of certain remarks made against him in the High Court's Order, dated November 20, 1973, in Criminal Misc. Petition No. 967 of 1973.

2. The appellant is a member of the Kerala Judicial Service, while the respondent herein is an Advocate practicing at On August 14, 1973, the appellant was working as district Magistrate, Ernakulam. One Kamalasanan, who was an accused in C.C. Nos. 216 and 217 of 1973 pending before him, was ordered to be released on bail on his executing a bond for Rs. 1,000 with two sureties in the like amount. The two sureties were Kamaleswaran, the brother of the accused, and Sri. Thankappan Nair. Thankappan's address was given as "businessman, son of Parameswaran Pillai, Thambanoor, Trivandrum". The affidavit filed by Thankappan while offering himself as surety, was attested by Sri. A. K. Srinivasan, Advocate stating :

Solemnly affirmed at Ernakulam on this 14th day of August 1973 and signed before me who is personally known to me.

3. The above cases stood posted for examination of the accused under Section 342 of the Code of Criminal Procedure. When on that date the cases were called for hearing, the accused was absent. His Counsel Shri Srinivasan appeared, who had to come from Trivandrum, yet he was expecting him to reach the court in time. The appellant (District Magistrate) thereupon ordered cancellation of the bail bonds and directed issue of notices to the surety under Section 514 of the Code of Criminal Procedure calling upon him to show cause before October 16, 1973 why the terms of the surety bonds providing for forfeiture of the sum of Rs. 1,000 be not enforced. The notices issued to the surety, Thankappan Nair, were returned unserved whereupon on October 17, 1973, the appellant issued a non-bailable warrant for the arrest of the surety. On the following day, the appellant issued a notice to Sri A. K. Srinivasan, Advocate which ran as under :

Ernakulam District Magistrate Court No. M.C. 106 and M.C. 107 of 1973.

Notice for Shri A. K. Srinivasan, Advocate.

The above-mentioned cases are being fixed for hearing on 3.11.1973 at 11 a.m. You

are required to appear before the Court.

By Order Sd/- Sharishtadar.18th October, 1973.##

4. It may be mentioned here that in the proceedings initiated under Section 514 of the Code of Criminal Procedure in the two cases, Mr. Srinivasan, Advocate was not the duly constituted attorney for the surety, Thankappan.

5. On receipt of the aforesaid notice, Mr. Srinivasan, Advocate filed CrI. M.P. 967 of 1973 before the High Court of Kerala under Section 561-A of the Code of Criminal Procedure praying that the appellant be directed to withdraw the notice, dated October 18, 1973, on the ground that the issue of notice was arbitrary and amounted to an abuse of the process of the court because -

(a) There is no provision in the Criminal Procedure Code empowering the Magistrate to issue such a notice to command the Advocate's appearance when he is not connected either as a witness or a party, or otherwise, with the proceedings relating to cancellation of bail-bonds;

(b) The notice was issued to humiliate him and the Bar since the latter had passed a resolution on July 21, 1973, protesting against the improper and discourteous treatment meted out by the Magistrate to the members of the Bar.

6. The learned Judge of the High Court before whom this petition came up for hearing, by an order dated November 2, 1973, called for a report from the appellant by November 5, 1973 regarding the allegations contained in the Advocate's petition and particularly as to under which provision of law and under what circumstances he had thought it fit to issue a notice to the Advocate requiring him to appear before him on November 3, 1973. The appellant thereupon submitted the report to the High Court, the material part of which reads :

When notice was sent to the surety, Thankappan Nair whose address is given as, businessman, Thambanoor, Trivandrum, it was reported by the police that there is no such person, as far as they could gather, from the detailed enquiries made and therefore notice could not be served. In the affidavits filed by Shri Thankappan Nair in these two cases when he offered himself as surety the signatures of the deponent were attested by Shri A. K. Sreenivasan, advocate stating "Solemnly affirmed at Ernakulam on this the 14th day of August, 1973 and signed before me, who is personally known to me". From the report of the police Trivandrum it appeared that this might be a case of false personation. It is seen that in several cases the accused have been got released by false sureties. I have already submitted a report about this to the Hon'ble High Court as per my letter dated August 31, 1973.

* * *

There are several other similar instances of false personation and filing false affidavits pending enquiry before this Court. Under the circumstances in this case also it appeared to the Court that a false affidavit has been filed by false personation. If it is false personation, the attestation by the advocate should necessarily be false. The offences under Sections 193, 196, 197, 199 and 205 of the Indian Penal Code appear to have been committed. These are some of the offences mentioned in Section 195 Cr. P.C. Under Section 476 of the Cr. P.C., when any Civil, Revenue or Criminal

Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interest of justice that an enquiry should be made into any offence referred to in Section 195, sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that court, such court may, after such preliminary inquiry if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court. To ascertain whether there is a person as described in the affidavits filed in the name of Shri Thankappan Nair notice was issued as part of the preliminary enquiry contemplated under Section 476 Cr. P.C. to Shri A. K. Sreenivasan who has attested the affidavits of the said Thankappan Nair stating that the deponent is personally known to him. This had to be done in view of the report of the police. Notice to Shri A. K. Sreenivasan was issued to appear in court on November 3, 1973 not in his capacity as Advocate appearing for the accused but as the person who has attested the affidavit of the said surety stating that he personally knows the surety. The court can make the preliminary enquiry mentioned above, either through the police or to the accused or to the other surety or to the person who attested the affidavit. In this matter accused is absconding, the other surety could not be served and the police report is as stated above. So the only person to whom the inquiry under Section 476 could be made in the circumstances is the person who has attested the affidavit.

7. On November 8, 1973, the Advocate filed an affidavit in which the inter alia averred :

I submit that the present explanation, that the notice was issued to me as a part of the preliminary enquiry contemplated under Section 476 of the Criminal Procedure Code, is obviously an after thought, since it is difficult that any reasonable man would have inferred from the police report, dated October 12, 1973, that Sri. Thankappan Nair, one of the sureties was a non-existent person and therefore the attestation made by me on August 14, 1973 would have been false.

He further reiterated with elaboration the allegations in his petition that the impugned action of the Magistrate lacked good faith and due care and had been issued to humiliate the Bar generally and the petitioner particularly.

8. After taking into consideration the appellant's report and other material on record, the High Court quashed the notice holding that the "action of the District Magistrate in issuing the impugned notice to the appellant constitutes grave misuse of his power and flagrant abuse of the process of the court".

9. The appellant then moved an application (Cr. M.P. No. 7 of 1974) for expunction of the remarks made against him by the High Court in its order, dated November 20, 1973. The application was rejected.

10. Against that order, dated March 13, 1974, refusing to expunge the adverse remarks, Shri Lakshmanan, the District Magistrate has come in appeal to this Court.

11. In the reply affidavit, dated March 21, 1975, filed in this Court, the appellant has submitted that if this Court is prima facie of the opinion that the passages requested to be expunged are too many and spread over throughout the order, at least these four passages be expunged from the order in

question :

(i) I cannot help remarking that the information furnished to this Court by the District Magistrate in his report dated November 3, 1973 regarding the contents of the police report is grossly inaccurate and misleading.

(ii) I make no secret of my opinion that the action taken by the District Magistrate, in the present case in issuing a notice to the petitioner, who is a member of the Bar, was most highly arbitrary and the very casual fashion in which the said action has been done renders it all the more objectionable.

(iii) that the action taken against the petitioner by the District Magistrate is totally devoid of any legal sanction and highly arbitrary.

(iv) I hold that the action of the District Magistrate in issuing the impugned notice to the petitioner constitutes a grave misuse of his power and also flagrant abuse of the process of his court.

12. The tests to be applied in considering the expunction of disparaging remarks against persons or authorities whose conduct comes in for consideration before courts of law in cases to be decided by them, were neatly summed up by this Court, speaking through S. K. Das, J. in *State of U. P. v. Mohammad Naim* ((1964) 2 SCR 363, 374 : AIR 1964 SC 703 : (1964) 1 Cri LJ 549) thus :

(i) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(ii) Whether there is evidence on record bearing on that conduct justifying the remarks; and

(iii) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.

13. Let us now apply these tests to the present case.

14. In the petition filed under Section 561-A, Code of Criminal Procedure, by the Advocate, the appellant was impleaded as the sole respondent. The appellant was called upon by the High Court to explain his conduct in issuing the impugned notice. In reply, the appellant submitted a detailed report. It is not controverted that before the High Court, the appellant was represented by a senior Public Prosecutor who had been directed to defend him by the State Government. The appellant had thus adequate opportunity of explaining his conduct and defending the impugned action. Indeed, in his report submitted to the High Court, he did his best to justify his conduct in that case. The appellant therefore, cannot complain that the remarks in question were passed by the High Court without affording him due opportunity to explain and defend his action.

15. Nor can it be said that this is a case where there was no evidence on record bearing on the conduct of the appellant to which the remarks in question pertain.

16. It is true that ex facie, the notice requiring the Advocate to attend the Court of the appellant on

November 3, 1973, though couched in court and peremptory language, was not, by itself, a very offensive document. But the Advocate's allegation was that it had not been issued in good faith and the sole purpose of issuing this notice was to humiliate the Advocate and the Bar who had earlier passed a resolution complaining to the High Court against the misbehaviour of the appellant towards the members of the Bar. Subsequently, on November 8, 1973 the advocate filed an affidavit setting forth full particulars of the circumstances which, according to him, showed how the notice was illegal, arbitrary and tainted by bad faith. He annexed a copy of the Bar's resolution, to his affidavit. The report sent by the appellant to the High Court confirmed that the allegations made in the Advocate's petition were not empty apprehensions. The report revealed that the notice was not an innocuous request to the Counsel to furnish better particulars of the surety, but it was a preliminary step taken under cover of Section 476, Criminal Procedure Code for possible prosecution of the Advocate. The appellant gave a clear clue to his ulterior intent, when in the report, he said :

Notice to Shri A. K. Sreenivasan was issued ... not in his capacity as Advocate appearing for the accused but as the person who has attested the affidavit of the said surety

17. Thus there was ample material before the High Court bearing on the impugned conduct of the appellant, justifying the adverse comments in question.

18. Again, the passages sought to be expunged could not be said to be irrelevant or alien to the subject-matter of the case before the High Court.

19. The notice issued to the surety had been returned by the police with an endorsement which, rendered into English, reads as under :

Notice could not be served on the person referred to in the notice as he (process-server) did not get any information about him after detailed enquiry made about him in Tampanoor from different businessmen. For want of sufficient information and more detailed particulars regarding the nature of the business conducted at Tampanoor by the person referred to in the notice, the service could not be effected.

Submitted for orders

20. But in his report submitted to the High Court, the appellant stated that "it was reported by the police that there is no such person as far as they could gather from the detailed inquiries made and therefore notice could not be served". Manifestly, this statement did not present a faithful and correct picture of the endorsement of the process-server. Evidently, this misleading stand was taken by the appellant to show that action under Section 476, Criminal Procedure Code against the Advocate would not be groundless. In these premises it cannot be said that the observations of the High Court that "information furnished to this Court by the District Magistrate in his report dated November 3, 1973 regarding the contents of the police report is grossly inaccurate and misleading", was unjustified.

21. The substance of the other remarks in question is substantially the same, viz, that the issue of the impugned notice to the Advocate by the appellant was illegal and arbitrary and amounted to a gross abuse of the process of the Court. These remarks were an integral part of the reasoning of the High Court. They were not irrelevant or foreign to the matter in issue. They were inextricably intertwined with the findings and the order recorded by the High Court in that case. Excision of these remarks

would emasculate the order of the High Court, robbing it of its very rationale.

22. Judged by the aforesaid tests, no case for interference by this Court has been made out.

23. Accordingly, we dismiss the appeal, with no order as to costs.

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