

(2000) 03 KL CK 0065

In the High Court Of Kerala

Case No : Criminal M.C. No's. 2715 of 1996-B and 2564 of 1997-B

N. Ram

APPELLANT

Vs

Siby Mathew and Another

RESPONDENT

Date of Decision : 23-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 482
Official Secrets Act, 1923 — Section 3, 4
Penal Code, 1860 (IPC) — Section 34, 499, 500, 501, 502

Citation : (2000) 2 ALT(Cri) 38 : (2000) CriLJ 3118 : (2000) 2 ILR (Ker) 859

Hon'ble Judges : S. Marimuthu, J

Bench : Single Bench

Advocate : M. Ratna Singh, T.G. Rajendran and Anil Thomas, for the Appellant;
C.P. Udayabhanu, (for No. 1), M.M. Mathew, Addl. Director General of
Prosecution and P.N. Sukumaran, Public Prosecutor (for No. 2), for the
Respondent

Final Decision : Allowed

Judgement

S. Marimuthu, J.—Criminal Miscellaneous Case No. 2715 of 1996 has been filed by one Mr. N. Ram, Editor, Frontline Biweekly and Criminal Miscellaneous Case No. 2564 of 1997 has been filed by Mr. T.S. Subramanyan and Mr. S. Rangarajan, who are the Columnist and Printer and Publisher of the Frontline Biweekly respectively and all the three are the accused in the complaint in C.C.No. 111 of 1996 on the file of the Judicial First Class Magistrate, Trivandrum, filed by Mr. Siby Mathew, I.P.S., the then Deputy Director General of Police, Trivandrum, under Sections 500, 501 and 502 read with Section 34, IPC. Now, the present Miscellaneous Cases have been filed to quash the above said complaint, u/s 482, Cr. P.C.

2. The facts as narrated by the learned counsel appearing for the petitioners and the learned counsel appearing for the first-respondent complainant for appreciating their respective contentions can be briefly stated hereunder : A case was registered in Crime No. 225 of 1994 on 20-10-1994 in the Vanchiyoore Police

Station regarding the overstay of two ladies, namely Fauziya Hassan and Mariam Rasheeda, who hailed from Maldives and during the investigation of the said case the police came to know that they were collecting secret informations from the Indian Space Research Organisation with the help of the Officers like Mr. Nambi Narayanan, Project Director, Cryogenic Systems Project, ISRO and Dr. Sasikumaran, General Manager, Fabrications, Cryo-engine. Therefore, another case was registered in Crime No. 246 of 1994 of the same police station on 13-11-1994 under Sections 3 and 4 of the Official Secrets Act, 1923 read with Section 34, IPC on the basis of the written complaint lodged by S. Vijayan, Sub Inspector of Police, Special Branch. While the cases were being investigated by the Kerala State Police, they were transferred to the CBI for investigation. The CBI thoroughly investigated both the crimes and also examined the investigation already conducted by the Kerala local police as well as the Kerala special branch police and filed a report before the Chief Judicial Magistrate, Ernakulam stating that the allegations of espionage against all the accused were false. The learned Magistrate thoroughly examined the report submitted by the CBI (R. C. 11 (S) /94/CBI), agreed with the report and finally recorded a finding discharging all the six accused on 2-5-1996.

3. Thereafter, an article on the head "A witch hunt ends", written by one of the petitioners, Mr. T. S. Subramanyan, was published in the Front Line Biweekly dated 31 -5-1996. This article according to the first respondent-complainant contains scandalous imputations which ultimately harmed the reputation of the Kerala State Police before the eyes of the public. And by this publication, the petitioners have made slander in order to lower the dignity of the Kerala Police and for remedying the injury inflicted on the morale of the police force, the first respondent-complainant has filed the above said complaint.

4. The complaint, according to the petitioners, does not make out a prima facie case against them to be tried under the above penal sections of IPC and in fact they are the verbatim reproduction of the materials collected and relied upon by the CBI during their investigation.

5. On account of the above admitted facts and rival contentions of both sides, the case laws as well as the relevant provisions in the IPC can be extracted hereunder for reference.

6. Section 499, IPC defines defamation as follows :

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 expected, to defame that person.

Section 500, which is the penal Section, defines as follows :

Punishment for defamation.- Whoever defames another shall be punished with

simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sections 501 and 502 are the penal sections for printing or engraving the matter known to be defamatory and sale of printed substance containing defamatory words. This Court in *Krishnaswami v. C. H. Kanaran* 1971 KLT 145 has ruled thus :

In order to constitute an imputation concerning an association or collection of persons as such u/s 500, IPC, there must be some definite body of persons capable of being identified and to the whole of whom it can be asserted that the defamatory matter applies. If a person complains that he has been defamed as a member of a class, he must satisfy the Court that the imputation is against him personally and that he is the person aimed at before he maintained a prosecution for defamation....When there is uncertainty as to whether the imputation would reflect either this man or that man, it could not be said that one particular man was meant in the imputation alleged.

In yet another case, *Kunhikannan v. Kalliani* 1972 KLT 619 the proposition laid down is as follows :

Where some passage in a written matter is alleged to be defamatory, the document should be read as a whole with a view to find out the main purport and too much importance should not be attached to a few isolated passages here and there. It is not permissible in law in cases like this to take one portion alone of the document which is the subject matter under attack and consider it without reference to the whole matter which alone would help the Court to appreciate the real intention of the parties.

In *Konath Madhavi Amma Vs. S.M. Sherief and Another*, the observation made by this Court is it is enough, if it is shown that the accused, had reason to believe that the imputations are likely to harm the reputation." Even the intention to cause harm to the reputation is not a necessary factor to be proved. In *Sasikumar B. Menon Vs. S. Vijayan and Another*, this Court has observed as follows : (para 8 of Cri LJ)

In order to attract Explanation 2 to Section 499, I.P.C., an association or collection of persons must be a definite and determinable body. Then only imputation could be said to be related to its members or components. The Kerala Police is not a definite or determinable body, but it is an ever changing body. Members of the police force are not static. Police personnel retire and new persons are enrolled. The character and composition of the Kerala Police changes every now and then. So, it cannot be said that the Kerala Police is a definite and determinable body.

7. The Supreme Court as well as the High Courts have repeatedly held as to how the authority u/s 482, Cr. P. C. has to be exercised by the High Courts. One of the classical judgments of the Supreme Court in this regard can be referred to

hereunder for the purpose of the instant case. In *Dada Silk Mills and Others Vs. Indian Overseas Bank and Another*,), it is held thus by the Supreme Court:

A note of caution is always sounded to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumstances and that too in the rarest of rare cases. It is also by now well established that while exercising inherent power u/s 482, Cr. P. C. the Court should not exercise its jurisdiction arbitrarily or should not be according to its whims or caprice. Once a legal and valid complaint is filed containing all necessary allegations so as to prima facie constitute any offence, the Court in its inherent or extraordinary power is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. At the initial stage, when the Court is moved to quash the criminal case, the Court has to ask the question as to whether the uncontroverted allegations as made prima facie constitute the offence. In absolutely rare cases the Court may take into consideration special features it is expedient and in the interest of justice to permit a prosecution to continue. This exceptional exercise is permissible on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate are bleak and therefore no useful purpose is likely to be served by allowing a criminal conviction prosecution to continue. This exceptional exercise is, by and large, to be avoided as once the allegations made in the complaint constitute an offence, law must have its full scope and such process of law, lawfully set into motion, cannot be justified by unnecessary judicial interdiction.

8. With the above propositions of law, settled by the Supreme Court as well as this Court, I will examine the contentions of both sides to reach a conclusion as to whether this Court can exercise its authority u/s 482, Cr. P. C. for quashing the complaint in S. T. 111 of 1996.

9. The complaint of the first respondent as argued by the learned counsel for the complainant would be that the above-said article with the head "A witch hunt ends" published in the *Frontline Biweekly* dated 31-5-1996 contains slanderous or scandalous words which have pulled down the fame of the Kerala Police as a result of which the entire police force in which the complainant is a member has been substantially degraded. Hence the petitioners have committed the offences punishable under Sections 500, 501 and 502, I.P.C. read with Section 34, I. P. C. On the other hand, the reply of the petitioners as contended by their counsel would be that the words found in the article are not at all defamatory or scandalous and they will Never injure the nobleness and the image of the Kerala police force or any individual member of it inclusive of the complainant. And, indeed, it is a verbatim reproduction of the conclusions of the CBI found in their report. Therefore, in no stretch of imagination one could say that the petitioners have committed any offence. As a matter of fact, the words in the article make out only a fair comment and criticism and they have been made in good faith and in the interest of public.

10. On account of the above submissions of both sides, I feel that some of the statements found in the report of the CBI can be looked into along with the allegations made in the complaint. The main allegations made in the complaint are that in the article the following words used constitute an offence of defamation.

But the blot it left on the record of the Kerala Police, Intelligence Bureau (IB) and the local press and the agony the accused had to undergo will remain for a long time to come, that some in the Kerala Police and the IB started witch hunt against them, that the most viciously targeted was Mr. Raman Srivastava, that professional jealousy was another factor that worked against this Officer who happened to be the youngest Inspector General of Police and who had held several prestigious posts, that the women could not spot Nambi Narayanan or Raman Srivastava in the identification parade, that what was shocking was that the Kerala police handed over the investigation to the I. B. which had no legal mandate to investigate, that it was inhuman torture they never allowed me to sleep they always made me stand, that Kerala police's handling of the case was marked by incompetence, that during interrogation the two women were so brutally tortured, etc.

The above words in the article according to the complainant, as adverted to above, are defamatory in nature, degrading the dignity of the Kerala police and its every member including the complainant.

11. The important passages found in the report of the CBI filed u/s 173(2), Cr. P. C. can be noted below : "According to the Kerala police as per the statement of Nambi Narayanan before them he visited Hotel Samrat and talked to Fauziya Hassan and on 11-10-1994 they took her to a Dam and transferred packets. But as per the investigation of the CBI it was found that only Sasikumaran had alone visited Hotel Samrat on 10-10-1994 and had taken Mariyam Rasheeda out for a dinner to Hotel Geeth and accused Nambi Narayanan on 10-10-1994 was out on tour to Sriharikota from 9-10-1994 to 15-10-1994 in connection with the launching of PSLV-II. According to the statement, accused Chandrasekhar, before the Kerala police stated in 1991, six Scientists including Sasikumaran visited Russia for a period of six months. But as per the investigation of the CBI it was revealed that accused Sasikumaran did not visit Russia during 1991 as per the LPSC records. As per the investigation of the Kerala police accused Fauziya Hassan had meetings with accused Chandrashekhar at Hotel Port Manor in March, 1993 and after three weeks he again met Fauziya and then showed interest in Cryo engine and accused Chandrasekhar and Nambi Narayanan had also, according to the investigation of the Kerala police, met Fauziya Hassan in the year 1992. But, as per the investigation of the CBI the passport of accused Fauziya Hassan does not indicate that she had any visit to India before 24-1-1994. Therefore, the investigation of the Kerala Police that she had meetings with the above said accused before 24-1-1994 (in the years 1992 and 1993) are not true. According to the Kerala Police investigation, the accused

Sasikumaran and Chandrasekhar were planning to start a Cavalier Project to manufacture bullet proof vests which was based on the carbon cloth technology which was stated to have been developed by accused Sasikumaran and the accused Raman Srivastava. But the investigation of the CBI would reveal that such carbon cloth technology was not developed by Sasikumaran. Rather it was developed by one Vishnu Sharma, a senior Scientist and others. Thus the investigation of the Kerala Police in that regard is not correct and substantiated. The CBI report would also reveal that there were no meetings among the accused persons either in Madras or in Bangalore or in Trivandrum as alleged by the Kerala Police. During the investigation the CBI also found that the case diary of the Kerala Police in fact reflected diversity and it was revealed that the accused Mariyam Rasheeda was not allowed to sit during interrogation, she was kept standing, she was threatened by the IB Officers that she would be stripped naked, made to lie on ice blocks, insects would be thrown on her body and it was only after the torture Mariyam Rasheeda identified the photograph of Raman Srivastava as the person who had met her in Bangalore as desired by the IB Officers. Therefore, on account of the harassment Mariyam Rasheeda was made to give the alleged statement. It was also found during investigation by the CBI that Inspector Vijayan had written in his case diaries that the IB Officers asked him to go out of the room while they were interrogating the accused Mariyam Rasheeda and at the instance of the IB Officers he had threatened Mariyam Rasheeda that she would be stripped naked and after this threat, she started crying, etc. Regarding the complainant, the CBI, during investigation, collected materials to the effect that he had no answer when questioned as to why the identification of the photograph of Bhasin of Bangalore as that of the Brig. Srivastava conducted by Baburaj were not recorded in the case diary. The complainant also pleaded innocence about the medical treatment meted out to accused Nambi Narayanan while he was in the police custody and as to why it was not recorded in the case diary."

12. On examining the report of the CBI, particularly the passages extracted above, the learned Chief Judicial Magistrate Ernakulam passed the order of discharge. When the materials collected by the CBI during their investigation, particularly those extracted above, the order of the Chief Judicial Magistrate discharging the accused and his discussion thereon and the allegations found in the complaint are examined thoroughly on the footing of the principles of law stated supra, needless to say that the words or the passages found in the said article would not constitute the offences punishable under Sections 500, 501 and 502 read with 34, I. P. C. They are only the verbatim reproduction of the materials collected by the Kerala Police during their enquiry and by the CBI during their investigation and of the discussions contained in the order passed by the learned Magistrate. Therefore, when the allegations contained in the complaint are examined in the light of the principles laid down by the Supreme Court, stated above, there is no case against the petitioners under the above Sections of the IPC to be proceeded further. In other words, the complaint on the

face of it does not make out a prima facie case against the petitioners and therefore, I am of the view that this is a fit case wherein this Court can exercise its authority u/s 482, Cr. P. C. for quashing the complaint.

Accordingly both the Crl. M. Cs. are allowed by quashing the complaint in S.T. 111 of 1996, on the file of the Judicial First Class Magistrate-V, Trivandrum.