KERALA HIGH COURT

R. Sankar

Vs

State (Kerala)

Criminal Appeals Nos. 73 and 81 of 1958, Trivandrum in C.C. Nos. 4 and 3 of 1957

(Raman Nayar and Vaidialingam, JJ.)

28.11.1958

JUDGMENT

Raman Nayar, J.

1. These appeals are from convictions under Section 500 I.P.C. in respect of the same article, first published in one newspaper and then reproduced in another. The appeals have been heard together since they involve the same questions and they may be disposed of by a common judgment.

2. The accused in Cri. Appeal 81 of 1958 from C.C. 3 of 1957 is the editor, printer and publisher of a Malayalam daily of Trivandrum by the name of "Potliujanam". In the issue of the 21st August 1957 of this newspaper there appeared the article, Ext. P. 1(a), attacking Sri V.R. Krishna Iyer, the Minister for Law and Electricity of this State. The article purported to be from the newspaper's own correspondent and it may be translated thus :

"IRREGULAR APPOINTMENTS.

Interference by the Law Minister in appointments in the Electricity Department. Trivendrum - August 21. Information is to hand that although appointments under the Electricity Board are to be made through the Public Service Commission since no rule have yet been framed regarding the powers of the Board, Minister Krishna Iyer has, contrary to this, begun some appointment Kumbhakonams. He has thus made the gambit for filling up the Electricity Department with his own satellites. One Harihara Iyer, who has taken leave, preparatory to retirement from the P.W. Department on the 20th September has been appointed for a year as Accountant in the Neriamangalam Division of the Electricity Department, and he has taken charge of the said post on 19-8-1957. Information has been received that this appointment, in disregard of the just claims of many persons in the department, has caused heartburning among the staff of the department. Although many possessing the technical qualifications most essential in the Electricity Department have applied for extension of service after their retirement their applications have all been rejected. This appointment now made by Minister Krishna Iyer without consulting the Public Service Commission and in contravention of the rules is being

pointed to as a prelude to the introduction into the Electricity Department of many such hangers on in the future. Thus prospers Minister Krishna Iyer's benign rule free of corruption and nepotism."

3. The Minister issued a denial in the form of a press release, and in Ext. P-17 dated 22-8-1957 the statement he then made, he averred that he had had nothing to do with the appointment of Harihara Iyer and that, in fact, he was unaware of the existence of such a man. The Chairman of the Electricity Board, which is an autonomous body constituted under the Electricity (Supply) Act (Central Act 54 of 1948), also issued the press statement Ext. P-13 dated 22-8-1957, asserting that it was be that had made the appointment and denying that the Minister had had anything to do with it. The Minister's denial was published in the issue of the paper of the 23rd August as Ext. P-2 (a), and so was Ext. P-2 (b), an extract of the Chairman's statement. Alongside these were published Ext. P-2 (c), a rejoinder by the paper's correspondent to the effect that inquiries made by him showed that all the averments in Ext, P-1(a) were true, and Ext. P-2 (d) an editorial asserting that every word of Ext. P-1(a) stood completely proved, repudiating the denial by the Minister and the denial which it said the Chairman was got to make, and twitting the Minister on his unnecessary and unjustified display of touchiness. On 24-8-1957, the Minister sent the lawyer's notice, Ext. P-3. to the accused calling upon him to make a public withdrawal of the allegations within three days of the receipt of the notice on pain of legal action. This notice the accused ignored and, on 12-9-1957, the Public Prosecutor, Trivandrum, acting under Section 198B Criminal Procedure Code made a complaint to the Court of Session, Trivandrum, charging the accused with offences punishable under Sections 500 and 501 of the Indian Penal Code. He did this (with a view to compliance with Section 198B (3)(b) Criminal Procedure Code) after obtaining the written sanction, Ext. P-5 dated 4-9-1957, signed by the Chief Secretary in his capacity also as the Secretary to the Council of Ministers.

4. The case was tried by the Additional Sessions Judge, Trivandrum, who found the accused guilty of an offence punishable under Section 500 I.P.C. and sentenced him to pay a fine of Rs. 250, in default, to suffer simple imprisonment for two months.

5. The accused in Crl. Appeal 73 of 1958 from C.C. 4 of 1957 is the editor, printer and publisher of. the "Dinamani", a Malayalam newspaper of Quilan, In its issue of the 23rd August 1957 this paper reproduced the article published in the Pothujanam of the 21st August under the caption, "so prospers the incorrupt administration of Minister Krishna Iyer". (This article in the Dinamani has been marked as Ext. P-1 in the case and the original article in the Pothujanam as Ext. P-6(a)). The Lawyer's notice, Ext. P-2 dated 24-8-1957 denouncing the allegations in the article as false and calling upon the accused to withdraw them publicly having been ignored, the Public Prosecutor, Trivandrum, acting under Section 198B of the Code made a complaint to the Court of Session, Trivandrum charging the accused with offences punishable under Sections 500 and 501, I.P.C. The complaint was preceded by the sanction, Ext. P-4 dated 4-9-1957, signed as in C.C. 3 by the Chief Secretary and Secretary to the Council of Ministers. The case was tried by the same judge who tried C.C. 3, and he convicted the accused under Section 500 I.P.C. and sentenced him to pay a fine of Rs. 150, or in default, to suffer simple imprisonment for one month.

6. In neither case did the accused deny the fact of publication. On the contrary, when questioned under Section 342 Criminal Procedure Code, both of them owned full responsibility for the publication of the article in question and sought to justify their conduct by asserting that the

article was true and that they published it fur the public good conceiving it to be their duty to do so as high minded and patriotic editors of newspapers. A different note was however struck in C.C. 4 when it came to the stage of leading evidence for the defense, and a defense of alibi was attempted by trying to make out that the accused in that case was away at Delhi at the material time. The evidence of the two witnesses examined on this aspect of the matter, namely, D.W. 3, the sub-editor of the newspaper, and D.W. 5 is, as pointed out by the learned Sessions Judge, inconclusive. In any event we have little hesitation in rejecting this defence as an afterthought in view of the clear and unequivocal terms in which the accused assumed full responsibility for the publication when questioned under Section 342 Crl. P.C).

7. The contentions advanced on behalf of the accused both here and at the trial, have been twofold. First that the article in question is not defamatory and that, in any event, the accused are protected by exceptions, 1, 2, 3, 8 and 9 to Section 499, I.P.C. Secondly, that there was no complaint as required by Section 198 and no proper sanction as required by Section 198B (3)(b) of the Criminal Procedure Code, that the lower court took cognizance and tried the cases in direct violation of the express prohibition in Sections 198 and 198B, and that its entire proceedings, including the convictions and sentences recorded against the accused, are therefore void.

8. With regard to the first aspect, the learned. Sessions Judge found that the article in question was per se defamatory and that none of the exceptions to Section 499 I.P.C. applied. We uphold this finding. That the article is, on the face of it, calculated to harm the reputation of the Minister in question is a matter that can admit of no doubt. For, what it says is that in pursuance of a scheme to pack the electricity department with his own underlings by underhand means, the Minister had, in violation of the rules, appointed one Harihara Iyer as an Accountant, and that this appointment was but the prelude to further appointments of the like nature. And the concluding sentence of the article (which was adopted as a title by the accused in C.C. 4) is obviously an ironical statement implying that Minister Krishna Iyer's administration was a bad administration riddled with corruption and nepotism. Although one defense witness in each case (D.W. 5 in C.C. 3 and D.W. 6 in C.C. 4) gave evidence to the effect that a perusal of the article did not Effect their opinion of Sri Krishna Iyer, we decline to believe that public morality and standards of public administration in this State are so low that conduct of the kind attributed to the Minister is generally regarded as blameless. The reason given by D.W. 5 in C.C. 3, a regular reader or a number of local newspapers, for the indifference with which he viewed the article in question is revealing. It is that it is usual for these papers to make such accusations against Ministers and responsible officers. The accusations are as often as not untrue, and therefore they create no impression on the mind of the reader in respect of the person against whom the accusations are made. He just ignores them. But not every reader, we apprehend, reads his newspaper with this nice perception of the standards which, according to this witness, these newspapers seem to have set for themselves.
The other witnesses (both for the prosecution and the defence) did not have this highly judicial frame of mind. For, their evidence shows that a reading of the article lowered the character of the Minister in their estimation. On their own showing the accused did intend that the publication should have the result of lowering the Minister in the eyes of his fellow-men; they only pleaded justification. In any event they must have known what the effect of the article would be.

9. It is needless to say that the burden lies on an accused person to make out that his case comes within any of the exceptions. The accused made no attempt to prove the truth of the imputations

they made; the evidence of the author of the article (he was examined as D.W. 1 in each case) that from inquiries made by him in high official quarters he was satisfied that the imputations were true, is, of course, altogether irrelevant for the purpose. On the other hand the evidence of the Minister and of Harihara Iyer that they were strangers to each other and that the Minister did not even know the existence of such a man and the evidence of the Minister, the Chairman of the Electricity Board and of the Finance Secretary to Government fall of whom were examined in both the cases that the Minister had nothing to do with the appointment of Harihara Iyer and was altogether unaware of it and that the appointment was made solely by the Chairman, Harihara Iyer being, at the instance of the Chairman, recalled from leave by the Finance Secretary and deputed to work under the Board after five other persons in Government service whom the Chairman wanted had refused to go, stands uncontradicted. This is also borne out by the files relating to the appointment which have been exhibited in, both cases. On the evidence, the allegations in the article far from being true are altogether unfounded.

10. This disposes of the defense under the first exception to Section 499 I.P.C. Learned Counsel for the accused have been at pains to point out that the Electricity Board was, as a matter of fact, making appointments through the Public Service Commission, that there was a circular issued by the Board that pending the framing of rules for the Board the old rules observed when the undertaking was a department of Government would be followed, and that the Chairman has confessed that he had no express authority from the Board as such to make appointments. It is said that all this shows that the appointment of Harihara Iyer was lacking in bona fides. We see no reason to think so. The Chairman is the head of the Board, and when he was in search of experienced accountants from Government service to train up his own men, the Public Service Commission was certainly not the channel through which he could have got them but, assuming that that was so, we are at a loss to understand how that proves that Harihara Iyer was the Minister's underling or that his appointment was made by the Minister. It is said that these are matters which could be inferred from the circumstances; if they can at all be inferred, it seems to us that they must be the inferences of a mind charged with imagination at the expense of reason.

11. Good faith is of the essence of the remaining exceptions relied upon by the accused; and good faith seems to us absent in these cases, singularly so in the case of the accused in C.C. 3. After the Minister and the Chairman had placed their version of the matter before him (a version now proved to be true) he reaffirmed the allegations by his editorial of the 23rd August, presumably on the strength of the rejoinder by his correspondent.

Although the accused himself had no such case when questioned under Section 342 Criminal Procedure Code the evidence of the correspondent is that, even before the publication of the original article, the accused sought confirmation from him of the allegations made, which confirmation he readily gave. As we have seen, his evidence is that he made inquiries in high official, among other, circles and was satisfied that the allegations were well-founded. He was repeatedly asked what were the sources of his information, but he stubbornly declined to answer the question. He claimed (and was strangely enough accorded) a self-given journalist's privilege which counsel on both sides are agreed the law does not follow. However that might be neither the accused nor the correspondent who was the author of the article, would tell the court how and from whom they got the information they thought fit to publish; and the bare assertion of the accused that he believed the allegations to be true, and the mere ipse dixit of the correspondent that they were, in fact, true can hardly prove good faith.

So also, in the case of the accused in C.C. 4, there has been no attempt to show why he believed

the allegations to be true, and although he did not repeat the allegations after the Minister and the Chairman had issued their press statements setting out the true position, he made no amends though the opportunity was offered. If a bare statement by the accused person that he believed that what he said was true were sufficient to prove good faith, a conviction for defamation could rarely e secured except on a plea of guilt.

12. A mere perusal of exceptions 2, 3 and 9 is sufficient to show that these exceptions which embody the defense compendiously known as "fair comment", apply only to expressions of opinion or imputations on character, and not to assertions of fact. The latter can be justified only by truth. Comment must be on actual and not on imagined conduct and even if the accused person genuinely believed the imputed conduct to be real that would be no defense. If the opinion or the imputation purports to be based on facts, then the, person claiming the benefit of these exceptions must prove those facts.
It is not enough for him to say that he believed those facts. When the allegations of fact are as in the present case, in themselves defamatory and those allegations are not proved to be true no defense of fair comment can possibly arise. For, "fair comment" cannot justify a defamatory statement which is untrue in fact. "A comment cannot be fair which is built upon facts which are not truly stated". And as emphasized by Hersehell, L.C. in, *Davis v. Shepstone*[1]

> "There is no doubt that the public acts of a public man may lawfully be made the subject of fair comment or criticism, not only by the press but by all members of the public. But the distinction cannot be too clearly borne in mind between comment or criticism and allegations of fact, such as that disgraceful acts have been committed, or discreditable language used. 'It is one thing to comment upon or criticise, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct'." (The italics here in' are mine).

These remarks seem very apposite to the present case.

13. With regard to the defence of fair comment, Section 499 I.P.C. only codified the
[1](1886) 11 A.C. 187, at page 190
prevailing English Law what in *Campbell v. Supottiswoode* [2] Blackburn, J, regarded as so clearly settled. Dealing with the defense of fair comment put forward in that case Cockburn, C.J., observed :

> "I think the fair position in which the law may be settled is this; that where the public conduct of a public man is open to animadversion, and the writer who is commenting upon it makes imputations on his motives which arise fairly and legitimately out of his conduct so that a jury shall say that the criticism was not only honest, but also well founded, an action is not maintainable. But it is not because a public writer fancies that the conduct of a public man is open to the suspicion of dishonesty, he is therefore justified in assailing his character as dishonest."

Dealing with the same question in *Joynt v. Cycle Trade Publishing Co*[3]*.,* Vaughan Williams, L.J., said that plea of fair comment could not be sustained

> "unless facts were proved which made it reasonable to make such a suggestion. That is the law as I understand it to have been laid down by Crompton, J., in (1863) 122 E.R. 288. The learned Judge said : if he (the critic) imputes to the person whom he is criticizing base and sordid motives, which are not warranted by the facts, I cannot think for a moment that because he *bona fide* believes that he is publishing what is true, that is any defence in point of law."

Bona fide belief might, in such a case have some bearing on the quantum of damages in a civil action; perhaps also on the question of sentence in a criminal prosecution; but otherwise it is irrelevant.

14. It is said that exception 9 embodies a defence of privilege rather than of fair comment, Even so its wording, as also the illustrations given show that it applies only to an expression of opinion regarding character and not to assertions of fact which are in themselves defamatory.

15. The defense under exception 8 has the merit of novelty, but little else. No doubt in political theory in any democratic form of government a Minister is, in the long run, responsible to the public. But that is not the sort of lawful authority contemplated by the exception; nor is accusation before the public by publication in a newspaper the sort of accusation that the exception speaks of. As well might the accused claim that the press, which is reputedly the watch-dog of the people, has authority over a minister and can therefore claim the privilege in exception 7.

16. At the trial, indeed, a special privilege, not to be found within the four corners of the law, was claimed for the press, and a special vulnerability imputed to persons who occupy positions like that of a Minister. It was also sought to be made out that the Minister in question had no reputation to lose and could not therefore possibly be a victim of defamation. These are contentions altogether indefensible in law as in fact,

[2](1863) 122 E.R. 288 decided in 1863

[3](1904) 2 K.B. 392

and no attempt has been made to repeat them here.

17. Leaving what we might call the merits of the case, and coming now to the second aspect of the defence namely, that based on Sections 198 and 198B of the Criminal Procedure Code, we might first consider a new contention taken for the first time at the hearing of these appeals. That contention is that Section 198B is discriminatory in that it places a person accused of the offence of libel against the persons mentioned therein in a different position from a person accused of the same offence against an ordinary person. Therefore the section must be struck down as offending Article 14 of the Constitution. We see little substance in this contention, for, to our mind, such difference as there is, is based on a reasonable classification. Section 198 Criminal Procedure Code deals with what might be called private wrongs and proceeds on the footing that a prosecution for the offence mentioned therein-and defamation is one of them is the exclusive concern of the victim of the offence. In other words, with special reference to the offence of defamation, the vindication of his character is a matter in which he alone, and nobody else, is interested. But that surely is not the case where the victim is one of the persons mentioned in Section 198B. There the public also are interested for, to borrow the forceful language of

Cockburn, C.J., in the case of (1863) 122 E.R. 288, already referred to :

> "The public have an equal interest in the maintenance of the public character of men; and public affairs could not be conducted by men of honour with a view to the welfare of the country, if we were to sanction attacks upon them, destructive of their honour and character, and made without any foundation."

18. This difference, namely, the absence of any public in the one case and its undoubted presence in the other seems to us sufficient to justify a special provision like Section 198B. A man cannot complain of discrimination unless the different treatment meted out to him is to his disadvantage. Let us, in this view, examine what is the change introduced by Section 198B, Criminal Procedure Code to the normal rule. It does not create a new offence or impose a higher punishment, although that might well be justified on the same grounds as justify the several special offences by or against public servants. All that it does is to introduce a difference in procedure. In an ordinary case of defamation, cognizance is taken by a first class Magistrate on a compliant made by the aggrieved person under Section 190(1)(a) read with Section 198, Criminal Procedure Code In a case falling under Section 198B, cognizance is taken by a Court of Session on a complaint made by the Public Prosecutor and, in the view, speaking for myself, I am taking of sub-see. 13 of that section also by the person aggrieved. That, so far as we can see, is all the difference. The Sessions Judge proceeds to try the offence in the same manner as the Magistrate, namely, as if it were a warrant case instituted otherwise than on a police report (see Sub-Section 5 of the section), and he can impose no higher punishment. The absence of a commitment is therefore immaterial; and, surely, no man can complain against being tried by a higher tribunal. In fact, it seems to us, that a higher tribunal was chosen for the protection of the accused person having regard to the special position of the victim and the authority behind the prosecution.

19. Even if it be that my view of Sub-Section 13 of Section 108B is wrong, that a complaint by the person aggrieved is not really necessary and that a complaint by the Public Prosecutor is enough, the reason of public interest which we have mentioned seems to us good and sufficient reason why the Public Prosecutor should be enabled to make a complaint in the special cases falling under that section. In that view, the public interest should not have to wait upon the willingness of the victim to embark on a prosecution.

20. We are aware that a Magistrate taking cognizance of an offence on a private complaint has to examine the complaint and the witnesses (if any) present upon oath; whereas a Court of Session taking cognizance under Section 198B does no such thing. We are not sure that this difference in procedure really affects the accused. But we might say that the fact that a complainant under Section 198B is made by a responsible person like a Public Prosecutor with the previous sanction of a responsible authority more than fulfils the purpose of an examination under Section 200 Criminal Procedure Code and is sufficient reason for dispensing with such an examination. Under proviso (aa) to Section 200 Criminal Procedure Code no examination under that section is necessary when a complaint is made by a court or by a public servant acting or purporting to act in the discharge of his official duties; and surely a complaint made by the Public Prosecutor in accordance with Section 198B does not stand on a lower footing.

21. It is true that a Magistrate proceeds to issue process to the accused under Section 204

Criminal Procedure Code only if he is of the opinion that there is sufficient ground for proceeding and that otherwise he dismisses the complaint under Section 20.3, Criminal Procedure Code But here again a complaint made, by the Public Prosecutor under Section 198B stands on much the same footing as complaint made by a public servant in the discharge of his official duty; and if as is hardly likely the complaint were on the face of it groundless, one should think that, although there is no express provision for dismissal, the Court of Session would throw out the case under Section 253(2) Criminal Procedure Code.

22. We do not think that there is any substance in the charge of unconstitutionality brought against Section 198B, Criminal Procedure Code.

23. The next argument is that, on a proper construction of Sub-Section 13 of Section 198B, a complaint by the person aggrieved is not dispensed with even with regard to cases falling under that section and that the present prosecution must fail for want of such a complaint, the complaint in question being solely by the Public Prosecutor, and the victim of the offence, namely, the Minister having made no complaint.

24. As I have already indicated I consider this contention to be well founded, but my learned brother does not agree. To appreciate the contention it is necessary to set out the relevant provisions in full. Section 198 Criminal Procedure Code shorn of its provisos which are not germane runs thus :

> "No court shall take cognizance of an offence falling under Chap. XIX or Chap. XXI of the Indian Penal Code or under Sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence."

Section 198B (1) thus :

> "Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (other than the offence of defamation by spoken words) is alleged to have been committed against the President, or the Vice-President, or the Governor or Rajpramukh of a State, or a Minister, or any other public servant employed in connection with the affairs of the Union or of a State, in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor."

And Section 198B (13) :

> "The provisions of this section shall be in addition to, and not in derogation of, those of Section 198."

25. According to learned counsel for the accused, the true construction of Sub-Section 13 of Section 198B is that it enjoins a compliance not merely with Section 198B, but also with Section 198. In other words, by reason of this provision we should read Section 198(1) as if it said

"Notwithstanding anything contained in this Code, but subject to the provisions of Section 198, when any offence....."

26. On the other hand, according to the learned Advocate General who appears for the prosecution, the true construction is that the remedy provided by Section 198B is in addition to, and not in substitution of, the remedy provided in Section 198. According to him Sub-Section 13 of Section 198B is intended against a possible argument that, in respect of cases falling under that section the special provisions thereof override the general provisions of Section 198 so that when the victim happens to be any of the persons mentioned in Section 198B he is deprived of the ordinary remedy of making what is called a private complaint. Against such an argument Sub-Section 13 of Section 198B provides, by way of abundant caution, that Section 198 remains unaffected; that the victim may, if he so chooses, proceed under that section.

27. There is no denying that the construction placed on Sub-Section 13 of Section 198B by the defense is the natural and grammatical construction. For, what Section 198 does is to prohibit cognizance except upon complaint made by the person aggrieved. It does not strictly speaking, confer any power of cognizance on the court or a right of complaint on the person aggrieved. That is done by Section 190(1), and the complaint by the victim contemplated by Section 198 is a complaint made under Section 190(1)(a). It is therefore wrong to think that Section 198 either confers a power or provides a remedy. It only imposes a prohibition, doubtless with an exception. It applied to all courts; and if Section 198B is not to be in derogation of Section 198, that can only mean "that even a court of Session proceeding under Section 198B is bound by the injunction in Section 198 not to take cognizance except on a complaint by some persons aggrieved. Were the intention what the learned Advocate General save it is, what Sub-Section 13 of Section 1983 should save is Section 190(1)(a) and not Section 198, Section 190(1)(a) being, of course, as always, subject to the prohibition in Section 198. Unless we forsake the ordinary and grammatical sense of the words used, the effect of Sub-Section 13 of Section 198B can only be to save the prohibition in Section 198 from the non-obstinate clause with which Section 198B opens, and to confine the operation of that clause to other provisions of the Code such as, for example, Section 193 which says that no Court of Session shall take cognizance as a court of original jurisdiction except on commitment.

28. The learned Advocate General argues that what Section 198B(13) refers to is only the exception clause in Section 198 and not the section as a whole, that what it saves is this clause, which means that a complaint may be entertained from the person aggrieved, and not the prohibition against cognizance in the absence of such a complaint. According to him Section 198B(13) reads Section 198 not as it is worded but as if it were worded.

> "A court may take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under Sections 493 to 496 (both inclusive) of the same Code, upon a complaint made by some person aggrieved by such offence."

29. This, of course, is not what Section 198 says or means. The question then is whether there is sufficient reason to allow Section 198B(13) to depart from the golden rule of construction and take such a liberty with Section 198. It is said that otherwise all manner of difficulties and absurdities would arise and that the very purpose of Section 198B would be defeated and the

section rendered a meaningless and otiose provision. And it is pointed out with reference to the speeches made by the Home Minister in the Lok Sabha and by the Deputy Home Minister in the Rajya Sabha when this section was enacted that its avowed purpose was to enable the Public Prosecutor to file a complaint in respect of cases falling under clauses (b) and (c) of Sub-S. 3 of the section in those rare instances where the Minister or public servant concerned was unable to move the court as a private complainant. If that be the avowed object of the section it surely could not have intended that both the Public Prosecutor and the public servant concerned should move the court. So runs the argument.

30. It is also said that the interpretation placed by the defense would lead to this absurdity. The victim of the offence would have to file a complaint before a first class Magistrate under Section 190(1)(a) while, at the same time, the Public Prosecutor would file a complaint under Section 198B. There is no-provision for the Sessions Court taking over the private complaint and there would thus be parallel trials by two different courts in respect of the same offence.

31. This latter argument proceeds on a misreading of Section 198. There is nothing in that section to imply that the complaint by the person aggrieved (which complaint is exempt from the prohibition) must be to a magistrate and cannot be to a court of Session. The complaint can well be to a Court of Session, and if there is in addition a complaint by the Public Prosecutor under Section 198B, then that Court gets the power of cognizance notwithstanding anything contained elsewhere in the Code.
In practice a complaint by the Public Prosecutor can hardly be made without reference to the victim of the offence, and a practical way of ensuring compliance- with both Section 198 and Section 198B (which is what Sub-Section 13 of Section 198B, as I read it, demands) would be for both the Public Prosecutor and the victim to sign the complaint. No private complaint by a victim before a magistrate, and no examination of the victim under Section 200 Criminal Procedure Code would be involved in view of the fact that the Court of Session would take cognizance under the special provisions of Section 198B. The Public Prosecutor would have the conduct of the prosecution relieving the victim of that responsibility; and barring the death of the victim I can conceive of no impediment to this procedure even if circumstances render it difficult for the victim to set the law in motion as a private complainant.

32. I do not know that it is permissible to have recourse to the debates in the legislature for the purpose of understanding a statute; but it is certainly permissible to look into the legislative history of the enactment. It is significant that this refractory sub-section was passed by the Lok Sabha in this form :

> "Nothing in this section shall be deemed to be in derogation of the right of the person aggrieved under Section 198".

A purist might still cavil that Section 198 does not confer any right as such on the person aggrieved. But that would be pedantry, for the meaning is clear. It is obviously that, while under the special provisions of Section 198B a Court of Session may take cognizance on a complaint by the Public Prosecutor notwithstanding anything to the contrary in the Code, this does not deprive the person aggrieved of his ordinary remedy of a private complaint. It was the Rajya Sabha that substituted the present sub-section, and obviously there must have been a purpose

behind this deliberate departure from the language used by the Lok Sabha. If it is permissible to look into the debates it is not difficult to see what that purpose was. There was, from the beginning, vehement opposition to the section itself on the ground that it was oppressive in that it enabled the use of the resources of the State to vindicate private wrongs and that it created a privileged class of public servants who could launch a prosecution under the sheltering wings of the Public Prosecutor instead of coming out into the open like any ordinary citizen. It was to meet objections such as these that the provision in Sub-Section 5 that the victim shall be examined as a witness for the prosecution, and the provisions in Sub-Sections 6 to 9 for the grant of compensation to the accused in the case of complaints found to be false and either frivolous or vexatious, were introduced in the shape of amendments in the Lok Sabha. It must have been to further this object by ensuring that the victim also would join in the complaint and thus take full responsibility for it that the Rajya Sabha enacted Sub-Section 13 in its present form.

33. A study of Sub-sections 6 to 9 of Section 198B confirms this view. It will be recalled that these Sub-Sections were introduced in the Lok Sabha, and it would appear that in passing what is now Sub-Section 13 in the form in which it emerged from the Select Committee despite the new introductions, the consequences that would follow were not appreciated. For, under Sub-Sections 6 to 9, it is not the Public Prosecutor or the Government that can be called upon to pay compensation, or from whom the compensation can be recovered as if it were a fine. It is the victim of the alleged offence. Now it is quite conceivable that in a case falling under clauses (b) and (c) of Sub-Section (3), especially the latter, a complaint may be made by the Public Prosecutor without the consent, in fact against the will, of the person alleged to have been defamed. The victim may, for his own protection, deny the imputations even if they be true, and because they are true may be unwilling to embark on a prosecution. A complaint may nevertheless be made by the Public Prosecutor and even in such a case, where the complaint is made against his will, the victim would still be liable to pay compensation if the complaint is eventually found to be false.

That the complaint was not made by him, that it was, in fact, made against his will, would be no defense, for, under Sub-Section 7, the only considerations are whether the accusation was false and whether it was frivolous or vexatious. Although of course no one can have any sympathy for such a victim, it would nevertheless be manifestly unjust to require him to pay compensation for something for which he was in no way responsible. Perhaps it was to obviate the possibility of such injustice that the Rajya Sabha insisted that the victim should also join in making a complaint before cognizance could be taken on a complaint made by the Public Prosecutor.

34. The construction placed on Sub-Section 13 by the learned Advocate General apart from being opposed to its wording would mean that a person could be penalised for something he never did this the legislature could never have intended, and hence the scheme of Section 198B can only be that the person aggrieved must also be responsible for initiating the prosecution. Sub-Section (9) also implies this, for it contemplates that the person called upon to pay compensation namely the victim of the alleged libel, would be civilly and criminally liable in respect of the complaint. And this, namely, the joinder of the victim, is exactly what the sub-section, in the natural and grammatical sense of the words it employs, ensures.

35. The only decided case on the point brought to our notice, *C.B.L. Bhatnagar v. the State*[4] takes the same view of the effect of Sub-Section (13) as I have done.

36. Another objection taken - and this time one which both of us consider well founded - is that,

there is not in these cases the previous sanction required by Section 198B(3), the sanction accorded being not by the authority competent to grant it under clause (b) of this sub-section. The order of sanction in both the cases is in similar terms and it is enough to set out the order in one of them. Ext. P-5, the order in C.C. 3, runs as follows :

"GOVERNMENT OF KERALA
HOME (A) DEPARTMENT
Proceedings,
Dated : Trivandrum 4-9-1957. Sub : - Sanction to make complaint against Sri K. Karthikeyan, the Editor, Printer and Publisher of the Newspaper, "Podujanam" under Section 198B of the Code of Criminal Procedure.

[4] AIR 1958 Bom 196

ORDER No. H/4-28800/57 Home (A)

> "Sanction is accorded to the Public Prosecutor, Trivandrum, under Sub-Section (3) of Section 198B of the Code of Criminal Procedure, 1898 to make a complaint against Sri K. Karthikeyan, Editor, Printer and Publisher of the Newspaper "Pothujanam" before the Court of Session, Trivandrum for the offences punishable under Sections 500 and 501 of the Indian Penal Code for having published a news item in its issue dated 21-8-1957 under the caption (words in Malayalam omitted), and also the reply of the correspondent under the caption (words in Malayalam omitted.) and the Editorial in the issue dated 23-8-1957 which are highly defamatory of the Minister for Law in respect of his conduct in the discharge of his public functions.

(By order of the Governor) Sd/N.E.S. Raghavachari, Secretary to the Council of Ministers and Chief Secretary".

37. Now it is quite apparent from its wording, and, in particular from the recital "By order of the Governor" under which the Chief Secretary and Secretary to the Council of Ministers has subscribed his signature to this document, that the sanction is not his sanction but the sanction of the Government expressed in the name of the Governor as required by Article 166(1) of the Constitution, and authenticated by the Chief Secretary and Secretary to the Council of Ministers in the manner prescribed under Article 166(2). There is no evidence in cither case of any sanction accorded by the Chief Secretary to the Council of Ministers himself; and hence the question is whether a sanction by the Government is sufficient under Section 198B(3)(b).

38. We think not for we are unable to subscribe to the view put forward by the learned Advocate General (which again he has attempted to fortify with reference to the debates in Parliament) that even in a case falling under Clause (b), as distinguished from Clause (c), of Sub-S. 3 of Section 198B, the sanctioning authority is really the Government concerned and that the Secretary acts only as a conduit. This is a construction which the language of the section can hardly bear. For, what it says is that there must be the previous sanction of the Secretary. The sanction is the sanction of the Secretary and not of the Government; and all that is required of the Government or the Government is competent to do, is to authorize the Secretary to give the sanction. It seems to us that what Sub-S. 3 contemplates is that somebody other than the person aggrieved should make up his mind whether sanction should be accorded, or not. And, if he considers that it should be accorded, he should do so with the authorization, in other words the permission, of the

person aggrieved in cases falling under Clause (a) and of the Government concerned in cases falling under Clause (b). The word used is "authorized" and not "directed", and sanction is a matter on which the Secretary must independently make up his mind and not one in respect of which he can be directed by the Government, or in which he merely acts as a channel of communication for the Government. Now an executive act of the Government should be expressed, and how it can be authenticated and communicated, are matters for which Article 166 of the Constitution makes due provision so that it were hardly necessary for the Criminal Procedure Code to do so. And where it is a matter of mere signing (which according to the learned Advocate General is all that the Secretary is expected to do), the Code employs appropriate language for the purpose as in the provisos to Sections 476(1) and 479(A)(1).

39. A clinching argument against the contention of the learned Advocate General is that if his contention were well founded there would be no difference whatsoever between Clauses (b) and (c) of Sub-S. 3. In both cases the authority competent to give the sanction would be Government. Then why one might well ask, this special and elaborate provision in Clause (b) ? and why all this trouble to name a mere conduit when that was thought unnecessary in Sub-Section (c). And why attach any importance at all as to who a mere conduit would be ? The answer to these questions obviously is that in Clauses (a) and (b) the Secretary is not a mere conduit but is an authority independent of the person aggrieved and of the Government concerned, and is to independently decide whether sanction should be given or not. That a Secretary is a subordinate of the Government is no impediment to the legislature conferring independent functions on him. This is apparent from Article 154(2)(b) of the Constitution; see also *Commissioner of Police, Bombay v. Gordhandas Bhanji*[5], and it scarcely lies in the mouth of the prosecution to suggest that Parliament could not have expected a Secretary to Government to exercise his own independent judgment in discharging his independent statutory responsibilities.

40. Ext. P5 in C.C. 3 and Ext. P4 in C.C. 4 although signed by the Chief Secretary and Secretary to the Council of Ministers are not orders of sanction by him but by the State Government. There is thus no sanction in either case by the authority mentioned in Section 198B(3)(b).

41. It is contended on the analogy of cases investigated in violation of Section 155(2) of the Criminal Procedure Code and Section 5A of the Prevention of Corruption Act (II of 1947) that a violation of Sub-S. 3 of Section 198B, Criminal Procedure Code does not vitiate a trial any more than does a violation of those provisions. Sub-Section (3) of Section 198B is an injunction on the Public Prosecutor and not on the court; the only injunction on the court is that in Sub-Section (1) which requires that there should be a complaint in writing made by the Public Prosecutor; and that it is said is the only condition of cognizance. Driven to its logical conclusion this argument would mean that even if there be no sanction at all the court would be bound to take cognizance on a complaint made by the Public Prosecutor. But we did not understand the learned Advocate General to go so far. However that might be, the argument can hardly bear examination once it is remembered that Sub-Section (3) of Section 198B is an integral part of a special provision which lays down the conditions on which, other provisions to the contrary notwithstanding a Court of Session may take cognizance. Whatever might be said of Sub-Section (2) there can be no doubt of the mandatory character of Sub-Section (3); and the fulfillment of every single condition seems to us a necessary pre-requisite of cognizance. By its wording, Section 198B is no doubt only-permissive. But it is stately an exception to other provisions of the Code, notably Section 198(1), which prohibit cognizance; and it is not pretended that cognizance by a Court of Session

otherwise than under Section 198B could be of any avail. Therefore there can be no doubt that Section 198B is a mandatory provision governing the competence of the court in the matter of cognizance. Section 155(2) of

[5] AIR 1952 SC 16

the Criminal Procedure Code and Section 5A of the Prevention of Corruption Act on the other hand do not concern themselves with the question of cognizance by a court but only with the question of investigation by a police officer. And, as pointed out in *H.N. Rishbud v. State of Delhi*[6], a defect or illegality in investigation, however serious, has no direct bearing on the competence of a court to take cognizance. A valid and legal police report is not the foundation of the jurisdiction to take cognizance. Section 190 Criminal Procedure Code enacts no bar to cognizance otherwise than in accordance with its provisions; and in any case, the general power of cognizance under that section is not limited to a police report. The special power of cognizance under Section 198B, it can hardly be disputed, is limited to a complaint in writing made by the Public Prosecutor; and that complaint, we have no doubt, must be in accordance with the provisions of the section. It is as if Sub-Section (1) said that the court may take cognizance on a complaint made by the Public Prosecutor with the previous sanction required by Sub-Section (3). In other words, a valid and legal complaint by the Public Prosecutor is the very foundation of the power of cognizance.

42. There are two other objections taken by the defense. Both seem to us unrounded; but we may refer to them briefly. One is that it does not appear that the sanctioning authority (whoever it was) applied its mind to the facts of the case before granting the sanction. It is only necessary to read the two orders of sanction to repeal this contention for they show that the sanction was accorded in full advertence to the facts of each case.

43. The other contention is that, on the very averments in the complaint, and on the evidence adduced by the prosecution, the Minister was not competent to make an appointment under the Electricity Board which is an independent and autonomous corporation with power to make its own appointments. Therefore it cannot be said that the alleged libel is in respect of the Minister's conduct in the discharge of his public functions so as to attract Section 198B. The argument is fallacious. For, what we have to consider under Section 198B is not whether the disgraceful conduct attributed to the public servant concerned is something which he could or could not properly have done in the discharge of his public functions - as likely as not, as in this case, it might not have been done at all but whether the libel is in respect of his public functions; in other words, whether the imputation is that he committed the disgraceful conduct in the discharge of his public functions. To put it shortly, whether the imputation is against what we might call his official character. That it is so in these cases cannot be doubted, for the allegation is, that Sri Krishna Iyer made an irregular appointment, and conducted himself disgracefully, in his capacity as Minister. And the innuendo that his administration is a corrupt administration is obviously a libel in respect of his conduct in the discharge of his public functions. It seems to us unnecessary to refer to the several decisions cited at the bar dealing with Section 197 of the Criminal Procedure Code and Section 270(1) of the Government of India Act; or to pause to consider whether the, "in respect of his conduct in the discharge of his public functions" of Section 198B(1) of the Code is of larger import than the, "acting or purporting to act in the discharge of his official duty" of the former or the, "act done or purporting to be done in the execution of his duty as a servant of the Crown" of the latter.

[6] AIR 1955 SC 196

As we have already remarked under Section 198B the inquiry is not whether any act was done by the public servant in the discharge of his official duty - there might have been no act done at all - but whether the imputation was in respect of his public functions.

44. It is of course not disputed that cognizance taken in violation of Section 198 or Section 198B is something that goes to the very root of the matter and renders the trial one without jurisdiction. It follows from what we have said that the trial in these cases was without jurisdiction.

45. We allow the appeals and set aside the convictions and sentences recorded against the accused persons in both of the cases.

46. It is perhaps unnecessary to say that this does not operate as an acquittal.

47. We might however add that, despite our finding that cognizance was barred, we have thought fit to pronounce on the merits of the cast because the merits were very elaborately argued before us and both sides seemed anxious for an adjudication on the merits. It might be that our finding on the question of cognizance is canvassed in further appeal; and in that event a finding by us on the merits might become necessary for the final disposal of the case.

C. A. Vaidialingam, J.

48. I agree with the judgment just now delivered by my learned brother Raman Nayar, J., excepting on the question about the scope of Sub-S. 13 of Section 198B of the Criminal Procedure Code With great respect, I regret, I am not able to agree on this point with the views expressed by my learned brother.

49. The contention of Mr. P. Govinda Menon, learned counsel for the appellants, based upon this sub-section is that in a complaint filed under Section 198B by the Public Prosecutor, the public servant, in this case the Minister for Law, should have also joined in the complaint. I did not understand Mr. Govinda Menon to contend that there should be two complaints in such cases namely, one by the public servant himself under Section 198 of the Criminal Procedure Code, before the proper forum, and another under Section 198B jointly by the public servant and the Public Prosecutor.

50. The learned Advocate General on the other hand, appearing for the complainant, the State of Kerala, in both the appeals, contended that in a complaint filed under 5, 198B, Criminal Procedure Code by the Public Prosecutor after the necessary formalities, it is not necessary that the person against whom the offence is alleged to have been committed, should also join as a party. According to the learned Advocate General, the effect of Sub-Section 13, of Section 198B is only to give an additional right to the public servant to have a complaint filed before a court of session by the Public Prosecutor also. It does not take away the right of a public servant, if he so chooses, to launch a complaint, himself before a proper court under Section 198B. There is nothing in the wording of any of the clauses of Section 198B to warrant the contention that the public, servant also should be a party, to the complaint filed by the Public Prosecutor.

51. The short point therefore, is whether the Minister for Law in this case, should have also joined in the complaint filed by the Public Prosecutor and whether the non-joining of the

Minister is fatal to the prosecution launched by the Public Prosecutor alone.

52. In my view, Sub-Section 13 of Section 198-B does not lead to the conclusion that the person against whom the offence is alleged to have been committed, should also be a party in a complaint filed by the Public Prosecutor under Section 198-B.

53. Though Section 198 of the Criminal Procedure Code is worded in such a way as to prohibit a court from taking cognizance of the offence mentioned therein, excepting upon a complaint made by the person aggrieved by such offence, in cases not covered by the provisos thereto, the object underlying the section is that the jurisdiction of the Court can be invoked only by the aggrieved person himself making a complaint. The right of the aggrieved person to invoke the jurisdiction of the Court by mating a complaint himself is clearly recognized by that section. Such a complaint can be made only to the Magistrates who are empowered to exercise jurisdiction in that behalf; whereas under Section 198-B, in the case of offences stated therein and alleged to have been committed against persons and under the circumstances enumerated therein, power is given to a Court of session to take cognizance of such offence when a complaint in writing is made by the Public Prosecutor. Two factors emerge from this section, namely

> (1) a Court of session, which otherwise gets jurisdiction only when the accused is committed to it for trial, is empowered to take cognizance straightway, and (2) such jurisdiction of the Court of session can be invoked by the Public Prosecutor making a complaint.

54. According to Mr. P. Govinda Menon, Section 198-B must be read along with the prohibitions mentioned in Section 198. That such a contention cannot be accepted will be seen from the opening words of Section 198-B clause (1). viz. "notwithstanding anything contained in this Code". These words clearly mean that Section 198-B stands by itself, irrespective of whatever is said in the Code about such matters. It is rather difficult to understand that the legislature by incorporating Sub-Section 13 in Section 198-B intended the prohibition under Section 198 to have full force and effect especially when the Legislature has very clearly stated in Section 198-B, clause (1) that those provisions are to apply "Notwithstanding anything contained in this Code". It is a canon of interpretation that all the parts of a Statute should be read in a reasonable manner so as not to conflict with one another. So read, in my view, the object of Sub-Section 13 of Section 198-B is only to preserve the rights of the person, against whom the offence is alleged to have been committed to directly approach if he so chooses the proper Court by himself making a complaint under Section 198 of the Criminal Procedure Code.

55. Mr. P. Govinda Menon further contended that there is intrinsic evidence in some of the Sub-Sections of Section 198-B to show that the person against whom the offence is alleged to have Been committed, should also join in a complaint made by the Public Prosecutor and for this purpose, the learned counsel relied upon Sub-Sections 6 to 11 of Section 198-B. Those sub-sections give power to the Court of session which tries the offence, to award compensation to the accused when it is of opinion that the accusation against the accused was false, frivolous or vexatious.

56. Sub-Section 6 gives power to the court of session to direct the person against whom the offence was alleged to have been committed, other than the President, Vice-President, Governor or Rajpramukh of a State, to show cause why he should not pay compensation to the accused On the ground that the Court is of opinion that the accusation was false, frivolous, or vexatious.

57. Sub-Section 7 empowers the Court of Session to consider any cause shown by the person so directed and to award compensation not exceeding Rs. 1,000 to be paid by such person.

58. Sub-Section 8 provides for recovery of compensation so awarded, as if it were a fine.

59. Sub-Section 9 provides that the person who has been directed to pay compensation, is not exempted from any civil or Criminal liability.

60. Sub-Section 10 gives a right of appeal to the person who has been so ordered to pay compensation.

61. Sub-Section 11 states that the compensation need not be paid before the expiry of the period for presentation of an appeal or during the pendency of the appeal, if one such is filed.

62. According to Mr. P. Govinda Menon, these Sub-Sections contemplate the public servant also being a party along with the complainant, in a complaint filed under Section 198-B; otherwise these Sub-Sections have absolutely no place or meaning. The sub-sections relied upon by Mr. P. Govinda Menon, do not, in my opinion, in any way, assist the contentions of the learned counsel for the accused. As pointed out by the learned Advocate-General, Sub-Section 5 of Section 198-B makes it obligatory, for the person against whom the offence is alleged to have been committed, being examined as a witness for the prosecution. The evidence of that person can be dispensed with, only if the Court of session otherwise directs by recording reasons. Therefore, the person against whom the offence is alleged to have been committed, will be before the Court as a prosecution witness. Further Sub-Section 6, on which the learned counsel for the accused has so strongly relied, itself begins by saying "if in any case instituted under this section".

63. Again Sub-Section 9 ends by saying : "In respect of the complaint made under this section". Therefore the words "in any case instituted under this section" as contemplated under Sub-Section 6, and the words "in respect of the complaint made under this section" contemplated by Sub-Section (9), must have reference to the proceedings commenced under Sub-Section (1) of Section 198-B. Sub-Section (1) clearly contemplates: "a complaint in writing made by the Public Prosecutor". Therefore, the complaint that is contemplated, is only that made by the Public Prosecutor and it is to such complaint, and a case commenced by such a complaint, that Sub-Sections 6 and 9 have application.

64. Further, Sub-Section 6 specifically confers a special power, and but for that provision, and the subsequent Sub-Sections, the Court of session would have no jurisdiction whatsoever to deal with the person, against whom the offence is alleged to have been committed. In this connection, reference may be made to the provisions of Section 250 of the Criminal Procedure Code whereby identical powers, as those conferred on the Court of session under Sub-Sections 6 to 11 of Section 198-B have been conferred on a Magistrate in dealing with a case instituted upon complaint or upon information given to a police officer or to a Magistrate. Under that section,

power is given to a Magistrate to call upon the complainant to show cause why he should not be directed to pay compensation, when the Magistrate is of the view that the accusation was false, frivolous or vexatious. Section 250 gives power to a Magistrate dealing with summons and warrant cases. If a complaint has been made by the aggrieved person under Section 198 straightway, the Magistrate would have power under Section 250 to direct the complainant to pay compensation under the circumstances mentioned therein. The legislature, by incorporating Sub-Sections 6 to 11 in Section 198-B, intended that the Court of session also should have such a power to proceed against the person against whom the offence is alleged to have been committed, notwithstanding the fact that a complaint, under the said section, is to be made only by the Public Prosecutor. Therefore, Sub-Sections 6 to 11 of Section 198-B, in no way suggest that the Public officer, against whom the offence is alleged to have been committed, should also figure as a complainant under this section.

65. The learned counsel for the accused finally relied upon a decision of a single Judge of the Bombay High Court reported in AIR 1958 Bombay 196. That decision no doubt, prima facie appears to support the contention of Mr. P. Govinda Menon that the effect of Sub-Section 13 of Section 198-B, is that a complaint under Section 198-
B, will have to be made both by the person aggrieved and by the Public Prosecutor. At page 197 of the reports, Mr. Justice Bavdekar observes :

> "What Section 198-B (13) consequently means, when it says that the provisions of Section 19S-B shall be in addition to, and not in derogation of the provisions of Section 198, is that any complaint which may be made under Section 198-B must also satisfy provisions of Section 198, that is, the complaint will have to be made both by the persons aggrieved and by the Public Prosecutor. I do not think that the language that the provisions of Section 198-B shall be in addition to, and not in derogation of those of Section 198 would be the correct language to use, if all that was intended was that it was not to be regarded that Section 198-B so to speak repeals Section 198, or that a complaint for defamation could not be made even to a Magistrate by the person aggrieved without the intervention of the Public Prosecutor".

66. If the learned Judge intended to lay down as a proposition of law that a complaint filed under Section 198-B of the Criminal Procedure Code should be by both the person aggrieved and by the Public Prosecutor, with great respect, it is not possible for me to agree with that reasoning.

67. The Public Prosecutor had not signed the complaint as required under Section 198-B, and the only point before the learned Judge was whether the Court of session could take cognizance on such a complaint which has not been made by the Prosecutor. The observations made by the learned Judge were not really necessary for the purpose of that case and they are only obiter. In any event, as mentioned earlier, it is not possible for me to agree with that line of reasoning. In my opinion, it is not necessary that the person aggrieved should also join as a complainant in a complaint filed by the Public Prosecutor under Section 198-B.

68. It follows that the non-joining of the Minister for Law in this case, in the present complaints does not on that account, vitiate the proceedings initiated by the Public Prosecutor alone under Section 198-B.

Appeals allowed.