

Ghulam Rasool Choari Vs. the State

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Court : Allahabad

Decided On : May-02-1967

Reported in : AIR1968All265

Judge : S.D. Khare and ;Yashoda Nandan, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 196 and 537; Indian Penal Code (IPC) - Sections 124A

Appeal No. : Criminal Appeal No. 2791 of 1963 connected with Criminal Revn. No. 351 of 1964

Appellant : Ghulam Rasool Choari

Respondent : The State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Suresh Narain Mulla, Adv.

Disposition : Appeal and Revision dismissed

Judgement :

Yashoda Nandan, J.

1. Cr. A No2791 of 1963 has been filed by Ghulam Rasool against his conviction under Sections 124A and 505 I.P.C and sentences of 6 months R.I. and three

months' R. I. under the two counts respectively. The learned Sessions Judge, Agra, has ordered the sentences to run concurrently. The connected Cr. R. No. 351 of 1964 by the State of U P is directed against the same judgment praying for enhancement of the sentences awarded against Ghulam Rasool. Since the appeal and the revision are directed against the same judgment we propose to dispose them off by a common judgment.

2. Ghulam Rasool was admittedly the Editor, Printer and Publisher of an Urdu Weekly 'Ehsas' having its office at Agra. According to the prosecution case, this paper is widely circulated in Agra, Ferozabad, Mainpuri, Shikohabad and Etawah. In the issue of Ehsas dated the 26th June, 1962 Ghulam Rasool (hereinafter referred to as the appellant) printed and published an editorial article under the caption 'Hussain Nam Hai Har Khubiye Hidayat Ka' and circulated the same in the public. The prosecution alleged that this article brought and did seek to bring into hatred and contempt and excited dissatisfaction towards the Government of the Union of India as established by law. It is also alleged that this article induced or attempted to induce the Muslims of India in general and those in Kashmir in particular to commit offences even by resorting to violence against the State and public tranquillity. In this article the Government of India was described as tyrannical and was alleged to have imposed a tyrannical rule over Kashmir maliciously through corruption, bribery and the bayonets of the Indian Army. The article, it was claimed, exhorted the Muslims to sacrifice everything and undergo all sufferings and agonies and to draw inspiration from the example of Hussain, the martyr of Karbala. The article further invoked Allah to bestow upon the Muslims strength, understanding and wisdom to save Kashmiri Muslims from the tyranny and the authoritarian rule of the Indian Government. It was alleged by the prosecution that this article was published during the crucial period when Kashmir was being debated in the Security Council and when the Indian Government sent a note of protest against the talks going on between Pakistan and China regarding the Sino-Pakistan agreement to locate and alter their common border in the occupied areas of Jammu and Kashmir. It is further alleged that the abovementioned article was published and circulated during the critical period of Moharram in order to make a strong appeal to the Muslims and to incite communal fanaticism amongst the Muslims. According to the prosecution case, the intention

of the appellant was to bring or attempt to bring into hatred or contempt or excite and attempt to excite disaffection towards the Government of India so that the tranquillity of the State may be disturbed and the people may commit violence and offences against the Indian Government.

3. On the publication of the abovementioned article. P. W. 1 Sher Pal Singh, Head Constable of the Local Intelligence Unit came to know of the abovementioned objectionable article on the 27th June, 1962. He made an entry in this regard in the information register. On this report, Sri R. S. Misra, Inspector Incharge, ordered the Senior Sub-Inspector Sri R. N. Bhot Rai to look into the matter. Sri R. N. Bhot Rai, who was examined as P. W. 2, obtained a copy of the Ehsas weekly dated the 26th June, 1962 and informed the S.S P and the District Magistrate through his confidential report dated the 30th June, 1962. In a supplementary issue of Ehsas, the appellant published his explanation about the article in question and this issue was also sent to the District Magistrate of Agra, P. W. 4 Sri G. S. Sial. Sri Sial wrote to the Government for the prosecution of the printer and publisher of the Ehsas weekly. The Government of Uttar Pradesh accorded the sanction for the prosecution of the appellant under Section 124A of the Indian Penal Code. Sri Sial also accorded sanction for the prosecution of the appellant under Section 505 I.P.C. in pursuance of these sanctions. Sri R. N. Bhot Rai, Senior Sub-Inspector, Local Intelligence Unit, Agra, filed a complaint which led to the prosecution and conviction of the appellant.

4. The appellant admitted that he was the Editor, Printer and Publisher of the Urdu weekly Ehsas. He, however, contended that the paper was not circulated outside Agra city. It was also stated that the article in question published in the Ehsas weekly dated the 26th June, 1962, was the reprint of an article of Faizan, a newspaper of Pakistan and that it was not his editorial. The circulation of the paper was admitted. The appellant explained that he had published the said article in order to criticise it and that it did not express his views. He alleged that he had been implicated on account of personal enmity and that his enemies had conspired with Sri Bhot Rai and had got the complaint filed. He further stated that on the 28th June, 1962, he brought out a special supplement of the Ehsas wherein he referred to the article in question as having been published in the Faizan

newspaper to clarify his position. He went on to state that he was a loyal citizen of India and that from 1957 in more than a hundred publications of Ehsas he had affirmed that Kashmir was an indivisible part of India. In his statement before the committing Magistrate, the appellant stated that the article in question was not an editorial by him and he had published it with the intention of criticising it, but either on account of some failure in the press or some other mistake there had been omissions to refer the article as a reprint from the Faizan. He examined in defence one Dharmvir Sisodiya, a Clerk in the District Information Office, Agra.

5. After considering the entire evidence on record, the trial court arrived at the conclusion that the impugned article had been published deliberately by the appellant and not inadvertently or by mistake. In the result, as already stated, the learned Civil and Sessions Judge, Agra, convicted the appellant for offences under Sections 124A and 505, I. P. C.

6. It was firstly contended by the learned counsel appearing for the appellant that while granting sanction for the prosecution of the appellant under Section 124A I. P. C. in exercise of the powers under Section 196 Cr. P. C. the Senior Superintendent of Police, Agra, had been specifically directed to institute a complaint against the appellant in a court of competent jurisdiction and hence the complaint filed by Sri R. N. Bhot Rai who is merely a Sub-Inspector of the Local Intelligence Unit was without authority and on the basis of such a complaint the court had no jurisdiction to proceed to try the appellant under Section 124A I.P.C. We are of the opinion that there is no merit in this contention.

7. The question for consideration is as to whether the complaint which the learned Sessions Judge entertained was complaint made by order of or under the authority from the State Government. The answer in the present case, in our opinion, must be in the affirmative. When it was stated in the order of sanction that the Senior Superintendent of Police, Agra, was directed to 'institute a complaint against the appellant' it could not have been the intention of the State Government that the ministerial task of signing the complaint must be done by the Senior Superintendent of Police himself. The Senior Superintendent of Police, Agra, was directed to institute a complaint merely because he was the head of the police

administration of the district There is no suggestion that the Senior Superintendent of Police is not directly or indirectly responsible for the prosecution of the appellant. P. W. 2 Sri R. N. Bhot Rai, who actually signed the complaint clearly stated that he had filed the complaint under orders of the Senior Superintendent of police, Agra. In this view of the matter, it is clear that the complaint for the offence under Section 124A I. P. C. cannot be held to be without authority. It was clearly open to the Senior Superintendent of Police to institute the complaint through a police officer who was an executive subordinate. No authority was brought to our notice in support of the submission made by the learned counsel for the appellant. The only case which apparently supports thp submission advanced on behalf of the appellant is Reg. v. Vinayak Divakar, (1871) 8 Bom HC Cr. 32. The facts of that case are however, clearly distinguishable. In that case one Vinayak Divakar, who was a District Deputy Magistrate in Khandesh, was prosecuted under Section 161 I. P. C. The sanction for the prosecution of Vinayak Divakar was in the following terms:

'There appears to be sufficient prima facie evidence to iustify the suspension of the District Deputy Magistrate until he can clear himself of the accusations which have been made against him The Right Honourable the Governor in Council is, therefore, pleased to direct that Vinayak Divakar be suspended from office, and to sanction, under Section 167 Cr. P. C. his prosecution, before the Magistrate of the District of Khandesh, on such charges as Mr. Campbell may be prepared to prefer against him. The inquiry should be conducted by Mr. Ash burner in person, and not delegated to any other person, and before the commencement of the proceedings the accused Magistrate should be furnished with copies of the charges, and list of the witnesses by whom they will be supported, and allowed full opportunity for the preparation of his defence.'

The trial court convicted Vinayak Divakar and his conviction was upheld in appeal. The prosecution was conducted by one Sri Kashinath Mahadev Thathe. Mamlatdar of Dhulia and Mr. Campbell's name did not appear on the record sent by the Magistrate, nor did it appear that Mr. Campbell lodged any complaint or took any part in the proceedings. It was contended before Westropp. C. J. who heard the revision, that there had not been a compliance with the Government

Resolution of the 12th December, 1870 which gave sanction to Mr. Campbell to prefer any charges that he may think proper against Vinayak Divakar and there was nothing on record to show that Mr. Campbell did prefer any complaint whatever against him. On the contrary, it appeared from the record that at one time Mr. Campbell had made some inquiry and then to have dropped all further proceedings. On the terms of the order of sanction, it was held by the learned Chief Justice.

'That Resolution selects the principal Magistrate of the District as the person before whom the prisoner is to be tried, and also selects Mr. Campbell, a member of the Civil Service, and a Magistrate of full power in that district, as the gentleman who was to bring the charges.'

It was further held that.

'It is reasonable to suppose that there must have been some special intent on the part of the Government in nominating this gentleman to bring these charges. This was manifestly a case of importance, the prisoner himself being a Full Power Magistrate of considerable standing in the Presidency and we can very well understand why Government should specially name a gentleman of character and position to select the instances upon which the prosecution should be brought, and to make the complaints before the Magistrate. It could not have been the intention of Government that any official, or other person who so pleased, should be at liberty to bring a charge of corrupt practices against Vinayak Divakar. It would have been singular if there had been any such intention and the careful language of this Resolution satisfies us that there was not. and that the intention of the Government was that a gentleman of a certain standing should be their delegate to select the cases, if any, upon which the prosecution should be rested.' On the terms of the Order and taking into account the background and the circumstances of the case it was held that it was the intention of the Government that the complaint be filed by Mr. Campbell and by no one else.

8. The above-mentioned decision was explained and distinguished in *In re, Batliwala*, 39 CrL. LJ 938 : (AIR 1938 Mad 758). In this Madras decision, paragraph 2 of the Order of sanction under Section 196 Cr. P. C. was as follows:

'The Deputy Inspector-General of Police, Railways and C.I.D. is requested to depute an officer of the Special Branch, C.I.D. of the rank not lower than that of Inspector of Police, to prefer a complaint in the Court of the District Magistrate of Nellore.'

In consequence of this order a letter was issued to Ayyasami Naidu Avergal, Inspector of Police, Special Branch, C.I.D. authorising the officer to prefer a complaint against. Batliwala in the court of the District Magistrate of Nellore. The letter was signed not by A. F. Bulkley, Esq., Deputy Inspector-General of Police, Railway and C.I.D., Madras, but by Mr. Colebrook, Superintendent, Special Branch, C.I.D. not as such but 'for Deputy Inspector-General of Police, Railways and C. I. D. ' It was contended before Horwill, J., who heard the appeal in the Madras High Court, that the prosecution was not filed in accordance with the order sanctioning the prosecution, inasmuch as the Circle Inspector who filed the complaint was not deputed by the Deputy Inspector-General of Police, C. I. D. as required by the sanction order but by the Superintendent Special Branch. This contention was repelled and it was held that Mr. Colebrook had signed the letter authorising the filing of the complaint on behalf of Mr Bulkley, In the alternative, it was held that even if it was Mr. Colebrook and not Mr. Bulkley who deputed Mr. Ayyasami Naidu to file the complaint it could not be held that the complaint was not filed properly. Interpreting the order of the Government, it was held that

'The order of the Government contained merely a request to depute a certain officer of the special Branch. C. I. D not below the rank of inspector, to file the complaint. It is clear from the order that the Government had no intention that, only an Inspector of Mr. Bulkley's choice should file the complaint He was ordered to depute the Inspector because he was the head of the C. I. D.'

9. In the instant case also the Senior Superintendent of Police was directed to institute a complaint merely because he was the head of the district police and in our opinion it was not the intention of the State Government that the complaint should be signed by him personally.

10. In any view of the matter, we are of the opinion that the filing of the complaint by Sri Bhot Rai Senior Sub-Inspector, L. I. U., was merely an irregularity curable

by Section 537 Cr. P. C. Section 196 Cr. P. C. reserves to the State Government the power of determining whether cognizance shall be taken by the court of any of the offences enumerated in that section. It is not contended that there was no valid sanction for the prosecution of the appellant for an offence under Section 124A I. P. C and when the question is only of the machinery for the institution of the proceedings and not of the mischief which Section 196 is designed to prevent, in our judgment it is a mere irregularity covered by Section 537 of the Cr. P. C. and not an illegality which would vitiate the proceedings.

11. It was next contended that the conviction of the appellant under Section 505 I. P. C. was unsustainable because Section 196 Cr. P. C. did not contemplate the State Government passing a general order empowering subordinate officers the authority to grant sanction for a class of cases. It was urged that in the present case, the State Government had issued a notification empowering the District Magistrate to grant sanctions for prosecutions for offences under Section 505 I. P. C. It was submitted that what Section 196 Cr. P. C. contemplated was that every time an offence covered by Section 196 Cr. P. C. was committed, the State Government must pass a separate order empowering the District Magistrate to grant sanction for the prosecution of the offender. Reliance was placed by the learned counsel appearing for the appellant on the decision of the Supreme Court in *Gour Chandra Rout v. Public Prosecutor*. : AIR 1963 SC1198 Interpreting Section 198-B Cr. P. C. it was held by their Lordships of the Supreme Court that reading Sub-sections (1) and (3) of Section 198-B together it was clear that the authorisation by the Governor is of the sanction with respect to a specific complaint. A general complaint can, therefore, not be of any avail. It was further held that Clause (a) of Sub-section (3) of Section 198-B contemplates authorisation by the Governor defamed and therefore an authorisation in general terms made by someone else previous to the actual commission of the offence involved in the specific complaint made can be of no avail The words of Section 198-B are materially different from that of Section 196 Cr. P. C. and the authority relied upon does not. in our opinion, support the contention of the learned counsel for the appellant. Neither on principle not on the terms of the section, we are compelled to hold that it is not open to the State Government by a general order to empower the District Magistrate to grant sanction for a class of offence. In our

opinion, the sanction granted by the District Magistrate for the prosecution of the appellant under Section 505 I. P. C. was perfectly valid.

12. On merits, it was contended that the court below was not justified in rejecting the explanation offered by the appellant that it was not the intention of the appellant to publish the offending article and it had been published only on account of a bona fide mistake. It was urged that if we take into account the fact that apart from the particular article for which the appellant had been prosecuted he had during the past many years been publishing articles which established that he was a loyal citizen of India, it must be held that the article had appeared on account of a bona fide mistake and that the necessary mens rea to attract the provision of Sections 124A and 505 I. P. C. was missing. Reliance was also placed on the supplement of the Ehsas dated the 28th June 1962 in which it was mentioned that the offending article had been merely copied out from the Faizan of Pakistan and in which the appellant had criticised the article. In our opinion, there is no force in this contention. A person may deliver a hundred speeches and yet only one of them may be seditious. The court below has given sound reasons for holding that the article published in the issue of the 28th June, 1962 was a mere afterthought. It has not been contended that the article read by itself does not attract the provisions of Section 124A and Section 505 I. P. C. The article in question was published on the editorial page and there is no mention anywhere in the publication that it had been taken from the Pakistan newspaper Faizan for the purpose of criticism. If the appellant had really intended to criticise the article, he could have done so without reproducing the whole article. Even after the article had been published, he could have approached the District Magistrate or the Senior Superintendent of Police or some other person or authority and pointed out that a mistake had been committed inadvertently by him in the publication of the article. As against this he remained silent for two days while the poisonous article was being circulated. After having come to learn of the mistake no attempt seems to have been made by him to have withdrawn the publication from circulation. We agree with the finding of the court below that the impugned article was published deliberately and intentionally.

13. The testimony of D. W. 1 Sri Dharmvir Sisodiya is of no help to the appellant and very rightly has not been relied upon by his counsel

14. However, having considered the circumstances of the case, we are of the opinion that no case has been made out for enhancement of the sentences awarded to the appellant.

15. We consequently dismiss Criminal Appeal No. 2791 of 1963 and uphold the convictions of the appellant and sentences awarded to him by the court below. The connected Criminal Revision No. 351 of 1964 filed by the State of Uttar Pradesh is also dismissed. Ghulam Hazool (appellant) is on bail. He shall surrender forthwith and serve out the sentences awarded to him by the court below.

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