

(2003) 07 GAU CK 0050

In the Gauhati High Court

Case No : Criminal Revision No. 430 of 1997

Sanat Chakravorty

APPELLANT

Vs

Omega Printers and Publishers Pvt. Ltd.

RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 202, 482
Penal Code, 1860 (IPC) — Section 120A, 120B, 499, 500

Citation : (2004) GLT 242 Supp

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : N. Choudhury and S.C. Kayal, for the Appellant; J.M. Choudhury and P. Kataki, for the Respondent

Judgement

I.A. Ansari, J.—The order under challenge in the present revision was passed by the learned Special Magistrate, Guwahati, on 9.5.1997, in CR. Case No. 2520C of 1997, taking cognisance of offences u/s 500 read with Section 120B of the Indian Penal Code against the present revision Petitioner, namely, Shri Sanat Chakravorty and four others.

2. In a narrow compass, the facts and various stages, which have led to the present revision petition, maybe set out as follows:

i) The O.P. No. 1, namely, Shri P.L. Senapati instituted C.R. Case No. 2520C of 1997 aforementioned, his case being, briefly stated, thus: The complainant is a private limited company under the name and style of Omega Printers and Publishers Pvt. Ltd. The directors of the company have passed a resolution appointing the complainant, Shri P.L. Senapati, to represent the company in the present complaint. The complainant company publishes, inter alia. "The Sentinel", which is one of the leading newspapers of northeastern India published from Guwahati. The company has earned great reputation amongst the readers not only of Guwahati, but also of the entire North-Eastern States. The accused No. 1 is the Managing Editor of "The Meghalaya Guardian", a daily

newspaper. "The Meghalaya Guardian" is published on behalf of G.L. Publications Ltd. by the accused No. 2, who is the Printer and Publisher of the said newspaper. Though the said newspaper is published from Shillong, it is circulated not only at Shillong, but also at various bookstalls in different parts of the city of Guwahati. The accused Nos. 3, 4 and 5 are the former employees of "The Sentinel" group. The accused No. 3 was a sub-editor/reporter of "The Sentinel". The accused No. 4 was the reporter/sub-editor of "Dongmusa", a Khasi weekly. The accused No. 5 was the correspondent for "The Sentinel" at Shillong. The accused No. 1 and 2 published a news item in "The Meghalaya Guardian" in its issue, dated 17th March, 1997, under the caption, "Scribes to stage hunger strike in city". In the said news item, it was published that five Shillong based journalists would stage hunger strike to protest against non-payment of their legitimate dues by two prominent Guwahati based newspaper groups and that the journalists concerned had worked for "The Sentinel" edited by D.N. Bezboruah, former president of "Editor's Guild of India". After the publication of the said news item on 17th March, 1997, another news item has been published on 18th March, 1997, in "The Meghalaya Guardian". This news item has been published alongwith a photograph with the caption, which reads, "City Scribes demand payment of dues", in this news item, it has been published that five Shillong based journalists undertook a token protest demonstration and hunger strike in front of the Shillong office of The Sentinel group and, later on, resorted to a threehour hunger strike in front of Y.M.C.A. office to protest against non-payment of their legitimate dues like remuneration of write-ups and salaries by two prominent Guwahati based newspapers groups, namely, "The Sentinel" and "The News Front". It has been also published therein that the striking scribes had told the reporter thus: "It is strange that the newspaper edited by the "Former President" of "Editor's Guild of India" is one of the organisations exploiting the scribes. They alleged that throwing all established rules to the wind, the management of "The Sentinel" Group sacked us when we asked for our salary. It is unfair". It has been further published in the said news item that the dues of the scribes have been blocked for over two years despite repeated reminders. The allegations published in the said news item are false and misleading. The photograph published in the said news item, dated 18th March, 97, shows altogether three journalists including the present revision Petitioner forming the group of the demonstrators. All the three journalists, who were from The Sentinel group, have been impleaded in the present complaint as accused Nos. 3, 4 and 5. The accused No. 3, Shri Nilotpal Gogoi, was appointed as a Sub-editor/reporter for The Sentinel on 1st July, 1993, and appointment letter to that effect was also issued by the Managing Director of the complainant company. The accused No. 3 left his job on 5th April, 1996, without giving any notice contrary to the terms of appointment. He discontinued his work on 5th April, 1996, after receiving the salary due to him. No demand or representation had been made by him for payment of any dues or salary, which had allegedly remained unpaid to him for working for the said company. In fact, the accused No. 3 does not have any good relationship with the outsiders and once he misbehaved with a senior

officer of the Labour Department for which an explanation had to be called for. The accused No. 4 was appointed on 1st of January, 1991, as a reporter/Sub-reporter of "Dongmusa", a Khasi weekly published at Shillong. The said accused No. 4 submitted his resignation letter on 12th July, 1996, on personal ground. The management accepted the said resignation letter and released him from service and paid all his dues. Despite the fact that the accused No. 4 failed to submit the required three months notice to the complainant company as per terms of the appointment letter, dated 1.1.91, the management had paid three months salaries as a special case for full and final settlement releasing him from service and the same was also received by accused No. 4 on 12th July, 1996. The accused No. 5, Sanat Kumar Chakravorty, was appointed as a correspondent by the Managing Director for "The Sentinel", at Shillong, with effect from 22nd February, 1995, but the accused No. 5 refused to work on a regular basis and this fact was intimated by him to the complainant company by his letter, dated 13th May, 1995. However, accused No. 5 used to work occasionally on verbal terms and conditions and for the work, he undertook, remunerations were paid to him. The accused Nos. 3, 4 and 5 had conspired with the accused Nos. 1 and 2 and in pursuance of the said conspiracy, they have published the aforesaid news item on the front page of the dailies on 18th March, 1997, giving a prominent view to their readers so that it does not escape the notice of the readers of the said newspapers. False, malicious and baseless allegations have been made against the Managing director of the company including the Editor of "The Sentinel", namely, D.N. Bezboruah. The accused Nos. 3, 4 and 5, in order to malign the image of The Sentinel group of newspapers including the directors and the management thereof, took the assistance of accused Nos. 1 and 2 in publishing the aforesaid news item on the front page of "the Meghalaya Guardian" with a view to lowering, in the eyes of the people of Assam, the image of not only the complainant company, but also its management and the editor working under the said company. In order to defame the complainant Company, the accused Nos. 1 and 2 took up the issue raised by the accused Nos. 3, 4 and 5 on false and baseless allegations and gave wide publicity with ulterior motive. The said daily has published the said news item on 18th March, 1997, and blown out of all proportion the said news item in order to give wide publicity so that it would cause damage to the reputation of the complainant company. The said evil design of the accused Nos. 1 and 2 can be well established from the news item published in the said daily newspaper inasmuch as the said news item has questioned the integrity, honesty and propriety of the management of the complainant company and has cast aspersions on the reputation of the management of the said company including its editor. D. N. Bezbaruah, and thereby they have committed an offence u/s 499, which is punishable u/s 500 of the Indian Penal Code. The accused persons, namely, accused Nos. 1 and 2 have knowingly published the said news item in collusion with the accused Nos. 3, 4 and 5 after having reasons to believe that the said imputation made in the news item would harm the reputation of the complainant company by lowering their moral and intellectual character in the estimation of all concerned including the

public at large. The said evil design of the accused Nos. 1 and 2 is also established from the fact that the said news item was published on the day, when the hearing of the Press Council of India Enquiry Commission was to take place, at Shillong, on the said complaint made against "The Sentinel". The said news item has affected the reputation of the complainant company among the members of the Press Council of India and thereby the accused Nos. 1 and 2 have been successful in harming the reputation of the complainant company and its reputation.

ii) Upon institution of the above complaint, learned Court below held an enquiry u/s 202 Code of Criminal Procedure. In this enquiry, the learned court below examined the complainant, who supported the allegations made in the present complaint, whereupon by order, dated 9.5.97, the Court opined that a prima facie case had been made out against the accused persons u/s 500 read with Section 120B IPC and directed accordingly issuance of summons. Out of the five accused, namely, 1) G.L. Agarwala, 2) Purushottam Lal, 3) Nilotpal Gogoi, 4) Thomas Lim and 5) Sanat Chakravorty named by the complainant, it is the accused No. 5, namely, Sri Sanat Chakravorty, who has, now, approached this Court, with the help of the present revision application, seeking to get the impugned order set aside and quashed.

3. I have perused the records including the impugned order. I have heard Mr. N. Choudhury, learned Counsel for the Petitioner, and Mr. J.M. Choudhury, learned Senior Counsel, who has appeared on behalf of the opposite party.

4. The law with regard to quashing of complaints, now, stands crystallized. If the contents of a complaint, when read as a whole and taken to be true and correct on their face value, disclose commission of offence, the complaint cannot be quashed. It, therefore, logically follows that if the contents of the complaint, in question, when read as a whole and assumed to be true, disclose commission of offence, the learned Court below could not have refused to issue process.

5. While dealing with the above aspect of the matter, one needs to refer to the leading case of State of Haryana and Ors. v. Bhajanlal and Ors. Reported in 199 Supp. (1) SCC 335, wherein the Apex Court, on taking into consideration a large number of judicial pronouncements on the above aspects of law, laid down as follows:

102. In the backdrop of the interpretation of the various relevant provisions of the code under chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the code, which we have extracted and reproduced above, we give the following categories of cases by way of illustration, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive

list of myriad kinds of cases wherein such power should be exercised:

- i) Where the allegations made in the First information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.
- ii) Where the allegations made in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognisable offence justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- iii) Where the uncontroverted allegations made in the FIR or complaint and evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused,
- iv) Where the allegations in the FIR do not constitute a cognisable offence but constitute only a non-cognisable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
- v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned act (under which criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code of the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- vii) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

(Emphasis is supplied)

6. It is clear from a close reading of the principles laid down in Bhajanlal's case (supra) that if the allegations made in a complaint, when taken at their face value and accepted in their entirety, make out a prima facie case or constitute commission of offence, such a complaint cannot be quashed. As a corollary thereto, a Magistrate also cannot, in such a case, decline to issue process against the accused. There is, however, a rider attached to this position of law. In an appropriate case, even an FIR/Complaint, which contains allegations constituting offence, can, if need be, quashed if the interest of justice so demands. Reference may be made to B.S. Joshi v. State of Haryana and Ors. Reported in AIR 2003 SC 1824.

7. A bare reading of the complaint, in question, reveals that according to the complainant, the accused have falsely made allegations against the complainant company that the latter has not made payment of the dues of the accused Nos.

3, 4 and 5 and, particularly of the dues of the accused No. 5 i.e., the revision Petitioner inasmuch as the accused No. 5 was, according to the complaint, appointed as correspondent for "The Sentinel", at Shillong, with effect from 22nd February, 1995, but he refused to work on regular basis and this fact was intimated to the complainant by the accused Petitioner's letter, dated 13th May, 1995, and in consequence thereof, the accused Petitioner used to work occasionally on verbal terms and conditions and for the work he undertook remunerations were paid to him.

8. From the above statements made in the complaint, it is clear that according to the complainant, there is no remuneration due to be paid to the accused Petitioner and his staging of demonstration on the accusation that he has not been paid his dues by the complainant company is false. Since, according to the complaint, the allegations made against the complainant company by, amongst others, the accused - Petitioner are false, it logically follows that according to the complaint, the accused Petitioner No. 5 is also responsible for making false accusations/imputations against the complainant company. According to the complaint, the said demonstration had been staged in pursuance of a conspiracy entered into by the accused, which resulted into lowering the image/reputation of the complainant company. The complaint, in question, did, thus, disclose commission of offences u/s 499 and 120A IPC.

9. In a situation, such as, the one that we have at hand, it cannot be said that the complaint, in question, did not contain any materials indicating commission of offences punishable u/s 500 read with Section 120B PC. Whether the allegations/imputations made by the accused against the complainant company were true or false is a matter, which can be decided and will be decided during the course of the trial, but until the trial is so held, it cannot be said that no case for issuance of process, as indicated hereinabove, has been made out by the complainant again, amongst others, the present accused Petitioner.

10. It is also of paramount importance to note that from the materials furnished by the complainant alongwith his complaint, it is clear that the moment the accused Petitioner staged demonstration alongwith his colleagues demanding payment of remuneration, the dispute did not remain confined between the employer and the employee. Apart from the fact that the demonstration so staged was published, what is worth noticing is that the news item, in question, dated 18th March, 1997 reads, inter alia, as follows:

...talking to this reporter on Monday at the site of the hunger strike, the striking scribes stated, "It is strange that the newspaper edited by the former President of Editors Guide of India is one of the organisations exploiting the scribes. Throwing all established rules to the wind, the management of The Sentinel group sacked us when we asked for our salaries". It is unfair.

11. The above contents of the relevant news item clearly show that amongst others, the accused Petitioner did aim at publicising the allegation/imputation

that the complainant company had not paid the dues of its employees and that the complainant company had been exploiting the scribes including the accused Petitioner. It cannot, therefore, be said, at this stage, albite tentatively, that the accused Petitioner did nothing do publicise the event and that the newspaper, in question, merely published the demonstration as a news item. Had the accused-Petitioner not reported to the correspondent of the "Meghalaya guardian" that they were being exploited by the complainant company, the situation could have, perhaps, been a little different. Thus, in any view of the matter, the contents of the complaint, in question, and the materials brought on record during the enquiry u/s 202 Code of Criminal Procedure did make out a prima facie case against the accused - Petitioner u/s 500 read with Section 120B IPC. Viewed from this angle, I do not see any merit in this revision and the same deserves to be dismissed.

12. In the result and for the reasons discussed above, this revision fails and the impugned order is maintained.

13. In order to ensure expeditious disposal of the complaint case aforementioned, the learned trial court is hereby directed to proceed with the matter expeditiously without according any adjournment unless the same becomes inevitable for reasons to be recorded, in writing, by the learned Court below.

14. Send a copy of this judgment and order to the learned Court below.