
(1972) 03 BOM CK 0014
In the Bombay High Court

Gulabrao Wamanrao Patil and Another	APPELLANT
Vs	
S.D. Raje and the State	RESPONDENT

Date of Decision : 18-03-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 503
Penal Code, 1860 (IPC) — Section 500

Citation : (1973) CriLJ 948

Hon'ble Judges : Bhole, J

Bench : Single Bench

Judgement

Bhole, J.—The original accused Nos. 1 and 2 being aggrieved by the order passed by the learned Addl. Sessions Judge, Jalgaon directing commission to be issued for the examination of the Hon"ble Minister for Education, Madhukarrao Chowdhari, as a witness for the prosecution have come here in revision. A defamatory matter was published in a weekly called "Janashakti" published from Jalgaon on 17 December 1970. The impugned article was captioned "Bridge will shift where Ministers stray". The Public Prosecutor, Jalgaon after obtaining the necessary sanction filed a complaint u/s 500 I. P. C against the applicants. On the day when the hearing was fixed it was argued that the Hon"ble Minister Shri. Chowdhari, who was said to have been defamed is an essential witness and that he should be examined. It was conceded that he should be examined at least once before the charge and that he may not be examined after the charge. The prosecution then filed an application stating that the witness was a public servant with several preoccupations and public duties to attend to and that his presence in the Court could not be procured without unreasonable amount of delay and inconvenience. It was also mentioned that the witness being a Minister has heavy responsibilities and has to deal with the matters of national importance. It is therefore not possible for the witness to attend the Court with short notice because he has to be at State headquarters for his public duties. It is therefore not possible for the witness to leave Bombay for Jalgaon to give evidence as a witness. In that view of the matter therefore the Public Prosecutor applied for

issue of commission for the examination of the witness,, since his presence could not be procured without delay and inconvenience to the Court; it was requested that the commission shall be issued in accordance with the provisions of Chapter XL of the Code of Criminal Procedure.

2. The learned Addl. Sessions Judge agreed that it was necessary for the Court to watch the demeanour of the witness for proper decision and that the accused should also be given a reasonable opportunity to test the veracity of the witness by effective cross-examination. He further agreed that witnesses like the President, the Vice-President and the Governor are allowed the privilege to be examined on commission only on the ground of status and not on the ground of public duties. Conceding that the examination of the Hon''ble Minister is necessary in this case for the ends of justice, he is of the view that if the witness attended the Court at Jalgaon. great inconvenience to him in the exercise of his public duties would be caused and that it will not be in public interests, if he leaves his duties at Bombay. The learned Judge is also of the view that the witness has to discharge his official duties and has to attend official functions and that therefore his presence in Court cannot be procured without inconvenience and delay; in that view of the matter therefore, he held that the circumstances of the case fulfils the conditions laid down in Section 503 of the Cr.PC It was, therefore, according to him proper and reasonable to order the examination of the Hon''ble Minister on commission. He therefore, allowed the application of the Public Prosecutor and ordered that commission be issued for the examination of the witness Sri. Madhukarrao Chowdhari. This order, therefore, is challenged here by the two accused. The point, therefore, that arises here for consideration is to see whether the impugned order is proper or not.

3. Section 503 of the Criminal Procedure Code is as follows:

503 (1) Whenever, in the course of any inquiry, trial or other proceeding under this Code, it appears to a High Court, Court of Session, or any Magistrate that the examination of a witness is necessary for the ends of justice, and .that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which under the circumstances of the case, would be unreasonable, such Court or Magistrate, may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of this Chapter;

Provided that where the examination of the President or the Vice-President r the Governor of a State as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such witness.

4. The reasons given by the learned Public Prosecutor in his application requesting that the Hon''ble Minister should be examined on commission are, in my view, not good reasons at all. According to his application the attendance of the Minister who is engaged in matters of national and State importance and who is engaged in duties which are public duties and who is therefore busy cannot be

procured in Court without considerable delay and great inconvenience. These are not certainly good reasons for avoiding the attendance in Court; these are not grounds for the purpose of examining a witness on commission under the provisions of Section 503 of Criminal Procedure Code. It is conceded that the witness in this case has to be examined and that his examination is necessary for the ends of justice. In fact he for all practical purposes is the complainant in this case because it is alleged that the imputations made against him in the article that was published are defamatory. If the reasons that are given by the Public Prosecutor are good u/s 503, the very same reasons would also be always available to other witnesses who may be holding high posts in Government officers or in business houses or who may be in other occupations. The time and work of such witness is as important to his office and also to nation as it would be to the Minister in his duties as a Minister. It appears to me, therefore, that the grounds given in his application by the learned Public Prosecutor, Jalgaon for the examination of .the witness u/s 503. Cr.PC are not good.

5. The Supreme Court in Dharmanand Pant Vs. State of Uttar Pradesh, has observed as under:

As a general rule it may be said that the important witnesses on whose testimony the case against the accused person has to be established, must be examined in Court and usually the issuing of a commission should be restricted to formal witnesses or such witnesses who could not be produced without an amount of delay or inconvenience unreasonable in the circumstances of the case. The idea of examining witnesses on commission is particularly intended for getting the evidence of witnesses other than parties principally interested such as complainant or any person whose testimony is absolutely essential to prove the prosecution case. In short, witnesses in a criminal case should not be examined on commission extent in extreme cases of delay, expense or inconvenience and in particular the procedure by way of interrogatories should be resorted in unavoidable situation. The discretion to be used by the Magistrate is a judicial one and should not be lightly or arbitrarily exercised.

Evidently, therefore, the provisions of Section 503 have to be sparingly used. The Section is to be implemented only in oases where it is absolutely essential and necessary. As a general rule every witness ought to be present in Court where the case is tried because of the various advantages that are derived by such presence not only to the Court but also to the accused. So far as this case is concerned, this is not therefore a case where exception to the general procedure can be made. Since he is the principal witness, he will have to be examined in Court. He is not a formal witness. The reasons given by the Public, Prosecutor in his application do not show that this is an extreme case especially when it is shown that the witness often visits Jalgaon. The reasons do not show that the Hon"ble Minister"s presence can be obtained only at great expense and at great inconvenience.

6. The learned Government Pleader contends here that the observations of the

Supreme Court in the case referred to were in respect of an appeal in the year 1954. He further contends that in 1954 the Magistrate was not empowered to pass an order u/s 503. Cr.PC But it was the District Magistrate or a Presidency Magistrate who was empowered to pass such an order. According to the learned Government Pleader those observations of the Supreme Court being in the appeal of the year 1954 would not be applicable. He is in that way, therefore, trying to distinguish the observations made by the Supreme Court. I cannot, however, accept this contention for the obvious reason that the whole of Section 503 was then in the Code except the amendment which was then made in the year 1955. Instead of words "District Magistrate" or "Presidency Magistrate" the words "or any Magistrate" after the words "Court of Session" were substituted. That will not make any difference at all. The proviso also was added by Act 56 of 1955. The proviso clearly shows that the legislature did not intend to make an exception of Minister. The only exception made by the legislature by the proviso is the President, the Vice-President and the Governor of a State. The intention of the legislature behind incorporating the proviso seems to be that it did not intend to make a Minister or any other dignitary an exception in the matter of his attendance in a Court of law. All others have to be present, in Court as witnesses except those who cannot be procured for reasons given in Section 503.

7. It appears to me, therefore, that the discretion exercised by the learned Addl. Sessions Judge is not a judicial one; he seems to have exercised it arbitrarily and without any good grounds. This application, therefore, will have to be allowed.

8. I. therefore, set aside the order passed by the learned Addl. Sessions Judge. Jalgaon and direct him to proceed with the case according to law.

9. Rule made absolute.