
(1973) 07 CAL CK 0002

In the Calcutta High Court

Case No : Criminal Revision case No's. 327 and 838 or 1971

N.J. Nanporia

APPELLANT

Vs

Brajendra Bhowmick

RESPONDENT

Date of Decision : 27-07-1973

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(2)
Penal Code, 1860 (IPC) — Section 499, 500, 501

Citation : 79 CWN 531 : (1975) 1 ILR (Cal) 315

Hon'ble Judges : Talukdar, J;A.K. De, J

Bench : Division Bench

Advocate : Ajit Kumar Dutta, Shyam Sundar Pal and Prasanta Kumar Das, in Cr. Rev. No. 238 of 1971 and Ajit Kumar Dutta and Dilip Kumar Dutt, Cr. Rev. No. 327 of 1971, for the Appellant; Niharendu Dutt Mazumdar and Barendra Nath Sur and Surathi Mohan Sanyal, for State, for the Respondent

Judgement

Talukdar, J.—These two Rules involve the same points for consideration and are, accordingly, taken up together for disposal. The first Rule, being Cr. Rev. 238 of 1971, is at the instance of the two accused Petitioners, N.J. Nanporia and S.A. Moore and is directed against an order dated February 1, 1971, passed by the learned Chief Presidency Magistrate, Calcutta, issuing processes u/s 500, Indian Penal Code, against the two accused Petitioners as well as the co-accused and u/s 501 thereof against the accused Petitioner No. 2 and for quashing the said proceedings, being case No. C/224/71 pending before the learned Chief Presidency Magistrate, Calcutta; while the other Rule, being Cr. Rev. No. 327 of 1971, is at the instance of the two accused Petitioners, Ashoke Kumar Sarkar and Ram Krishna Ghosh and is directed against an order dated February 6, 1971, passed by the learned Chief Presidency Magistrate, Calcutta, issuing processes u/s 500, Indian Penal Code, against the two accused Petitioners and also the co-accused and u/s 501, Indian Penal Code, against the accused Petitioner No. 2 and for quashing the proceedings based thereupon, being case No. C/248 of 1971, pending before the learned Chief Presidency Magistrate, Calcutta.

2. The facts leading on to the first Rule can be put in a short compass. On or about November 8, 1970, a news item given by a staff reporter was published from No. 4 Chowringhee Square, Calcutta, under the heading "alleged wagon-breaker fatally shot". The report, inter alia, stated that one Dulal Bhowmick, "alleged to be a wagon-breaker and wanted in connection with a number of Police cases", was removed with bullet injuries from the crossing of Broad Street and Rifle Range Road, P.S. Kareya, to the hospital where he was pronounced dead. It was further reported that the said Dulal Bhowmick "with seven associates, is alleged to have attacked a Special Branch Police party with daggers and swords at about 9 30 a.m. The Policemen, who were on their normal duty in the area, fired three rounds, one of which hit Bhowmick". The complainant opposite party, Sri Brajendra Bhowmick, who is a practising lawyer, filed a petition of complaint in the Court of the Chief Presidency Magistrate, Calcutta, on February 1, 1971, against the two accused Petitioners as well as one co-accused who was described as a staff reporter of The Statesman stating, inter alia, that the report published contained malicious and grossly false imputation against the complainant's deceased son, Dulal Bhowmick, intending to harm or having reason to believe or knowing that such imputation will harm the reputation of the deceased if living and that of the complainant and the members of his family. It was further averred that the entire report was mala fide and motivatingly designed to assassinate the character and reputation of the complainant's deceased son and to harm the feeling of the complainant and of others injuring their position, prestige and life in the society. Sri H.S. Barori, who was taking up the file of the Chief Presidency Magistrate, Calcutta, examined the complainant and by his order dated February 1, 1971, issued summons u/s 500 of the Indian Penal Code against all three accused persons and u/s 501 of the Indian Penal Code against the accused No. 2 only. This is the backdrop of the first Rule.

3. The facts in the second Rule being Cf. Rev. No. 327 of 1971 are substantially the same. The impugned report was published on or about November 8, 1970, corresponding to Kartik 22, 1377 B.S. in the Sunday issue of the Ananda Bazar Patrika, a daily newspaper published from No. 6 Prafulla Sarkar Street, Calcutta, under the heading "firing at Kareya". The report, inter alia, stated that one Dulal Bhowmick aged about 21 years was seriously injured due to the firing resorted to by the Police when they were attacked by some persons alleged to be Naxalites at the junction of Rifle Range Road and Broad Street at about 9-30 a.m. in the morning and while he was being taken to the Police Case Hospital, he died. It was further reported that, according to the Police, the deceased belonged to a party of wagon-breakers and that he was wanted in connection with a number of Police cases. A petition of complaint was filed in the Court of the Chief Presidency Magistrate, Calcutta, on February 2, 1971, by the complainant opposite party, Brajendra Bhowmick, against the three accused Petitioners alleging, inter alia, that the report published in the said newspaper amounted to defamatory imputation to the complainant's deceased son, harming the reputation of the said Dulal Bhowmick if living and intended to be hurtful to the feelings of his

family; and that the said report was published with a malevolence to vilify the memory of the deceased. Sri H.S. Barori, who was taking up the file of the Chief Presidency Magistrate, Calcutta, examined the complainant and by his order dated February 6, 1971, issued processes against the accused persons as mentioned above. The accused Nos. 1 and 2 in both the cases, who are the Petitioners in the two Rules, appeared and were released on P.R. Two applications were filed thereafter in this Court praying for setting aside the impugned orders dated February 1, 1971 and February 6, 1971, respectively summoning the accused persons and for quashing the relevant proceedings. Two Rules were issued and all further proceedings were directed to be stayed.

4. The submissions of Mr. Ajit Kumar Dutt, Senior Advocate (with Messrs Shyam Sundar Pal and Prasanta Kumar Das, Advocates, in Cr. Rev. 238 of 1971 and with Mr. Dilip Kumar Dutt, Advocate, in Cr. Rev. 327 of 1971) in support of the two Rules, have four dimensions. The first one is on the interpretation of expl. 1 to Section 499 of the Indian Penal Code and the learned Advocates have submitted that the petition of complaint as filed does not disclose any case coming within the ambit thereof. The second submission is based on facts relating to the merits of the proceedings. The third one relates to the concept of privilege ultimately bearing on the rights and privileges of the press as being necessary complement of its functions. The fourth and last dimension of Mr. Dutt's submissions is an intriguing one and of some importance relating to the principle of "express malice" or malice in fact. He contended that there was no such "express malice" on the part of the accused Petitioners vitiating thereby the present proceedings. Mr. Niharendu Dutt Mazumdar, Senior Advocate (with Mr. Barendra Nath Sur, Advocate) appearing on behalf of the complainant opposite party in both the Rules, joined issue and submitted that there was no question of any "privilege which in any event cannot be unqualified; that the facts disclosed did bring the case within the purview of expl. 1 of Section 499 of the Indian Penal Code; that the test at this stage is whether the petition of complaint discloses a prima facie case and the allegations made therein, prima facie, satisfy the essential ingredients of Sections 500 and 501 of the Indian Penal Code; and that the concept of express malice does not apply to such cases. Mr. Surathi Mohan Sanyal, Advocate, appearing on behalf of the State also opposed both the Rules, inter alia, on the ground that the prayer for quashing is premature at this stage and the several points raised on behalf of the accused Petitioners can only be decided properly on materials adduced during the trial. Several cases were cited on behalf of the respective parties and the same will be considered in their proper context.

5. The first dimension of Mr. Dutt's submission is one of law relating to the interpretation of expl. 1 to Section 499 of the Indian Penal Code. The steps of Mr. Dutt's reasoning in this behalf are that the provisions of Section 499 of the Indian Penal Code are to be read along with expl. 1 in this case inasmuch as the person defamed is dead; that for a proper interpretation the two parts of the provision contained in expl. 1 are to be read conjunctively and not in disjunction

in order to ascertain whether the elements of the offences charged have been duly established; that the sine qua non of the offence are (a) intention to be hurtful to the feelings of the deceased's family and (b) knowledge regarding the existence of such family members; and that the intention envisaged in the section is with regard to the particular person alleged to have been defamed and no foreseen consequence will do. Mr. Dutt Mazumdar contended that the imputations contained in the report satisfied the ingredients of expl. 1 and that the same is mala fide, intended to harm the reputation of the person concerned, if living and to be hurtful to the feelings of the family or other relatives. We must hold that there is a considerable force behind this submission of Mr. Ajit Dutt as on a proper interpretation the elements of expl. 1 to Section 499 enjoin that, in order to amount to defamation, the imputation alleged must not only harm the reputation of the person concerned if living but also be "intended to be hurtful to the feelings of his family or other relatives". The second part of the provision in expl. 1 is material and the first part cannot be considered independently thereof, de hors the intention of the Legislature. The defamation alleged in the petition of complaint, in this case, relates to a deceased person and therefore, the essential ingredients of expl. 1 have to be strictly satisfied. The submission of Mr. Dutt Mazumdar puts emphasis on the first part of expl. 1 to the exclusion of the latter part and as such, the same is not maintainable. The rules relating to construction of statutes also rule out such an interpretation. It has been observed in Craies On Statute Law that for the exposition of obscurely penned statutes

there is a general rule of construction applicable to all statutes alike which is spoken of as construction *ex visceribus actus*--within the four corners of the Act.

In the Lincoln College case (1595) 3 Co. Rep. 59-6 again and of *Re. a Debtor* (1950) Ch. 423 (431), per Evershed M.R. that--

The office of a good expositor of an Act of Parliament is to make construction on all parts together and not of one part only by itself--*Nemo enim aliquam partem recte intelligere cōtest antequam totum iterum atque iterum perlegerit*.

A reference in this context may also be made to the principle of *Roddendo Singula Singulis*. Crawford observed in *The Construction of Statutes* that--

It is also well-established as a principle of statutory construction that words in different parts of a statute must be referred to their appropriate connection, giving to each in its place, its proper force and effect and if possible, rendering none of them useless or superfluous.

On a consideration of the provisions of the statute and in the light of the facts disclosed, we are unable to agree with the contentions of Mr. Dutt Mazumdar. The first dimension of Mr. Ajit Kumar Dutt's contention accordingly succeeds.

6. This brings us to a consideration of the second branch of Mr. Dutt's submissions relating to merits. We have given our anxious consideration to the publications in both the papers and on ultimate analysis we hold that the

publication is, guarded enough mentioning clearly and referring to the sources "as alleged to be". The reports were published in the usual course apparently without any personal equation or an express malice. The impugned reports, therefore, do not come within the bounds of Section 499, Indian Penal Code and a continuance of the present proceedings would, accordingly, be an abuse of the process of the Court. It is expedient, therefore, in the interests of justice that the proceedings should be quashed at the earliest stage and the second dimension of Mr. Dutt's contentions also succeeds.

7. The third dimension of Mr. Dutt's contention is a material one and is based on the concept of privilege. Mr. Dutt contended that the impugned report appeared in a newspaper and the rights and privileges of the press, being the necessary complement of its functions, should not be overlooked. The freedom of the press, Mr. Dutt submitted, is the corner-stone of the liberty of the people and any attempt to circumscribe it artificially would be bad and repugnant. The learned Advocates appearing on behalf of the opposite parties and the State joined issue contending, inter alia, that there cannot be any such absolute privilege which, in any event, is only a qualified one bounded by the provisions of the statute. Frank Thaver observed in his work on the Legal Control of the Press that

freedom of the press and freedom of radio are correlative; both are symbols of democratic thought.

Freedom of the press is a relative term and the liberty of the press is a qualified right. It was further observed by Thaver that

on the theory that rights and duties are correlative, the thesis that there is a right to commit libel would not be sound.

A reference may also be made to the observations of Sir John Salmond in his work on Jurisprudence:

For every duty must be a duty towards some person or persons in whom, therefore, a correlative right is vested. And conversely every right must be a right against some person or persons upon whom, therefore, a correlative duty is imposed.

Upon this theory, though the right of a free press is guaranteed, there is imposed upon others the duty of respecting that right. "The one who has the right", observed Thaver, "to write and publish what he pleased in turn has the duty to respect a like right in others". The nature of the right has been discussed by the authorities and according to Salmond, "a right implies a correlative duty". Sir William Blackstone in his Commentaries published in 1765-1769 recognised the need of freedom of the press in Government, a need later discussed by eminent statesmen of the English speaking world. Blackstone likewise recognized the responsibility upon the part of the press for the abuse of the right and observed that

the liberty of the press is needed essential to the nature of a free State; but this

consists in laying no previous restraints upon publications and not in freedom from censure for criminal matter when published.

Without multiplying the authorities, a reference may now be made to the Constitutional Limitations (8th ed.) by T.M. Copley, wherein it was observed that

the constitutional liberty of speech and of the press, as we understand it, implies the right to freely utter and publish whatever the citizen may please and to be protected against any responsibility for so doing, except so far as such publications, from their blasphemy, obscenity, or scandalous character, may be a public offence, or as by their falsehood and malice they may injuriously affect the standing reputation or pecuniary interests of individuals.

A reference may also be made to the Treatise on the Freedom of the Press in India : Constitutional Provisions and their application by Dr. Joseph Minattur wherein at p. 102 while discussing the extent of such freedom the learned author quoted from the Bhagavad Gita that

for a man of honour datamation is worse than death and ultimately observed that--

as it is thus considered a great evil, provision for reasonable legislative abridgment of the right of freedom of speech and expression in relation to defamation is made in Article 19(2) of the Indian Constitution.

It is abundantly clear, therefore, that the authorities have laid down " that the freedom of the press is a qualified right in accordance with the provisions of the statute. In Halsbury's Laws of England (3rd. ed. : Simonds, vol. 30) in the chapter on the privileges and control of the press, (p. 567) it has been observed that

the press is with the foregoing few exceptions subject to the ordinary law.

8. We may now turn to stare decisis. This freedom is not, however, absolute for Clause (2) of Article 19 permits restrictions being placed upon it in certain circumstances. Our Constitution does not expressly provide for the freedom of press, but it has been held in a series of decisions by the Supreme Court that this freedom is included in the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution of India. In the case of Romesh Thappar Vs. The State of Madras, . Patanjali Sastri J. (as his Lordship then was) delivering the majority judgment observed that

there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation.

It was further observed that freedom of speech and expression is the foundation of all democratic organisations and is essential for proper functioning of the processes of democracy. In another case decided on the same date, namely in the case of Brij Bhushan and Another Vs. The State of Delhi, , Patanjali Sastri J. (as his Lordship then was) delivering the majority judgment of the Court

observed that

there can be little doubt that the imposition of precensorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression declared by Article 19(1)(a).

A reference may now be made to the case of *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, wherein it was observed by N.H. Bhagwati J. delivering the judgment of the Court that

while therefore no such immunity from the general laws can be claimed by the press, it would ultimately not be legitimate to subject the press to laws which take away or abridge the freedom of speech and expression....

In a more recent decision in the case of *Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI)*, it was observed by Mudholkar J., delivering the judgment of the Court, that

it would be clear that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject to such restrictions as could be legitimately imposed under Clause (2) of Article 19.

Against the background of the aforesaid decisions the concept of privilege, urged by Mr. Dutt, has to be considered. Such a concept is as old as the hills and its distinctive mark is its ancillary character. In a welfare State the consideration of the concept of privilege assumes additional importance. As was observed by Lord Dunedin "a privileged statement really stands for the occasion which is privileged". Privilege again is of two kinds, absolute and qualified and varies from case to case. A reference in this context may be made to the case of *P.C. Gupta alias Provash Chandra Gupta and Anr. v. State and Anr.* 75 C.W.N. 402. On a consideration of the various kinds of privileges, including the privileges of Parliament as described in Erskine May's "Parliamentary Practice", it was ultimately observed that these "are rights which are absolutely necessary for the due execution of its powers"...and that "the privileges are rightly the necessary complements of the functions". On a consideration, therefore, of the authorities and also the case law on the point, we ultimately hold that the privilege of the press is not an absolute one but is qualified being circumscribed within the limits of the provisions enjoined in the statutes. The third dimension of Mr. Ajit Kumar Dutt's submissions is disposed of accordingly.

9. The fourth and last dimension of Mr. Dutt's contentions relates to the principle of express malice. Bereft of all verbiage, express malice is malice in fact as different from implied malice which the law presumes from the mere publication of a defamatory matter. A reference may be made in this connection to the case of *P.C. Gupta alias Provash Chandra Gupta and Anr. v. State and Anr.* 75 C.W.N. 402. On a consideration of the observations made by the Master of the

Rolls in the case of Munster v. Lamb (1882) Law Rep. 11 Q.B.D. 588 relating to the case of a lawyer that

if any one needs to be free of all fear in the performance of his arduous duty, an advocate is that person,

the High Court held that therefore unless and until there is a proof of "express malice" on the part of the lawyer, in the discharge of his professional duties, he does not come within the bounds of the offence of defamation. The same principle should apply in the present case which relates to the press and the publication made therein; and as the impugned publications bring to light no express malice, the present proceedings are not maintainable. The fourth and last dimension also of Mr. Dutt's submissions, therefore, succeeds.

10. In the result, we make the two rules absolute, set aside the impugned orders dated February 1, 1971 and February 6, 1971, passed by the learned Chief Presidency Magistrate, Calcutta and quash the relative proceedings, being Gases Nos. C/224 of 1971 and C/248 of 1971 pending before the learned Chief Presidency Magistrate, Calcutta, under Sections 500 and 501 of the Indian Penal Code.

A.K. DE J.

11. I agree.