

(1956) 04 CAL CK 0011
In the Calcutta High Court
Case No : Criminal Revn. No. 1584 of 1955

Dr. Jatish Chandra Ghose

APPELLANT

Vs

Harisadhan Mukherjee and Others

RESPONDENT

Date of Decision : 11-04-1956

Acts Referred:

Constitution of India, 1950 — Article 194, 194(2), 194(3)
Penal Code, 1860 (IPC) — Section 499, 500

Citation : AIR 1956 Cal 433 : 60 CWN 971

Hon'ble Judges : Debabrata Mookerjee, J

Bench : Single Bench

Advocate : Arun Kumar Dutta, Anil Kumar Sen and Debi Prosad Pal, for the Appellant; Ajit Kumar Dutta and Amal Kumar Basu, for the Respondent

Judgement

Debabrata Mookerjee, J.—This is a petition to quash certain proceedings u/s 500, Penal Code pending against the applicant in the Court of a Magistrate at Midnapore.

2. The petitioner is a Member of the West Bengal Legislative Assembly from Ghatal who has been complained against by the opposite party Harisadhan Mukherjee, Sub-Divisional Magistrate, Ghatal. Opposite Parties Bhupati Charan Majhi and Raghunath Dalai are respectively the Editor and the Printer and Publisher of a vernacular fortnightly "Janamat" published at Ghatal.

3. It appears that in January 1954 the petitioner gave notice of his intention to ask certain questions in the West Bengal Legislative Assembly; the questions were however disallowed in accordance with the rules of procedure for the conduct of business of that Assembly. The disallowance was intimated to the petitioner on 16-2-1954. After a whole year the petitioner published the questions in "Janamat" in its issue of 28-2-1955.

4. On 29-7-1955 the opposite party Harisadhan Mukherjee preferred a complaint charging the petitioner u/s 500, Penal Code and the opposite parties the Editor

and the Printer and Publisher of "Janamat" u/s 501 of the Code. The learned Magistrate who dealt with the matter examined the complainant on oath and directed the issue of process against the petitioner and opposite parties Bhupati Charan Majhi and Raghunath Dalai.

5. Of the several questions disallowed and published in the paper two have been taken exception to, which constitute the basis of the charge of defamation brought in the case. The questions are to the following effect :

(a) Is it a fact that, the Jeep belonging to the Sub-Divisional Magistrate of Ghatal is kept without payment of rent in the motor bus garage of Sudhir Chandra Pal, Muktear and a reputed businessman and Chairman of Ghatal Municipality?

(b) Is it a fact that repairs to the Jeep belonging to the Sub-Divisional Magistrate are done free of charge, and petrol, mobil oil and other accessories for running the Jeep are supplied free of cost from the Motor Bus Company of Sudhir Chandra Pal and others.

6. The questions were prefaced by a note that they were intended for the enlightenment of the petitioner's constituency, but that they had been disallowed by the Speaker and consequently they could not be raised in the Legislative Assembly.

7. The complainant alleged that the petitioner had made and published these scandalous questions which were obviously intended to be read by members of the public; that the imputations were false and malicious and wantonly made and published with a view to harming the reputation of the complainant and they were calculated to lower him in the estimation of the public; the opposite parties Bhupati Charan Majhi and Raghunath Dalai, the Editor and the Printer and Publisher respectively printed the imputations knowing or having good reason to believe that they were highly defamatory of the complainant.

8. The complainant's case was eventually transferred for disposal to Sri B. B. Majumdar, Magistrate, 1st Class, Midnapore before whom a preliminary objection was raised as respects the maintainability of the proceedings against the petitioner. It was contended, inter alia, that the petitioner being a member of the West Bengal Legislative Assembly was entitled to certain immunities and privileges under Article 194 of the Constitution of India which constituted a bar to the prosecution of the petitioner. The learned Magistrate overruled the contention by an order dated 11-10-1953.

9. The petitioner thereafter applied to this Court for transfer of the proceedings against him under the provisions of Article 228 of the Constitution. That application was, however, refused on 9-12-1955 by a Bench presided over by the Hon'ble the Chief Justice presumably in the view that the proceedings out of which it arose did not involve any substantial questions of law as to the interpretation of the Constitution the determination of which was considered necessary for a proper disposal of the case.

10. The petitioner then obtained the present Rule on grounds which besides raising the plea of want of malice and the plea of public good sought to be achieved by means of the publication, also raised the question of the proceedings being barred by reason of the provisions of Article 194 of the Constitution. This latter question cannot, strictly speaking, be allowed to be re-agitated in a modified form in view of the Bench decision implicit in the order of 9-12-1955 refusing the petitioner's application under Article 228 of the Constitution. But in view of the fact that elaborate arguments presented to the Court largely trenched upon constitutional grounds, they may briefly be noticed out of deference to the arguments raised, on the assumption that this Bench was free to consider them.

11. The main contention is that the petitioner being a member of the West Bengal Legislative Assembly is entitled to certain privileges and immunities by virtue of the provisions contained in Article 194 of the Constitution which bars the petitioner's prosecution. That Article is in these words:

"(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof & no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members & the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

(4) The provisions of Clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature."

Clause (1) provides for freedom of speech in the Legislative Assembly subject only to the provisions of the Constitution and standing orders regulating the procedure of the House, while Clause (2): gives to members of the Legislature complete immunity from liability for anything said in the Legislature or its Committees and protects all concerned in respect of the official publication of any report, paper, vote or proceedings of the House. Clause (3) governs cases not covered by Clauses (1) and (2) and leaves to the Legislature concerned the right to make suitable legislation to define what "other powers", privileges and immunities shall be exercised or enjoyed by the members; and pending such

legislation these "other powers, privileges and immunities shall be those of the members of the House of Commons of the Parliament of the United Kingdom at the commencement of the Constitution. Clause (4) merely provides for extension of the rights and privileges of members of the Legislature to those others who by virtue of the Constitution have a right of audience in the House or of participation in its proceedings.

12. It is therefore reasonably clear that the immunity from liability to prosecution extends to only what is said within the walls of the Legislature. In a democratic set up this freedom of speech is quite conceivably an essential condition which guarantees the proper functioning of the Constitution. It helps to secure a free, frank and fearless discussion in the Legislature and subordinates possible disadvantage to an individual to the general good and protects from consequences which such discussion might entail. Similarly, official publications of the proceedings of the Legislature carry immunity for all concerned or connected with such publication. This is only a corollary to the right of free speech which would be liable to be defeated if an official publication exposed to liability those responsible for the discussion or those connected with the publication. Rights, privileges and immunities other than these are left to be secured by legislative measures and pending their adoption they will be those of the House of Commons at the commencement of the Constitution.

13. Now that the ground is clear, it is to be considered if the contention raised by the petitioner is tenable. The mere fact that he is a member of the Legislative Assembly will not spell out for him an absolute privilege. In order that he might successfully plead privilege and claim immunity from proceedings in Court, it has to be established that the prosecution relates to something said in the Assembly or that the publication in question is by or under the authority of the House. The questions which are said to be defamatory and upon which the charge is founded having been disallowed were never asked in the House with the result that they cannot be said to form part of the proceedings of the House as a result of the disallowance by the Speaker. The questions were left out of the proceedings with the consequence that they did not acquire that impress which alone could impart to their author immunity from liability to proceedings in Court-

14. Reliance has been placed on a decision of the Rangoon High Court in the case of --"C. P. Khin Maung v. Au Eu Wa" AIR1936 Rang 425 (FB) (A), in support of the proposition that privilege extended to questions even by virtue of the Government of India Act (1919) which by Sub-section (7) of Section 72-D provided as follows:

"Subject to the rules and standing orders affecting the council there shall be freedom of speech in the Governor's Legislative Council. No person shall be liable to any proceedings in any Court by reason of his speech or vote in any such council or by reason of anything contained in any official report of the proceedings of any such council".

The learned Judges held that the phrase "by reason of his speech or vote" included any utterance made at any time in any such council and there was no reason to confine the expression to formal discourse forming part of a debate. The question which was said to be defamatory in that case had in fact been allowed to be asked and consequently it formed part of the proceedings of the council. Although the question offended against the standing orders it was nevertheless; allowed to be asked and that being so, the infraction of the standing orders did not destroy the statutory privilege or affect the immunity of the member concerned for anything said in the council. There is thus no doubt that the question by being asked formed part of the proceedings of the House. The language of Clause (2) of Article 194 is even wider. The immunity extends not merely to "speech or vote", but to anything said or any vote given in the Legislature or any of its committees. This decision is of no assistance to the petitioner inasmuch as the questions in the present case having been disallowed never became a part of the proceedings of the House, whereas in the Rangoon case the question was allowed to be asked and was in fact asked.

15. It has been argued on behalf of the petitioner that where a constitutional right is involved, a construction which is favourable to the citizen in furtherance of such right has to be adopted. When the Constitution confers in clear terms a right or privilege to be exercised only in well-defined circumstances, it would, in my view, be utterly wrong to dispense with proof of existence of circumstances which constitutes a condition precedent to the exercise of such right or the claim of such privilege. Immunity from liability to proceedings in Court can only be claimed on proof of the fact that what was said was a part of the proceedings of the legislature or that the offending words were part of the proceedings published under authority. It cannot be said that the questions in the present case were part of the proceedings of the West Bengal Legislature nor their publication in the fortnightly "Janamat" could by any means be said to have been under the authority of the House.

16. The argument on behalf of the petitioner is sought to be reinforced by reference to certain excerpts from May's Parliamentary Practice. It is said that apart from proceedings of the House, strictly so called, a member of a legislature possesses certain privileges including the privilege of immunity from liability to proceedings in Court as a necessary complement of his functions.

"Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceeded those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law."

(May's Parliamentary Practice, 15th Ed. page 40). Again,

"the meaning of the term "proceedings" in Parliament has not been expressly

defined by the Courts, although they have decided that various specific matters connected with Parliament do on do not fall within the ambit of its proceedings An individual member takes part in a proceeding usually by speech, but also by various recognized kinds of formal action, such as voting, giving notice of a motion etc., or of presenting a petition or a report from a Committee, most of such actions being time saving substitutes for speaking."

(Page 61). Again,

"a general idea of what the term covers is given in the Report of the Select Committee on the Official Secrets Act in session 1938-39." "It covers both the asking of a question and giving written notice of such question and includes everything said or done by a member in the exercise of his functions as a member in a committee of either House, as well as everything said or done in either House in the transaction of Parliamentary business".

The same learned author at page 65 says as follows :

"It is a question whether the immunity attached to proceedings in Parliament could be extended to matters arising outside Parliament by virtue of their specially close relation to proceedings in Parliament. The Select Committee on the Official Secrets Act reported that "cases may easily be imagined of communications between one member and another or between a member and a Minister, so closely related to some matter pending, or expected to be brought before the House, that although they do not take place in the Chamber or a committee room, they form part of the business of the House, as, for example, where a member sends to a Minister the draft of a question he is thinking of putting down, or shows it to another Member with a view to obtaining advice as to the propriety of putting it down or as to the manner in which it should be framed. But this opinion was only concerned with the application of the Official Secrets Act to the proceedings of an individual Member, and would not necessarily afford protection in other cases."

17. It cannot therefore be said that the petitioner's argument has unqualified support of May's high authority.

18. Authority apart, the express constitutional provisions in Clauses (1) and (2) of Article 194 are in my view a complete and conclusive code as respects the privilege of free speech and immunity from liability to proceedings in Court for anything said in the Legislature or for publication of its reports. Anything which falls outside the ambit of these provisions is therefore liable to be dealt with by the Courts in the country in accordance with the law of the land.

19. Emphasis is laid on behalf of the petitioner on the opening words of Clause (3) of Act 194. The argument is that matters not strictly covered by the provisions of Clauses (1) and (2) are to be dealt with in accordance with Clause (3). I have no hesitation in saying that Clauses (2) and (3) of the Article are mutually exclusive and the powers, privileges and immunities of the latter clause

can have nothing whatever to do with those of Clause (2). The two clauses cannot possibly cover the same field. Quite obviously Clause (3) contemplates cases not provided for in Clauses (1) and (2). If therefore the case is covered by Clause (2) it would be idle to contend that the provisions of Clause (3) can be called in aid and reference made to rights and privileges in the House of Commons as they obtained at the commencement of the Constitution. In this view this contention must be negatived.

20. It has next been argued on the authority of -- "Wason v. Walter" (1869) 4 QB 73 (B), that a faithful publication of what took place in the Legislature is protected on the same principle as an accurate report of proceedings in a Court of justice is privileged on the ground that the advantage of publicity to the community outweighs any private injury resulting from, the publication. I do not agree with the statement that the questions in the present case were automatically assimilated to the proceedings of the House by being merely intended to be asked. If immunity from liability to proceedings in Court attached to any questions by being merely hurled at the Assembly Secretariat, scandals and libels of the worst sort would acquire such immunity. The questions far from representing what took place in the Legislature represented that they had no place in it by being disallowed. Therefore the analogy sought to be drawn between the publication of the questions and the publication of faithful reports of proceedings in Court cannot be pressed into service in aid of the petitioner's contention.

21. Cognate contentions were negatived by a Bench decision of this Court in the case of --" Dr. Suresh Chandra Banerji and Others Vs. Punit Goala, . That was an application under Article 228 of the Constitution for transfer of certain proceedings u/s 500, Penal Code to enable this Court to decide the constitutional point said to be involved in the case. The prosecution related to publication in the "Loka Sevak" of a speech in the Legislative Assembly by Dr. Suresh Chandra Banerjee, a member of that Assembly. Harris, C. J. presiding over the Bench pointed out that Clause (2) of Article 194 did not protect publication unless it was authorised by the State Legislature and protection was given to only one class of reports which according to the ordinary rules of construction must be taken to imply that no other class of reports was protected. Ex-pressio unius exclusio alterius. It was further held that the rule laid down in the case of "Wason v. Walter (B)", cannot be extended to this country and the ordinary criminal law of the land must apply so long as reports of proceedings of the Legislative Assembly were not treated as privileged under the Indian Law. I respectfully agree. The principle of the decision in "Wason v. Walter (B)", cannot in my view be extended to this country in view of the Indian Law of Defamation which does not exempt publication of the proceedings of the Legislature from the purview of the law.

22. I fail to appreciate a distinction sought to be made on behalf of the petitioner that the publication in the present case was made by him as a member of the

Assembly. The rights of a member are well-defined rights. He cannot be prosecuted for anything said in the Assembly Chamber nor can he be held liable in respect of any publication under the authority of the House of any report or proceedings. The powers and privileges referred to in Clause (3) of the Article being those not connected with speech or publication cannot be relied upon to give him an imagined protection. As a member of the Assembly the petitioner cannot have any further or higher constitutional rights of speech and publication than those guaranteed under Clauses (1) and (2) of Article 194. In this view I do not agree that the author of the publication which is said to be a communication between a member of the Legislature and his constituency enjoys any more privilege than is enjoyed by an ordinary citizen.

23. It remains to notice the only other point that the publication was made solely with a view to information of the public and for the public good. Whether in the circumstances of the case the petitioner acted with an innocent intention and without malice, whether the imputations were true and made for public good, are questions of fact which require to be investigated. No evidence has yet been called and it is indeed premature to express any opinion on the merits of these questions. The petitioner will certainly be entitled to raise at the trial whatever defences it is open to him to raise under the law. But they cannot possibly be put forward as grounds for quashing the proceedings now pending against him. There are several well-known exceptions embodied in Section 499, Penal Code and if the petitioner succeeds in proving that his case is covered by one or, other of these, the charge will then fail.

24. The result, therefore, is that this Rule is discharged.

(Note : By a subsequent order dated 4-5-1956 leave to appeal to Supreme Court under Article 133(1) was refused.)