
(2014) 04 PAT CK 0038

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 145 of 2013

Shivraj Singh Chauhan

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Constitution of India, 1950 — Article 15
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(3), 190, 197
Penal Code, 1860 (IPC) — Section 124(A), 124A, 153(A), 153(B), 153A
Prevention of Corruption Act, 1988 — Section 19(1)

Citation : (2014) CriLJ 2989

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Tuhin Shankar, Advocate for the Appellant; Ajay Kumar Sharma, AC to AAG-1, Advocate for the Respondent

Judgement

Aditya Kumar Trivedi, J.—Petitioner, who presently happens to be the Chief Minister of Madhya Pradesh, has prayed for quashing of FIR of Bettiah Town P.S. Case No. 380/2009 registered under Sections 124A, 153(A), 153(B), 181, 500, 504 IPC. Murad Ali, (O.P. No. 2) an Advocate had filed Complaint Case No. 2593 (C)/2009 alleging inter alia that he after reading "Hindustan" newspaper, "Dainik Jagran" newspaper dated 07.11.2009 came to know that Shivraj Singh Chauhan, Chief Minister of Madhya Pradesh made public speech that they will not allow any Bihari to be employed in the factory going to be established at Satna. It has further been averred that by such statement accused, Shivraj Singh Chauhan has contradicted the oath, he has taken on the eve of being elected as Chief Minister as well as has also caused/spread hatred against Biharis in contravention of constitutional mandate. It has also been averred that on the basis of race, religion, birth place, language, he had discriminated against the mandate of Constitution as well as such statement insulted the Biharis in its entirety. It has further been averred that by such insult he has provoked the Biharis causing breach of peace and tranquillity as well as to commit an offence.

2. The aforesaid complaint was sent to the concerned P.S. for registration and investigation of the case in terms of Section 156(3) Cr.P.C. by the learned CJM, West Champaran at Bettiah.

3. It has been submitted on behalf of petitioner that the aforesaid FIR suffers from mala fide as is evident from plain reading of the same. The same has been filed for gaining cheap popularity as well as wrongful gain. It has further been submitted that the aforesaid statement was never made by the petitioner at any occasion rather it happens to be distorted version which, after coming to the knowledge of petitioner had already controverted and the same has been filed as Annexure-2 series of the supplementary affidavit and the same happens to be November 6th, 2009. It has also been submitted that nothing has been brought on record to suggest that any factory has been installed at Satna by the State Government wherein one has been deprived of his employment being a Bihari.

4. It has also been submitted that the aforesaid news item happens to be not a press release of the State Government. Any news which is being collected and forwarded by correspondence or anybody else is published in the newspaper without ascertaining its reliability, authenticity, moreover, it passes through different tables attracting several cuts and patches according to status of the readers and so it cannot be said that whatever printed is the correct version. Moreover, it fell under the category of hearsay whereupon no reliance could be placed.

5. It has further been submitted that mere suggesting Bihari is not going to improve the status of complainant because of the fact that under such indication nobody can claim representing the unit unless and until is found segmentized and further disclosing the cause. It has further been submitted that instant case has been filed with political colour for extraneous consideration. Also put reliance on Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, , (1988) 3 SCC 319 : (AIR 1988 SC 1274), (1993) 3 SCC 109, (2010) 5 SCC 600 : (AIR 2010 SC 3196), (1993) 3 SCC 151 : (AIR 1993 SC 1348), (1998) 1 SCC 692 and 1974 Cri LJ 66.

6. Counter-meeting the submissions raised on behalf of petitioner, it has been submitted on behalf of AC to AAG-1 that the prosecution is maintainable in the background of the fact that the same happens to be in contravention of fundamental right of a citizen guaranteed under Constitution for which the State is under obligation to protect. The Constitution decry discrimination on account of sex, religion, caste, place of birth, race and further none of them will be subject to disability, liability, restriction or condition in terms of Article 15 of the Constitution of India.

7. As such, being a Chief Minister, petitioner has indulged in such kind of activity being in contravention of mandate of Constitution as well as happens to be penal and on account thereof, filing of complaint by Murad Ali is just, legal and proper. It has further been submitted that although, the statement of petitioner was

published invariably in all the daily news paper while the clarification has not been published and on account thereof, the feelings which the Biharis perceived due to earlier statement, still continue leading to hatred amongst the residents of Bihar as well as that of M.P.

8. It has also been submitted that the investigation is going on and the Investigating Officer has been directed to go to Satna for collection of evidence. By way of Annexure-1-A, statement of informant has been furnished. In spite of notice, O.P. No. 2 failed to appear.

9. The first and foremost point is with regard to reliability, acceptance of news paper reporting. In the case of Laxmi Raj Shetty and Another Vs. State of Tamil Nadu, , it has been incorporated as follows:-

"We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in S. 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under S. 81 of the Evidence Act to a newspaper report cannot be treated as proof of the facts reported therein.

26. It is now well-settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported.

10. Therefore, forming any kind of opinion adverse to the interest of petitioner is not at all found to be justifiable under the garb of the principle decided by the Hon"ble Apex Court referred above because of the fact that neither the name of reporter is there nor the date on which such statement was ever made moreso, in the background of the fact that before publication on 07.11.2009, its contradiction was already issued from Chief Ministers secretariat.

11. Apart from this, the most interesting theme is lacking of any source of with regard to installation of factory at Satna and further deprivation of an opportunity on the ground of birth place. In the aforesaid background, the present episode as flashed happens to be within the coverage of future imperfect. When the factory has not been established then as to how and under what circumstance and in what manner one should feel aggrieved thereby.

12. Now coming to the recognition of complainant being a Bihari, he found himself aggrieved thereby is not found tenable in the background of having his status not identifiable with regard to the statement made by the petitioner, even if so identified. The aforesaid issue has been properly explained in the case of Asha Parekh and Others Vs. The State of Bihar and Others, and the relevant para is 10 which is as follows:-

"10. It is well known that the essence of the offence of defamation consists in

calling that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow creatures and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed. The words or visible representations, therefore, complained of must contain an imputation concerning some particular person or persons whose identity can be established. If they contain no reflection upon a particular individual or individuals, but equally apply to others although belonging to the same class, an action for defamation will not lie. It goes without saying that the word "person" in Section 499 of the Code includes a company or an association or a collection of as well, as provided in Explanation 2 of Section 499, but the class of person attributed to must be a small determinate body. It is interesting in this connection to consider the case in *Government Advocate Vs. Gopal Bandu Das* where a newspaper had published certain libellous matters against two constables of Begunia Police Station in the Puri district. No constable in particular was named in that publication and the entire publication was absolutely false. In an action for defamation by two constables of the said police station against the printer and publisher of the newspaper Dawson Miller, C.J., observed as follows:-

"However reprehensible and morally unjustifiable the words complained of may be they must to be, actionable, contain an imputation concerning some particular person or persons whose identity can be established. An imputation against an association or collection of persons jointly may also amount to defamation within the meaning of the section but at the same time it must be an imputation capable of being brought home to a particular individual or collection of individuals as such. The article in question is not directed against the constables of the Begunia thana collectively so that they, as a body, could assert that each and all of them had been libeled . Nor can it be said that any two ascertained individuals have been the object of the attack. It is unnecessary that the person whose conduct is called in question should be described by name. It is sufficient if on the evidence it can be shown that the imputation was directed towards a particular person or persons who can be identified....."

Besides the above Bench decision of this Court being binding upon me, I am in respectful agreement with the law laid down in the case. Just as the constables of a particular police station formed an indeterminate body and thus not capable of being defamed, Advocates in general are incapable of being defamed.

13. Apart from this, neither Sections 124A, 153A, 153B, 182 of the IPC is made out because of the fact that from plain reading of the averments, it does not speak or suggest an intention to provoke disharmony, disorder or violence. The complaint also lacks the averment to the extent that the aforesaid news item was at the end of petitioner with the intention or knowledge that such an insult would provoke the aggrieved person to commit breach of peace or to commit an offence. Bare allegation of insult given without any of the fallouts as referred in the Section will not attract application of Section 504 of the IPC.

14. It is an admitted fact that petitioner happens to be a Chief Minister. Being a Chief Minister, he is a public servant. Being a public servant, he is found to be protected in terms of Section 197 of the Cr.P.C. This issue has been taken into consideration by a Constitution Bench in the case of *M. Karunanidhi Vs. Union of India and Another*, which is as follows:-

"49.....It is, therefore, clear that by virtue of the provisions contained in Article 167, the Chief Minister undoubtedly performs a public duty of the nature as enjoined by clauses (a) to (c) of Article 167. It is also clearly provided in the Constitution that the Chief Minister or the Ministers are entitled to salaries or allowances obviously in lieu of public duties that they perform. The salaries given to the Chief Minister or the Ministers are given from the Government funds, and, therefore, there will be no difficulty in holding that the Ministers are in the pay of the Government inasmuch as they receive their salaries, remunerations or wages from the Government. Mr. Venu Gopal, however, submitted that no analogy can be drawn between the constitutional provisions and the provisions contained in the Government of India Act because the constitutional position of a Chief Minister under the Constitution was not the same as under the Government of India Act where the Governor enjoyed vast and plenary powers and was not bound by the advice of the Council of Ministers as the Governor is under our Constitution. It is not necessary to probe into this aspect of the matter, because the Constitution clearly lays down that the Governor appoints the Chief Minister and being the appointing authority he is also the dismissing authority. We are not at all concerned in the instant case as to the circumstances under which the Governor can appoint or dismiss the Chief Minister. Once it is conceded that the Governor appoints the Chief Minister who is paid a salary according to a statute made by the legislature from the Government funds, the Chief Minister becomes a person in the pay of the Government so as to fall squarely within clause (12) of Section 21 of the Penal Code.

15. The maintainability of instant prosecution is also to be adjudged in the background of the fact that the complaint was filed before the learned Chief Judicial Magistrate, West Champaran at Bettiah incorporating Section 124(A), 153(A), 153(B), 181, 500 and 504 of the IPC. Section 500 falls under Chapter-XXI of the IPC and in the aforesaid background the competency of O.P. No. 2, Murad Ali as a complainant is found completely derecognized in terms of Section 199 of the Cr.P.C. For better appreciation the same is quoted below:--

199. Prosecution for defamation - (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Government of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction--

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect 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.

16. So from bare perusal of Section itself, it is evident that O.P. No. 2/ complainant does not happen to be competent enough to file complaint petition because of the fact that the Complainant/O.P. No. 2 did not disclose anything with regard to his own feeling nor he could be identified representing Bihari on mere connotation, moreover in the light of finding recorded in Asha Parekh and Others Vs. The State of Bihar and Others, .

17. Apart from this, in the case of Anil Kumar and Others Vs. M.K. Aiyappa and Another, , the Hon"ble Apex Court dealt with the function exercised by the learned lower court at the stage of passing of order in terms of Section- 156(3) of the Cr.P.C. under paragraphs-8, 9 and 10 which are as follows:--

8. We may first examine whether the Magistrate, while exercising his powers under Section 156(3) Cr.P.C., could act in a mechanical or casual manner and go

on with the complaint after getting the report. The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.

9. We will now examine whether the order directing investigation under Section 156(3) Cr.P.C. would amount to taking cognizance of the offence, since a contention was raised that the expression "cognizance" appearing in Section 19(1) of the PC Act will have to be construed as post-cognizance stage, not pre-cognizance stage and, therefore, the requirement of sanction does not arise prior to taking cognizance of the offences punishable under the provisions of the PC Act. The expression "cognizance" which appears in Section 197 Cr.P.C. came up for consideration before a three-Judge Bench of this Court in *State of U.P. Vs. Paras Nath Singh*, , and this Court expressed the following view:

"6.....And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, "no court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and "shall" makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance, it means taking

notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

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In State of West Bengal and another Vs. Mohammed Khalid and others, , this Court has observed as follows:

"It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out."

10. The meaning of the said expression was also considered by this Court in Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and Another, . The judgments referred to herein above clearly indicate that the word "cognizance" has a wider connotation and not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a precognizance stage and cannot be equated with postcognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 Cr.P.C. and the next step to be taken is to follow up under Section 202 Cr.P.C. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.

18. In General Officer Commanding Vs. CBI and Another, , it has been held.

"Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him.....If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab initio."

19. In the State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Hon"ble Apex Court has identified following categories wherein prosecution can be quashed and those are:- "(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) 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 grounds for proceedings against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide 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."

As such, FIR of Bettiah Town P.S. Case No. 380/2009 is hereby quashed. Petition is allowed.