
(1968) 10 P&H CK 0031
In the Punjab And Haryana At Chandigarh

Master Girdhari Lal, Editor, Printer and Publisher of Naya
Bharat

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 16-10-1968

Acts Referred:

Penal Code, 1860 (IPC) — Section 49, 499, 500, 501

Citation : (1969) CriLJ 1318

Hon'ble Judges : Gopal Singh, J

Bench : Single Bench

Judgement

Gopal Singh, J.—These are two criminal appeals by Girdhari Lal from two judgments dated October 18, 1966 passed by Shri H. D. Loomba, Sessions Judge, Gurdaspur. The appellant has been convicted by both these judgments in each case under Sections 500 and 501, Indian Penal Code and sentenced u/s 500, Indian Penal Code to simple imprisonment for one month and fine of tie. 200.00 or in default of payment of fine to further suffer simple imprisonment for two months and u/s 501, Indian Penal Code to simple imprisonment for one month. The two sentences of imprisonment in each case were directed to run concurrently. The trial Court, however, directed that these sentences in the two cases will run consecutively. The questions of law and facts involved in both the appeals being identical, these appeals have been consolidated for hearing.

2. The appellant is editor of an Urdu weekly called "Naya Bharat". It is issued from Pathankot. In its issue dated January 13, 1966, the appellant published a news item pertaining to Shop Inspector Ved Parkash Malhotra under the caption " Pathankot ke Shop Inspector ki andher gardi". The text of the news item as rendered in English runs as follows:

All shops and commercial establishments of the city remain closed on Sunday at Pathankot, but the khokhas and shops situate at Gurdaspur Road remain open. It has been learnt that the Shop Inspector gets fixed monthly allowance from these people and has, in return, granted the shopkeepers freedom to keep shops open

on Sundays. The said Shop Inspector has come from Hoshiarpur on transfer. Similar complaints were made against him there also. Hence we would request the Deputy Commissioner, Gurdaspur to take strong action against the said Inspector.

3. He published another new item against Ved Parkash Malhotra in the issue of that paper dated January 27, 1966 under the caption "Pathankot ke Shop Inspector ki dhandli". When translated in English, it would run as follows:

Usually, there are made complaints against shop Inspectors everywhere but the Shop Inspector, Pathankot has beaten all records of corruption and bhrashtachar.

The news item in each of the above oases is Exhibit F. G. These news items were brought to the notice of the Government. Taking the view that these news items were defamatory of Ved Parkash Malhotra in respect of his conduct in the discharge of his public functions as Shop Inspector, sanction for prosecution of the appellant was given by the Joint Secretary Home in the name of Governor, by order dated July 7, 1966 marked as Exhibit P. B. Complaint was filed on behalf of the State of Punjab against the appellant under Sections 500 and 501, Indian Penal Code with reference to the contents of these two news items stating that the appellant had made disparaging and defamatory statements against the conduct of Ved Parkash Malhotra, Shop Inspector in connection with the discharge of his official duties.

4. On behalf of the prosecution, the evidence of Joginder Singh P.W.1, B.K. Gotu, P. W. 2, Dwarka Dass P. W. 8, Garucharan Dass P. W. 4 and Ved Parkash Malhotra p. W. 5 was produced in support of the complaint. Charge was drawn up against the appellant on October 1, 1966. Joginder Singh P. W. 1 proved the complaint, Exhibit P. A. by stating that he filed it when he was working as Additional Public Prosecutor. :B. K.Gotu P. W. 2 in his capacity as Superintendent, Press Branch, Punjab Civil Secretariat, Home Department, proved the order of grant of sanction for prosecution of the appellant passed u/s 198-B, Criminal Procedure Code. The order of sanction is Exhibit P. B. It is signed by Shri E. S. Phulka, Joint Secretary Home, Government Punjab. Dwarka Dass, Senior Translator Press Branch. P. W. 8 proved both the news items dated January 18, 1966 and January 27, 1966 marked as Exhibit P.C. Their translations in English on the file are Exhibit P.C./1. Gurcharan Dass P. W. 4 is a Miscellaneous Clerk in the office of the Deputy Commissioner, Gurdaspur. He stated that the appellant is the owner and publisher of the Urdu weekly "Naya Bharat" since 1956.

Ved Parkash Malhotra P. W. 5 is the Shop Inspector against whose conduct the two news items were published in the newspaper of the appellant. Ved Parkash Malhotra stated that he worked as Shop Inspector at Pathankot from August 21, 1965 to June, 25, 1966, that he had been working as Shop Inspector since 1945, that there were 4 000 to 5,000 shops within his Jurisdiction, that the news items published by the appellant were incorrect, false and malicious and the motive which actuated the appellant to do so was his refusal to get him advertisements

from the shopkeepers for insertion in his paper and that his failure to oblige the editor made him publish these unfounded and defamatory items of news.

He further added that as a result of these publications, he has been lowered in the eyes of his friends, relations and those with whom he had to deal in his private capacity and of others with whom he had to deal in official capacity. He also added that he had a blotless service career extending over a period of 23 years and that the imputations made and published against him gave him a great shock.

5. In his statement u/s 342, Criminal Procedure Code, the appellant admitted that he had published these two items but contended in defence that the news items did not offend against the provisions of Section 500 or Section 501, Indian Penal Code as the facts stated in them were true and correct and that in any case the news items were protected by virtue of Ninth Exceptions of Section 499, Indian Penal Code as the opinions therein were expressed in good faith and concerned the conduct of the appellant touching public interest and were published for public good

6. The appellant in defence produced Darshan Puri D. W. 1, Sham Kumar D.W. 4, Rajinder Kumar D. W. 8, Raj Kumar D.W. 4 and Ram Lal D. W. 5. Darshan Puri D. W. 1 stated that, he addressed a letter dated January 10, 1966 to the appellant informing him that the appellant was showing favour to the shopkeepers and stall-holders at the Railway Road to open their shops before 9.00 a.m. and after 7.45 p. m. against the scheduled time and was also allowing them to keep their shops open on holidays. He requested the editor to publish the fact that the appellant was showing favour to certain shopkeepers. That letter placed on the file is Exhibit D. A. Sham Kumar D. W. 2 proved his letter dated December 29, 1965, Exhibit D. B. In that letter, he communicated to the appellant that shopkeepers and stallholders were paying Ved Parkash Malhotra monthly allowance for keeping their shops and stalls open before and after the time fixed for opening the shops. Rajinder Kumar D. W. 8 wrote letter dated January 20, 1966, Exhibit D. C. to the appellant communicating to him about the appreciation by the shop-keepers of the publication of the earlier news item.

Raj Kumar D. W. 4 stated that he had paid the shop Inspector illegal gratification of Rs. 10.00 and one kilo of almond to enable himself to keep his shop open before and after the schedule hours. Ram Lal D. W. 5 orally complained to the appellant to the same effect as D. Ws. 1 to 8 did. The appellant in support of his plea of justification of the two news items, which he published, relied upon these letters saying that it was on the basis of these letters received by him and the complaints made to him in his capacity as editor of the newspaper and their request to have their grievances brought to the notice of the public and the authorities for the same being redressed that he published the news items.

7. The trial Court relying upon the evidence of the prosecution witnesses and negating the contentions of the appellant found him to be guilty of offence

under Sections 500 and 501, Indian Penal Code and sentenced him as detailed above.

8. Shri Karam Pal Singh appearing on behalf of the appellant contended that sanction u/s 198-B (3)(c), Criminal Procedure Code was not a valid sanction as the facts constituting the offence were not considered while giving the sanction and that First, Third and Ninth Exceptions of Section 49 (sic), Indian Penal Code covered the case of appellant and he cannot be convicted

9. The order of sanction Exhibit P.B. placed on the record has been proved by B.K. Gotu P.W.2. He is superintendent in the (sic) Branch, Punjab Civil Secretariat, Home Department Chandigarh. The order does not on the face of it show that the facts of the Case Were placed before the authority according the sanction and that that authority applied to mind and came to the conclusion that grant of Sanction was necessary in the case. As provided in Section 188B(1) and (8) of the Code, a complaint for offence u/s 500 or 501. Indian Penal Code, has to incorporate the facie, which constitute the offence. Such a complaint can only be made by the Public Prosecutor if the facts alleged therein constituting the offence are brought to the notice of the authority granting the sanction. Thus, consideration of the facts of the prosecution case, on the basis of which prosecution is to be launched against an accused person when offence for defamation of a Government servant is said to have been committed, is necessary. It is on the consideration of these facts placed before the authority charged with the duty to grant sanction that it can determine whether sanction should or should not be accorded. In other words, sanction will not be valid if there is no evidence on the record to show that the attention of the sanctioning authority was brought to bear upon the facts of the prosecution case and he applied his mind to them and then came to the conclusion that sanction should or should not granted.

10. It is not necessary that there should be a definite statement in the body of the order granting the sanction that the facts were considered by the authority granting the sanction If ex facie, the order granting the sanction is silent about the facts of the prosecution case having been considered by toe authority concerned, it is open to the prosecution to lead evidence aliened to the contents of the order of sanction and to show that the relevant facts were placed before that authority and the same were considered by it and it was there after that sanction was granted. In the present case, neither there is anything in the body of the order, Exhibit P. B., nor any evidence has been led to bring on the record that the authority according the sanction applied its mind to the facts of the case, which received its attention and it was thereafter that it accorded the sanction.

11. A similar question arose in connection with the grant of sanction u/s 6(1)(o) of the Prevention of Corruption Act, 1947 and the question of validity of sanction in the absence of the proof of the fact that the fact a on which proposed prosecution was based were considered by the sanctioning authority. Their

Lordships of the Supreme Court in Madan Mohan Singh Vs. State of Uttar Pradesh, observed as follows:

The burden of proving that the requisite sanction has been obtained rests on the prosecution, and such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based; and these facts might appear on the face of the sanction or might be proved by extraneous evidence. In the present case, the facts constituting the offence do not appear on the face of the letter Exhibit P. 10. It was consequently incumbent upon the prosecution to prove by other evidence that the material facts constituting the offence were placed before the sanctioning authority. This they did not attempt to do.

We think that the appellant is right in his contention that the prosecution instead of proving what facts were placed before the Commissioner deliberately withheld them from the Court. The sanction must therefore be held to be defective and an invalid sanction could not confer jurisdiction upon the Court to try the case. The appeal is entitled to succeed on this point alone....

12. While considering the question whether it is obligatory on the prosecution to show that the sanctioning authority applied its mind at the time the order granting the sanction was passed, their Lordships of the Supreme Court in a case u/s 198-B(8) of the Code held in P.C. Joshi and Another Vs. The State of Uttar Pradesh, as follows:

Mere production of a document which sets out the names of the persons to be prosecuted and the provisions of the statute alleged to be contravened, and purporting to bear the signature of an officer competent to grant the sanction where such sanction is a condition precedent to the exercise of jurisdiction does not invest the Court with jurisdiction to try the offence. If the facts which constitute the charge do not appear on the face of the sanction, it must be established by extraneous evidence that these facts were placed before the authority competent to grant the sanction and that the authority applied his mind to those facts before giving sanction.

In the present case, the prosecution have failed to show that the sanctioning authority applied its mind to the facts on which the prosecution was sought to be initiated against the appellant and that it was as a result of consideration of the facts on its part that sanction was accorded. Exhibit P. B. is invalid. As grant of valid sanction u/s 198-B is a condition precedent for prosecution of an accused person, the trial of the appellant is vitiated.

14. The publication of the two impugned items of news in "Naya Bharat" dated January 13, 1966 and January 27, 1966 is admitted. In the news item appearing in the paper dated January 13, 1966 under the caption "Pathankot ke Shop Inspector ki andher gardi", the appellant makes and publishes imputation about the Shop Inspector receiving every month fixed allowance by way of illegal gratification from the shopkeepers and stallholders of certain locality for allowing

them to keep their shops and stalls open before and after the scheduled hours and also on holidays.

Similarly, in the news item appearing in the paper dated January 27, 1966 under the caption "pathankot ke Shop Inspector ki dhandli", imputation has been made and published by the appellant to the effect that the Shop Inspector pathankot has beaten all records of corruption and misconduct, that shopkeepers and stallholders at Gurdaspur Road open their shops at 6.30 a.m. and close them at 9-80 or 10.00 p.m. and also keep them open on Sundays that it is so because of the receipt of fixed monthly allowance from shop-keepers amounting to Es. 2,500.00 per mensem and on account of ease-loving and lazy habits of the Shop Inspector and that he is indulging in this loot. The above allegations made against the Shop Inspector are scandalous and defamatory of his conduct as a public servant. These imputations concerning the Shop Inspector are intended to harm him. They are bound to defame him. There is no doubt that the case falls under the principal provision of Section 499, Indian Penal Code, which runs as follows:

499. Defamation. - Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

15. It is, however, contended by the learned Counsel for the appellant that First Exception to that Section or in the alternative Third Exception or else Ninth Exception covers his case as the person consenting whom the alleged imputations have been made or published is a public servant. First Exception to that Section reads as given below:

First Exception. - Imputation of truth, which public good requires to be made or published-It is not defamation to impute anything which is true concerning any person, if it be for the public good that the-imputation should be made or published. Whether or not it is for the public good is a-question of fact.

16. The learned Counsel says that the imputations made and published in the newspaper were true and were for public good.

17. The imputations may be for public good, but the evidence referred to above without the same being reiterated here, does not conclusively establish that the allegations made against the Shop Inspector as incorporated in the two impugned news items are true. The-evidence led does not compel the conclusive-inference that whatever is stated in these news items is nothing but true. There is no doubt that Darshan Puri D. W. 1 proved letter, Exhibit D. A., Sham Kumar D. W. 2 letter, Exhibit D. B. and Raj Kumar D. W. 3 letter, Exhibit D. G. communicating to the appellant that it was as a result of connivance of the appellant (sic) and because of his acceptance of certain monthly allowance that the shops and stalls of Certain shopkeepers were observing opening hours before and after scheduled hours fixed for the purpose. Similarly, Raj Kumar D. W. 4

made broad and wild allegations that he had paid Bs. 10.00 and one billow of almond by way of bribe to the Shop Inspector to enable himself to enjoy the benefit of keeping his shop open for longer hours than the authorised limit) of time.

Sam Lal D. W. 5 orally complained to that effect to the appellant. Ved Prakash Malhotra, Shop Inspector denied the allegations. He also denied that he accepted any illegal gratification or that he had allowed any one to keep their shops open beyond the scheduled hours fixed for the purpose. On the basis of evidence placed on behalf of the defence, it is very difficult to come to the definite conclusion that the appellant was in fact receiving any monthly allowance and that it is because of any corruption on his part that different hours of opening shops and stalls were being observed by certain shopkeepers. On the basis of the evidence brought on the record, it is not possible to come to the finding that whatever is stated in these two news items is true. Unless the justification of the articles is conclusively established, even if the article had been written for public good, the case cannot fall under First Exception.

18. Third Exception to Section 499, Penal Code, which covers the case runs as follows: -

Third Exception.-Conduct of any person touching any public question. - It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

19. The imputations concerning the Shop Inspector embodied in the two news items do not amount to defamation as they express opinion respecting the conduct of the shop Inspector touching public question of regular hours of opening of shops being observed. Such an opinion has to be expressed in good faith. Healthy and wholesome criticism of public functions by public servants while acting in the discharge of their official duties is necessary to keep the public servants within the grooves of responsibility. Bona fide criticism concerning questions of public interest involving the conduct of public servants and expression of opinion for public good provide a good check and corrective against the transgression of bounds of official authority and help to maintain standard of conduct, which is expected of them, to attain the end of service to the public. The appellant by leading the evidence of Darshan Puri D. W. 1. Sham Kumar D. W. 2, Rajinder Kumar D.W. 8, Raj Kumar I). W. 4 and Ram Lal D. W. 5 has shown that the two news items were issued by him on the basis of letters and complaint³ received by him as editor of the newspaper for ventilating their grievances. Thus, he had some material to fall back upon to enable him to publish the two news items.

For the purpose of Third Exception, it is not necessary to prove that those facts conclusively show that the imputations published were true. To cover his case under Third Exception, it is sufficient for the appellant to show that he did it is

good faith. Considering that the appellant had material before him before he published these news items, the appellant did not do so without due care and attention. The news items published by him could not by virtue of Third Exception be held to be defamatory. The news items referred to the conduct of the Shop Inspector in relation to the said public question. As the appellant has expressed in good faith his opinion respecting the conduct of the Shop Inspector pertaining to the question of public importance, the case is covered by Third Exception.

20. The more appropriate Exception being Third Exception and the case being covered by that Exception as held above, Ninth Exception has no application. That Exception deals with a case in which the imputation is on the character of another provided that the imputation is made in good faith for protection of the interest of another person making it or of any other person or for the public good. As no question of character of the Shop Inspector as distinguished from his conduct is involved in the present case, the case is not covered by Ninth Exception.

21. In view of the above, I hold that the two impugned news items (all under Third Exception providing immunity for prosecution against the appellant. The appellant has in neither of these two cases committed offence either u/s 500 or u/s 501, Penal Code.

22. In the result, both these appeals are allowed. The convictions and sentences of the appellant are set aside and he is acquitted.