

(2008) 04 PAT CK 0043
In the Patna High Court
Case No : CR. WJC No. 382 of 2002

Vishesh Verma and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-04-2008

Acts Referred:

Citation : (2008) 04 PAT CK 0043

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—In spite of notice issued and validly served on respondent No. 5, the complainant, none has appeared on his behalf.

2. Petitioners have filed this writ application ostensibly for quashing the initiation of criminal prosecution against them on basis of a written complaint (Annexure-7) being Complaint Case No. 1180 of 2002 filed by respondent No. 5 in which the petitioners have been made accused persons. The complaint was filed on 12.08.2002 and on 13.08.2002, in terms of Section 156(3) of Criminal Procedure Code, the learned Additional Chief Judicial Magistrate, Siwan, referred the matter to the police for investigation who then on basis of the said complaint instituted Siwan (Town) P.S. Case No. 128 of 2002 on 22.08.2002, under Sections 500, 501 and 295(A) of the Indian Penal Code.

3. Petitioners, the accused persons, in the complaint are Producers, Director and Actors in a serial namely "Ram Khilawan C.M. "N" Family" and they have been charged for defamation and hurting religious sentiments. Apart from various submissions made in support of the writ application and as against the prosecution, the main submission has been that in terms of Section 199 Criminal Procedure Code only a person aggrieved or in other words person defamed was competent to institute prosecution in respect of offences punishable under Sections 500 and 501 of Indian Penal Code and undisputedly respondent No. 5, the complainant, neither claim nor professed to be such person rather specific assertions in the complaint was otherwise and in that view of the matter the learned Magistrate had no jurisdiction to entertain the complaint and send it for

investigation by Police on registering a First Information Report in terms of Section 156(3) Criminal Procedure Code. Both these offences are non-cognizable offences. So far as, Section 295(A) Indian Penal Code is concerned in the entire complaint there is no averment of facts constituting such an offence. The prosecution as commenced by the complaint is thus malafide in law and should not be and could not be permitted to be proceeded with.

4. As noted above in spite of notice complainant has chosen not to appear. However, a counter affidavit has been filed on behalf of the State which has mainly reiterated the allegations as made in the complaint and has stated that as the matter has been referred by the learned Additional Chief Judicial Magistrate in terms of Section 156(3) Criminal Procedure Code Police had no option but to register a case and proceed with the investigation. It is, further, stated in course of investigation except for the complainant who in his further statement has mainly reiterated the complaint no other witness came forward to be examined nor was the complainant able to produce any witness much less though named in the complaint and the Police could not trace them out as the complainant did not supply any address of those witnesses.

5. I have perused the complaint (Annexure-7), in question, the relevant part of the complaint are contained in Paragraphs 3, 6 and 11 which are reproduced hereinbelow:

(3) That the said pictures published in the Times of India created a curiosity in the mind of the plaintiff to see the serial "Ram Khillawan C.M. Family" and he viewed the said serial on 5.08.2002 very patiently and carefully and his impression at the end was that some evil minded person with some evil design especially intended to defame the said Laloo Pd. Yadav, Smt. Rabri Devi and their family and also to project through them a very bad and distasteful picture of the culture of Bihar through the language, wordings, phrases and talks put in the mouth of the character Ram Khilawan Yadav and Imriti Devi and one more character Puttan Yadav representing and resembling Sri Sadhu Yadav the Sala of Laloo Pd. Yadav and the whole Ministry headed by Smt. Rabri Devi as Chief Minister had practically been reduced to persons as creature of Laloo Pd. Yadav and the majority maintained by the Chief Minister Smt. Rabri Devi as Chief Minister in the legislature by means of jugglery, terrorism and bargain and illegal bribery of low level and thereby badly commenting on the representative character of the members of State Legislature.

(6) That the complainant aforesaid was very much shocked to find that the said serial makers involved in nefarious design of character assassination of eminent and beloved leaders of Bihar and the peacefully running Government of Bihar in making apparently so interesting pictures that the innocent people may be lured to witness the said serial in whole but which on realisation of the effect of the serial turns their mind with anger against it.

(11) That there are visual instance of not only undermining the recognised

religious sentility rather there is obvious manifestation of the fact that by utterances and vilifying words there is an intention to insult a particular religion or religious beliefs and this deliberate, malicious religion directed the outraging the religious feeling.

First coming to Section 295(A) Indian Penal Code which is quoted hereunder:

Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.- Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizen of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

6. For the purpose of this case, the underlying requirement of this section is hurting religious feelings. Even if what is stated in the complaint is accepted, there are no facts pleaded with regard to religion. At best, what is imputed is a particular caste was being subjected to ridicule in the opinion of the complainant. This in my view, is nothing to do with religion, as religion and caste are two different things on the face of it. No offence u/s 295(A) of Indian Penal Code is disclosed and the learned Magistrate at the first instance failed to consider this aspect of the matter because if no offence is disclosed then he had no jurisdiction in the matter much less in terms of Section 156(3) of the Code of Criminal Procedure. Moreover, the complainant does not even profess to be of that particular caste.

7. Here I may usefully refer to the judgment of Apex Court in the case of Ramesh Dalal Vs. Union of India (UOI) and Others, and in particular to para 13 of the said report. The case was dealing with banning of T.V. serial "Tamas" as it allegedly created hatred amongst different sects of people. The Hon"ble Court said thus:

Vivian, Bose, J. as he then was in the Nagpur High Court in the case of Bhagwati Charan Shukla v. Provincial Government AIR 1947 Nagpur 1 has indicated the yardstick by which this question has to be judged. There at page 18 of the report the Court observed that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. This is our opinion, is the correct approach in judging the effect of exhibition of a film or of reading a book. It is the standard of ordinary reasonable man or as they say in English law "the man on the top of a clapham omnibus.

8. Here I would also like to observe that a creative artist is free to project the picture of society or the political system or the person in politics in the manner he perceives. They can make pungent political satire of political leaders or system subject of course to decency, morality and public order. Legitimate

creation by a creative artist cannot be gagged or suppressed on the ground of intolerance of a section of super sensitive people not used to hearing dissent. This is the essence of democracy and we profess to live in a democratic country. People and more so, courts (including judicial magistrates) should realise this.

9. Now, coming to Sections 500 and 501 of the Indian Penal Code. From the averments as made in the complaint and quoted above the complainant himself specifically urges that it is not he who has been defamed, but, it is entirely someone else with whom he may have sympathy but certainly there is no common identity in any manner. The complainant does not profess that he is in any manner related to those persons or has been authorised by those persons to make the complaint. Nor does the complainant urge that those persons are covered by proviso to Section 199(1) of Cr. P.C. permitting him to lodge the case. Admittedly, those persons had not approached the Court with any complaint.

10. In this connection, reference may be made to Section 199 of the Code of Criminal Procedure which is quoted hereunder:

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 of 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.

11. The first requirement is that the complaint must be made by some person aggrieved by the offence and it is only on such a complaint that the Court can proceed because even though the offence may be disclosed but if the complaint is not by aggrieved person the Court would have no jurisdiction to take cognizance of the offence and if the Court has no jurisdiction to take cognizance of the offence then it cannot exercise any power much less in terms of Section 156(3) Cr. P. C. as that would be a futile exercise. I may mention that so far as offences under Sections 500 and 501 I. P. C. are concerned, they are non cognizable, bailable offences.

12. Thus, the question arises whether the respondent No. 5, the complainant can be said to be an aggrieved person as contemplated u/s 199(1) of the Code of Criminal Procedure for the offences as alleged. In the case of G. Narasimhan, G. Kasturi and K. Gopalan Ors. Vs. T.V. Chokkappa, , while dealing with Section 198 of the Old Criminal Procedure which is now Section 199, the Apex Court while dealing with the said Section has laid down that the said section (Section 199 of the new Code) lays down an exception to the general rule that a complaint can be filed by anybody whether he is an aggrieved person or not and modifies that rule by permitting only an aggrieved person to move a Magistrate in cases of defamation. Their Lordships held that the Section is mandatory, so that if a Magistrate who take the cognizance of an offence of defamation on a complaint filed by one who is not an aggrieved person the trial and conviction of the accused in such a case by the Magistrate would be void and illegal. That being the dictum of the Apex Court and if the trial and the conviction were to be void and illegal then in my view entertaining the complaint itself would be without jurisdiction. In such a situation, the complaint had to be thrown out and at the very inception. The Magistrate would be precluded from even exercising powers u/s 156(3) of the Criminal Procedure Code. But, the question remains as to whether the complainant, respondent No. 5, can be said to be a person aggrieved of defamation as certainly he was not defamed and the persons who are alleged to have been defamed have not moved the Court. This aspect of the matter has been dealt elaborately in the case of President and Directors of the Agricultural Produce Co-operative Marketing Society Ltd. Vs. M.K. Mohamed Ali and Others, . In that case certain statements were made against the President

and the Director of a Society. In stead of the President and the Director, the Society moved the criminal application. Their Lordships held that the society cannot be held to be aggrieved as there was no defamation in respect of the society and that being so the complaint was not maintainable by the society.

13. Similar view has been taken by the Gauhati High Court in the case of Smt. Aruna Asaf Ali and Others Vs. Purna Narayan Sinha, and in the case of Homen Borgohain and Others Vs. The Brahmaputra Valley Regional Handloom Weavers" Co-Operative Society Ltd., .

14. In the present case, from the averments as quoted above it could be seen that at best what can be said is that the complainant felt aggrieved because of some alleged defamatory statements were projected against persons who he idealized. The said complainant may genuinely be aggrieved or his feelings hurt but in law the action in respect of defamation being an action in personem, his complaint or complaint on his behalf was clearly not maintainable. It would have been a different matter if the persons who were allegedly defamed were to come forward and file a criminal complaint.

15. In view of the aforesaid, I am of the opinion that firstly no offence u/s 295(A) Indian Penal Code is disclosed and so far as Sections 500 and 501 Indian Penal Code are concerned, the complaint as laid by respondent No. 5, not being person aggrieved was not maintainable. Thus, in law the prosecution was malafide and as such was clearly an abuse of process of Court. That being the situation I am left with no alternative but to quash the entire prosecution including the complaint as laid to the Magistrate pursuant to which the F. I. R. was registered.

The writ application is thus allowed.