Ramesh Sinha and anr. Vs. Public Prosecutor, Lucknow

Ramesh Sinha and anr. Vs. Public Prosecutor, Lucknow

SooperKanoon Citation : sooperkanoon.com/467400

Court : Allahabad

Decided On : Nov-16-1959

Reported in : AIR1960All763; 1960CriLJ1541

Judge : R.A. Misra, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 198B, 198B(1) and 439

Appeal No. : Criminal Revn. No. 265 of 1959

Appellant : Ramesh Sinha and anr.

Respondent : Public Prosecutor, Lucknow

Advocate for Pet/Ap. : Brij Mohan Nath Kocher, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

R.A. Misra, J.

1. The two applicants in this revision petition are Sri Ramesh Sinha, the Chief Editor, Printer and Publisher, and Sri Kali Shankar Shulela, Editor of the Weekly called Jan Yug published from Kaiserbagh, Lucknow. The petition itself has arisen

under the following circumstances :

2. Purporting to act under Section 198-B, Cr. P. C. the opposite-party, who is the Public Prosecutor, Lucknow, filed a complaint under Section 500 of the Indian Penal Code against the two applicants on 6-4-1959. Sanction to prosecute the two applicants was obtained under Section 198-B (3) (a) of the Criminal Procedure Code from Sri N.G. Kaul, Home Secretary, U. P. Government, and the complaint was filed before the Sessions Judge, Lucknow. It was alleged in the complaint that in the issue of 'Jan Yug' dated the 2nd November, 1958, there was a news item under the caption 'Yeh bis lakh kaise bante', which contained scandalous statements against Dr. Sampurnanand, Mukhya Mantri, U.P. and Sri Hafiz Mohammad Ibrahim, Ex-Vitt Mantri, U.P. in respect of acts done by them in their capacity as Ministers of the U.P. State. It was stated that the article appearing under the above-mentioned caption was defamatory of Di. Sampurnanand and Sri Hafiz Mohammad Ibrahim, as it contained baseless imputations which were intended to harm or which the accused knew or had reason to believe would harm, their reputation and lower them in the society, in the political field and in the eyes of the Government.

It was further, emphasised that by publishing the said libelous news the accused intended or in any case the accused had every reason to believe that the imputations contained in the said news would or were likely to lower the credit of the aforesaid two Ministers, their character in respect of their office, their position in life and their calling in the estimation of others. A copy of the 'Jan Yug' which contained the aforesaid alleged defamatory article was filed along with this complaint.

3. On receipt of this complaint, the learned Sessions Judge summoned the accused and examined three witnesses produced by the prosecution. The statements of the accused were recorded on the 24th September, 1959. Both the accused admitted having printed and published the article in question but denied that it was defamatory. A charge under Section 500 of the Indian Penal Code was framed against both the accused on the same date. It appears from the record that earlier on the 24th July 1959, an application was presented by the accused in

which several objections were raised to the maintainability of this complaint. Notice of this application was given to the District Government Counsel and the 13th August, 1959, was fixed for its disposal. Eventually final orders were passed on this application on the 25th Aug. 1959, by which the learned Sessions Judge overruled all the objections raised in the said application. The present revision petition has been filed against the aforesaid order of the learned Sessions Judge.

4. Besides the objections contained in the aforesaid application of the accused, one Or two other points were also pressed before the learned Sessions Judge as will appear from his order under revision. The learned counsel for the appellants has pressed those objections in this Court also and I shall deal with them one by one. This application was heard by me on an earner occasion when a prayer was made by the learned counsel for the applicants that he would like to refer to certain facts from the file of the trial court in support of his contentions, and as the file was not before me on that day he prayed that the case be adjourned and the record of the trial Court be sent for. The prayer was accepted and the record is now before me.

5. The first contention raised was that in the alleged article there was no reference to any act or acts of the two Ministers performed by them in the discharge of their official capacity. If at all, the acts attributed to them were done in their private capacity, hence no complaint under Section-198-B(1) could be filed by the opposite party.

6. The second objection pressed against the validity of the complaint was that the complaint was bad and not maintainable because it was not signed by the two Ministers.

7. The third contention raised against the maintainability of the present complaint was that the sanction obtained for prosecuting the accused for having printed and published the defamatory imputations against Sri Hafiz Mohammad Ibrahim had been accorded by the Home Secretary to the U. P. Government. It was contended that this sanction is invalid, as at the time the said article was published in the 'Jan Yug' Sri Hafiz Mohammad Ibrahim was not a Minister in the U.P. State.

The complaint filed by the Public Prosecutor, Lucknow, under the sanction of the Home Secretary was also challenged as incompetent, on the ground that at the time when the sanction to file the complaint was sought for and obtained from the Home Secretary, Sri Hafiz Mohammad Ibrahim had ceased to hold office as 'Minister' in the U.P. State and had gone over to the Central Government and therefore the complaint could have been filed only with the sanction of the Central Government.

8. Dealing with the first objection, I may at once say that there is no force in it. Whether the acts attributed to the two Ministers were performed by them in their official capacity as Ministers or they had been done in their private capacity is a question of fact which will have to be decided on the evidence in the case. It is the function of the trial Court to assess the evidence placed by the parties and arrive at its own conclusion. Sitting as a revisional Court, this Court is not expected to perform the function of the trial Court and assess the value of the evidence for the first time. The proper forum for the consideration of this objection will be the trial Court itself at the close of the case. I, therefore, do not see any force in this contention which must be rejected.

9. Coming to the second objection that the complaint is bad because it has not been signed by the Ministers concerned, reliance was placed by the learned counsel for the applicants on two cases : (1) C. B. L. Bhatnagar v. State, AIR 1958 Bom 196, and (2) Shankar v. State, AIR 1959 Kerala 100.

10. In the first case a complaint purporting to be by the State of Bombay at the instance of one Sri M.S. Prasad, Income Tax Officer, C-III ward was filed against an accused who was alleged to have committed defamation of Sri M. S. Prasad by publishing certain articles. The complaint was signed by Sri M. S. Prasad who affirmed the same before the Registrar of the City Sessions Court. At the bottom there was an endorsement that the complaint was drawn by the Public Prosecutor for Greater Bombay but it was not signed by anybody. An objection was raised on the appearance of the accused that the complaint had not been filed by the Public Prosecutor as required by Section 198-B and it was, therefore, incompetent.

The learned Additional Sessions Judge, who was seized of the case, overruled the objection, hence the matter went up before the High Court. The point for decision before the High Court in the said case was whether it was open to the prosecution to prove by oral evidence and other circumstances that the complaint had in fact been filed by the Public Prosecutor, even though he had not signed it. During the course of the judgment his Lordship Bavdekar, J. who decided the matter was pleased to observe :

'All that it is necessary to state for the purpose of the present application is that the act of making the complaint must be his act, and it is not possible to say from the evidence before me that in this case the act of complaining was the act of Mr. Trivedi, the Public Prosecutor, in the present case. I have already mentioned that the complaint purports to be a complaint by the State of Bombay at the instance of the Income Tax Officer concerned. It is not signed by the Public Prosecutor himself; it is signed only by the Income Tax Officer, who has also apparently affirmed it before the Registrar of the City Sessions Court. It is true that at the bottom there is a remark that the complaint had been drafted by the Public Prosecutor but in my view rather than helping the prosecution, it helps the accused.'

Holding in the circumstances of the particular case that the complaint had not been filed by the Public Prosecutor, his Lordship quashed the proceedings against the accused. The specific question which has been raised before me in this revision application is whether a complaint under Section 198-B, Cr. P. C. besides being signed by the Public Prosecutor should also be signed by the official of the Government who is said to have been defamed. Incidentally, it is true, his Lordship Bavdekar, J. in the above noted Bombay case touched this point also and he has observed :

'What Section 198-B (13) consequently means, when it says that the provisions of Section 198-B shall be in addition to and not in derogation of the provisions of Section 198, is that any complaint which may be made under Section 198-B must also satisfy the provisions of Section 198, that is, the complaint will have to be made both by the person aggrieved and by the Public Prosecutor. I do not think

that the language that the provisions of Section 198-B shall be in addition to, and not in derogation of those of Section 198 would be the correct language to use, if all that was intended was that it was not to be regarded that Section 198-B so to speak repeals Section 198, or that a complaint for defamation could not be made even, to a Magistrate by the person aggrieved Without the intervention of the Public Prosecutor.'

The emphasis, therefore, in this decision was on the question that a complaint under Section 198-B of the Code of Criminal Procedure must be by the Public Prosecutor himself and not by the aggrieved person. An argument was raised in that case on behalf of the accused that Sub-section (13) does not mean that the complaint should be signed by both the person aggrieved or defamed and also the Public Prosecutor. His Lordship, as observed by me above, has incidentally touched the question whether the complaint should be filed by the aggrieved person and the Public Prosecutor both, though it was not precisely the point for decision before him. The decision, therefore, reported in AIR 1958 Bom. 196 mentioned above is not an authority directly on the question at issue before me.

11. The other case, AIR L959 Ker. 100 relied on by the applicants did certainly raise the precisely same question for decision which I am called, upon to decide in the present case which is whether the complaint which has been filed by the Public Prosecutor under Section 198-B Cr. P. C., is competent without being signed by the official who is said to have been defamed.

One of their Lordships Raman Nayar, J. who constituted the Division Bench after a full discussion of this prosecution was of opinion that the victim of defamation should also join Public Prosecutor in making a complaint under Section 198-B for the offence committed against him under Section 500 I. P. C. otherwise cognizance of such a complaint cannot be taken. During the discussion of this proposition, his Lordship referred to sections 198, 198-B (1) and Section 198-B (13) Cr. P. C. in particular.

'198. No Court shall take cognizance of an offence falling under Chapter XIX or Chap. XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by

such offence.

'198-B (1). Notwithstanding anything contained in this Code, when any offence failing under Chapter XXI of the Indian Penal Code (other than the offence of defamation by spoken words) is alleged to have been committed against the President or the Vice-President, or the Governor or Rajpramukh or' a State, or a Minister, 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 accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor.

'198-B (13) : The provisions of this section shall be in addition to, and not in derogation of, those or Section 198.'

It was argued before the Bench by the accused that the true construction of sub-section (13) of Section 198-B is that it enjoins a compliance not merely with Section 198-B but also with Section 198. According to the argument of the counsel in that case, by reason of this provision we should read Section 198-B (1) as if it said 'Notwithstanding anything contained in this Code, but subject to the provisions of Section 198, when any offence.....'

12. For the State it was urged that the true construction is that the remedy provided by Section 198-B is in addition to, and not in substitution of, the remedy provided in Section 198. Section 198-B (13) was inserted to meet any possible argument that, in respect of cases falling under that section, the special provisions thereof override the general provisions of Section 198 Cr. P. C. so that when the victim happens to be any of the persons mentioned in Section 198-B, he is deprived of the ordinary remedy of making what is called a private complaint. Section 198-B (13), therefore, provides by way of abundant caution that Section 198 remains unaffected, leaving it open to the victim of the defamation to file a complaint on his own behalf too if he so chooses.

13. Rejecting the contention advanced on behalf of the State, his Lordship made reference to the purpose lying behind the insertion of Section 198-B as gathered

from the debates held in the Lok Sabha and the Rajya Salbha with regard to this new provision. His Lordship observed:

'There was from the beginning, vehement opposition to the section itself on the ground that it was oppressive in that it enables the use of the resources of the State to vindicate private wrongs and that it created a privileged class of public servants who could launch a prosecution under the sheltering wines of the Public Prosecutor instead of coming out into the open like an ordinary citizen.

It was to meet objections such as these that the provision in Sub-section (5) that the victim shall be examined as a witness for the prosecution, and the provisions in Sub-sections (6) to (9) for the grant of compensation to the accused in the case of complaints found to be false and either frivolous or vexatious, were introduced in the shape of amendments in the Lok Sabha. It must have been to further this object by ensuring that the victim also would join in the complaint and thus take full responsibility for it that the Rajya Sabha enacted sub- Section (13) in its present form.'

According to his Lordship, a Study of Sub-sections (6) to (9) of Section 198-B confirmed this view. All these sub-sections were introduced in the Lok Sabha and it would appear that in passing what is now Sub-section (13) in the form in which it emerged from the Select Committee despite the new introductions, the consequences that would follow were not appreciated. For, in his Lordship's view, under Sub-sections (6) to (9), it is not the Public Prosecutor or the Government that can be called upon to pay compensation or from whom the compensation can be recovered as if it were a fine. Proceeding with this argument further his Lordship observed:

'It is the victim of the alleged offence. Now St is quite conceivable that in a case tailing under Clauses (b) and (c) of Sub-section (3) especially the latter, a complaint may be made by the Public Prosecutor without the consent, in fact against the will, of the person alleged to have been defamed. The victim may, for his own protection, deny the imputations even if they be true, and because they are true may be unwilling to embark on a prosecution. A complaint may nevertheless be made by the Public Prosecutor and even in such a case, where

the complaint is made against his will, the victim would still be liable to pay compensation if the complaint is eventually found to be false.

That the complaint was not made by him, that it was, in fact, made against his will, would be no defence, for, under Sub-section (7), the only considerations are whether the accusation was false and whether it was frivolous or vexatious. Although of course no one can have any sympathy for such a victim, it would nevertheless be manifestly unjust to require him to pay compensation for something for which he was in no way responsible. Perhaps it was to obviate the possibility of such injustice that the Rajya Sabha insisted that the victim should also join in making a complaint before cognizance could be taken on a complaint made by the Public Prosecutor'.

In view of these observations his Lordship was of the view that it is essential that the victim of the defamation should join the Public Prosecutor in filing the complaint under Section 198-B. His Lordship supported his view by reference to the case mentioned earlier and reported in AIR 1958 Bom 196.

14. The other learned Judge C. A. Vaidialingam, J. disagreed with his learned brother and was-of opinion that the victim of the defamation need/ not join in the complaint filed by the Public Prosecutor under Section 198B. According to Vaidialingam, J., Section 198B gave only an additional right to a public servant to have a complaint filed before the Court of Session by the Public Prosecutor, the remedy open to him under Section 198 Cr. P. C. being still available to him.

According to his Lordship, the words of Section 198 B(1) which say 'Notwithstanding anything contained In this Code' clearly mean that Section 198 stands by itself irrespective of whatever is said in the Code about such matters. According to him, it was difficult to understand that the Legislature by incorporating Sub-section (13) in Section 198B intended the prohibition under Section 198 to have full force and effect especially when the Legislature has very clearly stated in Section 198B Clause (1) that those provisions are to apply 'Notwithstanding anything contained in this Code'.

15. Discussing the argument advanced on behalf of the accused which was based on a reading of Sub-sections (6) to (11) of Section 198B and considering the reasoning of his learned brother that the public servant could not be expected to pay compensation without being a party to the motion, his Lordship was of opinion that they did not assist the argument of the accused that the Legislature contemplated that the person defamed should also be a party in a complaint filed by the Public Prosecutor under Section 198B. In his Lordship's view the person defamed was a necessary witness in a complaint filed under Section 198B by the Public Prosecutor and his evidence could be dispensed with only if the Court of Session otherwise directed by recording reasons.

The person against whom the offence is, there-Fore, alleged to have been committed will be before the Court as a prosecution witness. In the circumstances, if it, therefore, turns out that the case was false there would be nothing unjust if he is made to pay compensation for it. Sub-section (0) itself begins by saying 'If in any case instituted under this section'. Sub-section (9) of Section 198B ends by saying 'in respect of the complaint made under this section'. Therefore, the words 'If in any case instituted under this section' as contemplated is Sub-section (6) and the words 'in respect of the complaint made under this section' contemplated by Sub-section (9) must have reference to the proceedings commenced under Sub-section (1) of Section 198B. Sub-section (1) clearly contemplates a complaint in writing by the Public Prosecutor. On these reasonings his Lordship held that the complaint that is contemplated under Section 198B is only that made by the Public Prosecutor and it is only to such complaint alone and a case commenced on such a complaint that Sub-sections (6) and (9) will apply. His Lordship referred to the case reported in AIR 1958 Bom 196 also and observed that if the learned Judge in the Bombay case intended to lay down as a proposition of law that a complaint filed under Section 198B of the Cr. P. C. should be both by the person defamed and by the Public Prosecutor, he disagreed with the same with great respect.

16. The point which I am called upon to decide was also the subject of a decision by the Mysore High Court in a case in State v. P.K. Atre, AIR 1959 Mys 65. Dealing with that case, Narayana Pai, J. noticed the case decided in AIR 1958 Bom. 190 and was of opinion that the opinion expressed by Bavdekar J. did not

really conclude the matter before him, nor could it be taken as expressing a final opinion on it. His Lordship, Narayana Pai, J. quoted at length the provisions of the newly inserted Section 198B, particularly 198B (13), and tried to ascertain the meaning of 'in addition to, and not in derogation of' as used in Section 198B (13) with reference to Wharton's Law Lexicon and some authoritative judicial pronouncements. Placing reliance on these authorities, his Lordship observed :

'In the light of these principles it is necessary to examine the new Section 198B of the Code of Criminal Procedure. That section, it will be noted, has been incorporated in the original statute itself and now forms part of that statute. It cannot, therefore, be interpreted as an independent or a separate statute, but must be understood' in the general setting of the statute itself. The Supreme Court of India in Shamrao Parulekar v. District Magistrate, Thana, has formulated the correct principle of interpretation as follows:- 'The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need! to refer to the amending Ant at all'.

(See 1952 SCR 683 : AIR 1952 SO 324).

After a detailed discussion with which I am in entire agreement with respect, his Lordshio was of opinion that it is not necessary for the person defamed also to sign the complaint filed by the Public Prosecutor. His Lordship held that all that is required as a condition requisite for initiation of proceedings in a Court of Sessions under Section 198B (11 of the Code of Criminal Procedure is that the complaint should be made by the Public Prosecutor in writing with the previous sanction of the appropriate Government as provided in Sub-section (3) of that section.

It was argued before his Lordship, Narayana Pai J., also that Section 198B (6) to (11) of the Code of Criminal Procedure provided for a direction being made for payment of compensation to the accused by the person against whom the offence is alleged to have been committed in the event of the Court finding that the

accusation was false and either frivolous or vexatious, and it was, therefore, urged on behalf of the accused that these sub-clauses of Section 198B contemplate that the defamed person should also be a signatory to the complaint. His Lordship answer-ed this objection by referring to the provisions of Section 198-B itself which make the examination of the person defamed compulsory unless the Sessions Judge directs otherwise for reasons to be recorded in writing. After a discussion, his Lordship gave his reasons which are mentioned in the aforesaid decision and was of opinion that these provisions far from supporting the contention of the learned counsel for the respondents were in his opinion actually against, it. His Lordship held:-

'If, indeed, the person against whom the offence is alleged to have been committed should himself be a complainant or 3 joint complainant along with the Public Prosecutor in the complaint made under Section 198B (1), then it is unnecessary to make these special provisions in Sub-sections (6) to (11) of the section because the case will be fully covered by Section 250'.

These are all the cases placed before me by the learned counsel for the applicants and after having-read them, I find myself in entire agreement respectively widi the view of law expressed by his Lordship, Vailialingam J. in AIR 1959 Ker. 100, and Narayana Pai J. in AIR 1959 Mys 65 on the subject mentioned above.

17. Apart from adopting the reasoning given by their Lordship in the aforesaid cases, my own reason for holding that it is not necessary for the officer defamed to sign the complaint along with the Public Prosecutor filed under Section 198B of the Code of Criminal Procedure is that in substance every breach of law which entails penal consequences and is technically termed 'an offence', beside causing harm to the individual against whom it is committed, is supposed to be an injury to the State itself constituted, by law in the larger interest of the constituents of that State.

It is, therefore, the primary duty of the State itself to bring the offender to justice irrespective of the wishes of the person individually harmed. However, in some cases where the State has considered that the resultant injury to the larger interests of the society is so slight that the individual harmed can be safely relied

upon to bring the offender to justice himself, it has been left to the individual harmed to prosecute the offender or not. It is these petty class of offences for which legal action may be initiated by the individual. In all other cases, the machinery of law shall be moved by the State for the prosecution of the offender. Acting on this principle, offences have, therefore, been broadly divided into two classes, first it is the State which must figure as the complainant and the other in which action may be taken by the private individual. It is true that in the first class of cases the private individual who is aggrieved is not debarred from filing a complaint himself, but eventually this private complaint will also merge in the State prosecution and ultimately it is the State's will which will prevail.

According to the needs of the society, the Legislature, therefore, enacts laws to specify what offences shall be considered to be injuries to the State principally and the prosecution for them shall be initiated by the State and which others considering the lesser degree of the resultant harm will be left for private action. The provisions of Chapter XV-B have been enacted by the Legislature to carry out this purpose and it is in this Chapter that Section 198-B has been inserted. Considering the increasing tendency by interested quarters to publish groundless criticism with a view to scandalise the officers and dignatories of the State, the Legislature therefore enacted the special provisions of Section 198B for taking action against the offenders who commit defamation of such public officers by providing that the complaint shall be filed under Section 198B by the Public Prosecutor also with the sanction of the State Government.

This does not mean that the individual defamed has been deprived of his remedy to take action against the offender in his individual capacity. 'Reading Section 198B as a whole, this seems to be the object of the enactment. Section 198B (13) Cr. P. C. has, therefore, been put down to further clarify that henceforth action for defaming a public servant for acts performed by the Government official in the 'discharge of his duty may be taken by the State Government also but this new provision would not debar the Government official himself of his own remedy to proceed against the offender. In this view of the matter it is not necessary that the Government official should) also sign the complaint.

Therefore, I am of opinion that the complaint filed by the opposite party Public Prosecutor was perfectly competent without being signed by Dr. Sampurnanand and Sri Hafiz Mohammad Ibrahim.

18. The last objection raised to the competency of the complaint was that at the time the said article had been, published in the Jan Yug and also when the sanction had been obtained from the Home Secretary, Sri Hafiz Mohammad Ibrahim had ceased to be a Minister in the U. P. State. I do not think there is any force in tins contention also. As discussed above publication of the article alleged to be defamatory of Sri Hafiz Mohammad Ibrahim, Minister of U.P. apart from being defamation of Sri Hafiz Mohammad Ibrahim in his personal capacity was also a defamation of a Minister of the U. P. State. It was, therefore, the State which suffered the injury along with the individual and the responsibility for initiation of prosecution for defamation, therefore, lay with the State of U. P. irrespective of the fact whether the particular Minister remained in the State as such at the time the article was published or when sanction to prosecute the accused was obtained or not. The Home Secretary, U. P. who has granted sanction in this case, was therefore, perfectly competent to do so in respect of the defamation committed against one of the Ministers of the State as provided under Section 198B of the Code of Criminal Procedure.

19. As a result of the discussion given above,I hold that there is no force in this revision petitionand it is dismissed. The trial shall proceed beforethe Sessions Judge, according to law.