

i.Venkateswa Vs. State, Represented by Public Prosecutor,

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Court : Andhra Pradesh

Decided On : Jul-11-2013

Judge : Honourable Sri Justice C.Praveen Kumar

Appellant : i.Venkateswa

Respondent : State, Represented by Public Prosecutor,

Judgement :

HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR CrI.P. No.4346 of 2010 dated:11-7-2013 I.Venkateswarlu ..Petitioner State, represented by Public Prosecutor, High Court of A.,P., Hyderabad, and another...Respondents Counsel for the petitioner: Sri O.Manohar Reddy Counsel for the first respondent: Public Prosecutor Counsel for the second respondent: Sri Nazeer Khan ?.citations:

1. 2001 CrI.L.J.

3505(1) 2 2006(2) ALT (crl) 224 (SC) 3 (2009) 3 SCC3984 2006(2) ALD (crl) 243 (AP) 5 2012(1) ALD (crl) 744 (AP) THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR CrI.P.No.4346/2010

ORDER

: The petitioner who is an accused in CC No.130/2010 on the file of Judicial Magistrate of First Class, Bhainsa, filed the present Criminal Petition under Section 482 Cr.P.C., seeking quashing of proceedings in the said CC, which was taken on file against him for an offence punishable under Section 500 IPC.

2. The allegations in the complaint are as follows: The second respondent was Ex-Municipal Chairman of Bhainsa Municipality for two consecutive terms i.e. from 1995 to 2000 and 2000 to 2005. Subsequently, the post of Municipal Chairman of Bhainsa Municipality was reserved to the BC (General). The complainant who was previously the Chairman for two terms contested for ward No.10 of Bhainsa Municipality in 2005 elections as the post of the Chairman was reserved for BC (General). The petitioner who was working as Inspector of Police, Bhainsa earlier worked in Adilabad and has knowledge about the elections to Bhainsa Municipality, more particularly about the office of the Municipal Chairman of Bhainsa Municipality. It is alleged that the accused was also aware about the position held by the second respondent in AIMIM party. It is alleged that the accused was not fair while investigating matters relating to cases where Muslims are involved. One of the reasons for developing grudge against the second respondent is that he objected against registration of Cr.No.129/2009 against the persons belonging to Muslim community. It was a case where looting and damage to property took place at a Nursing Home in Bhainsa, wherein 33 persons mostly belonging to a particular community were shown as accused. In the month of January, 2010, the second respondent lodged a report against one Dr. Dasha Goud, DHMS, who was running nursing homes, namely, Sri Tirumala Nursing Home and Sri Satya Sai Emergency Hospital at Bhainsa. It is alleged in the said report that Dr. Dasha Goud used to perform ultra sound, scanning and surgeries i.e., appendicitis, abortions, sex determination test, hydrosol and also giving anesthesia without any authority or licence. He was also alleged to have indulged in sex determination tests and termination of pregnancy without obtaining any registration under Andhra Pradesh Private Medical Care Establishment Act, 2002. Basing on these allegations, a case in Cr.No.7/2010 came to be registered at Bhainsa Town Police Station for an offence punishable under Section 420 IPC and section 15(3) of the Indian Medical Council Act, 1956. The police investigated into the said matter and referred the case as false. In the final report filed by the police it was stated that the second respondent is trying to capture the post of Municipal Chairman in the forthcoming elections and for that purpose only he is utilizing his community by attacking Doctors in all possible routes and trying to bring down them to his route, which according to the respondent is said to be defamatory in

nature. Basing on these allegations, a private complaint was filed which was taken cognizance.

3. The learned counsel for the petitioner mainly submits that even accepting the allegations in the charge sheet to be true, no offence is made out. According to him, the averments made in the final report are based on the statements recorded during the course of investigation and since the act of the petitioner was in discharge of his official duty, no prosecution can be initiated except with the previous sanction of the State Government. He would further contend that the petitioner is protected under exception (3) of section 197 Cr.P.C., and as such continuation of proceedings against him is an abuse of process of law.

4. On the other hand, the learned counsel for the second respondent relying upon the judgment of the Apex Court contended that the act of the petitioner cannot be said to be in discharge of his official duty and it is no part of his duty to make allegations against the second respondent when he is very well aware that the second respondent is not eligible for the post of Municipal Chairman. According to him, the plea of good faith said to have been taken is a question of fact, which has to be decided during the course of trial.

5. The first question that falls for consideration is whether the petitioner can avail protection under section 197 Cr.P.C., 6. The legislative mandate engrafted in sub-section (1) of Section 197 debarring a Court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government touches the jurisdiction of the Court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code; ".any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty.". The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of

sanction would arise under Section 197, unless the act complained of is an offence, the only point for determination is whether it was committed in the discharge of his official duty.

7. The learned counsel for the second respondent relied upon the decision of the Supreme Court in P.K. PRADHAN V. STATE OF SIKKIM¹ to substantiate his plea. It was a case where the State Cabinet of Sikkim decided to implement 36 Rural Water Supply Schemes in the State of Sikkim under minimum needs programme. While approving the above proposal the Cabinet specifically decided that the work worth more than Rs. 1,00,000.00 shall be put to open tender while works below Rs. 1,00,000.00 shall be executed through Panchayat nominees. The approval of the State Cabinet was communicated to the concerned Department for necessary follow up action. It was alleged that when the matter was being processed, Shri Nar Bhadur Bhandari, the then Chief Minister of Sikkim, Shri P.K. Pradhan, the then Secretary, Rural Development Department, Government of Sikkim who is the appellant in this appeal along with fifteen contractors, named in the First Information Report, entered into a criminal conspiracy with the object of securing contract works in favour of the said contractors by corrupt or illegal means or by otherwise abusing their positions, and got the works awarded in favour of contractors aforesaid at low rates thereby causing pecuniary advantage and corresponding loss to the State of Sikkim. Under those circumstances, a first information report came to be registered against them for offences punishable under Section 120-B IPC r/w 5(2) r/w 5(1)(d) of the Prevention of Corruption Act, 1947 which correspond to Section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. After filing of a charge sheet, preliminary objection was raised before the Special Judge to the effect that the prosecution under Section 120-B of the Indian Penal Code read with Section 5(2) and 5(1)(d) of the 1947 Act cannot be continued in the absence of sanction under Section 197 Cr.P.C. The Special Judge by his order dated 17/11/1998 rejected the preliminary objection and held that no sanction was required. Challenging the aforesaid order, the appellant and the Shri Nar Bahadur Bhandari moved Sikkim High Court by filing separate revision applications, while dismissing the said petition the Court held that no sanction under Section 197 of the Code was required. Aggrieved by the same, the appellant preferred the criminal appeal. The Apex Court after

referring to Amrik Singh v. State of Pepsu, (AIR 1955 SC309 Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan, (AIR 1998 SC1524 and Matajog Dobey V. H.C. Bhari (AIR 1956 SC44 held ".that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 Cr.P.C., the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required.

8. In SANKARAN MOITRA v. SADHNA DAS², the Apex Court after referring to various authorities held as under: ".40.From the aforesaid decisions, in my opinion, the law appears to be well settled. The primary object of the Legislature behind Section 197 of the Code is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter under Section 197 of the Code. In other words, protection afforded by the said section is qualified and conditional.

9. CHOUDHURY PARVEEN SULIANA V. STATE OF W.B³ was a case where the appellant herein filed an application before the Chief Judicial Magistrate, Murshidabad, alleging commission of offences by the respondent No.2 and another for offences punishable under Sections 387and 504 r/w 34 IPC which came to be registered as C.R. Case No.543 of 2005. In the aforesaid complaint it was alleged that on 9.

11. 2005 Samiui Choudhury was shot at near his house and thereafter he was admitted at Behrampore New General hospital. It was also alleged that on the pretext of conducting investigation the respondent No.2 and others used to come

to the house of the appellant, threatened her husband and wanted the husband of the appellant to make a tutored statement. They even tried to obtain his signature on a blank paper. Being aggrieved by the order taking cognizance the respondent No.2 moved the High Court under Sections 397, 401 read with Section 482 Cr.P.C. The main ground of challenge was that being in the employment of the State Government, he enjoyed the protection of Section 197 Cr.P.C. and that no Court could take cognizance of the offence except with the previous sanction of the State Government. This plea was accepted by the High Court and the proceedings against him were quashed. Aggrieved by the same the aggrieved party filed an appeal before the Supreme Court. The Apex Court held that ".it was no part of his duty to threaten the complainant or her husband to withdraw the complaint. In order to apply the bar of Section 197 Cr. P.C. each case has to be considered in its own fact situation in order to arrive at a finding as to whether the protection of Section 197 Cr. P.C. could be given to the public servant.

10. Similar view was taken by this Court in T. K. RAMAMANI V. AKKALA RAMA SAIBABA⁴.

11. The broad legal principle which emanates from the above decisions is that if the acts complained are of such a nature that they are so integrally connected with the duties attached to the office and which are inseparable from them, then sanction under section 197(1) would be necessary. But if there is no reasonable connection between acts and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. It would now be proper to see whether the acts of the accused are defamatory in nature and if so whether sanction under Section 197 Cr.P.C., is required to prosecute him.

12. The question is whether the averments made in the final report filed by the petitioner in Cr.No.7/2010 of Bhainsa Town Police Station, prima facie satisfy the essential ingredients of defamation.

13. Section 499 IPC defines 'defamation' and it is thus: ".499. Defamation.- 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

intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person. Explanation 1.-It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives. Explanation 2.-It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. Explanation 3.-An imputation in the form of an alternative or expressed ironically, may amount to defamation. Explanation 4.-No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

14. The essential ingredients of defamation are:

1. Making or publishing any imputation concerning any person; 2) Such imputation must have been made by (a) words, either spoken or intended to be read; or (b) signs; or (c) visible representations; 3) Such imputation must have been made with the intention of harming or with knowledge or reason to believe that it will harm the reputation of the person concerning whom it is made.

15. In order to establish good faith it has to be first seen the circumstances under which the defamatory matter was written or uttered; Secondly, whether there was any malice; Thirdly, whether the accused made any inquiry before he made the allegations; Fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability to show that the accused acted in good faith.

16. The contention of the learned counsel for the petitioner that the defamatory accusations contained in the final report do not amount to publication and that they are not accessible to anyone other than the parties to the proceedings cannot be accepted. The contents of the final report were made known not only to the advocates appearing for the parties, but also to the typist who typed the final

report in the police station, Public Prosecutor, police and also to the advocates who will be present in the court at the time when the matter is heard. The imputations made in the final report touching the integrity, honesty and patriotism of the complainant are in my considered view prima facie defamatory in nature. Therefore, the contention that the imputations in the final report were never put to circulation and it was between two individuals cannot be accepted. The said view is fortified by a judgment of this court in VANIPALLI VEERA VENKATA SATYA HARISCHANDRA PRASAD V. S. RAMESH⁵ wherein this court dealing with the averments made in a bail application held that the same would amount to circulation.

17. The contention of the learned counsel for the petitioner that witnesses who were examined during the course of investigation have described the complainant as the person who was trying to capture the Municipal Chairman post in the forthcoming elections and for that he is utilizing his community people by attacking on Doctors in all possible routes is without any material. No material ie., the statements of witnesses recorded by the petitioner during the course of investigation are placed before the court to substantiate their plea. Unless the said statements are looked into, it cannot be said that the petitioner has acted in good faith by reproducing the version of the witnesses recorded by him during the course of his investigation. There are no reasons to accept the version of the petitioner that he acted with care and caution, that he conducted an enquiry before making the allegation and that there is preponderance of probability to show that he acted in good faith. Therefore, the circumstances under which the defamatory matter was written or uttered have to be enquired into during the course of trial.

18. In the absence of any material to show that the averments in the final report which are alleged to be defamatory in nature are based on the statements of the witnesses recorded by him during the course of investigation, sanction under section 197 Cr.P.C., is not necessary to initiate prosecution against the petitioner. Further, the sworn statements of the witnesses recorded at the time of taking cognizance of the matter would corroborate the version of the complainant. Hence, the truth or otherwise of the said allegations have to be enquired into during the course of trial.

19. Accordingly, the Criminal Petition filed for quashing of the proceedings in CC No.130/2010 on the file of Judicial Magistrate of First Class, Bhainsa, is hereby dismissed. However, the request of the learned counsel for the petitioner seeking dispensation of the presence of the petitioner can be acceded to for the reason that the petitioner who is Inspector of Police is not working at the said place now. The same is not objected to by the counsel appearing for the second respondent. In view of the same, the presence of the petitioner on every date of adjournment in CC No.130/2010 on the file of Judicial Magistrate of First Class, Bhaisa, is dispensed with except on the dates when his presence is required by the court.

_____ C.PRAVEEN KUMAR,J Dt.11-07-2013

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