
(2006) 03 OHC CK 0040

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 3904 of 2000

Express Publications (Madurai) Ltd. and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 18-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 153A, 153B, 499, 500, 501

Citation : (2006) CLT 449 (Suppl CrI) : (2006) CriLJ 2548 : (2006) 1 OLR 518

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

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Parichha, J.—Learned Counsel for the petitioners and learned Addl. Govt. Advocate appearing for opp. party No. 1-State are present. Despite serviced of notice, no one has appeared for opp.party No. 2. Though, the matter is listed for admission, on the consent of learned Counsel for the parties. it is taken up for final disposal at the stage of admission.

2. Petitioners have assailed the FIR dated 9.2.2000 registered as Capital P.S. Case No. 60 of 2000 corresponding to G.R. Case No. 455 of 2000 of the Court of learned S.D.J.M., Bhubaneswar for offences u/s 153A, 153B, and also the proceedings of that case.

3. Petitioner No. 1, a Publishing House, is publishing an English daily, "The Indian Express" from various canters of the country. It published a book in December, 1999 from Chennai bearing title "India 1000 to 2000" a millennium book of reference containing various topics, such as; culture, history, economy, sociology, Arts, Science, literature etc. That book was edited by petitioner No. 3. One of the articles of the said book under Chapter-IX- titled "No Sakuntalam every year" was written by petitioner No. 2. In that Chapter (at page 441 of that book) there was a sentence "Oriya is a younger sister of Bengali". Opp. Party No. 2 on reading this line in the book felt that the said line not only defames the Oriya

language and literature, but also deeply hurts the sentiment of the Oriya readers, which can snowball into a major issue leading to disturbance of public peace and tranquility of the State. He, therefore, lodged the FIR indicated above which culminated in registration of the Capital P.S. Case and the proceeding of G.R. Case No. 455 of 2000 of the Court of SDJM, Bhubaneswar.

4. Mr. Sanjeet Mohanty, learned Senior Counsel appearing for the petitioners submitted that petitioner No. 1 is a group of publications with illustrious record for last several decades and it took out the publication of "India 1000 to 2000" with the pious intention of promoting culture, history, economy, arts and Science etc. and had absolutely no intention of defaming the Oriya language or literature or offending the feelings of any one. He submitted that petitioner No. 2 is an eminent author of 70 books including the Encyclopedia of Indian Literature and is considered as top ranking literarian and historian not only in India but throughout the world and the sentence in controversy was written by him simply as an information and his opinion and was never meant to offend the feelings of any class or community. Mr. Mohanty submitted that on learning about the allegation raised by opp. party No. 2 about the controversial sentence, the author and the publisher immediately published an apology in the newspaper and also deleted that sentence from the subsequent publication of "India 1000 to 2000". He submitted that the controversial sentence in the worst case be considered as a wrong statement by a historian, but it can never be inferred as a publication meant for defaming Oriya language or literature or for creating any clash or controversy between the two lingual and literary groups. He further submitted that considering these aspects and the fact that the petitioners had no ill-intention in the publication, the entire proceedings may be quashed.

5. Ms. Kasturi, learned Addl. Govt. Advocate appearing for the State on the other hand submitted that the controversial sentence written and published by the petitioners is clearly derogatory to the Oriya language and literature and is bound to hurt the sentiment of the Oriya people. She submitted that such publication can cause public unrest and furor and may lead to clash and hatred between the two communities. According to her, the controversial publication of the petitioners clearly attracts the provision of Section 153A, 153B, 500 and 501, IPC and as such the criminal proceedings against the petitioners cannot be quashed.

6. Before entering into the factual aspects of the case it will be proper to indicate the legal position with regard to quashing of the proceedings of a criminal case. Section 482 Cr. P.C. contemplates saving of inherent power of High Court. The Section reads as follows:-

482. Saving of inherent power of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Analyzing the provision of this section the apex Court and High Courts in several judgments have clarified that the extraordinary power u/s 482 of the Code has to be exercised sparingly and should not be resorted to like the remedy of appeal or revision (see the case of Kavita Vs. State and Others, At the same time it has also been laid down that to prevent abuse of process of the Court inherent power u/s 482, Cr.P.C. can be exercised to quash a criminal proceeding. The term "abuse of process of Court" was further clarified in the cases of Laloo Prasad v. State of Bihar (1997) 2 Crimes 498 (Pat.) and State of U.P. Vs. R.K. Srivastava and Another, In those cases it was candidly observed that if the allegation made in the FIR taken at their face value and accepted in their entirety do not constitute any of the offences alleged then continuance of such proceedings would amount to abuse of process of the Court. So the only aspect that is to be examined in the present case is whether the allegations reveal prima face case for the alleged offences or whether continuance of the proceedings against the petitioners would be abuse of process of the Court.

7. It is not disputed that petitioner No. 1 published a millennium book of reference under title "India 1000 to 2000", the petitioner No. 3 edited the said book and petitioner No. 2 wrote chapter IX literature part of that book wherein the sentence "Oriya is a younger sister of Bengali" appears. The allegation of opp. party No. 2 is that the said line is defamatory to Oriya language and literature and the same may create hatred and clash between the two linguistic groups. On the basis of such allegation Capital P.S. case No. 60 of 2000 was registered u/s 153A, 153B, 500/501, IPC. The plea of the petitioners that the alleged controversial line appearing in the book is neither defamatory nor does it promote any hatred or clash between the linguistic groups and accordingly the allegation does not reveal any prima facie case for the alleged offences. To appreciate the submission, it is necessary to recount the provisions of the offences alleged. The relevant portion of Section 153A is quoted below :

153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony. -(1) Whoever-

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence. language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) xx xx

Section 153B speaks about imputations, assertions prejudicial to national-integration. Relevant portion of the Section reads thus :

153B. Imputations, assertions prejudicial to national-integration-

(1) Whoever, by words either spoken or written or by signs or by visible

representations or others,-

(a) xx xx

(b) xx xx

(c) makes or publishes any assertions, counsel, plea or appeal concerning the obligation of any classes of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons.

Section 500 provides punishment for defamation and Section 501 contemplates punishment for printing or engraving matters known to be defamatory.

8. A close reading of Sections 499 to 501 of the I.P.C. would reveal that the person publishing the matter must have the intention of defaming or he must have the knowledge or good reason to believe that such matter is defamatory to any person, group or any religion etc. Similarly, on reading of the provision of Sections 153A and 153B of the IPC one can see that the publication of the words must be for promoting or attempting to promote disharmony or feeling of enmity, hatred, ill-will between religious, racial, language or regional groups. So the intention and knowledge part is the most important factor in deciding whether a particular publication attracts the provision of the above noted penal Sections. This remark finds support from the case of Balwant Singh and another Vs. State of Punjab, wherein the apex Court made the following observation :

Section 153-A provides for punishment for promoting enmity between different groups on ground of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, language or regional groups or castes or communities. It is only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or affect public tranquility, that the law needs to step in to prevent such an activity. The intention to cause disorder or incite people to violence is the sine qua non of the offence u/s 153A, IPC and the prosecution has to prove the existence of mens rea in order to succeed. In the present case, the prosecution has not been able to establish any mens rea on the part of the accused person as envisaged by the provisions of Section 153A, IPC, by their raising casually the three slogans a couple of time. The offence u/s 153A, IPC is, therefore, not made out (see para 9)

9. In the present case admittedly the petitioners published the controversial sentence in their book under Chapter-IX (literature). It is not disputed that opp. party No. 2 is an eminent writer and historian having a national reputation. In the context of the history of Oriya language and literature he wrote that "Oriya is a younger sister of Bengali". Whether this statement of the writer is right or wrong is not to be decided in a proceeding like this. It is only to be seen whether

the intention of the writer was to defame the Oriya language or literature and/or whether he wanted to promote any ill-will and hatred between two linguistic groups. The writing of the chapter would prima facie indicate that the above noted remark was not made with any derogatory sense, rather as soon as the protest of opp. party No. 2 came to their notice, the petitioners published an apology in the news paper and deleted the controversial sentence from their subsequent publication of the book. Considering these factors along with the contents of chapter concerned one cannot gather that the writer or the publisher published the alleged sentence to defame the Oriya language or literature or promote hatred between different linguistic groups. So, prima facie case for the alleged offences is not available against the petitioners. It is also to be noted that an affidavit has been filed to say that petitioner No. 2 who wrote the article, is now dead. Petitioner Nos. 1 & 3 have already tendered apology and have deleted the controversial line from their subsequent book and petitioner No. 3 is now a person aged more than 75 years. Under such situation, continuance of the criminal proceeding will be a simple abuse of process of the Court.

10. Considering the above noted facts and circumstances and subsequent developments best interest of justice would be achieved by quashing the proceeding of Capital P.S. Case No. 60 of 2000 corresponding to G.R. Case No. 455 of 2000 of the Court of learned S.D.J.M., Bhubaneswar. Accordingly, the said criminal proceeding is quashed and the Crl. Misc. Case is allowed.