
(1975) 09 PAT CK 0012
In the Patna High Court

Asha Parekh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-09-1975

Acts Referred:

Cinematograph Act, 1952 — Section 4, 5A, 5B
Criminal Procedure Code, 1973 (CrPC) — Section 197, 397, 401, 482
Penal Code, 1860 (IPC) — Section 108, 21, 499, 500, 7E

Citation : (1977) CriLJ 21 : (1976) 9 PLJR 108

Hon'ble Judges : Uday Sinha, J

Bench : Single Bench

Judgement

Uday Sinha, J.—These are four applications for quashing a criminal action for defamation initiated against the petitioners by the complainants, who are four Advocates of this Court. They have been heard together and are being disposed of by this common judgment. The complaint giving rise to the criminal action against the petitioners was filed before the Sub-divisional Magistrate, Patna on 16-11-1971. The learned Magistrate examined the complainants on solemn affirmation and sent the matter for inquiry to Shri Lala Agam Prasad, Magistrate, First Class, On receipt of the inquiry report, the learned Sub-divisional Magistrate issued processes against the petitioners for taking their trial under Sections 500 and 108 of the Indian Penal Code (hereinafter referred to as "the Code") by his order dated 20-1-1972 and thereby the entire prosecution lodged against them.

2. All the petitioners were associated with the production of a film (Nadan). The petitioner in Criminal Miscellaneous 864 of 1972 played the role of the heroine in the film. Navin Nischal, petitioner in Criminal Miscellaneous 866 of 1972 played the role of the hero in the abovementioned film. Deven Verma, petitioner in Criminal Miscellaneous 894 of 1972 was the Writer, Producer and Director of the film. Besides, he had also a small role in the film. In Criminal Miscellaneous 1119 of 1972 there are four petitioners. Petitioners 1, 3 and 4 in that application played minor roles in the film. Petitioner No. 2, Akhtar-Ull-Imam was the Dialogue Writer of the film. The Chairman, Central Board of Film Censors was

made accused No. 6 in the complaint end processes have been issued against him as well, but no application for quashing the proceeding has been filed by him.

3. The substance of the allegations against the accused in the complaint was that all the accused had aided and abetted the production of the film in question which was defamatory to the reputation of the Advocates as a class, and, therefore, they were liable to be punished under Sections 500 and 108 of the Code. The Chairman. Central Board of Film Censors was alleged to have aided and abetted the offence of defamation by granting them the necessary certificate for exhibiting the picture as required by the Cinematograph Act (hereinafter referred to as "the Act"). The complaint contains some samples of the dialogues in the film which are said to be defamatory. The defamatory statements are alleged to have been made by accused Deven Verma, Ashit Sen and Sunder. The other accused are not alleged to have made any statement or gesture which could be described as defamatory in any manner, but by taking part in the production of the film they are alleged to have aided and abetted the offence of defamation of the complainants. It should be stated here that all the four Advocates are members of a Firm by the name and style of "Khetan Advocate and Advocates". Besides the alleged defamatory dialogues and scenes referred to in the complaint, it has been stated in paragraph 15 of the complaint that "there are more defamatory statements in this film which shall be produced if and when required".

4. The ground common to all the applications for quashing the prosecution is that the dialogues and sequences in the film do not constitute the offence of defamation in terms of Section 499 of the Code. I shall, therefore, proceed to consider whether Advocates as a class can be defamed or not, in terms of Section 499 of the Code and if the answer be in the affirmative which of the accused would be liable for the same.

5. Before proceeding to consider the main argument on behalf of the petitioner, I must express my extreme displeasure at the conduct of the complainants, in making the Chairman of the Central Board of Film Censors (hereinafter referred to as "the Board") an accused in the case for not having censored the defamatory statements and at the cavalier manner in which the learned Magistrate acted in issuing processes against the Chairman of the Central Board of Film Censors. If the learned Magistrate had made even a little effort, he would have appreciated that the complaint against the Chairman of the Board was fit to be dismissed in limine. Sections 7E and 7P were complete bar to the taking of cognizance against the Chairman of the Board. Sections 7E and 7F are, therefore, quoted below to make the position absolutely clear:

7-E. Members of the board and advisory panels to be public servants - All members of the Board and of any advisory panel shall, when acting or purporting to act in pursuance of any of the provisions of this Act, be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

7-F. Bar of Legal Proceedings. No suit or other legal proceedings shall lie against the Central Government, the Board, advisory panel or any officer or member of the Central Govt., Board or advisory panel, as the case may be, in respect of anything which is in good faith done or intended to be done under this Act.

It will thus be seen that the Chairman of the Board must be deemed to be a public servant within the meaning of Section 21 of the Code. In granting the required certificates to the film in question the Chairman of the Board was undoubtedly acting in pursuance of the provisions of the Act and, therefore, Section 7F of the Act was a complete bar to the initiation of the proceeding in the present case. Apart from the bar contained in Section 197(1) of the Code of Criminal Procedure, 1973 which prohibits taking of cognizance against public servants while acting in the discharge of their official duties without the sanction of the Central Government, Section 7F of the Act completely bars any legal proceeding against the Board or any of its officers in respect of anything done in good faith or intended to be done under the said Act. In the face of any averment that the Chairman of the Board or any of its members had not acted in good faith in granting the requisite certificate, the bar contained in Section 7F of the Act faces the complainants squarely and in that view of the matter, the cognizance taken and the processes issued against the Chairman of the Board was without jurisdiction and to say the least misconceived. In all fairness to Mr, Basudev Prasad, learned Counsel for the opposite party, it must be stated that he candidly conceded that the Chairman of the Board should not have been made an accused in the case and the processes issued against him were absolutely unwarranted. Although the Chairman of the Board has not filed any application for quashing the proceeding against him, it will be an abuse of the process of the Court to let the proceeding continue against him. I, therefore, in exercise of the powers vested in this Court by Sections 397, 401 and 482 of the Code of Criminal Procedure, 1973, quash the cognizance taken against the Chairman of the Board, accused No. 6 in the complaint.

6. The first contention urged on behalf of the petitioners is that in the absence of any averment in the complaint that the petitioners intended to harm the reputation of lawyers as a class or that they knew or had reason to believe that such imputation would harm the reputation of lawyers as a whole, they cannot be held to be guilty under Sections 500 and 108 of the Code. The second contention seriously contended on behalf of the petitioners was that in order to constitute the offence of defamation the defamatory publication must refer to some definite person or a determinate class. It was contended that the lawyers as a class were too indeterminate a body to be the subject matter of defamation. The imputation cannot have any relevance to the complainants in particular.

7. In my view, both the contentions are sound and must succeed. Taking up the first question about the intention or knowledge of the accused in portraying the character of a lawyer in the film in question it will be seen that Section 499 of the Code lays down that a person defames another if he by words either spoken or

intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person. In this connection paragraphs 12 and 16 of the complaint are relevant which are quoted hereinbelow:

12. That it is stated that it was the bad motive of the accused persons in using the defamatory statements in the film against the Advocates for the purpose of gaining monetary benefit and cause loss to the profession of Advocates and its reputation to which the complainants belong.

16. That accused persons acted in the said film "Nadan" and got it released, amounting to publication of the defamatory statements, intending to harass or knowing or having reason to believe that the said imputation will harm the reputation of the Advocates" class and as such have committed offence in defaming the complainants and the class of Advocates." There is no doubt that it has been stated in the complaint that all the accused abetted one another with a bad motive for gaining monetary benefit and causing loss to the profession of Advocates and their reputation. There is also an averment in paragraph 16 of the complaint that the accused intended to harass the Advocates" class. But these averments fall short of the element that the accused intended to harm the reputation of all Advocates. According to paragraph 12 of the complaint, the accused intended to cause monetary benefit and in paragraph 16 the intention attributed to the accused was one of intending to harass the Advocates in general. The character of the Advocate in the impugned film was not the central theme thereof. Obviously it was a side issue of the main stream of the film. The role of lawyers or their activities was not the central point to which the producer or the Director or hero or heroine of the film were depicting. In that view of the matter, it cannot by any stretch of imagination be contended nor was it contended that the petitioners or anybody associated with the film intended to harm the reputation of lawyers to defame the class of persons known as Advocates, There can be no doubt that every film is produced with the primary object of earning monetary profits, The averment in paragraph 12, therefore, cannot be read as imputing the necessary intention to defame Advocates on the part of the petitioners. The allegation in paragraph 16 of the complaint that the accused intended to harass Advocates in general is absolutely irrelevant to the intention required by Section 499 of the Code for making the petitioners liable thereunder.

8. Section 499 of the Code further lays down that a person would be liable for defamation criminally if he made or published any imputation concerning any person knowing or having reason to believe that such imputation will harm the reputation although he may not have intended to cause such a harm. It is, therefore, essential to see whether the facts are such as the accused must be attributed the knowledge or that the accused. should have had reasons to believe that the imputation in the film would harm the reputation of Advocates as a

class. In this connection the provisions of the Cinematograph Act, 1952 are relevant. Section 4 of the Act lays down that any person desiring to exhibit shall make an application to the Board for a certificate in respect thereof and the Board may grant or refuse such a certificate or it may grant such a certificate after deleting objectionable parts of the film. The Board consists of a whole time Chairman and other members appointed by the Central Government. Apart from the Board there are also Advisory Panels at regional centres consisting of persons qualified to judge the effects "of films on the public. The Advisory Panel has been enjoined to examine films and to make such recommendations to the Board as it may think fit. Section 5A of the Act provides for certifications of the films. Section 5B lays down the principles for guidance in certifying films. It is useful to quote here the contents of Sub-section (1) of Section 5B which read as hereunder:

5-B. Principles for Guidance in Certifying Films: (1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence." A perusal of the section quoted above shows that one of the matters required of the Board is to see that the film under scrutiny does not involve any defamation or contempt of court. It must, therefore, be assumed that the Board had applied its mind to matters in issue in the present applications and on being satisfied that there was nothing defamatory granted a "U" certificate for unrestricted public exhibition, In that background it is difficult to come to the conclusion that the accused knew or had reasons to believe that such imputation would harm the reputation of lawyers. I do not for a moment contend that the grant, of "U" certificate to the sponsors of a film will never make them liable for defamation, but if a body of Experts specially charged with the duty of not passing on for publication and exhibition any defamatory material did not consider it as such, it will be unfair to presume that the producer, Director or actors of a film, ill-versed in legal matters should have known or should have had reasons to believe that the characterisation of a lawyer in the film would adversely affect the Advocate class. I am, therefore, of the view that neither the accused intended to harm the reputation of Advocates nor could they have had the knowledge that they would harm the reputation of Advocates nor could they have any reason to believe that. Advocates as a class would be defamed by the role of an Advocate in the film.

9. The second contention urged on behalf of the petitioners is that the portrayal of an Advocate in the film did not ex facie amount to defamation of Advocates as a class, because as a class it is not capable of defamation since it is too indeterminate a body. Mr. Nageshwar Prasad appearing for the petitioner in Criminal Miscellaneous No. 866 of 1972 contended that the alleged defamatory dialogues and scenes in the film in question were not a fling at Advocates in general, but it was only upon such Advocates who had no aptitude for the

profession, who were oblivious of the nobility of the profession and who indulged in all kinds of under-hand tricks for serving their personal ends. He submitted that, there can be no doubt that the profession of Advocates has been, and still is a noble and respectable profession in society and there have been numerous instances of the profession having thrown up towering personalities. Nor, could it be denied, he submitted that there were several, or at least some in that noble profession, who had failed to adhere to the high standards of the profession. The portrayal of an Advocate in the impugned film was only a criticism of such lawyers who were almost a black sheep, for the world "of touts" and lawyers or solicitors are not poles as under. Did not Charles Dickens in his Pickwick Papers identify a solicitor's office by two porters sitting outside as touts for procuring marriage licences and the attorney issuing marriage licences without any marriage having taken place ? The payment of commission to touts is a sine qua non for procurement of clientele by touts. Has not action been taken against delinquent lawyers under the Legal Practitioners Act ? He, therefore, contended that the impugned portions of the film were neither defamatory of the complainants nor of Advocates in general. Having heard learned Counsel for the parties, I am of the view, as I shall presently show that Advocates as a class are too vast and indeterminate a body to be the subject-matter of defamation. Individual Advocates may be defamed but Advocates as a class cannot be defamed. The profession of Advocates may be denied but not defamed.

10. It is well known that the essence of the offence of defamation consists in calling that description of person which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow creatures and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed. The words or visible representations, therefore, complained of must contain an imputation concerning some particular person or persons whose identity can be established. If they contain no reflection upon a particular individual or individuals, but equally apply to others although belonging to the same class, an action for defamation will not lie. It goes without saying that the word "person" in Section 499 of the Code includes a company or an association or a collection of as well, as provided in explanation 2 of Section 499, but the class of person attributed to must be a small determinate body. It is interesting in this connection to consider the case in *Parmeswar Rai and others Vs. King Emperor* where a newspaper had published certain libellous matters against two constables of Begunia Police Station in the Puri district. No constable in particular was named in that publication and the entire publication was absolutely false. In an action for defamation by two constables of the said police station against the printer and publisher of the newspaper Dawson Miller, C.J., observed as follows:

However reprehensible and morally unjustifiable the words complained of may be they must to be, actionable, contain an imputation concerning some particular person or persons whose identity can be established. An imputation against an association or collection of persons jointly may also amount to defamation within

the meaning of the section but at the same time it must be an imputation capable of being brought home to a particular individual or collection of individuals as such. The article in question is not directed against the constables of the Begunia thana collectively so that they, as a body, could assert that each and all of them had been libelled. Nor can it be said that any two ascertained individuals have been the object of the attack. It is unnecessary that the person whose conduct is called in question should be described by name. It is sufficient if on the evidence it can be shown that the imputation was directed towards a particular person or persons who can be identified....

Besides the above Bench decision of this Court being binding upon me, I am in respectful agreement with the law laid down in the case. Just as the constables of a particular police station formed an indeterminate body and thus not capable of being defamed, Advocates in general are incapable of being defamed.

11. The case of *Eastwood v. Holmes* 1 F&F 347 : 175 ER 758 completely supports my proposition that lawyers as a class are not capable of being defamed. In an action for defamation by innuendo where in the report of the proceedings of the British Archaeological Association it was mentioned in regard to certain antiquities that

these are figures reported to have been obtained from the Thames, and called "pilgrims" signs. They are being offered not only in London, but throughout the country, and anti quaries should be on their guard in the purchase of them. Mr. C had inspected 800 of them, but the aggregate is stated to be not less than 2000. The whole are proved to be of recent fabrication. They appear to have been made in chalk moulds. They have been steeped in a strong acid and smeared over with Thames mud.

It was held that action could not be maintained. The observation of Willes, J., quoted below, on this aspect of the law it; interesting and at the same time illuminating:

Willes, J.: The action cannot be maintained. Assuming the article to be libellous, it is not a libel on the plaintiff, it only reflects on a class of persons dealing in such objects, and it is immaterial In this view whether they are genuine or not. If a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there is something to point to the particular individual, which (350) there is not here, There is nothing to show that the article was inserted with any special reference to the plaintiff." The case referred to above, obviously lends support to the submission of learned Counsel for the petitioner and, therefore, it will be useless to multiply decisions except to refer to one decision of the Supreme Court. The law on the subject was considered by the Supreme Court in *G. Narasimhan, G. Kasturi and K. Gopalan Ors. Vs. T.V. Chokkappa*, in which the newspaper. "Hindu" was prosecuted for having wrongly published a resolution passed at a Conference by some members of the Dravida Kazagam. The president of the reception committee of the said Conference had complained that

it was defamatory of the Conference and, therefore, the newspaper was liable to be prosecuted and punished. An application by the Editor of the "Hindu" for quashing the prosecution u/s 561-A of the Code of Criminal Procedure having failed before the High Court, the matter was agitated before the Supreme Court where it was contended that the Conference was an undefined and an amorphous body, therefore, not capable of being defined and so the complainant was incompetent to lodge the complaint. While allowing the application, the Supreme Court observed as follows which may be quoted with profit:

That being so the High Court completely missed the real issue, viz., Whether the conference was a determinate and an identifiable body so that defamatory words used in relation to the resolution passed by it would be defamation of the individuals who composed it, and the respondent, as one such individual and chairman of its reception committee could maintain a complaint u/s 500 of the Penal Code. Whether the Dri-vada Kazhagam was an identifiable group or not was beside the point, for, what had to be decided was whether the conference which passed the resolution in question and which we said to have been distorted was such a determinate body, like the *Tek Chand Gupta Vs. R.K. Karanjia and Others*, or the body of public prosecutors in *Sahib Singh Mehra Vs. State of Uttar Pradesh*, as to make defamation with respect to it a cause of complaint by its individual members. In our view the High Court misdirected itself by missing the real and true issue arising in the applications before it and deciding an issue which did not arise from those applications. The judgment of the High Court, based on an extraneous issue, therefore, cannot be sustained.

The class of Advocates in general is a much more amorphous and indeterminate body than the conference alluded to in the Supreme Court case referred to above. The law in respect of defamation of a class of persons as enunciated by Salmond is as follows:

In every case where the plaintiff is not named the test whether the words used refer to him is the question whether the words are such as would reasonably lead persons acquainted with the plaintiff to believe that he was the person referred to. If the words can be regarded as capable of referring to the plaintiff, the jury still have to decide the question of fact. Do they lead reasonable people, who know him, to the conclusion that they do refer to him? (*Knupffer v. London Express Newspaper* (1944) AC 116 "The reason why a libel published of a large or indeterminate number of persons described by some general name generally fails to be actionable is the difficulty of establishing that the plaintiff was, in fact, included in the defamatory statements, for the habit of making unfounded generalisations is ingrained in ill educated or vulgar minds, or the words are occasionally intended to be facetious exaggeration" (*Ibid*, at 122, per Lord Atkin). Thus no action would lie at the suit of anyone for saying that all mankind is vicious and depraved, or even for alleging that all clergymen are hypocrites or all lawyers dishonest. (*Eastwood v. Holmes* (1858) 1 F&F 347). For charges so general in their nature are merely vulgar generalisation." Vide (*Salmond on the*

Law of Torts, Fifteenth Edition, 187). In Halsbury's Laws of England (3rd Edn. Edited by Viscount Simonds) Vol. 24, page 5, paragraph 6 it has been observed that

A class of persons cannot be defamed as a class, nor can an individual be defamed by general reference to the class to which he belongs. A similar view has been taken by Gatley in "Libel and Slander" where it has been observed that "where the words complained of reflect on a body or class of persons generally, such as lawyers, clergymen, publicans or the like, no particular member of the body or class can maintain an action.

The view of Mr, Justice Willes in *Eastwood v. Holmes* (Supra) was approved by Lord Justice Holmes and Lord Justice Cherry as laying the sound law and strictly applicable in the case of *O. Brien v. Ason* (1913) 47 IL 252.

12. Learned Counsel for the opposite party placed reliance upon a case *Sahib Singh Mehra Vs. State of Uttar Pradesh*, where the appellant published an article in his paper "Kaliyug" of Aligarh making imputations against the integrity of the Public Prosecutor and the Assistant Public Prosecutors. The complaint u/s 500 of the Code was filed at the instance of the Public Prosecutor and the 11 Assistant Public Prosecutors of Aligarh. In an appeal by the accused the Supreme Court observed that the impugned remarks could certainly lead the readers of the article to believe or suspect that the prosecuting staff was corrupt in the discharge of its duties as Public Prosecutors, and were thus bound to affect the reputation of the prosecuting staff adversely. The Supreme Court also observed that the prosecuting staff of Aligarh or as a matter of fact the prosecuting staff in the State of Uttar Pradesh is certainly such an identifiable group or collection of persons as is contemplated by Explanation (2) to Section 499 of the Code. The case relied upon by learned Counsel was decided on its own facts and is clearly distinguishable as the Supreme Court did in *G. Narasimhan, G. Kasturi and K. Gopalan Ors. Vs. T.V. Chokkappa*,

13. On a review of the cases and the treatises on the subject referred to above, I have no manner of doubt that Advocates as a class are incapable of being defamed. If any publication can be shown to refer specifically to particular individuals then alone an action for defamation may lie, not otherwise, I am also of the view that the portrayal of the lawyer in the impugned film does not have any relevance to lawyers as a class. The dialogues and visible representations point out only to Advocates who indulge in such practices. Surely the impugned portions of the film cannot lead any reasonably person to form the conclusion that Advocates are pests and a despicable bunch. The submissions of learned counsel for the petitioners have substantial force and must succeed.

14. In the result, the applications are allowed and the cognizance taken against the petitioners as well as accused No. 6, the Chairman of the Central Board of Film Censors by the learned Sub-divisional Magistrate, Patna is quashed.