

(1988) 08 OHC CK 0020

In the Orissa High Court

Case No : Misc. Case No. 80 of 1988 (Arising out of O.S. No. 1 of 1987)

Janaki Ballav Patnaik

APPELLANT

Vs

Bennett Coleman and Co. Ltd. and Others

RESPONDENT

Date of Decision : 09-08-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 153B
Constitution of India, 1950 — Article 19(1)
Criminal Procedure Code, 1973 (CrPC) — Section 327

Citation : AIR 1989 Ori 216

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : B.M. Patnaik, for the Appellant; R. Mohanty, (for Nos. 1, 2 and 3) and R. Patnaik, (for No. 4), for the Respondent

Judgement

K.P. Mohapatra, J.—In this petition the plaintiff has prayed for the following reliefs :

(i) The suit should be tried in camera; and

(ii) To prohibit publication of the proceedings of the trial including evidence of witnesses relating to libelous and obscene matters as well as pleadings, applications, affidavits and documents filed in Court in newspapers, magazines, periodicals, pamphlets, books or otherwise.

2. It needs no repetition that the plaintiff, the Chief Minister of Orissa has filed a suit for damages for defamation against the defendants on the grounds that the latter in the offending articles published in some of the issues of the Illustrated Weekly of India (hereinafter referred to as the "Weekly") alleged unnatural and perverted sexual behaviour on the part of the former, and repeated the allegations in the shape of affidavits or otherwise. On account of the publication of the obscene matters in copies of the magazine which has a wide circulation including at Bhubaneswar, his moral, social and political reputation is in jeopardy. The defendants in their written statements have not denied publication of the

materials, but have taken the plea of justification and disowned liability for payment of the damages.

3. The main idea of the plaintiff in filing the petition praying for the reliefs stated at the beginning is that during hearing some of the witnesses to be examined by the parties shall make reference to several matters which are so obscene that normally one would neither like to utter nor like to hear the same. If the proceedings are published freely in newspapers, etc., the allegations originally made against him by the defendants in the copies of the Weekly shall be repeated and thereby he will be put to more humiliation and jeopardy than ever. Hence the necessity for hearing in camera and prohibition of publication of further proceedings of the suit, Mr. B. M. Patnaik, learned counsel for the plaintiff supported the plaintiffs plea with , vehemence and placed reliance on Section 153B of the Civil P.C. ("Code" for short) and AIR 1967 SC 1. Naresh Shridhar Mirajkar v. State , of Maharashtra, Mr. R. Mohanty, learned counsel appearing for defendants 1, 2 and 3 and Mr. R. Patnaik, learned counsel appearing for defendant 4, on the other hand urged that the Court is a public place and for proper administration of justice the hearing of the suit shall be done in Court in the presence of all. They further urged that in a democracy the mouth of the press cannot be gagged by prohibiting them to publish the proceeding of the suit. They also relied upon the same provisions in the Code, as well as the same reported decision of the Supreme Court.

4. Section 153B is quoted below for easy reference :

"153B. Place of trial to be deemed to be open Court.-- The place in which any civil Court is held for the purpose of trying any suit shall be deemed to be an open Court, to which the public generally may have access so far as the same can conveniently contain them: .

Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into or trial of any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in the room or building used by the Court."

This section was introduced by C.P.C. Amendment Act 104 of 1976. The object and reason were that the Code did not contain any provision as to the holding of a Civil proceeding in open Court and as to the power of the Court to hold the proceedings in camera. The matter was being dealt with u/s 151. It was considered to be appropriate to have an express provision on , the subject on the lines of Section 327 of the Cr. P.C. According to the plain interpretation of the section, a suit in any civil Court shall be tried in the open Court and the public in general shall have access to it. This is more so because a Court of law is always deemed to be a public place. The parties to the suit, lawyers and all shall have the opportunity of watching the civil proceedings. This is the general rule, but the proviso lays down the exception. In exercise of its discretion and if the Court thinks fit, the Court may order that the trial of any suit may be held in camera

and the public generally shall have no access or to remain in the Court room or building used by the Court. The exception by its very nature requires exercise of due care and caution before the Court directs trial of a suit out of the public gaze. In Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, it was held in para 20 as follows :

".....It is well settled that in general, all cases brought before the Courts, whether civil, criminal, or others, must be heard in open Court. Public trial in open Court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial Tribunals, courts must generally hear causes in open and must permit the public admission to the court-room."

It was also held in para 21 as follows :

"Having thus enunciated the universally accepted proposition in favour of open trials, it is necessary to consider whether this rule admits of any exceptions or not. Cases may occur where the requirement of the administration of justice itself may make it necessary for the Court to hold a trial in camera. While emphasising the importance of public trial, we cannot overlook the fact that the primary function of the judiciary is to do justice between the parties who bring their causes before it. If a Judge trying a cause is satisfied that the very purpose of finding truth in the case would be retarded, or even defeated if witnesses are required to give evidence subject to public gaze is it or is it not open to him in exercise of his inherent power to hold the trial in camera either partly or fully? If the primary function of the Court is to do justice in causes brought before it, then on principle, it is difficult to accede to the proposition that there can be no exception to the rule that all causes must be tried in open Court. If the principle that all trials before Courts must be held in public was treated as inflexible and universal, and it is held that it admits of no exceptions whatever, cases may arise where by following the principle, justice itself may be defeated. That is why we feel no hesitation in holding that the High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course. It is hardly necessary to emphasise that this inherent power must be exercised with great caution and it is only if the Court is satisfied beyond a doubt that the ends of justice themselves would be defeated if a case is tried in open Court that it can pass an order to hold the trial in camera, but to deny the existence of such inherent power to the Court would be to ignore the primary object of adjudication itself. The principle underlying the insistence on hearing causes in open Court is to protect and assist fair, impartial and objective administration of justice; but if the requirement of justice itself sometimes

dictates the necessity of trying the case in camera; it cannot be said that the said requirement should be sacrificed because of the principles that every trial must be held in open Court. In this connection it is essential to remember that public trial of causes is a means, though important and valuable, to ensure fair administration of justice; it is a means, not an end. It is the fair administration of justice which is the end of judicial process, and so, if ever a real conflict arises between fair administration of justice itself on the one hand, and public trial on the other, inevitably, public trial may have to be regulated or controlled in the interest of administration of justice. That, in our opinion, is the rational basis on which the conflict of this kind must be harmoniously resolved. Whether or not in the present case such a conflict did in fact arise, and whether or not the impugned order is justified on the merits, are matters which are irrelevant to the present enquiry."

The aforesaid principles laid down by the Supreme Court before Section 153B of the Code was inserted in the statute book are in no way in conflict with the provisions including the exception contained therein. On the other hand, the provisions of Section 153B are quite in consonance with the aforesaid principles. It can, therefore, be said that the settled law is that trial of a civil suit shall be conducted in the open Court under public gaze, but in exceptional and appropriate cases after exercise of due care and caution, the Court may direct that a part or whole of the proceeding shall be conducted in camera.

5. In the instant case the allegations against the plaintiff which he has challenged are mostly obscene. A picture has been depicted that the plaintiff is a sex pervert loving unnatural sex. In view of the nature of the pleadings in the plaint, in his evidence the plaintiff will deny each and every allegation in which obscenity has been attributed to him. Some other witnesses are also likely to repeat obscenity in their evidence. The allegations, the words and sentences are so filthy and obscene that generally a normal person much less children, adolescents, young girls, ladies and men will hate to hear and read. The moral and cultural background of India is such that such language can hardly be relished when spoken to be heard and read. They are not literature depicting the sexual behaviour of the hero, nor are the Indians so modern in the sense modernity is understood in the western countries that they will hear and read trash and obscene matters and forget it. It will be embarrassing for the counsel to examine and cross-examine the witnesses on the allegations, it will be embarrassing for the Court to record the statements and those who will be present in Court will not enjoy such events. In the background of the peculiar facts of the case and keeping the principles of law in the background, I am of the view that administration of justice will not suffer if parts of the proceeding of the suit are tried in camera.

6. The next question for consideration is whether a free hand should be given to defendants 1, 2 and 3 and the press in general for publication of the obscene matters brought out in the evidence of the witnesses including that of the

plaintiff. In this connection, it is useful to quote the following from para 30 of AIR 1967 SC 1 (supra) :

"If the High Court thus had inherent power to hold the trial of a case in camera, provided, of course, it was satisfied that the ends of justice required such a course to be adopted, it would not be difficult to accept the argument urged by the learned Attorney-General that the power to hold a trial in camera must include the power to hold a part of the trial in camera, or to prohibit excessive publication of a part of the proceedings at such trial. What would meet the ends of justice will always depend upon the facts of each case and the requirements of justice. In a certain case, the Court may feel that the trial may continue to be a public trial, but that the evidence of a particular witness need not receive excessive publicity, because fear of such excessive publicity may prevent the witness from speaking the truth."

The above observations will show that the press do not have the unfettered right to publish any material and there shall not be infringement of their fundamental right under Article 19(1) of the Constitution of India, if excessive publication of a part of the proceeding in a civil trial is prohibited. Mr. B. M. Painaik urged and in my view rightly so that if evidence which is wholly obscene is printed, published and circulated, there is likelihood of further character assassination of the plaintiff and so while administering justice which is equally both for the plaintiff and the defendants, it would be appropriate to prohibit such printing and publication. Mr. R. Mohanty on the other hand contended that since the plaintiff has come up with the suit the evidence of the civil proceeding cannot be withheld from the press. This contention, however, militates against the principle laid down by the Supreme Court as quoted above. In specific cases the Court can prohibit excessive publication of the proceedings of a civil trial by imposing suitable restrictions. As already stated above, the evidence of the plaintiff and some other witnesses of this case is likely to be such that apart from being obscene they will be detestably unreadable. There is little doubt that in a democratic system of Government the press enjoys the maximum of freedom, but such freedom is not always absolute. In certain circumstances it can be curtailed. In the background of the facts of this case, I am of the view that in order to prevent excessive publication of the evidence of the plaintiff and some other witnesses it will be necessary to impose suitable restrictions in the matter of printing, publication and circulation in newspapers, magazines, periodicals, pamphlets, books or otherwise.

7. After giving my anxious consideration to the pros and cons of the matter, I give the following directions :

(i) The proceeding of the suit shall be in camera in part. The evidence of the plaintiff and other witnesses, as will be indicated from time to time, shall be recorded in camera. The evidence of other witnesses shall be recorded in open Court :

- (ii) While hearing the suit in camera, general public shall not remain present,
- (iii) There shall be no bar of entry for advocates, their clerks, witnesses and officers of the Court;
- (iv) The evidence recorded in camera inclusive of facts stated in pleadings, applications, affidavits and documents filed in Court relating to obscene matters and evidence shall not be printed and published by defendants 1, 2 and 3 or any other person in any newspaper, magazine, periodical, pamphlet, book or otherwise, and
- (v) Any such publication hereby prohibited if made shall be deemed to be contempt of this Court.

The Misc. Case is accordingly disposed of.