

(1994) 09 GAU CK 0009

In the Gauhati High Court

Case No : Civil Revision No. 119 of 1994 and Misc Case No. 108 of 1994

Ajit Kumar Bhuyan and Jayanta Baruah

APPELLANT

Vs

Hiteswar Saikia the Proprietor, Printing Udyog

RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Penal Code, 1860 (IPC) — Section 120B, 499, 500, 501, 502

Citation : (1995) 2 GLR 219

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : C.K. Sarma Baruah, G. Misra, G. Phukan and P.B. Hatikakati, for the Appellant; A.S. Bhattacharjee, N.C. Phukan, A.K. Choudhury and K.R. Deb, for the Respondent

Judgement

A.K. Patnaik, J.—This application has been filed by the opposite party No. 1 for vacating/modifying the interim order dated 12.4.94 passed by this Court in Civil Revision No. 119/94 staying further proceedings in Money Suit No. 293/92 pending in the court of the learned Assistant District Judge No. 1, Gauhati.

2. The brief facts relevant for the purpose of this Misc Case are that the opposite party No. 1 filed Money Suit No. 293/92 in the court of the learned Asstt. District Judge, Gauhati against the two Petitioners for damages of Rs. 1,00,000/- and for permanent injunction. In the said suit, the case of the opposite party No. 1 is that the Petitioner Nos. 1 and 2 are the "Editor" and the "Publisher" respectively of the Assamese "Sadin" and the opp. party No. 2 is the Proprietor of the said weekly. In the issues dated 28.3.92 and 4.9.92 of the said Assamese Weekly "Sadin" some articles were published containing statements which are defamatory of the opposite party No. 1 and are calculated to lower the opposite party No. 1 who is the Chief Minister of the State of Assam in the estimation of right thinking men and expose him to hatred, contempt or ridicule. For such defamation the opposite party No. 1 has claimed Rs. 1,00,000/- as damages and has prayed for permanent injunction restraining the Defendants from publishing

any words to the like effect in future.

3. In respect of the publication of the very same article in the issue of "Sadin" dated 28.8.92, a Criminal Complaint Case No. 1c/92 has also been filed against the Petitioners by Public Prosecutor with the sanction of the Government of Assam in the court of learned Sessions Judge, Gauhati and as per the said complaint case, the news item published in the "Sadin" dated 28.8.92 contains defamatory statements concerning the integrity of the Chief Minister of Assam and The Managing Director of Assam Industrial Development Corporation and the Petitioners are guilty of offences punishable u/s 120-B of I.P.C. read with Sections 500/501/502 or the I.P.C.

4. In the back ground of the aforesaid facts, the Petitioners filed a petition No. 4813/93 in the court of the learned Asstt. District Judge, Gauhati trying the Money Suit No. 293/92 praying for stay of the said Money Suit pending disposal of the Criminal Complaint Case No 1c/92. To the said petition, the opposite party No. 1 filed his objection before the learned Asstt. District Judge No. 1, Gauhati and by order dated 20.12.93 the learned Asstt. District Judge No. 2 held after due consideration that it was incumbent on the Defendants-Petitioners to let the court know their defence in the suit by filing the written statement, before the court can grant relief u/s 151 Code of Civil Procedure.

5. Aggrieved by the said order dated 20.12.93 of the learned Asstt. District Judge No. 2, the Defendants-Petitioners have filed the present Civil Revision No. 119/94 and notice of the said Civil Revision was issued on 4.4.94 making it returnable by 12.4.94 and on 12.4.94 this Court passed orders for waiting service of notice for 2 weeks and directing as an interim measure that further proceedings in Money Suit No. 293/92 pending in the court of the learned Asstt. District Judge No. 1, Gauhati shall be stayed.

6. Mr. A.S. Bhattacharjee, learned Counsel for the opposite party No. 1, submitted that the said interim order dated 12.4.94 staying further proceedings in money Suit No. 293/92 in the court of learned Asstt. District Judge No. 1, Gauhati was passed ex parte. He submitted that Money Suit No. 293/92 was filed by the Opposite party No. 1 before the Complaint Case No 1c/92 was instituted. He further stated that the said Complaint Case has not been filed by the opposite party No. 1, but by the Public Prosecutor. Mr. Bhattacharjee also submitted that defamation is regarded both as a Civil injury and a Criminal offence. For the Civil injury committed by the Petitioners the opposite party No. 1 has filed the aforesaid Money Sun No. 293/92 and for the criminal offence committed by the Petitioners, the Public Prosecutor has filed the complaint Case No. 1c/92. Under law both the aforesaid suits and the complaint case can go on simultaneously against an individual and just because criminal proceedings have been instituted against the Petitioner, the Money Suit filed by the Opposite Party No. 1 should not be stayed. Mr. Bhattacharjee has brought to my notice relevant passages from the book on Defamation by Duncan & Neil published by Butterworth & Co. (Publisher) Ltd. London. In support of his submissions Mr. Bhattacharjee also

cited the decisions reported in Kshitish Chandra Bhowmick Vs. Harakchand Betala and Others, , Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, and Mirta Lina Pr. Ltd. Vs. The Finlay Mills Ltd. and Another,

7. Mr. C.K. Sarma Baruah, learned Counsel for the Petitioners, on the other hand, submitted that by the order dated 20.12.93, in Money Suit No. 293/92, the learned Asstt. District Judge No. 2, Gauhati has called upon the Defendants-Petitioners to file the written statement and let the court know their defence in the suit. He submitted that the ingredients of the offence of defamation for which the Petitioners have been accused in the said Complaint Case No. 1 c/92 and the ingredients of the tort of defamation for which the Money Suit has been filed by the opposite party No. 1 are one and the same and since the aforesaid complaint case and the Money Suit relate to the news item published in the Assamese Weekly "Sadin" dated 28.8.92 and are founded on the same allegations of defamation against the Petitioners; there can be no doubt that the Petitioners would be prejudiced and embarrassed in the trial of the complaint case in case they are made to disclose their defence by filing written statement in Money Suit No. 293/92. In the circumstances, therefore, the interim order dated 12.4.94 slaying further proceedings in Money Suit No. 293/92 in the court of the learned Asstt. District Judge No. 2, Gauhati should not be vacated. In support of his aforesaid submission, Mr. Sarma Baruah cited the decisions of the Supreme Court reported in AIR 1954 SC 97 and of the Additional Judicial Commissioner, reported in AIR 1979 Goa 37,

8. At this stage I shall only consider whether the Petitioners have made out a prima facie case for stay of further proceedings in Money Suit No. 293/92. Now there is no dispute over the proposition of law stated by Mr. Bhattacharjee, learned Counsel for the opposite party No. 1, that under law a prosecution for the criminal offence of defamation and a suit for the civil injury of defamation can lie on the same set of facts against the same individual. But the question in the present case is, whether the proceedings in the Money Suit No. 293/92 for defamation should be stayed for the time being till the trial in the complaint case No. 1 c/92 is over. In the case of M.S. Sheriff Vs. The State of Madras and Others, cited by Mr. Sarma Baruah, the Supreme Court has held that where there is likelihood of embarrassment to the accused in the criminal proceeding, a civil suit against the accused should be stayed till the criminal proceeding is over. The aforesaid decision of the Supreme Court has also been followed by the Additional J.C. in the decision reported in AIR 1979 Goa 37 in the case of A. Ribeiro v. E.B.S. Silveira and it was held therein that where embarrassment or prejudice is likely to be caused to the accused, if they are required to file written statement and disclose their case in the suit, the civil suit should be stayed until disposal of the criminal case. As against the aforesaid decisions cited by Mr. Sarma Baruah, all decisions relied on by Mr. A.S. Bhattacharjee do not deal with situations where a civil suit and a criminal prosecution have been instituted on the same set of facts and the Court has been called upon to stay the civil suit until disposal of the criminal case on the ground that continuance of the Civil suit would prejudice

the accused in the criminal case.

9. Thus, the point to be considered is whether the filing of the written statement by the Petitioners in Money Suit No. 293/92 would in any way embarrass or prejudice them in the trial of the complaint case No 1c/92. There is no dispute over the fact that the news item dated 28.8.92 in the Assamese Weekly "Sadin" is one of the causes of action for the suit for defamation (Money Suit No. 293/92) and also constitutes the basis for the alleged offence of defamation against the Petitioners in Complaint Case No 1c/92. It may not be correct as submitted by Mr. Sarma Baruah, learned Counsel for the Petitioners, that the ingredients of the offence of defamation and the ingredients of the tort of defamation in India are one and the same *Bira Gareri Vs. Dulhin Somaria and Others*, but the defence in a prosecution for the offence of defamation and in a suit for defamation may be one and the same. The Petitioners may raise such defence in the Complaint Case No. 1c/92 as are available to them under the exceptions to Section 499 of the IPC at the criminal trial and may raise the very same defence against the allegations of defamation in Money Suit No. 293/92. Therefore if the Petitioners are required to disclose their defence by filing written statement in Money Suit No. 293/92 before evidence on behalf of the defence in the criminal trial is closed, they will be embarrassed or prejudiced in the criminal trial.

10. For the aforesaid reasons, I am inclined to hold that the Petitioners cannot be compelled to disclose their defence by filing written statement in Money Suit No. 293/92 in the court of the learned Asstt. District Judge No. 1, Gauhati, until the evidence on behalf of the defence in Complaint Case No. 1c/92 is closed but once the evidence on behalf of the defence is over the Petitioners may be called upon to file their written statement and the suit may proceed to trial. In the result, the interim order dated 12.4.94 of this Court is modified and the impugned order dated 20.12.93 passed by the learned Asstt. District Judge No. 2, Gauhati in Money Suit No. 293/92 in so far it directs the two Defendant-Petitioners to file their written statement is stayed, till the evidence on behalf of the defence in Complaint Case No. 10/92 in the Court of the learned Sessions Judge, Gauhati is closed. It is made clear that this order shall not stand in the way of the Trial Court or the Appellate Court from considering and passing orders on an application for temporary injunction, if any, filed in the suit.

The Misc. Case is disposed of.