
(1972) 08 CAL CK 0017
In the Calcutta High Court
Case No : Criminal Rev. No. 84 of 1972

Sarala Birla

APPELLANT

Vs

Durga Prosad Shastri

RESPONDENT

Date of Decision : 28-08-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 439, 561A
Penal Code, 1860 (IPC) — Section 499, 500, 95

Citation : (1973) 1 ILR (Cal) 456

Hon'ble Judges : P.C. Borooah, J;Chanda, J

Bench : Division Bench

Advocate : Ajit Kumar Dutt, Prasun. Ch. Ghose and N.C. Shah, Opposite Party No. 1, for the Appellant;A.C. Mitra, Jaharlal Roy and Bhaskar Sen for Opposite Parties Nos. 2 and 3, for the Respondent

Judgement

P.C. Borooah, J.—The Petitioner Sm. Sarala Birla alias Mrs. B. K. Birla has filed this application under Sections 439 and 561A of the Code of Criminal Procedure for quashing certain proceedings pending against her in the Court of the Presidency Magistrate, Calcutta, u/s 500, Indian Penal Code, in case No. C/277 of 1972.

2. On a petition of complaint filed by the complainant opposite party No. 1, Durga Prosad Shastri, alias Shastriji, before the learned Chief Presidency Magistrate on January 20, 1972, the learned Chief Presidency Magistrate after examining the complainant issued process against the Petitioner u/s 500, Indian Penal Code. It was alleged in the said petition of complaint that the Petitioner Sm. Birla published an article in Hindi in the issue dated May 9, 1971, of Saptahik Hindusthan, a weekly magazine published by the Hindusthan Times Press, Connaught Circus, New Delhi. The article was entitled "Jai Shri Badri Vishal" and were the reminiscences of a journey to Kedar-Badrinath undertaken by Sm. Birla along with other members of her family in which the complainant opposite party Durga Prosad Shastri acted as caretaker. It was alleged that in the said article the complainant opposite party had been referred to and described as

an irresponsible person, a glutton, more anxious for his own choicest food than doing his duties, who roamed in dreamy land in poetic fantasy ignoring the responsibilities he was entrusted with, who behaved in such a manner as having no sense of responsibility and who was unreliable to act as the manager or caretaker of the party visiting the holy shrines of Badrinalhji and Kedarnathji. On the said petition of complaint process was also issued against the accused opposite party No. 2 Monohar Shyam Joshi, Editor of the Saptahik Hindusthan, and the accused opposite party No. 3 Ram Nandan Sinha, the printer and publisher of the said magazine.

3. Mr. Ajit Kumar Dutt, learned Advocate appearing on behalf of the Petitioner, has referred us to the petition of complaint and has drawn our attention to the English translation of the Hindi article which was annexed to the said petition and he has referred to certain passages which, according to the complainant opposite party, are defamatory. Mr. Dutt has submitted that Sm. Birla wrote the article as reminiscences of her journey to Kcdar-Badrmath and in that article she made reference to Shastriji, for whom she had deep affection and esteem, and she did not in any way intend to defame or injure his feelings. In fact, Sm. Birla wrote to Shri Shastri a letter which is annexed to the petition of complaint wherein replying to a letter dated June 29, 1971, written by Shri Shastri, she stated that-

the article does not even remotely make any defamation charges against you or anybody else. There was never any intention to hurt you in any way and I am sorry that a person like "you, with. whom we have been associated for many years and for whom we have every regard and affection, could at all take offence and write such a letter. I hope this letter will clear any misgivings that you may have.

4. Mr. Dutt submits that after Sm. Birla had written such a letter, the matter should have ended and on the petition of complaint process should not have been issued on such frivolous allegations.

5. Mr. Dutt has referred us to the decision of Lachhmi Narain Vs. Shambhu Nath, . He has also relied on a passage from the case of Sim v. Stretch (1936) T.L.R. 669. Mr. Dutt has also argued that before process can be issued u/s 500 of the Indian Penal Code, the offending words in the article must amount to an imputation which implies an accusation, allegation or insinuation.

6. Mr. Dutt has in conclusion submitted that the whole proceedings are frivolous and an abuse of the process of the Court and the proceedings should be quashed. Mr. A. C. Mitra, the Learned Counsel appearing on behalf of the accused opposite parties Nos. 2 and 3, has supported the arguments of Mr. Dutt. Mr. D, N. Ghose, the learned Advocate appearing for the State, also supports" Mr. Dutt"s argument.

7. The complainant opposite party No. 1, on the first day of hearing, was represented by certain learned Advocates. He then desired that- he would argue in person and the learned Advocates had retired from the case that day. Shri

Shastri has argued his case in person. Shri Shastri has referred us to the petition of complaint and has drawn our attentions to the English translation of the article "Jai Shri Badri Vishal" which is annexed to the petition of complaint. He has in particular referred us to the portions typed in capital letters which, according to him, are highly defamatory and were written by Sm. Birla with the ulterior object of bringing him down in the estimation of the public and of those who hold him in high regard. The offending passages referred to by Shri Shastri are his own translation in English and the passages he referred to are the following:

(a) Shastri had his own peculiar manners; (b) Then it was found that, as for him, he was coming on poetic fantasy; (c) He did speak very smartly "Yes Babu, fine Babu, very well Babul, I am just bringing them along. The very moment the Babu was out of sight, he must have come under (the influence of) poetic fantasy; (d) How could we know that all this delay was caused only on account of the poori and brinjal vegetable of Shastriji; (e) He again places order of khana. He ate leisurely and, having loaded his belongings in the dandeers, himself came along leisurely as if he was half asleep and/or intoxicated (Aram se jhumle jhumle aye). He would not allow them to go ahead.

8. Mr. Shastri also submits that the materials which are disclosed in the petition of complaint coupled with his submissions amply and prima facie make out the essential ingredients of the offence of defamation. He submits that as a charge u/s 500 of the Indian Penal Code has not yet been framed, the application made by the Petitioner is premature.

9. In the case of *Lachhmi Narain v. Shambhu Nath* (Supra) it was observed:

The first point we have to consider is whether the words complained of are in fact defamatory. In other words, whether they are capable of a defamatory meaning. In the words of Lord Selborne in *Capital and Counties Bank v. Henty and Sons*, the test is:

"Whether, under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libellous sense" or in the words of Lord O'Brien in *Keogh v. Incorporated Dental Hospital of Ireland*, we must:

Consider what might be conveyed by the notice to a reasonable, fair-minded man and not what might be inferred from it by a man of a morbid or suspicious mind.

We must also take notice of the words of Brett L.J. in the *Capital and Counties Bank* case that "it is unreasonable that where there are a number of good interpretations, the only bad one should be seized upon to give a defamatory sense to the document".

10. In the case of *Sim v. Stretch* (Supra) referred to above it was observed:

But to make an imputation which is based on the existence of facts unknown and not to be inferred from the words attacked is surely exactly to come under the

ban of Lord Esher in *Capital and Counties Bank v. Henty and Sons*: "It seems to me unreasonable that, when there are a number of good interpretations, the only bad one should be seized upon to give a defamatory sense to the document". It is not a case where there is only the choice between two reasonable meanings, one harmless and one defamatory. It is a case where there is only one reasonable meaning which is harmless and where the defamatory meaning can only be given by inventing a state of facts which are not disclosed and are, in fact, non-existent.

11. Section 499 of the Indian Penal Code reads as follows:

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.....

Therefore, the essential ingredient of Section 499, Indian Penal Code, is that an imputation has to be made or published concerning a person. The word "imputation" has been defined by Dr. Sir Hari Singh Gour in Penal Law of India as

a word of evil significance and implies the attribution of evil, the making of an accusation, allegation, insinuation or a charge against a person

12. We have gone through the English translation of the article written by Sm. Birla and which has been annexed to the petition of complaint. In our view, they are reminiscences of Sm. Birla of an account of her travel to Kedar-Badrinath in which the complainant opposite party acted as a caretaker. We have also carefully scrutinised the passages referred to by Mr. Shastri which, according to him, are defamatory. In our view, these passages are harmless and are written in a sense of jest or affection without any intention to malign or defame Sri Shastri. In our view, the passages referred to by Mr. Shastri do not amount to an imputation so as to come within the definition of Section 499, Indian Penal Code.

13. The learned Magistrate before issuing process has to satisfy himself that a prima facie case has been made out and he must apply his mind judicially and not act mechanically and issue process against the persons concerned just because a complaint had been filed. In the instant case, on the basis of the petition of complaint and the annexures no case, in our view, has been made out u/s 500, Indian Penal Code, and process should not have been issued by the learned Magistrate. Further, continuance of the proceedings would tantamount to an abuse of the process of the Court. If the learned Magistrate had considered the letter of Sm. Birla dated July 8, 1971, which has been annexed to the petition of complaint, the learned Magistrate would have realised that the accused Petitioner did not even remotely intend to make any defamatory observations against Sri Shastri and it was not her intention to hurt him in any way and that she was genuinely sorry that a person like him, with whom she had been associated for many years and for whom she had regard and affection, could at all take offence to such a publication. After this letter was written, in our view, the matter should have ended.

14. Further, Section 95 of the Indian Penal Code reads as follows-:

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

15. In pur view, this is a case which can appropriately be brought within the purview of Section 95 of the Indian Penal Code.

16. In the result, this Rule is made absolute and the proceedings pending against the accused Petitioner as well as against the accused opposite parties Nos. 2 and 3 before the learned Chief Presidency Magistrate are quashed.

Chanda, J.

17. I agree.