

# CALCUTTA HIGH COURT

Dr. Suresh Chandra Banerji

Vs.

Punit Goala

Misc. Case No. 240 of 1951

(Harries, C.J. and Banerjee, J.)

01.08.1951

## JUDGMENT

### **Harries, C.J.**

1. This is a rule calling upon the Chief Presidency Magistrate to show cause why the records of a certain case should not be transferred to this Court under the provisions of Article 228 of the Constitution to enable this Court to decide the constitutional point involved in the case. We have heard the parties at length and we have come to the conclusion that this is not a case in which we should call for the records because it is clear that the view taken by the Chief Presidency Magistrate that the proceedings should continue is well founded.

2. The petitioners, who are the parties accused in the proceedings, have been described by the complainant as members of the editorial board of a newspaper published in Bengali in the city of Calcutta known as "Loka Sevak". Accused No. 1 Dr. Suresh Chandra Banerji, M. L. A. is said to be a member of the editorial board of the newspaper, whereas accused Nos. 2, 3 and 4 are respectively chairman of the board of editors, editor and publisher of the said newspaper. They are said also to be members of a recently formed political party in this State known as the Krishak Praja Mazdoor Party and the suggestion of the complainant is that the Loka Sevak is an organ of this party.

3. The proceedings arose out of a report in this Bengali newspaper of a speech made by Dr. Suresh Chandra Banerji in the Legislative Assembly of the State of West Bengal. That speech is said to have been made on 13.3.1951 and the complainant in his complaint alleged that that speech contained matter defamatory of him. On 14th March the Loka Sevak published a report of the proceedings in the Legislative Assembly including a report of the speech of Dr. Suresh Chandra Banerji.

4. The complainant then filed a complaint in the Court of the Chief Presidency Magistrate against the four petitioners alleging that this report of the speech of Dr. Suresh Banerji contained matter highly defamatory of him and had been published maliciously and in bad faith.

5. Before the Chief Presidency Magistrate it was contended that no proceedings could lie against the four petitioners. It was urged that such proceedings were prohibited by Art 194 of the Constitution of India, and it was further contended that reports of proceedings of a Legislature of a State were privileged and no prosecution could lie in respect of anything contained in such reports. The learned Chief Presidency Magistrate however directed process to issue and the petitioners were called upon to answer the complaint made in respect of an offence under Section 500 of the Indian Penal Code.

6. The petitioners then moved this Court and obtained a rule nisi calling upon the Chief Presidency Magistrate to show cause why the records of the case should not be transferred to this Court so that this Court could decide the constitutional point involved, namely, whether Article 194 of the Constitution barred these proceedings.

7. We have heard Mr. Sudhansu Sekhar Mukherjee in support of this rule and we are satisfied that there is nothing in Article 194 of the Constitution which bars this prosecution which has been instituted against the four petitioners.

8. Article 194 of the Constitution of India is in these terms :

"(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature."

9. Clauses (1) and (2) of Article 194 protect absolutely and completely a member in respect of any speech made by him in the Legislative Assembly or in any committee of the Legislature. His words spoken within the four walls of the Assembly are clearly absolutely privileged and no proceedings either civil or criminal may be taken in respect of them. It is, therefore, clear that Dr. Suresh Chandra Banerji who made the speech in the Assembly containing the alleged defamatory matter cannot be prosecuted for uttering the words complained of in the Assembly. It is to be observed, however, that in the complaint it is not suggested that he is liable in respect of

the words spoken in the Assembly. What is suggested in the complaint is that he is liable in respect of the publication made at his instigation in the Loka Sevak on the following day.

10. It is further clear from Clause (2) of Article 194 of the Constitution that all persons connected with any publication of proceedings of a Legislature are protected if such publication is made by or under the authority of the Legislature itself. Official and authorized reports of proceedings are authorized by the Legislature and all persons connected with such a publication are protected from both civil and criminal proceedings by reason of Clause (2) of this Article. It is not suggested that the reports of the proceedings in the Loka Sevak are published by or under the authority of the Legislative Assembly of this State and therefore Clause (2) of the Article has no application whatsoever.

11. Mr. Sudhansu Mukherjee, however, contended that these four persons connected with the publication of the report of the speech in the Loka Sevak were protected by reason of Clause (3) of Article 194 of the Constitution. That clause provides that in respect of all matters other than those covered by Clause (2) the powers, privileges and immunities of members of a Legislative Assembly shall be such as may from time to time be defined by the Legislature and until such powers, privileges and immunities have been defined they shall be those of members of the House of Commons in England at the date upon which the Constitution came into force.

12. It appears to me that Clause (3) of Article 194 can have no application whatsoever to the case of publishers because it only applies to privileges, powers and immunities of members of the Legislative Assembly. Clause (3) would apply to Dr. Suresh Chandra Banerji as a member of the Legislative Assembly. But, as I have said, he is not being charged as a member, but as a person concerned with the publication of a defamatory matter in a newspaper.

13. Further it appears to me that if Dr. Suresh Chandra Banerji had in his private capacity caused his speech to be published in a newspaper he would still be liable in spite of Clause (3) of Article 194. A member of Parliament in England cannot be proceeded against in respect of anything which he has said in the House of Commons, but it has been held that if he causes his speech to be published in a newspaper, then he may be liable both civilly and criminally. Such were the decisions in the case of *Rex v. Lord Abingdon*<sup>1</sup>,

14. Further it appears clear from the words of Clause (2) of Article 194 of the Constitution that no publication of reports is protected unless such is a publication authorized by the Legislature. Protection by this Article is only given to one class of reports and by the ordinary rule of construction it must be held that no other class of reports is protected. *Expressio unius exclusio alterius*.

15. As this report is not protected by anything in the Constitution the ordinary law of the land must apply. It was urged by Mr. Sudhansu Mukherjee that reports of proceedings in a Legislature are the subject of a qualified privilege and he relied upon the well-known English decision in *Wason v. Walter*<sup>2</sup>, in which it was held that a faithful report in a public newspaper of a debate in either House of Parliament, containing matter disparaging to the character of an individual which had been spoken in the course of the

<sup>1</sup>(1794) 1 Esp. 226 and *Rex v. Greevey*, (1813) 1 M. and Section 273

<sup>2</sup>(1869) 4 QB 73

debate is not actionable at the suit of the person whose character has been called in

question. But the publication is privileged on the same principle as an accurate report of proceedings in a Court of justice is privileged, viz., that the advantage of publicity to the community at large outweighs any private injury resulting from the publication.

16. Mr. Mukherjee has urged that we should apply the same rule to India. But it appears to me that we cannot possibly do so. We have to apply the criminal law of the land and unless reports of proceedings in a Legislative Assembly are given a privilege by Indian law then we cannot possibly extend the principle of *Wason v. Walter*<sup>3</sup>,) to proceedings in this country.

17. The offence of defamation is dealt with in Sections 499 and 500, Penal Code, and in Section 499 appear a number of exceptions in which it is laid down what cannot be defamation. The fourth exception provides :

"It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings."

18. But it is to be observed that there is no exception providing that it is not defamation to publish the report of proceedings of a Legislative Assembly. The rule of law enunciated in the English case of *Wason v. Walter* finds no place in the Indian Penal Code and therefore we must hold that reports of proceedings of a Legislature in an Indian newspaper, unless such are expressly authorized by the House, are not the subject-matter of privilege and may found a complaint for defamation under Section 500 of the Code.

19. Whether the matters contained in the report amount to defamation would of course depend upon whether such matters fell within any of the other exceptions of the Code set out in Section 499. We are not concerned with the question as the only matter before us is whether or not the report is privileged merely because it was a report of proceedings in a Legislative Assembly.

20. It appears to me quite clear that the fact that the report was a report of proceedings in a Legislative Assembly affords no privilege or protection, because the report was not one published under the authority of the Legislature concerned.

21. It is to be observed that Dr. Suresh Chandra Banerji could not be held liable for the publication in this newspaper apart from his connection with the activities of the newspaper unless of course he had expressly instigated the newspaper to publish the report. It is true that a person may be liable for defamation though he himself had not published the defamatory matter. For example, if A sends a communication to B but knows that B would be bound or likely to show the communication to others, A may be held liable for the publication to those others by B. It might therefore be said that when a person makes a speech in a Legislative Assembly he knows or ought to know that that speech would be duly reported in the local newspaper, particularly if the speech contained any matters of great public interest or matters likely to create a sensation. Therefore it might be said that though the speaker in the Legislative Assembly did not publish the words, he uttered them in the legislative Assembly knowing that they would be published

<sup>3</sup>(1869) 4 QB 73

outside the Assembly. This rule, however, as to vicarious publication cannot possibly apply to

speeches made in the Assembly Absolute privilege has been given in respect of anything said in a House of the Legislature. It was thought in England and in India that unless such absolute privilege was granted members of Legislative Assemblies might be afraid to speak out their minds and freely to express their views. Members, therefore, were completely protected even though the words they uttered were malicious and false to their knowledge. It was thought advisable in the interests of free and open discussion to give utterances in a legislature complete and absolute protection.

22. It seems to me that if a member could be proceeded against because of the publication of his speech, it would defeat completely the absolute privilege given to the speech itself in the Legislative Assembly. Any speaker in a Legislative Assembly must know that his speech may be reported and would know for a certainty that his speech would be reported if it was a sensational one or contained matters of great public interest. If there was any risk of his being made liable for the words by reason of the fact that he must have known that they would be published, he would lose that freedom to express himself which the law intended he should have within the four walls of the chambers of the Assembly. I think it is clear that a person who makes a speech in a Legislature cannot possibly be held liable for its publication in a newspaper when he has himself done nothing to cause such publication. The matter, as I have already said, is different if he has himself taken steps to publish it as it is suggested Dr. Suresh Chandra Banerji did in this case.

23. For these reasons I think it is clear that Article 194 of the Constitution of India does not prohibit proceedings in respect of this report in the newspaper. Upon the merits, we express no opinion whatsoever. It will be open to these four accused persons to take any defense which is legitimately open to them. The only matter which we decide is that Article 194 of the Constitution affords them no defense.

24. It was suggested in argument that Article 19 (1) (a) and Clause (2) of Article 19 of the Constitution might affect the question. It is, however, clear that the freedom of speech guaranteed to citizens by Article 19 (1) (a) is subject to the restrictions set out in Clause (2) of the article. Clause (2) of Article 19 as it stood before the recent amendment was in these words :

"Nothing in sub clause (a) of Clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."

Existing law as to defamation, therefore, prevailed and Sections 499 and 500, Penal Code, were part of the existing law.

25. Clause (2) of Article 19 has recently been amended by Section 3 (a), Constitution First Amendment Act, 1951. This Act received the assent of the President on 18.6.1951 and it is conceded that the proceedings in this had been launched before the amendment. This amendment cannot be retrospective in its effect and that is the result I think of the decision of the Supreme Court in *Keshavan Madhava Menon v. State of Bombay*<sup>4</sup>. In that case a majority of the Supreme Court held that Article 13 (1) of the Constitution had no retrospective effect but was wholly prospective in its operation. Further, it did not in terms make the existing

laws which were inconsistent with the fundamental rights void ab initio or for all purposes. It had only the effect of nullifying or rendering all inconsistent existing laws ineffectual or nugatory and devoid of any legal force or binding effect only with respect to the exercise of fundamental rights on and after the date of the commencement of the Constitution. As it had no retrospective effect, if an act was done before the commencement of the Constitution in contravention of the provisions of any law which, after the Constitution, became void with respect to the exercise of any of the fundamental rights, the inconsistent law was not wiped out so far as the past act was concerned, for to say that it was, would be to give the law retrospective effect. It was, therefore, held that there was no fundamental right that a person should not be prosecuted and punished for an offence committed before the Constitution came into force. So far as the past acts were concerned, the law existed notwithstanding that it did not exist with respect to the future exercise of fundamental rights.

26. It follows, therefore, that even if the recent amendment of Clause (2) of Article 19 affected the matter in any way, it would not be material. However it does not appear to me that the recent amendment can possibly affect the matter. But it need not be further discussed as Mr. Mukherjee concedes that Clause (2) of Article 19 as it originally stood would offer his clients no protection whatsoever. It appears to me that the amended article also offers them no protection.

27. In my judgment the view taken by the learned Chief Presidency Magistrate that this prosecution should proceed was the right view and we, therefore, discharge the rule and direct the prosecution to proceed.

28. Apparently the records were sent to this Court although not called for and they should be returned forthwith to the Court of the Chief Presidency Magistrate with a copy of this judgment.

29. It was suggested that we should interfere in this case under our revisional powers or our inherent powers. In our view no grounds have been made out for any such interference at this stage.

**Banerjee, J.**

30. I agree.

Rule discharged.

<sup>4</sup>(1951) SCJ 182