

(1981) 03 DEL CK 0047

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 525 of 1980

S. Malgaonkar and Others

APPELLANT

Vs

Jagmohan

RESPONDENT

Date of Decision : 02-03-1981

Acts Referred:

Citation : (1981) 20 DLT 5 : (1981) ILR Delhi 853

Hon'ble Judges : G.R. Luthra, J

Bench : Single Bench

Advocate : K.L. Sharma, Arun K.Sinha and R.L. Tandon, for the Appellant;

Judgement

G.R. Luthra, J.

(1) The present petitioners, by way of this petition u/s 482 of the Code of Criminal Procedure (in short Code), pray for quashing of the criminal proceedings pending against them in the court of a Metropolitan Magistrate, New Delhi.

(2) The aforesaid criminal proceedings were started on a complaint in writing dated June 6, 1979 of Shri Jagmohan (hereinafter referred to as respondent) praying that the present petitioners and one Javid Liaq be prosecuted and punished for commission of offences punishable under Sections 500, 501 and 502 of the Indian Penal Code for defaming the former.

(3) Shri S. Malgaonkar, petitioner No. I is Editor-in-Chief of a daily newspaper "Indian Express", Shri Ajit Bhattacharjee and Shri R. K. Mishra are the Editor and printers and publishers respectively of the said newspaper. Shri Javid Liaq was a correspondent of that newspaper. In the Indian Express issue "of April 19, 1977 on pages I and 5 an article appeared under the heading, "THE Day Of Bullets, BULLDOZERS" by Javid Liaq. The said item inter alias contained the following :

"AT around eight on the evening of April 18, Qyamuddin and three other residents of Turkman Gate went to Hotel Ranjit on hearing that Sanjay Gandhi and his group had come there. Conferring in a plush room of his Hotel, which

over-looks Turkman Gate were Jagmohan, then Vice-chairman of the Dda, Ramesh Dutta, troop leader of new defunct Nehru Brigade. two unidentified women and Sanjay Gandhi. After wrangle with some hangers on outside Qyamuddin and his companions got into the room. Qyamuddin pleaded that demolition should be stopped till alternative accommodation could be provided. Sanjay said not a word. Jagmohan told them to get out and burst forth in rage : "We will do what we want. We won't allow a second Pakistan here.". Qyamuddin and friends retreated hurriedly."".

Indermohan and Siraj Piracha, both social workers in the area used to meet Jagmohan quite often. He had told them about his pet theory more than once. If Muslim communities such as that one around Jama Masjid were not disposed there would be no national integration." According to Jagmohan, respondent as he stated in the complaint, aforesaid imputations made against him were totally false, incorrect, concocted and with a view to lower him in the eve? of the public and friends and there was never any meeting nor any utterance by him as mentioned in the aforesaid portion of the news item. It is alleged by him that the daily newspaper Indian Express" is .published from New Delhi and has very wide circulation within country and outside and that the aforesaid imputations caused considerable damage to his reputation

(4) It is alleged by the petitioners in the petition that the aforesaid complaint is barred by Rule 19 of the Central Civil Services (Conduct) Rules (hereinafter referred to as the Conduct Rules), which were framed in exercise of the powers conferred by proviso to Article 309 and clause 5 of Article 148 of the Constitution of India. Relevant rule 19 reads as under : "19. Vindication of acts and character of Government servant (1) No Government servant shall, except with the previous sanction of the Government Lave recourse to any court or to the press for the vindication of any official act which has been the subject matter of adverse criticism or an attack of a defamatory character. (2) Nothing in this rule shall be deemed to prohibit a Government servant from vindicating his private character or any act done by him in his private capacity and where any action for vindicating his private character or any action done by him in private capacity is taken, the Government servant shall submit a report to the prescribed authority regarding such action." It is contended by the learned counsel for the petitioners that without obtaining sanction of the Government, Shri Jagmohan, respondent had come to a criminal court for the vindication of his official act as Vice-chairman of D.D.A. in violation and contravention of rule 19 of Conduct Rules which had statutory binding force and that Therefore, the court should not grant indulgence to him.

(5) It was contended by the learned counsel for the respondent that it had not been shown by the petitioners that the Conduct Rules were applicable to respondent Rule I of the said Rules says that those roles shall apply to every person appointed to Civil Service or post in connection with affairs of the Union. At the relevant time respondent was not appointed to any civil service or post in

connection with the affairs of the Union i.e. Central Government because he was acting as Vice-Chairman of the D.D.A. Reliance of the petitioners is on Rule I! of the Rules framed by the D.D.A. u/s 57 of Delhi Development which reads as under :

"THE provisions of the Central Civil Services (Conduct) Rules, 1964, as amended by the Central Government from time to time shall apply mutates mutants to the services and posts under the Authority, all references to the Central Government shall be construed as references to the Authority and all references to the Head of Department or Head of Office shall be construed as reference to the vice Chairman."

It was contended by the learned counsel for the petitioners that rule Ii made Conduct Rules applicable to all the persons working under Delhi Development Authority. The learned counsel for the respondent however rightly made a distinction. Section 57(1)(c) says that rules can be framed by the D.D.A. in respect of salaries, allowances and conditions of service of the Secretary, Chief Accounts Officer and other officers and employees of D.D.A. But those rules do not apply to the Vice Chairman. Reading of Sections 3, 4 and 5 of the Delhi Development, Act together makes it clear that the Secretary, Chief Accounts Officer and other employees of the D.D.A. do not include Vice-Chairman or other members of the D.D.A. or the members of the advisory council. Sections enumerates as to, Who shall" be members of the D.D.A. and one of the paid members is shown as vice Chairman Section 4 deals with the appointment of the staff of the D.D.A. including Chief Accounts Officer and Secretary while Section 5 deals with the constitution of Advisory Council Section 57(1)(c) is in respect of Secretary, Chief Accounts Officer and other Officers and employees. It is Section 56(2)(c) which gives .powers to the Central Government to make Rules regarding salaries, allowances and conditions of service of whole time paid members of the D.D.A. Vice-Chairman being one of the paid members u/s 3, rules farmed u/s 56(2)(c) could be applicable to him. As the respondent was Vice-Chairman of D.D.A. at the relevant time, rules framed u/s 57could not be availed of.

(6) Reliance of petitioners further is on an admission of the respondent when he appeared as witness before the trial court. That admission reads as under :

"I consider myself to be dedicated public servant. The Government Servants Conduct Rules have "since been made applicable to me since adopted by D.D.A".

The learned counsel also relied upon Section 3(3)(b) which says that Vice-Chairman shall be appointed by Central Government. The learned counsel contended that the respondent was appointed by Central Government and that Therefore, Conduct Rules must apply to him and the same was also admitted by him.

(7) Mere anointment by the Central Government does not make applicable Conduct Rules because they, as already mentioned, apply to those persons who

were holding Civil Service or Civil Post of Union. Emphasis is not on the appointment by the Central Government but is on holding of post in the said Government.

(8) It is clear from the above that on perusal of various provisions of Delhi Development Act, Conduct Rules and Regulations framed u/s 57 of Delhi Development Act it is not made out that Vice Chairman of D.D.A. at the relevant time was governed by Conduct Rules. It is well settled that" admission (as in the present case of respondent reproduced above) or opinion on a point of applicability or interpretation of law or Rules is not relevant. Hence on the basis of that it cannot be said that the Conduct Rules governed the respondent. Yet I assume for the sake of argument, that the Conduct Rules applied to the respondent and then proceed further with a view to see as to what is the effect of those rules on the case.

(9) Rule 19 of the Conduct Rules has already been reproduced. It is clear from the same that it is only for vindication of official act that Government servant has to seek permission. In the present case respondent did not want to vindicate any official act and therefore. Rule 19 aforesaid did not prohibit the respondent to have recourse to the courts without permission of the Government. He could have come straight to the court, as he did. The word vindication has not been defined anywhere in the Rules, In the Chamber's dictionary meaning of the word vindicate" has been given as, to justify, to clear from criticism, to defend with Success, to make good a claim to, to lay claims to, to maintain, to avenge and to free- Justification, defending or clearing criticism of any act necessarily implies admission that the act was done, and at the same time saying that it was neither blameworthy nor wrong. Here the respondent does not want to justify the alleged imputations. He totally denies that any meeting was held or that he uttered any words attributed to him. "Therefore, in the present case recourse to a court is not for vindicating any act but is for denying and establishing total falsehood of the imputations or acts attributed to respondent. There is thus difference between indicating, justifying or defending an act as compared to denial and Falsehood of the same. Denial and vindication are inconsistent with each other.

(10) The learned counsel for the petitioners contended that the respondent had recourse to the court for vindicating or defending himself by way of denying of the acts imputed to him, and that Therefore, the provisions of rule 19 of the aforesaid Conduct Rules were attracted.

(11) But the argument of the learned counsel does not take note of words existing in the rules. In the rule the emphasis is on vindication of official act and not vindication of himself. The very denial of the act necessarily means that the respondent is not trying to defend or justify, which is the same thing as vindication, the commission of the act, but on the other hand he is trying to establish that the said act never happened and allegations in respect of the commission of the same are totally false.

(12) It was also contended by the. learned counsel for the petitioners that mere denial by the respondent of the commission of the official act could not be taken as gospel truth, that the same could be proved to be wrong during evidence and that no weight should be attached to the denial. But that argument cuts at the root of the petition. That argument presupposes that respondent must be given an opportunity in the trial court to establish the falsehood of the allegations contained in that portion of the news-item which has been reproduced already, and that the petitioners should be at liberty to prove the truth of the same. That means that the trial must go on as it is and the proceedings before the trial court should be quashed, while aim of the petition is that the proceedings before the trial court should not be taken further and the evidence of the parties should not be recorded. In fact, aforesaid argument of the learned counsel has no relevancy and force. In these proceedings we are concerned with the interpretation and effect of rule 19 of the Conduct Rules on the maintainability of the complaint of the respondent as framed.

(13) It is, as discussed above, abundantly clear that rule 19 of the Conduct Rules has no application to the facts of the present case. It does not and did not debar or prohibit the complainant from filing of the present complaint. Therefore, proceedings on the basis of the complaint can continue in" accordance with law and the present petition is liable to be thrown out as baseless.

(14) Even otherwise said rule does not and did not debar or prohibit any court from taking cognizance of the offence of defamation which they (courts) are otherwise entitled to do under the provisions of Section 199 of the Code. Rule is prohibitory in respect of conduct of Government Servant and not prohibitory as against actions and taking cognizance of offence by the courts. Section 199 referred to above deals with the complaints in respect of commission of offences punishable under Chapter Xxi (Sections 500 to 502) of India Penal Code. Subsection I says that no court shall take cognizance of such an offence except on a complaint made by a person aggrieved by the offence. Respondent was aggrieved person and could file complaint. Then Sub-Sections 2 to 5 prescribe a special procedure for enabling a public prosecutor to file a complaint in a court of Session in, case of commission of offences against President of India, Vice-President of India, Governor of State. Administrator of Union Territory or Minister of Union of State of a Union Territory and any other public servant employed in connection with the affairs of the Union or State. Then Sub Section 6 reads as under:

"NOTHING in this section shall effect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."

So it is clear that any person who is aggrieved of an offence of defamation can make a complaint to a Magistrate having jurisdiction to take cognizance of the same and under certain circumstances public prosecutor can also make a

complaint

(15) The learned counsel for the petitioners contended that Conduct Rules had statutory force and they must be given effect to when they prohibited a Government servant in having recourse to law courts without permission of the Government. I have already held that in the present case the rule 19 of Conduct Rules did not prohibit the respondent to file complaint but even if said rule did, it did not have any prohibition against the courts taking cognizance of the complaint which they otherwise are bound to entertain in view of Section 199 of the Code referred to above.

(16) So looking from any angle the present petition has no merit. There was no prohibition of Conduct Rules against the respondent in the present case in respect of filing of a complaint which he did. Even otherwise said rule did not prohibit, under any circumstances, taking cognizance of the complaint by court. Hence the present petition deserves dismissal.

(17) The learned counsel for the respondent raised following preliminary objections: "(1) Points raised in the petition should have been brought to the notice of the trial court and order invited otherwise present petition is not maintainable. (2) One of the accused before the trial court was Javid Liaq, that he should have been impleaded either as petitioner, or respondent and on account of his absence present petition u/s 482 Criminal Procedure Code is not maintainable. In view of the fact that the petition fails on merits it is not necessary to decide the said objections. However, it may be mentioned that when legality of trial or proceedings before the court are assailed it is proper and appropriate that first of all that court itself should be approached by way of an application to give verdict in respect of the same and then recourse is made to the High Court. In that way it was appropriate for the petitioners to have brought to the notice of the trial court all the points raised in this petition and order invited.

(18) I, Therefore, dismiss the present petition in limine. A copy of this order be sent to the trial court along with records of his court immediately. The date before the trial Magistrate shall be March 16, 1981. Petition dismissed in limine R.S. March 2, 1981. Note : Vide separate order the date stands changed from March 16 to March 28, 1981. At the time of announcement of judgment R. L. Tandon counsel for the respondent is present. He informs, that already date is fixed before the trial court which is March 28, 1981. Hence let this matter be put up before the trial court on March 28, 1981.