

Mohammad Ibrahim

Vs

B. Rama Rao

Criminal Appeal No. 194 of 1971

(Y. V. Chandrachud, A. C. Gupta JJ)

28.11.1975

JUDGMENT

CHANDRACHUD, J. -

1. The appellant had filed Writ Petition No. 205 of 1967 in the High Court of Andhra Pradesh for challenging the order of his reversion from the post of Assistant Engineer to that of a Supervisor. The respondent, who was then an Assistant Secretary to the Government of Andhra Pradesh in the Public Works Department, swore to a counter affidavit on behalf of the five respondents in the writ petition. He stated in that affidavit, inter alia that grave charges of misbehaviour were made against the appellant by one Miss G. L. Narayanamma, that the case in regard to those charges was pending in the court of the Eighth City Magistrate, that the appellant's services as an Assistant Engineer were sound unsatisfactory since November 1963 and that the order of reversion was passed because his service record was not satisfactory. The writ petition was dismissed by the High Court but the appellant carried the matter to this Court and on remand, the writ petition eventually succeeded and the order of reversion passed by the Andhra Pradesh Government was set aside by the High Court.

2. On January 28, 1970, the appellant filed an application in the High Court praying that orders may be passed under Section 479-A of the Code of Criminal Procedure 1898, directing that the respondent be prosecuted under Section 193 of the Penal Code on the ground that the statements made by him in the counter affidavit were to his knowledge false. The High Court by its judgment dated July 7, 1970 dismissed the application and being aggrieved thereby, the appellant has filed this appeal by special leave.

3. Section 479-A of the Code provides, to the extent material, that when any civil court is of the opinion that any person appearing before it as a witness as intentionally given false evidence in any stage of judicial proceeding and that for the eradication of the evils of perjury and in the interest of justice, it is expedient that the witness should be prosecuted for the offence which appears to have been committed by him, the court shall, at the time of delivery of the judgment disposing of the proceedings, record a finding to that effect and may, if it so thinks fit, make a complaint thereof in writing setting forth the evidence which is false. The statements made by the respondent in his counter affidavit in regard to the pendency of the complaint filed by Miss Narayanamma and the appellant's service record are, in their letter and in the literal sense, not true but that is not enough for sanctioning the prosecution. An essential pre-requisite of Section 479-A is that the court must form the opinion that the witness had made the statement complained of "intentionally".

4. The High Court has recorded a finding that on the material before it, it was difficult to come to the conclusion that the respondent had made the particular statements, intentionally. In this view, the

High Court seems to us to be right. The respondent has filed an affidavit before us from which it is clear that Miss Narayanamma had, in fact, made a complaint against the appellant to his superior officers in regard to his conduct and behaviour towards her. It is this complaint which formed the subject-matter of the criminal case which was filed by the appellant against Miss Narayanamma for defamation under Section 500 I.P.C. Miss Narayanamma was fined in those proceedings but that is beside the point. The criminal case was pending in the magistrate's court when the counter affidavit of respondent was drafted but the case was disposed of before the affidavit was sworn and tendered in the High Court. Those in charge of the legal affairs of the State ought to have shown greater care in scrutinising the affidavit once again before it was sworn but that cannot justify the charge that the respondent had made the untrue statement intentionally. It is not irrelevant, on the factual aspect, that he had no reason for doing so. The same holds good in regard to the other statement contained in the counter affidavit that the service record of the appellant was not satisfactory until a certain date.

5. Under Section 479-A Cr. P.C. not only is it necessary that the court must form the opinion that the witness had intentionally given false evidence, but it is further necessary that the court must come to the conclusion that for the eradication of the evils of perjury and in the interests of justice it is expedient that the witness should be prosecuted for the offence which appears to have been committed by him. On this aspect of the matter, there is any a circumstance showing that it is not in the instant case expedient in the interests of justice that the respondent should be prosecuted for having made false statements in his counter affidavit. There is a plausible explanation as to the circumstance in which the respondent came to make the two particular statements now complained of. Secondly, the respondent did not occupy any high place in the hierarchy of the Secretariat staff and we are inclined to the view that he swore a statement which by his superior officer he was commanded to swear. Mr. Markandeya appearing for the appellant urged that the entire record of the case was before the respondent and if he were to peruse that record with any degree of care, he would not have made the particular averments in his counter affidavit. The question before us is not whether the respondent was negligent in failing to peruse the record carefully but whether he had intentionally made the false statements complained of and whether the interests of justice require that he must be prosecuted for having made the particular statements. Those whose duty primarily it was to study the record and to draft a counter affidavit on the basis of that record should have exercised the care demanded of them before the respondent was asked to swear the affidavit. Their failure to display care and caution cannot be visited upon the respondent who was but small officer in a big department of the State Government.

6. We cannot however, part with this case without drawing the attention of the State Government to what seems to be highly unsatisfactory state of affairs. Counsel for the appellant drew our attention to an unreported judgment of the High Court of Andhra Pradesh in *G. Satyanarayana v. Government of Andhra Pradesh* (Writ Petition Nos. 1480 & 1525 of 1968, decided on March 5, 1969 (AP HC) in which the High Court expressed its grave concern at innumerable instance in which irresponsible statements were made, without any regard to accuracy, in the affidavit filed on behalf of the State Government. The case before us is yet another instance of the malady. We hope that the higher officers of the State Government will cease hereafter to utilise the lower ones to provide an alibi for their own want of care and that the legal advisers of the Government will display greater competence and attention in drafting affidavits. The respondent has already retired from government service and we do not think it expedient in the instant interests of justice to disturb his peace, such as may have survived the gnawing feeling of having made false statements on oath.

7. With these observations, we dismiss the appeal.

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