
(1978) 05 AHC CK 0021

In the Allahabad High Court

Case No : Criminal Misc. Case No. 776 of 1974

Satendra Kumar Gupta

APPELLANT

Vs

A.B. Shorewal

RESPONDENT

Date of Decision : 08-05-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 476, 482
Penal Code, 1860 (IPC) — Section 344, 406, 409, 420, 494
Uttar Pradesh State Legislature Proceedings (Protection of Publication) Act, 1974 —
Section 3, 3(1), 3(2)

Citation : (1979) ACR 21

Hon'ble Judges : M. Murtaza Husain, J

Bench : Single Bench

Advocate : D.C. Vidyarthi, for the Appellant;

Judgement

M. Murtaza Husain, J.—These nine applications u/s 482 Code of Criminal Procedure (new) have been filed by the applicants for quashing the proceedings of different criminal cases pending in the Court of Judicial Magistrate at Lucknow u/s 500 IPC and other sections of the Indian Penal Code. All these cases have arisen on the basis of different complaints filed by Sri. A.B. Shorewal, opposite party. The applicants of these applications are editors, printers and publishers of different newspapers, and also Chairman, Manager, Reporter etc., of different news agencies.

2. The opposite party Sri. A.B. Shorewal was formerly employed in the U.P. Police Service as Deputy Supdt., of Police. For some reason or the other he was placed under suspension. A Member of U.P. Legislative Assembly, namely Shri Sarvasukh Singh tabled certain questions in the Assembly eliciting details regarding suspension of the opposite party. While submitting reply to those questions an Hon'ble Minister of the U.P. Government namely, Shri Om Prakash Singh furnished certain informations about the opposite party to the House. One of the informations given by the Hon'ble Minister was that on 30-10-1969 the opp. party was found in suspicious circumstances near Pakistan Embassy. News

about those replies given by the Hon"ble Minister were flashed in different newspapers, namely, the Aaj, the Amar Ujala, the National Herald, the Nav Jiwan, the Swatantra Bharat, the Nav Bharat Times and the Pioneer. Information was gathered by the editors, printers, publishers and reporters of those newspapers from news agencies known as Samachar Bharti and Hindustan Samachar.

3. The contention of the opposite party in the different complaints filed by him against the applicants is that he was a highly respectable person belonging to a reputed family of Shorewals. He was a writer and poet and had published several books. He had contributed articles and poems to various papers and periodicals and used to broadcast his poems from All India Radio. He was honoured by the management of a fortnightly paper "Revolot" through appointment as its Honorary Chief Literary Editor. The opposite party was also associated with organisations like Lala Shital Pd. Shorewal Trust and a Girls Inter College of Etawah. He maintained that on account of malice, and in order to cause harm to the reputation of the opposite party, the Petitioners who were connected with different news agencies, flashed distorted news about replies given by the Hon"ble Minister Sri. Om Prakash Singh at the floor of the House and also suppressed the information given to the House by Shri Roop Nath Yadava, MLA and an Ex-Minister, whereby the position of opposite party stood clarified, and the Petitioners who were associated with newspapers referred to above had likewise published twisted news to cause harm to the reputation of the opposite party and suppressed publication of such news which clarified the position of opposite party. The opposite party thus maintained that the Petitioners were guilty of an offence u/s 500 IPC and other connected offences as detailed in different complaints. The learned Magistrate, in whose court the complaints were filed, perused the complaint's statement and documents filed by him and summoned the Petitioners to stand their trial u/s 500 IPC. The Petitioners have now come to this Court with these applications.

4. The first point urged on behalf of the Petitioners before me is that the complaints filed by the opposite party against them were barred by Section 3 of the U.P. State Legislature Proceedings (Protection of Publication) Act, 1974 which Act, inspite of its subsequent repeal was applicable to the aforesaid complaints.

Section 3 of the said Act runs as follows:

3. (1) Save as otherwise provided in Sub-section (2), no person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper or in respect of the supply by a news agency for publication in a newspaper of a substantially true report of any proceedings of either House of the Uttar Pradesh State Legislature, unless the publication is proved to have been made with malice.

(2) Nothing in Sub-section (1) shall be construed as protecting the publication of any matter, the publication of which is not for the public good.

A bare reading of the above section would reveal that it will apply to the publication in a newspaper of any proceedings of either House of U.P. State Legislature or in respect of news supplied by a news agency, provided that the said news contains a substantially true report of the proceedings and the publication is proved to have been made without malice and the published matter was for public good. Before coming to the conclusion whether or not the complaints filed by the opp. party against the Petitioners are barred by the above noted Section 3 of the said Act findings of fact are to be given on three points, namely (i) that the impugned publication contained a substantially true report of the proceedings of State Legislature, (ii) that the publication was not made with malice, and (iii) that the impugned publication was, or was not for the public good. Those findings of fact have to be given by the courts which are dealing with the impugned complaints. This Court, while exercising its inherent jurisdiction u/s 482 Code of Criminal Procedure, cannot enter into those questions of fact. The Petitioners would be well advised to take up the plea of the bar of Section 3 of the aforesaid Act before the trial court, because this Court cannot quash the proceedings of the impugned complaints at this stage unless the aforesaid findings of fact are given.

5. Secondly, it was argued on behalf of the applicants that taking the allegations of opposite party as they stand, no offence of defamation stands made out against the Petitioners. I do not agree with this contention also. In a charge u/s 500 IPC the prosecution has to make out the following ingredients:

1. Making or publishing any imputation concerning any person.

2. Such imputation must have been made-

(i) by words, either spoken or intended to be read; or

(ii) by signs; or

(iii) by visible representations.

3. Such imputation must have been with the intention of harming, or with knowledge or having reason to believe that it will harm the reputation of the person concerning whom it is made.

6. Copies of the complaints filed by the opposite party against the applicants have been annexed to the present application. Their perusal would indicate that allegations concerning all the above noted ingredients have been made by the opposite party in his complaints. If the opposite party succeeds in making out those allegations, offence of defamation shall stand made out against the Petitioners. Evidence in different cases has not been recorded by the Magistrate concerned as yet. It is neither possible, nor proper for this Court to express any opinion about the merits of the allegations made by the opposite party in his complaints, because those allegations are to be decided by the Court concerned. All that has to be seen by this Court at the present stage is whether or not the allegations made by the opposite party in his complaints, even if they are taken

at their face value and accepted in their entirety, constitute an offence against the applicants as alleged. Thus looked, the allegations of the opposite party in his complaints do make out an offence of defamation against the Petitioners. It has also been argued on behalf of the Petitioners that the complainant has made such persons as accused who had no direct concern with the publication of news items in question. The liability of different persons arrayed as accused in different complaints for the publication of the impugned news items is to be decided by the Court concerned when the cases are taken up for hearing. It is not possible for this Court to express any opinion on that point at this stage. I am, therefore, of the opinion that the case in question cannot be quashed on the ground that allegations of the opposite party in his complaints do not make out any offence against all or some of the applicants.

7. Lastly it has been contended on behalf of the applicants that prior to the institution of the complaints in question the opposite party had filed suits for damages on the basis of the same defamation, which forms the subject matter of the impugned complaints, against all the Petitioners in the Civil Courts and simultaneous pendency of civil and criminal cases against the Petitioners is bound to cause embarrassment to them and, therefore, the proceedings of the present complaints should be stayed till the decision of pending civil suits.

8. It has not been disputed on behalf of the opposite party that much prior to the filing of the present complaints the opposite party had filed suits for damages worth lacs of rupees against all the Petitioners in the competent civil court and those suits were pending when the present complaints were filed. It is true that those suits were filed *forma pauperis* but the fact remains that civil remedy of damages for the alleged defamation was already sought by the opposite party against the Petitioners when he filed the present complaints. Two questions arise for determination in this connection namely (i) whether or not embarrassment is being caused to the Petitioners on account of the continuance of simultaneous proceedings in civil and criminal courts with respect to one and the same subject matter and (ii) if there is such an embarrassment which of the two proceedings should be stayed.

9. Both the questions referred to above came up for consideration before their Lordships of the Supreme Court in *M.S. Sheriff Vs. The State of Madras and Others*, . In that case suits for damages for wrongful confinement were pending in the civil court and criminal prosecutions u/s 344 IPC for the same wrongful confinement were pending in the criminal court. It was observed by their Lordships that:

As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the

other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till every body concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered u/s 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.

10. It is clear from the above observations that where the same matter is being litigated in civil and criminal courts, proceedings in either court cannot be stayed only upon the consideration of possibility of conflicting decisions by the two courts, though the same can be stayed upon the consideration of likelihood of embarrassment to the Defendants and the accused on account of the simultaneous pendency of those proceedings. It is further clear from those observations that as between civil and criminal proceedings the criminal matter should ordinarily be given precedence, though no hard and fast rule can be laid down in that behalf and special considerations obtaining in any particular case may justify giving of precedence to civil proceedings over the criminal cases. There are, however, a large number of decisions of this Court as well as of other Courts wherein criminal proceedings were ordered to be stayed till the decision of civil proceedings if no serious offence said to have been committed by the accused was involved in the case, or where it was evident that after the institution of a civil suit recourse was had to criminal court for the purpose of black-mailing the Defendant or exerting pressure upon him for extracting money.

11. In *Emperor v. Mohan Singh* ILR All 522 Walsh, J. of this Court observed that:

Although transactions which involve civil liabilities may amount to criminal offences, and often do, so that the dividing line between the two in a discussion of the case is almost indistinguishable, the use of the criminal law, not for the purpose of punishing an offender or in the public interest, but as a means of exerting pressure to extract money from an agent, is to be discouraged.

Again in *Emperor v. Sudeshra* ILR All 562 Young, J. observed:

Persons having claims, often of a doubtful nature, frequently took criminal proceedings in the hope that the Defendant would pay up the amount rather

than face a criminal charge, but to use criminal court for enforcing a civil claim was highly improper and might almost amount to black mail.

In *Kanhaiya Lal Vs. Bhagwan Das*, civil and criminal proceedings were simultaneously going on wherein the question of forgery of a will was involved. Sulaiman, J. (as he then was) was of the opinion that criminal proceedings having been taken on a private complaint could not proceed and further observed that:

Had I not come to the conclusion that these proceedings should be quashed, I would have had no hesitation in saying that these proceedings ought to be stayed pending the disposal of the civil case. Obviously it would be highly undesirable that the same dispute should be allowed to be fought out in two Courts, namely, criminal and civil courts simultaneously.

12. The above cases were considered and followed by V.D. Bhargava, J. in *Bhagwandin v. Janak Lal* 1956 AWR 288 wherein a civil suit was already instituted on the basis of a Hundi and thereafter a complaint u/s 420 IPC was filed and it was observed by his Lordship that:

It has been held over and over again that it is not proper that both criminal and civil proceedings regarding the same matter should be allowed to continue side by side. This is particularly so, where there is no doubt that the criminal proceedings have been taken to exert influence for the withdrawal of the civil suit.

13. Even after the pronouncement of their Lordships of the Supreme Court in *M.S. Sheriff v. State of Madras* (supra) the question of stay of criminal proceedings on account of already pending civil suits came up for consideration before different Courts of the country and criminal proceedings were ordered to be stayed.

14. In *Ramnarain Singh Vs. Mahatam Singh*, a learned single Judge of Patna High Court after considering the abovenoted Supreme Court decision and other earlier cases observed that:

There is no hard and fast rule that a criminal case, pending decision in a civil suit, covering the same point, should necessarily be stayed or should not be stayed, and each case has got to be approached on its own facts. But as between the civil and criminal proceedings, the criminal proceedings should be given precedence over civil proceedings. Criminal justice should be prompt and effective, and the guilty should be punished for his offence against the law.

After making that observation his Lordship considered the category of cases wherein even criminal cases should be stayed on account of pendency of civil suit in order to avoid embarrassment to the Defendants and the accused, it was further observed that:

In a good many cases, however, where no serious offence is involved such as in the case of the criminal trespass or defamation, where the matter can be

investigated more fully and conclusively in the Civil Court, it may be desirable to stay as a rule the criminal proceedings pending the decisions in the Civil Court.

While both courts are equally competent it is well settled that the decision of the Civil Court is considered to be more thorough apart from the fact that it is conclusive and in certain contexts, it may be desirable to stay criminal proceedings pending decision of the civil suit. It is still more so where the prosecution is by a private party....

The above decision was followed in *Nandu Babu Vs. Rajendra Kumar Singh*, and criminal cases pending under Sections 406, 409 and 420 IPC were stayed pending the decision of the civil suits.

15. In *Musam Mia and Others Vs. Kishim Ali Mia and Another*, a criminal case u/s 494 IPC was stayed till the decision of the civil suit which was filed for a declaration about the status of the parties.

16. It follows from the above decisions that where civil and criminal proceedings with respect to the same matter are simultaneously going on, one of those proceedings can be stayed if the Court comes to the conclusion that the simultaneous pendency of the two proceedings is causing embarrassment to the parties concerned, but no hard and fast rule can be laid down as to which of those proceedings should generally be stayed. As a matter of fact expeditious disposal of criminal proceedings is to be given precedence over the disposal of civil suits so that criminal cases are decided when the events are still fresh in the public mind and the innocent should be absolved as early as possible, but there may be cases where considering the weight and binding effect of civil decisions it may be expedient in the interest of justice to stay criminal proceedings.

17. In the present cases the averments in the complaints filed by the opp. party against the applicants are exactly similar to the allegations made in the pauper applications which are to be deemed to be plaints of the suits after permission to sue as pauper is accorded. The civil suits were filed much prior to the present complaints. The questions of fact and law requiring consideration for awarding damages to the opposite party in the civil suits and for punishing applicants for defamation in the criminal cases are almost similar. Both the courts have to adjudicate upon the alleged defamatory nature of the impugned publication only on the basis of documentary evidence and not on oral evidence. Responsible editors, publishers, and respectable persons connected with different news agencies are arrayed as Defendants in the civil suits, and as accused in the criminal cases. They are bound to face embarrassment on account of simultaneous pendency of the two proceedings. It is, therefore, expedient in the interest of justice to stay one of the two proceedings. The offences involved in the criminal cases are not serious. The decision of the Civil Court on the questions whether or not the impugned publication amounts to defamation and Section 3 of U.P. State Legislature Proceedings (Protection of publication) Act, 1974 protects the persons responsible for that publication is expected to be more

thorough and conclusive. The filing of the impugned complaints by the opp. party much after the institution of the civil suits does not rule out the possibility of filing of complaints for harassing and pressurising the Defendants against whom civil remedy was already sought. In the particular Circumstances of the present cases it appears more desirable and expedient in the interest of justice to stay the criminal cases and not the civil suits.

18. I am, therefore, of the opinion that though it is not desirable to quash the proceedings of the criminal cases in question in exercise of the inherent jurisdiction of this Court, yet it is expedient in the interest of justice to stay the proceedings of all the criminal cases involved in these applications. I, therefore, allow these applications and order that proceedings of different complaint cases detailed in these applications shall remain stayed till the disposal of civil suits earlier filed by the opposite party against the applicants for damages on the basis of the same defamation which is involved in the aforesaid criminal cases.