

(1999) 11 MP CK 0062
In the Madhya Pradesh High Court
Case No : Criminal C. No. 7554 of 1997

A.K. Singh, Special Railway Magistrate, Jabalpur	APPELLANT
Vs	
Virendra Kumar Jain, Advocate	RESPONDENT

Date of Decision : 26-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 202(1), 408, 410
Judges (Protection) Act, 1985 — Section 3
Penal Code, 1860 (IPC) — Section 500

Citation : (2001) 1 MPLJ 324

Hon'ble Judges : Rajeev Gupta, J

Bench : Single Bench

Advocate : Ajit Singh, for the Appellant; Narendra Sharma with R.K. Samaiya, for the Respondent

Final Decision : Allowed

Judgement

R.P. Gupta, J.

This petition u/s 482 Criminal Procedure Code is directed against the order dated 20-11-1997, passed by the Court of Shri M.P. Gupta, Chief Judicial Magistrate, Tikamgarh, taking cognizance of an offence u/s 500 Indian Penal Code against the present petitioner on a complaint filed by the respondent before the Chief Judicial Magistrate and directing that summons be issued to the present petitioner as accused to stand his trial for that offence.

The petitioner was a Judicial Magistrate First Class, Orchha, district Tikamgarh. Shri M.P. Gupta was the Chief Judicial Magistrate at District Tikamgarh. The respondent/complainant was allegedly an Advocate practicing at Tikamgarh. While working as Judicial Magistrate First Class at Orchha, a complaint was filled in his Court by one Veer Singh on 10-1-1077 against certain forest officers for offences punishable under sections 392, 436/34, Indian Penal Code. This Magistrate after examining the complainant on oath and witnesses present with him u/s 200, Criminal Procedure Code referred the matter for further enquiry to

police u/s 202, Criminal Procedure Code directing that the investigation be made and result be reported. This order was passed on 10-1-1997. The police after inquiry reported that no offence was committed by the alleged forest officers and in fact the complainant Veer Singh had committed various offences under the Forest Act. After this report the complaint was fixed for hearing before the Magistrate on 11-2-1997, 13-2-1997 and 15-2-1997 on the prayer of the complainant's counsel.

The complainant personally filed a petition u/s 410, Criminal Procedure Code unrepresented by any lawyer, before the Chief Judicial Magistrate, Tikamgarh on 15-2-1997. In this transfer petition one of the grounds raised was that after examining the complainant u/s 200, Criminal Procedure Code the Magistrate could not have proceeded u/s 156 (3) of the Criminal Procedure Code by referring the matter to the police for investigation and that procedure was illegal.

The Chief Judicial Magistrate purporting to act u/s 410 Criminal Procedure Code, directed the present petitioner to send his comments on the transfer petition. The present petitioner sent his comments. One of the remarks in his comments regarding legality or illegality of referring the matter to police for further inquiry after recording statement of complainant u/s 200 Criminal Procedure Code, was that action was not u/s 156(3), Criminal Procedure Code, but, u/s 202(1), Criminal Procedure Code and that this allegation in the transfer petition was based on some un-ripe or immature advice (ALP GYANI KANOONI SAL AH PER ADHARIT). These comments are always sent in confidence to the requisitioning superior Court.

We do not know what happened in the transfer petition, but, about 9 months after this report of the Magistrate the present complainant/respondent Virendra Kumar filed a complaint on 5-11-1997 urging that by use of the words "ALP GYANI KANOONI SALAH" the Magistrate had brought into disrepute the legal competence of this complainant respondent on whose advice in fact the transfer petition had been filed and, thus, it amounted to his, character assassination, and these remarks were not allegedly in performance of duty of the Magistrate.

On this complaint, on the statement of the complainant respondent and two Advocates as witnesses on his behalf, who said that these remarks were read out by the Chief Judicial Magistrate in open Court as reply of the Magistrate and this Advocate/complainant Virendra Kumar became a laughing stock among the bar members, cognizance was taken by the Chief Judicial Magistrate for offence u/s 500, Indian Penal Code against the present petitioner, Judicial Magistrate First Class, Orchha, by the impugned order.

The contention of the petitioner is that great injustice has been done to him by the Chief Judicial Magistrate by the impugned order and the order amounts to an abuse of process of the Court, that even according to the allegations in the complaint against him by Virendra Kumar, Advocate, he has only sent his comments to the transfer petition on a direction by Chief Judicial Magistrate

himself. He was protected u/s 3 of the Judges Protection Act, 1985 (Act No. 59/85). He was duty bound to send his comments when directed by the Chief Judicial Magistrate to do so. It is urged that the transfer petition nowhere discloses that it was moved through any counsel or any counsel had been engaged before the Chief Judicial Magistrate in the transfer petition. The transfer petition was moved personally by the applicant who was the complainant before the Magistrate. So, the Magistrate (petitioner) could hardly have any basis to imagine that this complainant Virendra Kumar Advocate was the person who had advised Veer Singh to file the transfer petition or had drafted his transfer petition or the transfer petition was drafted on his advice. It is also argued that a bare perusal of provisions of sections 200 and 201, Criminal Procedure Code makes it clear that after recording the statement of the complainant and his witnesses on the first day when the complainant appeared, the Magistrate has option to refer the matter to such police officer as he feels proper for investigation and report u/s 202(1), Criminal Procedure Code. It is for the purpose of further inquiry into the complaint. Such order is not an order u/s 156(3), Criminal Procedure Code which empowers the Magistrate on receiving a complaint to direct an officer incharge of police to record first information report and investigate the matter and put up a challan if case is made out or proceed according to law. That order is passed before any statement of complainant is recorded.

It was in this light that he (present petitioner) had remarked that the ground taken by the complainant was based on immature advice i.e. "ALP GYANI KANOONO SALAH". The complainant Virendra Kumar Advocate could not be the object of this comment by the Magistrate.

It was also argued that these words can have no effect of defying any person nor of character assassination. They are only remarks regarding lack of legal knowledge and the Magistrate was within his right to point out this effect to the Chief Judicial Magistrate.

After giving consideration and deep thought to the circumstances and background of this complaint filed against the Magistrate, it appears clear that the complaint as well as the order of taking cognizance were nothing, but, abuse of process of law against the present petitioner to humiliate him and to make him stand trial for offence which was never committed. It appears clear to this Court that the Chief Judicial Magistrate has grossly ignored the protection available to the petitioner u/s 3 of the Judges Protection Act. The Chief Judicial Magistrate was expected to act independently and for the interest of justice. The Chief Judicial Magistrate appears to have committed severe illegalities; firstly, the transfer petition moved before him was u/s 410, Criminal Procedure Code. Under that provision the jurisdiction of the Chief Judicial Magistrate is administrative in nature. It is to keep equilibrium of cases amongst the various Magistrates working under him in the district. He can withdraw cases from one Magistrate and send them to another. This provision does not empower a Chief Judicial Magistrate to exercise power of transfer on complaint by one of the parties. For

that, the remedy to the aggrieved party is u/s 408, Criminal Procedure Code. That power is exercised by the Sessions Judge. He can transfer cases from one criminal Court to another in his Session Division "when he considers it expedient to do so for the ends of Justice". He can transfer a particular case from one court to another. He may act either on the report of the lower court or on the application of the party interested or on his own initiative. So, this is the provision which provides remedy to an aggrieved person, who feels to have lost faith in a particular criminal court for one or other reason. His remedy is not u/s 410, Criminal Procedure Code.

In view of this scope of provisions of sections 408 and 410, Criminal Procedure Code the Chief Judicial Magistrate should not have acted on a transfer petition based on grievances against the trying Magistrate. The best course was to leave the complainant to move the Sessions Court u/s 408, Criminal Procedure Code.

Since, the Chief Judicial Magistrate chose to call for the comments of the Magistrate, we may look into the circumstances and nature of the particular relevant comment. The record clearly shows that the transfer petition was not filed through any Advocate. Name of no Advocate was disclosed in the transfer petition which was sent to the Magistrate petitioner for his comments. It was moved by the complainant himself. He had raised various apprehensions that perhaps the Magistrate was aligning himself with the proposed accused forest officers. Under what circumstance the complainant Virendra Kumar Advocate considered that he was the subject matter of the comments "ALP GYANI KANOONI SALAH" is not clear. The Chief Judicial Magistrate in his impugned order has not noted that the transfer petition was so filed by this complainant Virendra Kumar or at what stage he was engaged as counsel. In Court the complainant said that he had moved the application for transfer. The present petitioner Shri A.K. Singh (Magistrate) has filed copy of the transfer petition received by him for comments with the orders of the Chief Judicial Magistrate. It purports to be signed by Veer Singh complainant and does not show that it is filed through any counsel. Even contents of this petition nowhere show that it is being filed through any Advocate. So, it would be farfetched to argue that any comment was meant as comment to any particular Advocate or to any Advocate at all. When a party moves the petition personally the assumption is that he is doing so on his own advice. An Advocate is not expected to avoid his name from being mentioned in the petition clearly, if he is drafting it and moving it. He is not expected to act in concealment of his name. So the comments could not be said to be related to the complainant Advocate or any Advocate whatsoever.

Now coming to the fact whether this comment is inherently defamatory, it appears clear that it is not so. The background of the comment has to be kept in mind. Sections 156(3), 200 and 202, Criminal Procedure Code have to be kept in consideration for reaching a proper conclusion about this comment. They are as under:

156. Police officer's power to investigate cognizable case. -- (1) Any officer-in-

charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above-mentioned.

200. Examination of complainant. -- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses --

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192:

Provided further that if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

202. Postponement of issue of process. -- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him u/s 192, may, if he thinks fit, postpone the issue of process against the accused, and either, inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made --

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath u/s 200.

(2) In an inquiry under sub-section(1), the Magistrate may, if he thinks fit take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is

triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer-in-charge of a police station except the power to arrest without warrant.

Section 190 is also relevant and is noticed as under:

190. Cognizance of offences by Magistrate. -- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence --

(a) upon receiving a complaint of acts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

A harmonious consideration of these provisions would be that when a complaint comes before a Magistrate, he is empowered to take cognizance of the offence u/s 191 (a) above referred. At that stage he has two options; first is that he may act u/s 156(3) and direct a police officer incharge of police station to investigate. Such police officer then registers the first information report on that basis, investigates the offence under the provision of Chapter XII of Criminal Procedure Code and he may file a charge-sheet u/s 173, Criminal Procedure Code, if an offence is disclosed or a final report if no offence is disclosed. On the basis of charge-sheet and material filed therewith the Magistrate may then take cognizance against the accused or he may accept the final report that there is no offence disclosed. This first option may be exercised only when offences alleged in the complaint are cognizable.

The second option before the Magistrate, at the time of filing of the complaint before him, is to proceed u/s 200, Criminal Procedure Code and record the statements of the complainant and his witnesses who are present and thereafter he has further three options; (i) if he is satisfied to take cognizance of the offence and issue summons against the accused persons, (ii) to enter into further inquiry himself or by another Magistrate u/s 202(2), Criminal Procedure Code by directing the complainant to bring or produce any other witness, if he so desires. On such inquiry or its report he may proceed to take cognizance or dismiss the complaint, (iii) to refer the matter for inquiry to a police officer or to any other person as the Magistrate thinks fit, u/s 202(1), Criminal Procedure Code who will

then report after inquiry. Although the words used in section 202(1), Criminal Procedure Code "direct an investigation to be made by police officer or by other person as the Magistrate thinks fit", it is in fact an inquiry to be made by that police officer or other person. Such inquiry can be ordered duly after recording statement of complainant and witnesses present. (Section 202(1) proviso (b)). On the basis of report of such inquiry by police officer or other person, the Magistrate may accept it and dismiss the complaint or take cognizance and summons the accused if an offence is reported to be disclosed or he may not accept even that report of inquiry and give further opportunity to the complainant to produce his witnesses before the Magistrate himself if he so desires fit and then proceed.

After these inquiries either by himself or through another Magistrate or through police officer or through another person, options of the magistrate are either to dismiss the complaint u/s 203, Criminal Procedure Code or to take cognizance of offence and issue process against accused u/s 204, Criminal Procedure Code.

So, that, in effect and spirit is the procedure laid down by these provisions.

In the complaint of Veer Singh the Magistrate allegedly recorded his statement and statement of his witnesses who were present with him and then ordered inquiry by a police officer u/s 202(1) read with proviso (b). That order could not be u/s 156(3), Criminal Procedure Code. In the transfer application, the complainant had taken a ground that order u/s 156(3) could not be passed, but, was passed. This ground for transfer certainly discloses lack of understanding of the procedural legal provisions, above discussed. It was a proper order u/s 202(1), Criminal Procedure Code within discretion of the Magistrate. If in these circumstances the Magistrate remarked that the grounds taken was based on mere immature legal opinion, he could not be said to be unjustified or to be commenting in mala fide manner against anybody. In this background and circumstances "ALP GYANI KANOONI SALAH" can have no other meaning or interpretation then that of immature and un-considered legal advice.

Thus, neither on fact it could be said that there was any reference to the complainant Virendra Kumar Advocate nor on the contents of the complaint it could be said that there was any inherent or overt words of defamation involved in the remarks of petitioner. Why any Advocate had fought shy of mentioning his name in the transfer petition, is anybody's guess.

After this discussion, it would be appropriate to refer to the provision of section 3 of the Judges Protection Act also which in fact provides an absolute defence to a Judge when he is acting in discharge of his judicial duty. A comment sent by a Magistrate on a direction of the Chief Judicial Magistrate to his sub-ordinate, is an action in discharge of the official or judicial duty. Section 3 of that Act is in the following term:

3. Additional protection to Judges. -- (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provision of sub-

section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of acting or purporting to act in the discharge of his official or judicial duty or function.

(2)

There is no dispute that the petitioner acting as a Magistrate was a Judge. The object of this act is to secure additional protection for Judges and other acting members of judiciary. It is strange that the Chief Judicial Magistrate did not consider that comments of the Magistrate, on direction given, to the transfer petitioner, were acts committed in discharge of his official duties. The reasoning of the Chief Judicial Magistrate, in the impugned order, is that the words "ALP GYANI KANOONI SALAH" is parallel to comment that a particular lawyer is quarrelsome and gambler. It is really strange that the Chief Judicial Magistrate found a parallel in the two. Firstly, the comments never referred to any particular person as no lawyer was disclosed in the transfer petition. Secondly; it is not inherently defamatory, but, a justified one in the background of existing state of affairs, as already discussed.

The Chief Judicial Magistrate considered only whether the Magistrate Shri Singh could be prosecuted without sanction u/s 197, Criminal Procedure Code and gave not thought to provision of section 3 of the Judges Protection Act. The Chief Judicial Magistrate should have taken care to find out whether there were additional protection provided to a Judge who acts in discharge of his official duties. Ignoring those provisions even by lack of knowledge of the same, does not speak well of the Chief Judicial Magistrate about his understanding of the law on these aspects.

Section 197, Criminal Procedure Code prescribes a pre-condition for prosecution of Judges or Magistrates i.e. sanction of the State Government or Central Government under whom they are employed when there is any prosecution intended against them for offence alleged to have been committed while acting or purporting to act in discharge of official duty. The comments were certainly sent by this Magistrate in discharge of his official duty as Chief Judicial Magistrate has directed him to do so. The comments were not abusive of anybody. They only expressed a frank opinion about a advice on the basis of which a particular ground a was raised in the transfer petition and scope of particular order was commented upon. He cannot be debarred from expressing his opinion. The language was in no manner derogatory prima facie. There was certainly immature and unconsidered legal advice involved in the particular ground taken. Thus, protection u/s 197, Criminal Procedure Code regarding necessity of a presentation for prosecution could not be obviated. The additional protection u/s 3 of the Judges Protection Act was also available to the petitioner. Apart from this, prima facie, there was no scope for reaching the finding that an offence was disclosed. The filing of the complaint as well as the order taking cognizance amounts to abuse of process of court, to harass a Judge.

Independence of judiciary in its function necessarily warrants that the Judges at the lowest rank and rung of ladder should be able to act without fear of harassment or intimidation. It is really an intimidation on part of a lawyer to file a complaint against a Magistrate to put him in the dock for trial for alleged offences which do not exist. It is the duty of the supervising Judge to see that his sub-ordinates act fairly, but, also that they act fearlessly and not in constant fear of intimidation by some unscrupulous member of the Bar or those who appear before them. If one level of Judges by sheer ignorance of law or carelessness or deliberately permit its sub-ordinate Judges to be harassed or intimidated like this, the whole judicial system suffers and administration of justice is put to great risk. It brings the system into disrepute and makes the concerned Judge a laughing stock at both levels.

The duty of the Advocates is also not to indulge in intimidation of the Judges by such action. Their duty is to uphold dignity of the Court. It is only then that the Bar's dignity enhances. If the Bar put the Judges to indignity, a day will come that public will spite at the institution of Bar as they are part of the system of judicial administration. Bar certainly has duty to be fearless and act independently, but, that does not mean it should intimidate the Judges by such reckless methodology as filing criminal complaints against them. It is really unfortunate that a judge of the level of Chief Judicial Magistrate acted without proper consideration of legal provisions. The act of the complainant in filing the complaint, thus, was condemnable particularly when he had concealed his name from the transfer petition itself, if he really was counsel for the applicant/complainant. We do not know at what stage he was engaged and whether he was engaged in chamber only or at all. Even otherwise there was no spite in the comments sent. Nor any prima facie infamy involved. The members of the Bar should act in restraint always.

For reasons discussed above, this petition is accepted. The impugned order of the Chief Judicial Magistrate of taking cognizance against the petitioner for offence u/s 500, Indian Penal Code is quashed. The complaint also quashed.

The petition is accordingly accepted.