

# **BOMBAY HIGH COURT**

C.B.L. Bhatnagar

Vs.

State (Bombay)

Criminal Revn. Appln. No. 1542 of 1956

(Bavdekar, J.)

29.03.1957

## **ORDER**

### **Bavdekar, J.**

1. This is an application for revision from a complaint which has been filed in regard to an offence of defamation committed by the petitioner by certain articles published by him. The complaint in this case, it is common ground now, was presented by the Public Prosecutor for Greater Bombay to the Registrar of the City Sessions Court. It purported to be a complaint filed by the State of Bombay at the instance of Mr. M. S. Prasad, Income-tax Officer, C-III Ward, having his office at Aayakar Bhavan, Church-gate, Bombay. The complaint is signed by Mr. M. S. Prasad, who has also affirmed it before the Registrar of the City Sessions Court. At the bottom there is an endorsement that the complaint was drawn by the Public Prosecutor for Greater Bombay, which is not signed by anybody. Now, when a warrant was issued against the petitioner he raised a contention before the learned Additional Sessions Judge, to whom the complaint went for disposal, that he could not take cognizance of the offence, because the complaint had not been filed by the Public Prosecutor. This contention of his has been overruled by the learned Additional Sessions Judge, and he has come here in revision.

2. Now, the learned Additional Sessions Judge pointed out rightly that sub-section (13) of section 198B says that the provisions of section 198-B are in addition to, and not in derogation of the provisions of section 198 itself. The learned advocate, who appears on behalf of the petitioner, argues that that does not mean that if it desired that there should be a trial by a Sessions Court without a committal that the complaint must be made both by the person aggrieved, that is, the person defamed, and the Public Prosecutor. He says that the meaning of that Sub-section is that it would be open to the complainant to file a complaint before a Magistrate, who would thereupon take cognizance and proceed to try the accused, or to commit him for trial under the ordinary law, that is, the Code of Criminal Procedure as it was before section 198-B was added. I do not

think, however, that this contention can possibly be accepted. It is true that it is always open to a person defamed to lodge a complaint of defamation before a Magistrate; but that is not because section 198-B (13) enables him to do so. but because when an offence of defamation is committed, the only limitation upon the ordinary law that any person can set the criminal law in motion, which is provided in section 198, being satisfied, the complainant himself can make a complaint of the offence before a Magistrate. What section 198-B (13) consequently means, when it says that the provisions of section 198-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 198B must also satisfy the provisions of section 198, that is, the complaint will have to be made both by the person aggrieved and by the Public Prosecutor. I do not think that the language that the provisions of section 198B 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 198B 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.

3. But the further question which has got to be considered is whether the provisions of section 198B have been complied with in the present case. Now, what that section requires is that the complaint shall be made by the Public Prosecutor. If it is not made by him. then the Magistrate cannot take cognizance. Now, it is not necessary for the purpose of this application to decide whether there must be application of the mind of the Public Prosecutor, or whether the Public Prosecutor, before he files a complaint, is required to exercise what may be called an individual judgment. All that it is necessary to state for the purpose of the present application is that the act of making the complaint must be his act. and it is not possible to say from the evidence before me that in this case the act of complaining was the act of Mr. Trivedi, the Public Prosecutor, in the present case. I have already mentioned that the complaint purports to be a complaint by the State of Bombay at the instance of the Income Tax Officer concerned. It is not signed by the Public Prosecutor himself; it is signed only by the Income Tax Officer, who has also apparently affirmed it before the Registrar of the City Sessions Court. It is true that at the bottom there is a remark that the complaint has been drafted by the Public Prosecutor; but in my view, rather than helping the prosecution it helps the accused. It is obvious that the Public Prosecutor has made a distinction in this connection between himself and Mr. Prasad. Whereas he has shown that he was merely a drafter of the complaint, Mr. Prasad has been shown as the person at whose instance the prosecution was lodged and who was as a matter of fact himself making the complaint. There was no occasion for his making such a distinction if Mr. Trivedi had thought that the act of complaining was his own act.

4. Now, it is quite true that there is nothing which prevents a Public Prosecutor, when the complaint itself is ambiguous and it cannot be said whose act it is, to lead evidence to show that whatever might appear from the complaint, the act of making the complaint is the act of the Public Prosecutor. It has been held by this Court and as a matter of fact also now by the Privy

Council that where sanction is necessary, and on the face of it the sanction does not make it clear that it is in relation to the facts charged, evidence could be adduced to show that the sanction which was given was in respect of the facts charged. The same reasoning must necessarily apply to a case like the present, and it is open to the prosecution to lead evidence to show that, whatever the defects in the drafting of the complaint may be, the act of making the complaint was Mr. Trivedi's. But the prosecution failed to do so. It is obvious, therefore, that it cannot possibly be said now that the act of complaining was the act of the Public Prosecutor. For illustration, it may well be inquired whether assuming that in this case a question arose of compensation being given under section 250, an order could be made against the Public Prosecutor to pay the compensation, and I do not think it can possibly be said that when Mr. Trivedi has made this distinction that he is merely a drafter of the complaint and also obviously the advocate who presented the complaint to the Court it can be successfully contended for the purpose of section 250 that he was the complainant against whom an order under Section 250 could be made.

5. The learned Government Pleader draws my attention to section 537 (a); but it seems to me that that is not the section which can be availed, of in the present case. When section 198B contemplates that the act has got to be the act of the Public Prosecutor and it has not shown that it is his in such a case the Sessions Court must refuse to take cognizance and the defect is one of jurisdiction.

6. Finally, it is said that the prosecution should now be allowed to lead evidence to show that the act in this case is the act of the Public Prosecutor. Now, I could have understood such a contention, if an objection had not been taken at the outset on behalf of the petitioner under section 198. That objection was taken. The State chose to fight it out and fought it without success. There is no reason why opportunity should now be given to it to lead evidence which would enable them to fill up the gap.

7. The proceedings of the learned Additional Sessions Judge consequently are quashed, and the petitioner accused is ordered to be discharged.

Revision allowed.