ORISSA HIGH COURT

Gour Chandra Rout

Vs

Public Prosecutor

Criminal Revn. No. 178 of 1959

(R.L. Narasimham, C.J.)

16.12.1959

ORDER

R.L. Narasimham, C.J.

1. This is a revision petition to quash a criminal proceeding in Original Criminal Misc. Case No. 1 of 1958, pending in the Court of the Sessions Judge of Cuttack, against the petitioners.

2. Petitioner No. 1 is the Editor and petitioner No. 2 is the Printer and publisher of an Oriya daily known as "Matrubhumi". In its issue dated 31-5-1958 was published a statement said to have been made by Dr. Ram Mohan Lohia, a prominent politician of India regarding the political crisis which prevailed in Orissa during that month. The following is the English translation of his statement:

> "When his attention was drawn to the last political crisis which prevailed in Orissa, he replied that the Congress is a new oppressive party and those who desire to get into power by pushing the former aside (i. e. Ganatantra Parishad) are old oppressors. So, while expressing his personal views he said that the single member of our party should remain neutral under the circumstances. While his attention was drawn to the activities of the Governor of Orissa, he said "Governor Sukhthanker is a mere toy in the hands of the Congress. A close relation of this Governor has got an appointment in the Assam British Oil Company, on a fat salary, through the endeavors of the Congress Government. How could the Governor be so ungrateful by not showing favour towards the Congress Party?"

The portion referring to the conduct of the Governor Sri Y. N. Sukhthanker was said to be grossly defamatory. The allegation that a close relation of his got an appointment in the Assam British Oil Company on a fat salary was emphatically denied as untrue. The insinuation that he supported the Congress party because he was grateful to the Congress for securing a job for his son was also emphatically denied. There can be no doubt that the offending passages are prima facie grossly defamatory unless the petitioners can claim the benefit of any of the various

exceptions to Section 499 I. P. C.
The then Home Secretary, Sri P. N. Mohanty on 29-9-58 sanctioned the filing of a complaint by the Public Prosecutor against the Editor, and Publisher of the newspaper for having committed the offence of defamation against the Governor of Orissa, Sri Y. N. Sukthanker in the discharge of his official duties. On the basis of this sanction order the Public Prosecutor filed a complaint before the Sessions Judge, Cuttack for an offence under Section 501 I. P. C. This complaint was made in pursuance of the special provisions contained in Section 198-B of the Criminal Procedure Code inserted by the recent amending Act 26 of 1955. Mr. A. Das for the petitioners challenged the validity of the entire criminal proceeding on the following two grounds:

> (i) By virtue of Sub-section (13) of Section 198-B Cr. Procedure Code the provisions of that section are in addition to and not in derogation of "those of Section 198 and as no complaint was made by the aggrieved person (the Governor of Orissa) as required by Section 198 Criminal Procedure Code the proceeding is null and void.
> (ii) The power of the Home Secretary to sanction the filing of a complaint bv the Public Prosecutor as provided in sub-section (3) of Section 198-B depends on his being an officer authorized by the Governor in this behalf as required by clause (a) of that sub-section. According to Mr. Das there was no valid authorization of the Home Secretary by the Governor to sanction the filing of such a complaint.

3. Section 198 Criminal Procedure Code prohibits a Court from taking cognizance of the offence of defamation except upon a complaint made by the person aggrieved by such defamation. Hence, under the law as it prevailed prior to the amendment, brought about by the amending Act 26 of 1955, a complaint by the Governor would have been necessary for initiating this case. But Section 198B prescribes a new procedure where the person defamed is the Governor of a State and the allegations against him relate to his conduct in the discharge of his official functions. For such an offence, a complaint by the Public Prosecutor may be filed before a Court of Session. But the Public Prosecutor cannot file such a complaint except with the previous sanction of any Secretary to Government "authorised by the Governor in this behalf".
But sub-section (13) says that "the provisions of this section shall be in addition to and not in derogation of those of section 198". The construction of sub-section (13) of Section 198-B Criminal Procedure Code has led to a sharp conflict of judicial opinion. In *C.B.L. Bhatnagar v. State*, Bavdekar[1] J. took the view that both the sections should be complied with and a complaint should be filed not only by the public prosecutor but also by the aggrieved person. In a recent decision of the Mysore High Court reported *in State of Mysore v. P. K[2]. Atre* this view was dissented from by Narayan Pai J. and it was held that if the procedure prescribed in section 198-B Criminal Procedure Code is resorted to, there is no need to comply with the provisions of section 198 and that a complaint by the Public Prosecutor alone would suffice. In a Division Bench decision of the Kerala High Court reported *in R. Shankar v. State[3],* the two Judges who constituted the Bench (Raman Nayar and Vaidyalingam JJ.) differed on the question. Raman Nayar J. was inclined to follow the view taken by
Bavdekar J. in AIR 1958 Bombay 196, while Vaidyalingam J. was of the contrary view.

4. It is unnecessary for me to discuss at great length the relative merits of the two views. With respect I am inclined to adopt the reasoning given by Narayan Pai J. in AIR 1959 Mysore 65 and

to hold that where proceedings are initiated under section 198-B Criminal Procedure Code a separate complaint by the aggrieved person may not be necessary as requited by section 198 Criminal Procedure Code The words "in addition to and not in derogation of" in sub-section (13) of Section 198-B Criminal Procedure Code only mean that if the special procedure prescribed in section 198-B is not adopted for prosecuting a person guilty of defamation, it is still open to an aggrieved person to file a complaint under section 198 Criminal Procedure Code before a competent Magistrate. But to go further and say that for every complaint initiated under section 198-B there should be another complaint by the aggrieved person so as to conform to the provisions of Section 198 Criminal Procedure Code ineffective for all practical purposes, except for the limited purpose of trial in a Court of Session instead of in the Court of a Magistrate. I am therefore of the view that the criminal proceeding against the petitioners are not void in the absence of a complaint by the aggrieved person, namely the Governor of Orissa.

5. Regarding the second point raised by Mr. A. Das it was fairly conceded by him that clause (c) of sub-section (1) of Section 198-B Criminal Procedure Code does not require that the authorization of the Home Secretary by the Governor should be in any particular form. Even if it is not in the form usually used in indicating the exercise of statutory power, it is yet open to the prosecution to prove by evidence that there was such an authorization prior to the giving of sanction by the Home Secretary to the Public Prosecutor. In the lower Court some evidence was led on this point including the evidence of the Governor. In this Court also at the special request of the Advocate General, the Deputy Secretary of the Home Department was examined as a witness. The learned Advocate General's argument in this respect is two-fold. First, he relied on the following notification of the Government of Orissa Home Department (Special Section) dated 18th July 1956 by which a general authorization by the Governor was given to the Home Secretary to accord previous sanction to making of complaints under sub-section (1) of Section 198-B, Criminal Procedure Code, in respect of offences committed against the Governor;

"Government of Orissa,
Home Department.
(Special Section)
Notification.
Dated Cuttack, the 18th July, 1956.

No. 1607-C: In exercise of the powers conferred by Clause (a) of sub-section (3) of section 198-B of the Code of Criminal Procedure, 1898 (V of 1898) the Governor hereby authorizes the Secretary to the Government of Orissa in the Home Department, to accord previous sanction to the making of complaints, under sub-section (1) of the said section in cases where such complaints are made of an offence alleged to have been committed against the Governor. By Order of the Governor.
Sd. A. K. Barren.

Secretary to Governor."

Secondly, even if the general authorization made in the aforesaid notification be held to be defective, the Advocate General contended that, on the evidence of the Governor, the facts as stated in the sanction order of the Home Secretary (Sri P. N. Mohanty) dated 29-9-1958, and the evidence of the Deputy Secretary, Home Department (Sri Sacchidananda Nayak) given in this

Court, it should be held that there was specific authorization by the Governor Sri Y. N. Sukthanker of the Home Secretary Sri P. N. Mohanti to sanction the filing of a complaint in this case.

6. So far as the general authorization as given in the aforesaid notification of the 18th July 1956 is concerned there seems considerable force in the contention of Mr. A. Das that it may not suffice, for strict compliance with the requirements of clause (a) of sub-section (3) of section 198-B Criminal Procedure Code That clause does not expressly say that the authorization may be made "either by general or special order". In the absence of such enabling words, the principle of Section 14 of the General Clauses Act would apply and the statutory power of authorization may be exercised by the Governor from time to time "as occasion requires" unless a different intention appears from the context. Ordinarily the occasion would arise only if the defamatory matter is published and the aggrieved party (the Governor) considers that the initiation of a criminal proceeding is necessary. He may then authorize the Secretary concerned who will further examine the question as to whether sanction should be given and then accord sanction to the Public Prosecutor, for filing a proper complaint before the Court of Session. It is true that the Secretary is not a mere "conduit pipe" to mechanically accord sanction and he may, even after an authorization is made in his favor by the Governor, examine the entire question, and, if he is not satisfied about the existence of prima facie grounds or, for other good reasons, he may, refuse to accord sanction. In this respect I would, with respect agree with the view taken by the Division Bench of the Kerala High Court in AIR 1959 Kerala 100 (cited above) at page 107. But from this view it does not necessarily follow that a general authorization can be given by the competent authority long before the commission of the offence is even contemplated. If that were the intention of the Legislature it would surely have said so in express terms in Section 198-B, Cr. P. Code. But it is unnecessary to decide this question for the disposal of this revision and I would leave it open.

7. The Advocate General is on a surer footing in respect of this second contention. The sanction order of the Home Secretary (Sri P. N. Mohanti) dated the 29th September 1958 is as follows:

> "Sanction order under Section 198-B Criminal Procedure Code 1898.

Whereas "The Matrubhumi" an Oriya Daily published from Cuttack, in its daily edition dated 31st May 1958 knowing or having reason to believe that such a matter is defamatory of the Governor of Orissa, published a statement alleged to have been made by Dr. Ram Mohan Lohia to the effect that the Governor of Orissa in consideration of his obligations towards the Congress Government in securing a well paid job for a near relation of his, in an oil company in Assam, favoured the Congress party to be in power in the last political crisis, in Orissa. Whereas the said statement reflects on the conduct of the Governor of Orissa in the discharge of his public functions, it constitutes an offence committed by the Editor and Publisher of the Matrubhumi punishable under Section 501 I.P.C. Whereas the Secretary to the Home Department has been authorised by the Governor in this behalf under Section 198-B, (a) to accord sanction to a complaint being made by the Public Prosecutor, Cuttack against the Editor and Publisher of the said Newspaper Matrubhumi for the aforesaid offence. Now therefore, in pursuance of the aforesaid authority, I Sri P. N. Mohanti, Secretary, to the Govt. of Orissa in the Home Department, do hereby accord sanction for the aforesaid complaint being made by the Public

Prosecutor.
Sd. P. N. Mohanti.
29-9-1958.
Secretary to the Govt. of Orissa.
Home Department.

8. In the third paragraph of the aforesaid sanction order the Home Secretary expressly says that he has been authorised by the Governor under Section 198-B (3) (a) Criminal Procedure Code to accord sanction to the filing of a complaint against the Editor and Publisher of the newspaper 'Matrubhumi'. This statement (which must prima facie be taken as correct) would show that after the attention of the Governor was drawn to the offending Article, the latter authorised the Home Secretary to accord sanction. This inference is strengthened by the evidence given by the Deputy Secretary, Home Department in this Court. He stated that the relevant file first went to the Legal Remembrancer and then it was submitted to the Governor in the usual way sometime in June 1958 and was then received back in the Home Department with the orders of the Governor thereon. He has also spoken about the substance of the opinion given by the Legal Ramembrancer on the subject and the contents of the order of the Governor. Mr. A Das objected to these matters going in evidence on the ground that as the learned Advocate General was not willing to produce in court, the written opinion given by the Legal Remembrancer or the actual orders passed by the Governor, (claiming privilege for the same,) the witness was not entitled to speak about the contents of those documents. Assuming, without deciding, that the contents of the Secretariat file for which privilege was claimed by the Advocate-General, are inadmissible unless the document is formally proved in evidence, nevertheless the Deputy Secretary to the Home Department is entitled to speak about facts of which he had personal knowledge, viz, that the file in question first went to the Legal Remembrancer, that it was received back to the Home Department with the advice of the Legal Remembrancer, then it was submitted to the Governor, and received back in the Home Department with his orders. I would utilize the evidence of the Deputy Secretary only to this limited extent. It would have been much better if the Advocate General had examined the then Home Secretary Sri P. N. Mohanti, but the explanation given for his non-examination is that he is on leave now. It is thus well established that the offending article appeared in the edition of Matrubhumi dated the 31st May 1958, that the file dealing with the prosecution or the editor, printer and publisher of the newspaper was received with the Governor's orders sometime in June 1958 and the sanction order was issued by the Home Secretary (Sri P. N. Mohanti) on the 29th Sept. 1958. In that sanction order it is expressly stated that the Home Secretary had been authorized by the Governor in this behalf, as required by clause (a) of sub-section (3) of Section 198-B, Criminal Procedure Code

9. On these facts I must hold that proper authorization has been made as required by law.

10. Mr. A. Das then contended that the general presumption of correctness attaching the facts as stated in official orders of this type should not be made in this case, inasmuch as the Governor, in his evidence, stated as follows:

> "I did not ask the Government to start this case. They did so after consultation with me. I sent the translation to Government telling them that the facts were untrue and to take such action as deemed proper. I did not direct Government to start a case for a defamation. I

gave no specific written directions to Government to start this case. By 'Government' I mean the department concerned. The Secretary to the Governor dealt with the department concerned. I did not ask in writing any Secretary to the Government or any Minister to start this case."

On the basis of these answers, Mr. Das urged that the statement in the sanction order dated the 29th September, 1958, to the effect that the Secretary Home Department had been authorized by the Governor to accord sanction to complaint being filed by the Prosecutor, was contradicted by the evidence of the Governor. This argument assumes that when the Governor used the expression "start this case" he meant authorization of the Home Secretary to issue a sanction order. Such an interpretation cannot be given to this expression. The case could be started only after the issue of sanction order by the Home Secretary or after the filing of the complaint by the Public Prosecutor. On these matters, the Governor cannot obviously issue any directions to the Home Secretary. The Secretary has discretions conferred on him by the statute, to proceed in any manner he may think fit and may, even after authorization by the Government examine the matter afresh before according sanction. Moreover, the learned Advocate who cross-examined the Governor did not expressly question him as to whether he had authorized the Home Secretary to accord sanction to the Public Prosecutor to file a complaint in this case. Hence the words "start the case" used by the Governor, in his evidence, in the context, would not include authorization of the Home Secretary to accord sanction, so as to throw doubt on the correctness of the statement made in the sanction order of Sri P. N. Mohanti, on the question of authorization.

11. I should also notice another argument raised by Mr. A. Das. In the offending passage one of the sentences, (as translated in English) is to the following effect:

"Governor Sukhthanker is a mere toy in the hands of the Congress".

This sentence has not been referred to in the sanction order issued by the Home Secretary on the 29th September 1958. Mr. Das urged that the attention of the Home Secretary was not expressly drawn to this passage and that he has not given sanction to the filing of the complaint against the petitioners so far as this passage is concerned. He relied on the observations of the Privy Council in the well known case of *Gokulchanda Dwarakadas v. The King, reported in*[4] to the effect that sanction should be given in respect of 'facts constituting the offence charged and where it is not clear that the attention of the sanctioning authority was specially drawn to such facts the sanction order would be invalid. It is unnecessary for me to express any opinion on this point at this stage. So far as the remaining portions in the offending passage are concerned the sanction can be no doubt that the Secretary's attention was drawn to the facts constituting the offence so far as those portions are concerned. How far the omission of any reference in the sanction order to the passage in which the Governor was described as a "toy in the hands of the Congress" would affect the validity of the prosecution of the petitioners for using those expressions is a matter for decision during trial and it is not advisable for this Court to express any opinion now. I see however no defect in the sanction order which will have the effect of rendering the trial itself void ab initio.

12. For the aforesaid reasons, this revision petition is dismissed.
Revision dismissed.

Cases Referred.

[1] AIR 1958 Bom 196
[2] AIR 1959 Mys 65
[3] AIR 1959 Ker100
[4] AIR 1948 P.C. 82