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Court : Allahabad

Decided On : Sep-15-1959

Reported in : AIR1960All623; 1960CriLJ1296

Judge : M.C. Desai, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 499 and 500; Evidence Act, 1872 - Sections 132; Code of Criminal Procedure (CrPC) , 1898 - Sections 161 and 162

Appeal No. : Criminal Revn. No. 1451 of 1958

Appellant : Haji Ahmad Husain

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : Bhagwan Das Gupta, Adv.

Judgement :
ORDER

M.C. Desai, J.

1. An anonymous complaint was made against a Sub-Inspector of Police that he committed an offence punishable under the Prevention of Corruption Act against the applicant and it was investigated by a Deputy Superintendent of Police in

accordance with the provisions of the Act. The Deputy Superintendent in the course of the investigation interrogated people including the applicant, who made a statement in reply to his querries, to the effect that he was beaten by the Sub-Inspector and was compelled by him to pay him a bribe. The Deputy Superintendent, as the result of his investigation, recommended proceedings under Section 7 of the Police Act against the Sub-Inspector; in the report he said that the Sub-Inspector had tried to suborn some of the persons who were likely to give evidence against him.

Proceedings under Section 7, Police Act. were commenced against the Sub-Inspector and then he filed a complaint against the applicant for the offence of Section 500, I. P. C.; alleging that the statement made by him to the Deputy Superintendent during the investigation was defamatory. The Magistrate took cognizance of the complaint and tried the applicant; in the meantime the proceedings under Section 7 of the Police Act were stayed, though it is not known under whose order and on what ground. The trial Court found that the applicant committed the offence of defamation by making the statement against the Sub-Inspector and convicted him. His conviction has been maintained on appeal.

2. It was contended by Sri Bhagwan Das Gupta that the statement made by the applicant during the investigation was a privileged statement and could not form the basis of a charge of defamation. The law regarding criminal defamation is laid clown exhaustively in Sections 499 and 500 I. P. C. There arc no exceptions to criminal defamation other than those contained in exceptions 1 to 10 to Section 499. Every defamatory statement not coming within any of the exceptionsis punishable under Section 500. None of the exceptions exempts a defamatory statement from punishment on the ground of any privilege; the word ''privilege' is not used in any of them.

It is a finding of fact that the statement made by the applicant was a defamatory statement and he would be guilty unless his case came under some exception. The only exception that could apply to the statement made by him is exception 8; it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over him with respect to the subject-matter of

the accusation. The applicant made the accusation against the Sub-Inspector to the Deputy Superintendent, who had lawful authority over the Sub-Inspector with respect to the subject-matter of the accusation. The subject-matter of the accusation was that the Sub-Inspector had beaten and extorted a bribe from the applicant and the Deputy Superintendent was making an investigation into that very accusation and when making the investigation he had lawful authority over the Sub-Inspector. Consequently if the accusation made by the applicant to the Deputy Superintendent was made in good faith, it did not amount to defamation.

It has been found as a matter of fact by the Courts below that the accusation was false and I cannot go into the question whether the finding is correct or not because I am not sitting in appeal over it. Once the accusation is found to be false, it necessarily follows that it was not made in good faith. Since it is false the applicant knew that he was not beaten by the Sub-Inspector and was not made to pay him a bribe and could not in good Faith state before the Deputy Superintendent that he had been beaten and made to pay a bribe.

No plea of good faith can be advanced in respect of a matter which was false within the knowledge of the person making it. The applicant, therefore, could not claim exemption under exception 8.

3. There is no other law under which he could claim exemption from the law of criminal defamation. Reliance was placed by Sri Bhagwan Das Gupta on Section 132, Evidence Act. That provision does not apply to a statement made by a person during an investigation under Section 161 Cr. P. C. It compels a witness to answer all relevant questions that are put to him in any suit or in any civil or criminal proceeding, and exempts him from prosecution except for perjury. An investigation under Ch. XIV, Cr. P. C. may be a proceeding but is certainly not a suit or a civil or criminal proceeding.

A person who is interrogated under Section 161 by a police officer making an investigation is not a witness. Section 161 authorises a police officer making an investigation to examine orally any person supposed to be acquainted with the facts and circumstances of the case. All sorts of persons can be said to be supposed to be acquainted with the facts and circumstances of the case. They

may be supposed to be acquainted with the facts and circumstances of the case because they are the victims of the offence under investigation or they are the persons who committed it or they are the persons who saw it being committed or they are thepersons who have heard somthing about it or they are the persons who are acquiantcd with relevant facts.

Section 161 makes no distinction between one person acquainted with the facts and circumstances of the case and another. It does not divide them into the classes of complainants, accused persons and witnesses; instead they are all interrogatees. Therefore, the word 'witness' used in Section 132, Evidence Act, does not refer to any interrogatee examined by a police officer under Section 161; it refers only to a person who enters the witness-box and is sworn as a witness.

The applicant was not a witness when he made the defamatory statement against the Sub-Inspector and was not entitled to the privilege of exemption from the liability for any prosecution except that for perjury conferred by Section 132, Evidence Act. If he had made the defamatory statement while giving evidence against the Sub-Inspector as a witness he would have been exempt from prosecution for defamation.

4. Sri Bhagwan Das next relied upon the provisions of Section 162 Cr. P. C. They are that a statement made by any person to a police officer in the course of an investigation shall not be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when it was made. All that is barred is the use of the statement at an inquiry or trial in respect of the offence under investigation. The defamatory statement made by the applicant to the Deputy Superintendent cannot be used at any enquiry or trial in respect of the offence punishable under the Prevention of Corruption Act under investigation; its use in any other inquiry or trial in respect of any other offence is not barred. Therefore, it cannot be said that the defamatory statement could not be used in evidence against the applicant in his prosecution under Section 500, I. P. C.

5. There is no other law under which the applicant can claim exemption. There are, however, some cases laying down that a person cannot be convicted under Section 500 I. P. C., for making a defamatory statement to a Police Officer under

Section 161 Cr. P. C. In Manjaya v. Sesha Shetti, ILR 11 Mad 477, the statement made by a witness during cross-examination was held to be privileged; that was on the basis of Section 132, Evidence Act. That case did not deal with the question whether a statement made by a person to a police officer under Section 161, Cr. P. C. was privileged or not and did not supply any answer to it. That question, however, arose in Queen-Empress v. Goviuda Pillai, ILR 16 Mad 235 and was answered in the affirmative.

The judgment of the Bench is very short. The very first sentence of it is that the principle laid down in Manjaya case was applicable because persons interrogated under Section 161 Cr. P. C., were hound to answer truly all questions put to them. No other discussion is given in the judgment. I have not tried to find how Section 161 stood in 1891, but Section 161, as it stands at present, does not require interrogatees to answer the questions truly at all. Sub-section (2) to Section 161 only compels them to answer all questions but leaves them free to answer them falsely if they like.

If the law in 1891 was the same, the sole reason given by the learned Judges is incorrect, and if it was different, the reason is not applicable now. Both the above cases were relied upon by Sir George Knox in Parwari v. Emperor, ILR 41 All 311, (AIR 1919 AH 276). That case also dealt with statements made to the police under Section 161 and they were held to be privileged. The learned Judge relied upon the cases of Manjaya, ILR 11 Mad 477 and Govinda Pillai, ILR 16 Mad 235, though Manjaya case did not lay down anything about such statements being privileged. The learned Judge emphasized that the English law of criminal defamation is different from the Indian law of criminal defamation and that we must adhere strictly to the Indian law as laid down in Section 499 I. P. C. (I. agree with the learned Judge in the respect), but did not cite any statutory provision in support of his finding.

6. My conclusion is that the applicant was liable to be punished under Section 500 for making the defamatory statement.

7. Though I find that the applicant was liable to be punished, I am of the opinion that the proceedings started against him were nothing but an abuse of a process

of the Court. The Sub-Inspector of Police, who was being proceeded against under Section 7 of the Police Act, might not be prevented from making a complaint against one of the witnesses against him for defamation, but when such a complaint was made it was the duty of the Magistrate to stay all proceedings in it so long as the proceedings under Section 7 of the Police Act were pending.

It was obviously an attempt on the part of the Sub-Inspector to exercise undue pressure upon the persons, likely to be examined against him in the inquiry under Section 7 of the Police Act and it was the duty of the Magistrate not to lend any assistance to it. It should have been obvious to him that if the persons, who were likely to be examined in the inquiry under Section 7, Police Act, were under a threat of prosecution under Section 500, I. P. C. by the Sub-Inspector, they might not be prepared to give evidence against him in the inquiry tinder Section 7, Police Act.

Had the Superintendent of Police, who was conducting thc inquiry been a Court, the filing of the complaint by thc Sub-Inspector might have amounted to contempt of Court and might have been punished as such. When a person against whom a legal proceeding is going on files a complaint against a person who is likely to be a witness against him in the proceeding in respect of thc subject-matter of his evidence, the complaint must be kept pending so long as the proceeding is not over. The Magistrate, therefore, ought to have kept the complaint of the Sub-Inspecter pending and not proceeded on it. The proceedings conducted by him deserve to be quashed.

8. I set aside the applicant's conviction andsentence and quash all proceedings on the complaint of the Sub-Inspector. The complaint shall remain pending and shall he taken up only afterthe proceeding under Section 7 of thc Police Act againstthe Sub-Inspector comes to an end. The bailbonds of the applicant are discharged. The fineif realized, shall be refunded.

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