
(2011) 03 AHC CK 0295
In the Allahabad High Court
Case No : Application No. 1587 of 1998

Mayawati Ex Chief Minister	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 191(1), 200, 202, 202(1), 202(2)
Penal Code, 1860 (IPC) — Section 153(1), 499, 499(2), 500, 501

Citation : (2011) 4 ADJ 759

Hon'ble Judges : Rajesh Dayal Khare, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Dayal Khare, J.—Heard learned Counsel for the applicant and learned A.G.A. for the State Respondent.

The present 482, Code of Criminal Procedure application has been filed for quashing the proceedings of Complaint Case No. 4433 of 1997 (Mahendra Singh v. Ms. Mayawati and Ors.) under Sections 500, 501, 502, 505, 153(1) IPC pending before Chief Judicial Magistrate, Jalaun.

2. The facts of the case are that the opposite party No. 2 filed a complaint case No. 4433 of 1997 before the Chief Judicial Magistrate, Jalaun on the allegation that two history books for Intermediate classes, namely, "Bharat Ka Itihas" and "Chitra Intermediate new pattern Itihas", which were written by Dr. A.K. Mittal, Professor, History Department and Dr. R. Agarwal, Assistant of Dr. S.K. Mittal, Gorakhpur University, Gorakhpur respectively and which books were published by K.L. Bansal, Printer and publisher, Shahitya Bhawan, Agra and Chitra Prakashan Western, Meerut, respectively. The allegation in the complaint is that the aforesaid two books (hereinafter referred as "books in question") were approved by the Government of U.P. to be thought in various schools to the students of history in classes XI and XII and at that time applicant was Chief Minister of the State of U.P.

3. The allegations made in the complaint against the applicant are that the books in question are having such contents, which defame and insult persons belonging to Rajpoot community/casts, which have cause deep anguish to the persons belonging to Rajpoot community/casts. The other accused persons are the Secretary of Education, U.P., Director of Education, U.P., the Additional Secretary (Education), U.P., who was also made accused by name in the complaint case. The writers, publishers, printers and owners of publications are allegedly charged for the offence under Sections 500, 501, 502, 505, 153(1) IPC. Consequent to the filing the complaint case by the opposite party No. 2, the Court below recorded the statement of complainant u/s 200, Code of Criminal Procedure and statements of Shiv Ram Singh Gaur, P.W. 1, Laloo Singh, P.W.2, Udaybhan Singh, P.W. 3, Sanjay Saxena, P.W 4 and Ram Sharan Jatav, P.W. 5. On the basis of the materials and evidence on record, the Court below came to the conclusion that the offence u/s 500 IPC appears to have been made out against the applicant, and some of the other accused named in the complaint, therefore, Court below passed summoning order on 2.4.1998 against the present applicant and other accused persons, named in the complaint, except accused Nos. 3, 4 and 5.

4. It is further alleged in the complaint that when the opposite party No. 2 read the books in question, alongwith certain other persons, they made a representation to the concerned authorities as well as to the applicant and also met the applicant personally and it is alleged that during the course of the said meeting the applicant used derogatory language against Rajpoot community/casts.

5. The provisions of Chapter XVI provide procedure of complaint case as to how the Magistrate will entertain any complaint and will issue process against the accused person. For this purpose, u/s 200, Code of Criminal Procedure it is provided that the Magistrate shall examine the complainant on oath and the witness present, if any, and the substance of such examination shall be reduced in writing. The Section 202(1), Code of Criminal Procedure provides that Magistrate may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. The Section 202(2), Code of Criminal Procedure provides that in an inquiry under Sub-section 202(1), Code of Criminal Procedure the Magistrate may, if he thinks fit, take evidence of witnesses on oath. The Section 204(1), Code of Criminal Procedure provides that if in the opinion of Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be a summons case, he shall issue summons for the attendance of the accused.

The said procedure specifically confers duty upon the Magistrate to satisfy himself before issuing summons that there is sufficient ground for proceeding and summoning.

6. It is contended on behalf of the applicant that the witnesses, who are named

and who had been examined u/s 202, Code of Criminal Procedure are not the student of Intermediate classes nor there is any averments in the statements of said witnesses that they have been told about the aforesaid fact by any of the students of the Intermediate classes, who have read the books in question, which allegedly contains derogatory remarks against Rajpoots. It is further contended that the applicant has neither written the books in question nor the applicant is in any way concerned with the publication or its approval for being taught in the Intermediate classes in State of U.P. It is next contended that bare perusal of the statement recorded u/s 200 as well as 202, Code of Criminal Procedure would disclose that no offence is made out against the applicant under the charged sections and that no offence has been committed by the applicant and the Chief Judicial Magistrate has passed summoning order without application of mind and in most mechanical and cursory manner.

7. Learned Counsel for the applicant has relied upon the judgment of Hon''ble Apex Court in the case of Chandra Deo Singh Vs. Prokash Chandra Bose and Another, in which it has been held that the object of the provisions of Section 202, Code of Criminal Procedure is to enable the Magistrate to form an opinion as to whether process should be issued or not. At that stage, what the Magistrate has to see is whether there is any evidence in support of the allegations made in the complaint and not whether the evidence is sufficient to warrant any conviction. Reliance has also been placed by the learned Counsel for the applicant on the case of Punjab National Bank and others Vs. Surendra Prasad Sinha, in which Hon''ble Apex Court has held:

5. It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only \\on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the Court would be circumspect and judicious in exercising discretion and should take all the relevant acts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prima objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the Respondent had abused the process and laid complaint against all the Appellants without any prima facie case to harass them for vendetta.

8. Further reliance has also been placed by the learned Counsel for the applicant in the case of Adalat Prasad Vs. Rooplal Jindal and Others, in which Hon''ble Apex Court has held:

15. It is true that if a Magistrate takes cognizance of any offence, issues process

without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Code of Criminal Procedure does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal Courts, the remedy lies in invoking Section 482 of the Code.

9. Supplementary affidavit of Daya Ram Pal also been filed in the present case, wherein statement of complainant u/s 202, Code of Criminal Procedure has been appended to show that no offence is made out against the applicant under the charged section and that the complaint is not made by any person aggrieved within the meaning given in Section 191(1), Code of Criminal Procedure, as complainant does not come within the ambit of Section 499 explanation (2), IPC, as Rajpoot community is not association or collection of persons u/s 499(2), IPC, in reference to association or collection of people, who are being sought to be defamed, therefore, complaint is not maintainable. It is contended that the complaint has been lodged only to get political mileage.

10. The counter-affidavit, which has been filed by the Director of Education (Secondary), U.P. Lucknow contains a clear recital in paragraph No. 5 that U.P. Board of examination or State Government has no relation or concern with the publication, printing or approval of the books in question. The said counter-affidavit further contains a recital to the effect that the publication and printing of books in question were done by the private persons, i.e., writers, publishers and printers. There was no role of U.P. Board of Examination or the State Government in the same. The said counter-affidavit further contains recital to the effect that the said books in question had been stopped from being taught to the students of class XI and XII of U.P. Board of Examination by issuing Office Memorandum dated 1.6.1998.

11. This Court vide order dated 1.6.1998 had stayed the summoning order, and the said order shows that Sri Rajendra Singh Senger had put in appearance on behalf of opposite party No. 2, but the Court had also issued notices to the opposite party No. 2, while staying the summoning order. Office report dated 14.9.2010 shows that notices/letter alongwith the order of this Court dated 1.6.1998, which was sent to the opposite party No. 2, through Chief Judicial Magistrate, Jalaun, the same has not been returned back after service, thus, as per Rules of the Court the notice is deemed to be sufficient.

12. From the facts as detailed above it is apparent that the applicant being the Chief Minister of the State of U.P., at that point of time, was in noway concerned with either the publication or the approval of the books in question sought to be taught to the Intermediate students in the State of U.P. As per the averments made by the opposite party No. 2, he read the books in question alongwith certain other persons, who are not named, allegedly met the applicant with a representation and during the said meeting it is alleged that the applicant used

derogatory language against Rajpoot. However, the opposite party No. 2 has neither specified any date or place on which he met the applicant. Further, as the applicant was Chief Minister of State of U.P., at that point of time, it can be presumed that the opposite party met the applicant at Lucknow and if the allegations, as made by the opposite party No. 2, are taken to be correct, then the Courts at Jalaun, did not have any territorial jurisdiction to entertain the complaint or to issue process/summoning order.

13. After hearing the learned Counsel for the applicant and learned A.G.A. and after perusing the summoning order, it is apparent that the allegation made in the complaint and the statement of complainant as well as witnesses as recorded under Sections 200, 202, Code of Criminal Procedure do not disclose any date or place, where the alleged incident/offence is said to have been taken place or how the applicant is involved in "making or publishing" of any defamatory words or sentence or quote as alleged in the complaint. The only allegation, which appears to be made against the applicant is in respect of offence of defamation, which is that the State Government has approved the books in question, and at that time the applicant was the Chief Minister of State of U.P. when the books were approved and included in the syllabus of class XI and XII for the U.P. Board of Examination.

14. A perusal of the statement of complainant recorded u/s 200, Code of Criminal Procedure shows that the delegation of person, allegedly met the present applicant in the month of August, 1997 to submit a representation, which delegation was insulted by the applicant. The witnesses in their statement recorded u/s 202, Code of Criminal Procedure as P.W. 2 and P.W. 3 had stated that they were members of the said delegation, who met the present applicant but the alleged incident of meeting of the delegation has been described by these witnesses is contradictory/different from the averments as contained in the complaint. It is also noteworthy that none of the witnesses has disclosed the date and time of the alleged meeting of the alleged delegation with the present applicant.

15. From the facts as detailed above and in view of the averments as contained in the counter-affidavit filed by the Director of Education (Secondary), U.P. Lucknow, it appears that the alleged incident of meeting of delegation appears to be an outcome of afterthought and not reliable. Moreover, the said averment does not show that the applicant is the "Maker or Publisher" of the defamatory texts.

Perusal of the counter-affidavit further shows that the books in question were not approved by the State of U.P. and further that same was withdrawn from teaching by issuing a notification to that effect.

16. Thus, as per the settled principle of law as laid down by the Hon''ble Apex Court, as well as by this Court, that the function of the Magistrate holding the primary inquiry is only to be satisfied that prima facie case is made out against

the accused on the materials placed before him by the complainant, the said function required reasoning of satisfying himself before issuing summons that there was sufficient ground for summoning any accused person. Reliance has been placed by the learned Counsel for the applicant in the case of Pepsi Foods Ltd. and Anr. v. Special Chief Judicial Magistrate and Ors. 1998 SCC 1400, wherein Hon''ble the Supreme Court has held that criminal law cannot be sent into motion as a matter of course by mere asking.

17. In the instant case the summoning order dated 2.4.1998 does not show any reason as to how the Court below came to the conclusion that there is sufficient ground for proceeding against the present applicant, specially when the applicant is admittedly neither writer nor publisher or printer of the books in question. In the opinion of the Court, the order issuing process/summons against the applicant is unsustainable under law as the Court below has passed the order mechanically.

In view of what has been discussed above as well as the settled principle of law as laid down by the Hon''ble Apex Court as well as by this Court, this Court is of the opinion that no prima facie offence is made out against the present applicant.

Accordingly, the petition succeeds and is allowed and proceedings of complaint case No. 4433 of 1997 (Mahendra Singh v. Ms. Mayawati and Ors.) u/s 500 IPC pending before Chief Judicial Magistrate, Jalaun is hereby quashed only against the applicant.

No orders as to costs.