
(1984) 11 GAU CK 0008
In the Gauhati High Court
Case No : Criminal Revision No. 50 of 1982

Shri Kirti Nath Hazarika and Another	APPELLANT
Vs	
The Public Prosecutor	RESPONDENT

Date of Decision : 30-11-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197(1), 198, 198B, 198B(1), 199(2)
Penal Code, 1860 (IPC) — Section 500, 501, 502

Citation : (1985) 1 GLR 218

Hon'ble Judges : B.L. Hansaria, J

Bench : Single Bench

Advocate : D.K. Bhattacharyya, S. Ali and D.R. Das, for the Appellant; C.R. Dey, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Hansaria, J.—An article in Assam titled "RANGALI TINGAT SURYYASTA" that is sun-set over Rangaliting, which is a village wherefrom the person mentioned in the Article came, was published in a local daily newspaper called "Dainik Asom" in its issue of 11th June, 1980. The article contained the following passage, inter alia,:

It is morning. With empty stomach Nripen and Munindra both with other members of the party assembled in the "Jalianabag" of Assam. Then time rapidly advanced. It was then half past seven by the clock-whole sky was plunged with the slogan-Jal Aai Asam". At that time the sky above Duliajan was clear. Notorious robber of modern times S.P. of Dibrugarh Sri Priya Nath Goswami alias Hara Nath Darogs, ordered us to go away from the place of picketing giving only fifteen minutes time. We answered his orders with the slogan "Jai Aai Asam" we will give blood but not oil.

(This is the translation given in the Annexure which accompanied the complaint).

2. A complaint was filed against the Petitioners under Sections 500, 501 and 502

of the Penal Code by the Public Prosecutor, Dibrugarh, for two descriptions of Shri Goswami in the aforesaid passage-(1) ""notorious robber of modern times" and (2) Haranath Daroga. While doing so, the learned Public Prosecutor exercised his power under Section, 199 (2) of the Code of Criminal Procedure after necessary sanction was granted by the State Government, as required by Sub-section (4)(b) of the aforesaid section. An objection was taken before the learned Sessions Judge regarding the maintainability of the complaint on two counts: first, the requirements of Section 199(2) were not satisfied; and secondly, the sanction was bad in the eye of law. The learned Sessions Judge has rejected both the contentions and has framed a charge u/s 500/501 against Petitioner No. 1 who is editor of the dally, and u/s 500/502 against Petitioner No. 2, the printer publisher. Feeling aggrieved, this Court has been approached principally u/s 487 of the Code of Criminal Procedure to quash the entire proceeding.

3. Shri Bhattacharyya has assailed the complaint, mainly, on the ground that the Public Prosecutor, Dibrugarb, could not have exercised his powers u/s 199(2) as the offence alleged was not in respect of the Superintendent of Police in question "in the discharge of his Public function". Something has also been stated by the learned Counsel on the question of non-satisfaction of the requirement of Sub-Section (4)(b). But, then, as the State Government did sanction the prosecution as appears from Annexure-III, it cannot be held that the prosecution was in violation of the aforesaid section. A perusal of the impugned judgment shows that the learned trial Court has gone into this question and has held that the sanction does not suffer from any legal infirmity On the attention of Shri Bhattacharyya being drawn to it. he confined his address to this Court on the first infirmity mentioned above.

4A. In so far as "on-fulfilment of the requirements of Section 199(2) is concerned, the theme of Shri Baattacharyya's argument is that the offending portion of the article had not defamed Shri Goswami in respect of his conduct in the discharge of his public function, It is stated by the learned Counsel that for Section 199(2) to operate any and every defamation would not do, the same must have rational relation to the public duty discharged by the incumbent. He refers in this connection to Muneshwara Nand Vs. State, As per this decision which had dealt with the parallel provision of Section 198B(1) finding place in the Old Code, if a public servant feels defamed in connection with his private function, be like any ordinary citizen, has no option but to make a complaint to the Magistrate under old Section 198, But if the defamation happens to be of the kind incorporated in Section 198B(1), two "alternative courses are open for taking criminal proceeding against the offender. Either the Public Proseoutor could file a complaint in the Court of Sessions, or the defamed public servant can himself approach the Magistrate, It has been further held that the phrase conduct in the discharge of his public fuctions" cover a vaster field than what is encompassed by Section 197(1). The result is that if there is any defamatory statement concerning the behavior of a public servant which could be reasonably

associated with the discharge or non-discharge of his official duties, even if not strictly necessary for that discharge, or relating to his conduct which bears such rational, though not pretended or fanciful, relation to the duty that it appears to have been displayed in the course of the performance or non-performance of the duty, it would immediately attract the operation of Section 198(Sic). To put it differently, the Bench further observed that if in the imputation the conduct of the official is made to appear as stemming from the "colour of his office" even if it may not be strictly justifiable by law, the provision of Section 198B will apply. On the other hand if the imputation alludes the behavior or conduct which relates to his life as a private citizen or which does not hinge on his public functions, the section will have no relevance.

5. Let us analyse the defamatory statements finding place in the aforesaid quoted portion of the article in the light of the above decision which has stated, if I may say so with respect, the law correctly. One thing which is apparent is that Shri Goswami was being criticised as the Superintendent of Police of Dibrugarh, This, however, is not decisive for the purpose at hand, inasmuch as, the allegation must have connection with certain action done by Shri Goswami in the discharge of his public function. As to the two offending remarks in the aforesaid quoted portion relating to Shri Goswami, it may be stated that according to the learned Sessions Judge the appropriate translation of the Assamese words "Kukbyat Nardasya" (the first defaming expression) would be "blood thirsty human beast". Shri Bhattacharyya would not, however, agree with this translation as he stated that in para 6 of the complaint itself this phrase has been translated as "modern ill-reputed rogue" whereas in Annexure-"A" to the complaint containing English, translation of the write up, the equivalent given is "notorious robber of modern times", As to the two qualifying phrases (which should be accepted in reference to the one mentioned by the learned Sessions Judge), they may have something to do with the way Shri Goswami had discharged his public function as Superintendent of Police, or it may not be quite so. Both the views seem reasonably possible. But then to have described him as "Haranath Daroga" who, as per paragraph 6 of the complaint, "was a person (Sic) who helped the Britishers in committing atrocities on the nationalists during the British rule in Assam" because of which he was held by the people of Assam in contempt, would definitely show that Shri Goswami was being criticised in respect of his conduct in discharge of his public function in as much as it was some function of Shri Goswami as Superintendent of Police which must have led the writer to compare him with Haranath Daroga. The mention of Shri Goswami was made in the article for his having given only 15 minutes time to go away from the place of picketing. If the article is read as a whole, it would seem that giving of only 15 minutes time was one of the reasons which had caused a number of injuries and even some deaths in the firing which subsequently followed. The writer has also stated that the type of movement which was being conducted at the relevant time in Assam against foreigners Duliajan congregation being a part of it, has akin to one fought by their forefathers to drive away the

English, and at such comparison of Shri Goswami with Hanuath Daroga assumes significance, and has to be regarded as connected with his public function dealt in the article.

6. I would, therefore, think that the complaint as filed was not in relation to any private function of Shri Goswami, nor did it relate to his life as a private citizen, but was connected with his conduct in the discharge of his public function. In this view of the matter, it cannot be held that the requirement of Section 199(2) were not satisfied in the present case. The complaint as filed cannot, therefore, be quashed.

7. In the result, the petition is dismissed. The stay order granted earlier stands vacated.