

(1975) 02 KAR CK 0002
In the Karnataka High Court

B.A. Deshpande and Others

APPELLANT

Vs

The Public Prosecutor

RESPONDENT

Date of Decision : 21-02-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 198 B, 198 B (3) (b), 200
Penal Code, 1860 (IPC) — Section 500

Citation : (1975) CriLJ 1761

Hon'ble Judges : D. Noronha, J

Bench : Single Bench

Judgement

D. Noronha, J.—The Government of Mysore (now Karnataka) in order No. HD 544 SST 72. dated 31-1-1973. Authorised the Chief Secretary to sanction the lodging of a complaint on behalf of Sri B. Basavalingappa, then Minister for Municipal Administration and Housing. The Chief Secretary to Government acting u/s 198B (3) (b) of the Code of Criminal Procedure, 1898 (hereinafter referred to as the Code), and purporting to take all the facts and circumstances into consideration, accorded sanction to the Public Prosecutors of three districts, viz., Gulbarga, Bangalore and Bijapur, to file a complaint for an offence u/s 500, Indian P. C. against the various persons arrayed as the accused, to vindicate the honour and character of the Honourable Minister. Each of the three Public Prosecutors did so before the respective Sessions Judges as per Section 198-B of the Code.

2. In Criminal Case No. 16/73 before the Sessions Court, Gulbarga there were thirty-two accused. In Criminal Case Nos. 1 and 2 of 1973 before the Sessions Court, Bangalore, there were three and one accused. The third accused in Criminal Case No. 1 of 1973 was deleted. In Criminal Cases 1, 2 and 3 of 1973, before the Sessions Court, Bijapur, there were twenty, one and one accused.

3. Criminal Revision Petitions 428. 545, 580, 554. 555 and 556, all of 1973, respectively relate to Criminal Case 16 of 1973 on the file of the Sessions Judge, Gulbarga, Criminal Cases 1 and 2 on the file, of the Sessions Judge, Bangalore, and Criminal Cases 1, 2 and 3 on the file of the Sessions Judge, Bijapur. The

accused in all the six criminal cases, excepting one in Criminal Case No 1 of 1973, before the Sessions Judge, Bijapur, are the petitioners here. The respondents are the Public Prosecutors of the respective districts in Gulbarga and Bijapur cases; while in Bangalore cases, the State itself is the respondent.

4. In Cri. R. Ps. 428 and 545 of 1973 Sri B. V. Deshpande in Cr. R. P. 580 of 1973 Sri N. D. R Ramachandra Rao and in Cr. R. Ps. 554 to 556 of 1973. Sri U, L. Narayana Rao, learned Advocates. represented the respective petitioners. Sri N. Basavaraju, learned High Court Government Pleader, represented the Public Prosecutor and the State.

5. The six criminal cases before the three Sessions Courts have been at different stages, to which I shall presently refer. In all of them the starting point is the publication in the Delhi weekly paper "Organiser", dated 16-9-1972. The relevant portion of it is as below:

CORRUPT MYSORE MINISTER

What are the "bad habits" of Mysore Ministers that Shri K. Hanumanthaiya is taking exception to? What are these bad habits ? Cannot the public have a peep into them and if not why not ? To these questions the answer is that ii the public knows about them outside Mysore the "image" of Madame Gandhi"s Congress will become clear. It is one of lust, sex, perversion and arrogance of the Ministers.

Shrimati Gandhi is not tired of claiming that she is doing away with communalism and casteism. Yet her party Minister in Mysore has exhorted a Harijan audience not to leave one Brahmin girl or woman unmolested. "All along there have been prostitutes from the Harijan community. Now let the other communities provide these to us." Brave words, are they not ?

ABUSES FOR BRAHMINS

The same Harijan Minister told his community MLAs that he would demonstrate how "Brahmin Bastards" should be treated. He called the number two men in the State Government after the Chief Secretary into his room. When he appeared he said : "You Brahmin bastard, get out".

It appears that Mysore Ministers are sex-starved. A Minister dealing with municipalities camped in a district and asked the tahsildar to procure him a good Brahmin girl. The tahsildar would not and on the other hand has asked the Chief Minister to define the duties of a tahsildar. Do they include procurement of women ?

Another tahsildar was more practical. When the Minister demanded that if he could not get him a girl he should send his wife, the tahsildar duly got a diseased prostitute to go to the Minister. The Minister would sleep with anything clad in sarees. He had to be hospitalised for intense venereal disease for a week

...

The Editor and Publisher of the Organiser are accused one and two in CC No. 1 of 1973 in the Sessions Court, Bangalore.

6. The complaint in C. C. No. 16 of 1973 before the Sessions Judge, Gulbarga, is based on the signed petition dated 27-9-1972, (in English) presented to Sri D. Devaraja Urs, Chief Minister, Government of Mysore, Camp Aland (in Gulbarga District), and copies to the Governor, the President, the Prime Minister and the President of the A. I. C. C It reads as below:

Respected Sir,

We the undersigned citizens of Aland belonging to the Brahmin Community most respectfully wish to bring the following to your kind notice for immediate needful action.

We are very sorry to read in newspapers that Sri Basavalingappa. Hon''ble Minister for Municipal Administration. Government of Mysore, has spoken in very objectionable and indecent words regarding Brahmins and has openly instigated the Harijans "to dishonour Brahmin Ladies by way of revenge and most them". This way of reckless, irresponsible and barbaric utterance coming from the mouth of no less a person than the one holding a sacred and pivotal position of a Minister in your illustrious cabinet, has rudely shocked our feelings of dignity and caused righteous indignation.

By such mischievous and filthy utterance, the Hon''ble Minister has done disservice to the secular feelings of citizens of democratic India and has brought down the standards of Public Life, We are very much distressed and we fall short of words to adequately express our wrath.

We are very much proud of you, sir who symbolize the hopes and aspirations of the minorities, and we are confident that our life and dignity are safe in your hands. The continuance of such a Minister who has no sense of dignity and decorum and does not have rudimentary knowledge of behaviour as an important Public man and a Public servant, is a stigma to you and your cabinet. You know very well sir, Brahmins as a whole are second to none in their contribution to the building up of modern and secular democratic India and they hold a pride of place in the present day''s civilisation and healthy development of the country towards socialist goal. They cannot swallow such an insult and keep mum as help-less creatures.

We are proud of our heritage and true Brahmin cal culture and our immense sacrifices that we have made o. the altar of freedom movement of our Motherland,

We humbly request you. Sir, to remove such an incapable Minister from your cabinet and prevail upon him to openly apologise before the public for the wretched utterances that he has made against the Brahmins.

We are sure. Sir, we will be given justice at your hands.

With kind regards.

Yours faithfully, Aland, Brahmin Citizens D/- 27-9-1972. of Aland Taluka.

7. The complaint in C. C. No. 1 of 1973 before the Sessions Judge, Bangalore is based on the article in the Organiser, dated 16-9-1972, already adverted to.

7. The complaint in C. C. No. 1 of 1973 before the Sessions Judge, Bangalore, is based on the article in the weekly Kannada paper "Jwalamukhi", dated 15-10-1972, and, but for the caption, is almost a replica of the article in the Organiser. That paper is edited, printed and published by the accused in the case.

9. The complaint in C. C. No. 1 of 1973 before the Sessions Judge, Biiapur, is based on the petition (in Kannada), dated 20-9-1972, signed by the accused and presented to the Chief Minister by the Brahmin Youth Association, Bagalkot. Copies of the petition printed at the Janatha Printing Press, Bagalkot, Bijapur District, were distributed. The petition has for its inspiration the article appearing in the Organiser.

10. The complaint in C. C. No. 2 of 1973 before the Sessions Judge, Biiapur, is on similar lines as the one in C C No. 1 of 1973 before him. The signatory to the representation, dated 20-9-1972, is only one person who is the accused, described as a Press Correspondent.

11. The complaint in C. C. No. 3 of 1973 before the Sessions Judge, Bijapur, is against the Proprietor of the Janatha Printing Press, Bagalkot, in which Press the printing of the Kannada Petition dated 20-9-1972 to the Chief Minister by the Brahmin Youth Association, Bagalkot, was done.

12. In C. C. No. 16 of 1973 before the Sessions Judge (First Additional, Gulbarga, after examining the Minister (P. W. 1) and also P. Ws. 2 and 3 and marking a few documents, a charge was framed u/s 500. Indian Penal Code. At that stage, a stay order was received from this Court.

13. In C. C. No. 1 of 1973 before the Sessions Judge, Bangalore, P. W. 1 (Minister) and two more prosecution witnesses (P. Ws. 2 and 3) were examined. The two accused were next questioned u/s 342, Criminal Procedure Code. In C. C. No. 2 of 1973 on the file of the same Court, the Minister (P. W. 1) and one more witness (P. W. 2) were examined for the prosecution. The accused was next questioned u/s 342, Criminal Procedure Code, After hearing counsel On both sides, a common order was passed on 17-9-1973 that from the evidence on record there is ground for presuming that the accused have committed an offence u/s 500, Indian Penal Code. The cases were posted to 22-10-1973 for framing of charge for the said offence. Meanwhile, a stay order from this Court was received.

14. In Cr, R. P. No. 545 of 1973, corresponding to C. C. No. 1 of 1973, the prayer is for setting aside the order of the Sessions Judge, Bangalore, and to quash the proceedings before that Court In Cr. R. P. No 580 of 1973, corresponding to C. C.

No. 2 of 1973, the prayer is that the impugned order dated 17-9-1,973 of the Sessions Judge, Bangalore, be set aside and such further suitable orders as may be necessary under the facts and circumstances of the case in the interests of justice and equity be passed by this Court.

15. In the Bijapur batch, viz., the three Criminal Cases Nos. 1. 2 and 3, all of 1973, before the Sessions Judge (Additional), the order sheet dated 20-3-1973 discloses that the Court was of the opinion that in the first two cases there were sufficient grounds for proceedings against the accused u/s 500. Indian Penal Code, and in the third case to proceed against the accused u/s 500 read with Section 501, Indian Penal Code. The Sessions Judge immediately proceeded u/s 204 of the Code to issue processes to the accused. Soon thereafter, in all the three cases, the accused filed an application u/s 253 (2) of the Code for discharging them. By separate but almost identical orders, all dated 18-9-1973, the Sessions Judge dismissed the three applications. In all the above three cases further proceedings were stayed by this Court on 29-10-1973 in Cr. R. Ps. 554, 555 and 556 of 1973. Though there is no prayer as such in the three petitions, what emerges from the grounds of revision is that the learned Sessions Judge has failed to exercise the jurisdiction vested in him and that the applications filed by the petitioners (accused) u/s 253 (2) of the Code have to be allowed.

16. The material provisions of the Code to be dealt with here are Sub-section (1) Clause (b) of Section 197, Section 198, Sub-sections (1), (2), (3) (b) and (5) of Section 198-B, Section 200 read with proviso (aa), Sub-section (1) of Section 204; and Section 253, as also Clause (a) of Section 537 along with the Explanation. The above provisions read as below:

Section 197. Prosecution of Judges and Public Servants - (1) When any person who is a Judge within the meaning of Section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a State Government or the Central Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a)...

(b) in the case of a person employed in connection with the affairs of a State of the State Government.

Section 198. Prosecution for breach of contract, defamation and offences against marriage - No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under Sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence:

Section 198-B. Prosecution for Defamation against public servants in respect of their conduct in the discharge of public functions - (1) Notwithstanding anything

contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code is alleged to have been committed against the President, or the Vice-president, or the Governor or Rajpramukh of a State, or a Minister, or any other public servant employed in connection with the affairs of the Union or of a State, in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor.

(2) Every such complaint shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(3) No complaint under Sub-section (1) shall be made by the Public Prosecutor except with the previous sanction. -

(a) ...

(b) In the case of a Minister of the Central Government or of a State Government, of the Secretary to the Council of Ministers, if any, or of any Secretary to the Government authorised in this behalf by the Government concerned;

...

(5) When the court of Session takes cognizance of an offence under Sub-section (1), then, notwithstanding anything contained in this Code, the Court of Session shall try the case without a jury and in trying the case, shall follow the procedure prescribed for the trial by Magistrates of war-rent cases instituted otherwise than on a police report and the person against whom the offence is alleged to have been committed shall, unless the Court to Session, for reasons to be recorded otherwise directs, be examined as a witness for the prosecution.

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

Provided as follows:

(a) ...

(aa) when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties;

Section 204, Issue of process - (1) If in the opinion of a Magistrate taking

cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

Section 253. Discharge of accused - (1) If, upon taking all the evidence referred to in Section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Section 537. Finding or sentence when reversible by reason of error or omission in charge or other proceedings - Subject to the provisions hereinbefore contained no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account-

(a) of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

...

Explanation - In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

17. I am making this common order pertaining to all the six criminal revision petitions, as the person around whom the controversy revolves and who is the target of attack by the accused, is the same, viz., Sri B. Basavalingappa. who at the material time was the Minister for Municipal Administration and Housing, State of Mysore (now Karnataka), and the points involved are interrelated.

18. On purpose. I have underlined "acting or purporting to act in the discharge of his official duty", while reproducing Section 197 (1) and "in respect of his conduct in the discharge of his public functions", while reproducing Section 198-B (1), of the Code.

19. "Duty", as per the dictionary meaning, is what one is bound by any (especially moral) obligation to do; one's proper business; service.

20. "Conduct" has a wider connotation and essentially means "to behave".

21. All these and other allied aspects have been elaborately and convincingly brought out, with reference to numerous reported authorities from the Privy Council up to the Supreme Court, in the Division Bench decision of the Allahabad High Court in *Muneshwara Nand Vs. State*, .

22. Several rulings have been placed before me to resolve the point whether the alleged conduct of the Minister in the discharge of his public functions was beyond reasonable bounds or not. All decisions of the various High Courts, including ours, and ultimately of the Supreme Court, invariably say that each case has to be judged on its own facts and circumstances. I have set out previously the stages and phases of the criminal cases before the three Sessions Judges and the stances they have pursued. However, on the crucial point they are all agreed, viz., that Section 198-B is applicable and it is neither necessary nor expedient to adopt the procedure envisaged by Section 200 of the Code. Whether a person takes one route, and another takes a slightly different route, what ultimately counts is the destination. Justice should not only be done but appear to be done and ought not be delayed. Mere irregularities, if any, cannot be used as hurdles to impede a speedy quest towards achieving substantial and natural justice.

23. In the two Bangalore cases and in the Gulbarga case, the objection as per the explanation to Section 537 of the Code complaining of the occasioning of failure of justice due to wrongly clutching at jurisdiction, was not raised at an earlier stage in the proceedings. A surprise was sprung only here, possibly adopting the stand taken in the three Bijapur cases. I am in respectful agreement with the observations of a learned single Judge of the Bombay High Court in *Harikishan Agrawal Vs. The State of Maharashtra*, that where no objection was taken that the Sessions Court had no jurisdiction in respect of a complaint u/s 198-B by the Public Prosecutor at the stage of framing of charge u/s 500, Penal Code and the accused waited till the entire prosecution evidence was over, and the case was fixed for recording of his statement, there was no need for interference in revision by the High Court on the ground of jurisdiction of the Court. In such case, no great hardship would be caused to the accused on account of non-interference by the High Court.

24. The alleged defamation complained of is as far back as September, 1972. We are now about two-and-a-half years from then. In the peculiar facts and circumstances of these cases, it is neither warranted by law nor the ends of justice that the hands of the clock should be put back and the Minister be asked to approach the Magistrates' Courts afresh u/s 200 of the Code, thus prolonging the entire controversy. All the doors are still wide open and the matters ought to be proceeded with expeditiously, including the three Bijapur cases as well. It is pertinent to remark that at this point of time avoidable bifurcation and harassment is wholly uncalled for.

25. In the result all these Revision Petitions fail and stand dismissed. The three Sessions Judges at Gulbarga, Bangalore and Bijapur are directed to proceed with

the cases and dispose them of expeditiously, according to law.