

**Ramesh Chander Vs. the State**

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**Court :** Punjab and Haryana

**Decided On :** Mar-24-1965

**Reported in :** AIR1966P& H93; 1966CriLJ292

**Judge :** H.R. Khanna, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 52, 499, 500 and 501; [Press and Registration of Books Act, 1867](#) - Sections 7; General Clauses Act

**Appeal No. :** Criminal Appeal No. 105 of 1964

**Appellant :** Ramesh Chander

**Respondent :** The State

**Advocate for Def. :** M.R. Chhibar, Adv. for; Advocate General

**Advocate for Pet/Ap. :** R.K. Chhibar and; R. Sachar, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**H.R. Khanna, J.**

1. This is an appeal by Ramesh Chander, who has been convicted by learned Sessions Judge, Jullundur, under Section 500 of the Indian Penal Code, and has been sentenced to pay a fine of Rs. 300 or in default to undergo simple

imprisonment for a period of three months.

2. The brief facts of the case are that a report, English translation of which is as follows, was published in the issue, dated 19th September 1957 of the Hind Samachar, Urdu Daily of Jullundur:--

'How nepotism is indulged in under Kairon Government: For giving promotion to a favourite officer, the Chief Conservator of Forests granted leave: in the said Officer's Range, there has taken place misappropriation of timber worth lakhs of rupees but no enquiry has been held.

Chandigarh: September 18: From a very reliable source it has been learnt that important changes are likely to take place very soon in the Forests Department of the Punjab Government. It is said that the present Forest Minister of the Punjab is not pleased with the work of the Chief Conservator. Hence he has been asked to get leave preparatory to retirement. In his place is being posted the present Conservator, Sardar G. S. Dhillon and in place of Shri Dhillon S. Bachan Singh, Divisional Forests Officer, Amritsar, will be appointed as Conservator. It is said that all these changes are being effected only because the Minister has deep interest in a high officer and he wants to get him promotion. This officer is the same about whom the Hind Samachar had disclosed recently that in his Division there had taken place misappropriation of timber worth laks of rupees which had been caused to be removed unlawfully through contractors. When the Range Officer made a complaint to this effect the said department, instead of any action being taken he was transferred to Karnal. And no enquiry is being held in this connection up till now because the Minister concerned is sitting over the whole case. He neither publishes the report nor gets an enquiry held into it.'

Ramesh Chander accused was the Printer and Publisher of the Hind Samachar on 19th September, 1957. On 25th November 1957 Shri Mangat Rai, Secretary to the Council of the Ministers of the State of Punjab, gave sanction Exhibit P. B. under Section 198-B of the Code of Criminal Procedure for the prosecution of the accused under Section 500 of the Indian Penal Code. It was recited in the sanction that the Secretary was satisfied that the report in question contained statements defamatory of Shri Gurbanta Singh, Forest Minister, Punjab, in respect of his

conduct in the discharge of his public functions, and as such the accused had committed an offence punishable under Section 500 of the Indian Penal Code. Complaint under Section 500 of the Indian Penal Code was thereafter filed by the Public Prosecutor in the Court of Sessions Judge, Jullundur, on 15th March 1958, on the allegation that the accused had intentionally printed and published the above report which contained statements defamatory of Shri Gurbanta Singh in respect of his conduct as Forest Minister, Punjab, in the discharge of his public functions. The accused was further stated to have circulated the above report amongst the public. Prayer was, accordingly, made for the trial of the accused for the offence under Section 500 of the Indian Penal Code.

3. At the trial the accused admitted that he was the Printer and Publisher of the Hind Samachar on 19th September 1957. As regards the publication of the news item in question the accused stated that he did not control the news department and it was the responsibility of the Editor to select, verify and give the news for publication in paper. According to the accused the news item in question was published without his knowledge and he came to know of it after it had been published. The accused added that on enquiry from the Editor it was found that the news item had been published in good faith and in the interest of the public as the news item was believed by the Editor to be correct. The accused also expressed regret in case any part of the news item was found to be incorrect. The present prosecution was ascribed by the accused to political differences between the Chief Minister Sardar Partap Singh Kairon and his father Shri Jagat Narain.

4. The learned Sessions Judge held that the news item in question contained imputations against Shri Gurbanta Singh which were false and not true, and reflected adversely on his reputation as a Minister. It was further held that as the accused was the Printer and Publisher of the newspaper he could not be exonerated from liability because he did not care to see the impugned news item before its publication in the newspaper. The accused was, accordingly, convicted and sentenced as above.

5. Mr. R. K. Chhibar on behalf of the accused-appellant has, at the outset, argued that as the accused is the Printer and Publisher of the Hind Samachar, the case

against him fell under Section 501 and not under Section 500 of the Indian Penal Code, and that as the sanction under Section 198-B of the Code of Criminal Procedure for the prosecution of the accused was for the offence under Section 500 of the Indian Penal Code only, the entire proceedings against the accused and his conviction under Section 500 of the Indian Penal Code are liable to be quashed. Reference has been made to the Crown v. Uma Shankar, 18 Pun. Re. 1889 (Cr.), wherein Plowden, J. observed that the offences under Sections 500 and 501 were quite distinct, and a criminal Court is not competent to amend or alter a complaint under Section 501 of the Penal Code into one under Section 500. In this connection I find that the learned Sessions Judge framed charge against the accused both under Sections 500 and 501 of the Indian Penal Code for printing and publishing the news item in question. Subsequently when it was pointed out that the sanction, Exhibit P. A. which had been granted for the prosecution of the accused, was for the offence under Section 500 of the Indian Penal Code only, the charge under Section 501 of the Indian Penal Code against the accused was dropped.

Section 499 of the Indian Penal Code gives the definition of defamation. Shorn of the Explanations and the Exceptions, with which we are not concerned at present, the definition reads as under:--

'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 excepted, to defame that person.'

Sections 500 and 501 are as under:--

'500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine or with both.'

'501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with

both.'

It would appear from the above that Section 500 provides the penalty for the simple and plain act of defamation, while Section 501 prescribes the punishment which may be imposed upon a person who prints or engraves any matter knowing or having good reason to believe that such matter is defamatory of any person. The definition of defamation, given in Section 499 reproduced above, goes to show that if a person publishes any imputation concerning another person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of the other person he would, except in cases covered by the Exceptions, be guilty of defaming the other person. The word 'publishes' in the definition has obviously been used in its etymological sense as connoting 'to make public' or to make known to the people in general. To quote from Halsbury's Laws of England, Third Edition, Volume 24, Page 35 'publication consists in making known the defamatory statement after it has been reduced into some permanent form'. As a publisher of a newspaper makes known to the people in general and thus gives publicity to the news item printed in that newspaper, the case against the publisher for the publication of a defamatory news item in the Paper would legally and logically amount to defamation simpliciter, and, as such, would be punishable under Section 500 of the Indian Penal Code. It may be that if the publisher is also the printer of the news paper, the case against him would be covered by Section 501 too of the Penal Code but it would not in any way affect his liability as a publisher under Section 500 of the Code. I would, therefore, hold, that as the accused is the publisher of the Hind Samachar, he cannot escape his liability for the offence under Section 500 of the Indian Penal Code, if the case be otherwise proved against him, merely because of his having got the issue in question of the Hind Samachar printed.

6. It has next been argued that the news item in question was published without the knowledge of the accused because he had entrusted the selection of news to the editor of the paper and as such the accused is not responsible for the impugned news item. In this connection I find that the accused is admittedly the printer and publisher of the Hind Samachar. The accused also filed declaration dated 29th August, 1957 Exhibit P. C. under Section 5 of the [Press and](#)

[Registration of Books Act, 1867](#) (Act XXV of 1867), and declared therein that he was the printer and publisher of the Hind Samachar. Section 7 of that Act inter alia provides that the production in any legal proceeding of an attested copy of such declaration shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration that the said person was the printer or publisher of every portion of the newspaper in question. As the accused was the printer and publisher of the Hind Samachar at the relevant time and had filed the declaration to that effect, it shall be presumed that the accused was aware of what was printed and published in the issue of the Hind Samachar.

The declaration is prima facie evidence of the publication by the accused all the news items in the Hind Samachar and I have not been referred, at the hearing of the appeal, to any cogent material to show that the presumption about the accused being the publisher of the news item in question has been rebutted. The mere fact that, according to the accused, in daily routine he had asked the Editor to select the news item, would not absolve the accused for the publication of the news item in question.

7. There can be no doubt and it has not been disputed before me that if the case against the accused is not covered by any of the Exceptions to Section 499 of the Indian Penal Code, the news item would be per se defamatory. It is clearly insinuated in the news item that Shri Gurbanta Singh, who was at the relevant time Forest Minister, was indulging in nepotism and in order to advance the interests of Shri Bachan Singh, in whose Division misappropriation of timber worth lacs of rupees had taken place, the Chief Conservator of Forests had been asked to proceed on leave preparatory to retirement. This was a kind of character assassination the inevitable effect of which must be to lower Shri Gurbanta Singh in public estimation. It has indeed been admitted by D. W. 17 Shri Nauhria Ram Editor of the Hind Samachar, that at the time of the publication he was aware that the news item was defamatory if the contents of the same were wrong. D. W. 15 Shri Partap Singh, retired Chief Conservator of Forests, has likewise stated that on reading this article he got an impression adverse to the Minister concerned. The defence evidence thus lends support to the statement of P. W. 4 Shri Gurbanta

Singh that the publication in question had adversely affected his prestige and position as public worker and Minister.

8. Mr. R. K. Chhibar on behalf of the accused has tried to show that the allegations made in the impugned news item are correct and as such the case is covered by First Exception to Section 499 which reads as under:--

'First Exception:-- It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.'

After having been taken through the evidence on record I am of the view that the above Exception cannot be of any avail to the accused because the news item in question contained an incorrect statement on a material point of fact. The main burden of the allegation contained in the news item was that in order to give promotion to Shri Bachan Singh, who was the favourite officer of the Forest Minister, the Chief Conservator of Forests had been asked to take leave preparatory to retirement. D. W. 15 Shri Partap Singh was the Chief Conservator of Forests in those days and it would appear from his testimony that his retirement was due in January 1956. Before Shri Partap Singh retired, he made an application for grant of extension and on that application extension was granted to him for one year till January 1957. Shri Partap Singh then made another application for extension in service for further two years. D. W. 12 Shri S. R. Maini, who was the Secretary to the Punjab Government Forest Department, however, made a recommendation that Shri Partap Singh should be granted extension for one year. P. W. 4 Shri Gurbanta Singh, Forest Minister, then granted extension to Shri Partap Singh for a period of one year. Shri Partap Singh represented before the Finance Commission the case of the Forest Department of the Punjab State.

It would appear that the Punjab Government formed the impression that Shri Partap Singh (D. W. ) had not prepared for the task and had failed to put up a convincing case for the Forest Department before the Finance Commission. Letter Exhibit D. D., dated 1st April 1957, was addressed by Shri S. R. Maini to Shri Partap Singh informing the latter that the Government took a serious view of his delinquency, and calling upon him to explain as to why his services should not be

terminated on that account. Although Shri Gurbanta Singh has deposed that he did not give any instructions for the sending of the aforesaid letter, the evidence of D. W. 12 Shri Maini shows that the above letter was written under the orders of Shri Gurbanta Singh, Shri Partap Singh's services were however, not terminated in pursuance of letter Exhibit D. D., and Shri Partap Singh has deposed that he completed the full term of his second extension. According to Shri Partap Singh, he had no grouse in respect of the period of extension as he was allowed to continue in service for the full term of the second extension. Shri Partap Singh also asked the Government for permission to avail of leave preparatory to retirement after the period of extension. Shri Gurbanta Singh recommended that Shri Partap Singh should be given that benefit but the Finance Department did not agree.

The material on record thus, clearly goes to show that Shri Partap Singh served for the full term of his service and the two periods of extension, and there was no premature retirement from service in his case. Shri Partap Singh also did not apply for a third extension and, in the circumstances, the allegation that Shri Partap Singh, Chief Conservator of Forests, had been asked to proceed on leave preparatory to retirement, is incorrect.

9. The other allegation made in the news item was that Shri Bachan Singh was the favourite officer of the Forest Minister Shri Gurbanta Singh, and Shri Partap Singh was being made to retire in order to promote Shri Bachan Singh. I have already held above that the allegation about Shri Partap Singh being made to retire is not correct. In order to show that Shri Bachan Singh was the favourite officer, it has been pointed out on behalf of the accused-appellant that though a committee, consisting of Shri Partap Singh, Chief Conservator of Forests, and three Conservators, had recommended that consequent upon the retirement of Shri Partap Singh, Major Gurbachan Singh, Divisional Forest Officer, be promoted as Conservator, the Forest Minister turned down the recommendation and promoted Shri Bachan Singh as Conservator. In this connection I find that it is admitted by Shri Partap Singh that Shri Bachan Singh was the seniormost forest officer working in the State at the time of the retirement of Shri Partap Singh. Major Gurbachan Singh, who was recommended for promotion as Conservator of Forest, was junior to Shri Bachan Singh. Major Gurbachan Singh, on the basis of

his war services, claimed seniority against Shri Bachan Singh but the Governor turned down the representation. Major Gurbachan Singh was the son-in-law of Shri Partap Singh, Chief Conservator of Forest, and I see nothing improper in the decision of the Minister to promote Shri Bachan Singh, who was the seniormost man as against Major Gurbachan Singh, even though the latter's name had been recommended by a committee headed by his father-in-law.

10. Another allegation, which has been made in the news item in question, is that in the Division of Shri Bachan Singh timber worth lacs of rupees had been misappropriated and when complaint to that effect was made by Range Officer, no enquiry was held and only the Range Officer was transferred to Karnal. This allegation obviously referred to the complaint made by D. W. 14 Shri. 'Sohan Singh, who was Forest Range Officer of Pathankot and who made complaints Exhibits D. U. and D. V. against Bachan Singh, Divisional Forest Officer. The evidence of Shri Gurbanta Singh shows that when he received the above complaints he marked those complaints for necessary enquiry and the enquiry was entrusted to and was actually made by Shri Kaushak, who was the Conservator of Forests, under whom Shri Bachan Singh worked. Although Shri Sohan Singh has tried to fling mud on Shri Kaushak also by saying that Shri Kaushak asked him to take back the complaints because of his friendly relations with Shri Bachan Singh, Shri Sohan Singh admits that he put his signatures at Exhibits D.U/1-A and D. U./1-V wherein he stated that he could not name his witnesses. The statement of Shri Sohan Singh in any case goes to show that an enquiry was actually held by Shri Kaushak on the complaints made by the witness. In the circumstances the allegation in the news item in question that no enquiry was made on the complaints made by Shri Sohan Singh was factually not correct.

11. I would, therefore, hold that the news item in question contained allegations which were factually incorrect and as such the accused can take no advantage of the First Exception to Section 499.

12. Argument has been advanced that the case of the accused is covered by the Ninth Exception to Section 499, which Exception reads as under:--

'It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.'

Perusal of the above Exception makes it plain that it is not necessary to show that the imputation regarding the character of another person should be true and all that is needed is that it should be made in good faith for the protection of the interest of the person making it or of any other person or for the public good. As observed by their Lordships of the Supreme Court in Harbhajan Singh v. State of Punjab, Criminal Appeal No. 53 of 1961, D/- 2-3-1965: (AIR 1965 SC 97).

'the proof of truth which is one of the ingredients of the First Exception is not an ingredient of the Ninth Exception. What the Ninth Exception requires an accused person to prove is that he made the statement in good faith.'

According to the learned counsel for the accused-appellant the imputation was made in good faith and for the public good. So far as the question is concerned as to whether the imputation was made for the public good, there can be hardly much dispute. It is a legitimate function of all newspapers in a democratic set up to act as champions of a clean administration and sentinels of public interests, and as such they are well within their rights to expose and bring to the notice of the general public any lapse or malpractice in the administration including that of nepotism and favouritism. Were there a genuine case of favouritism and nepotism, a newspaper by bringing it to the notice of the general public would be acting for the public good. Even if the allegations made by the newspaper are factually not correct, the editor, printer, and publisher of the newspaper would be protected if the allegations are made in good faith and for public good. It is however, essential that both these conditions of good faith and for public good should be fulfilled before the benefit of Ninth Exception can be invoked. As the publication of the news item appears to be for the public good, the point which needs determination is whether the publication was in good faith. According to Section 52 of the Indian Penal Code nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention. This definition is at variance with the definition of good faith under the General Clauses Act according to which 'a thing

shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not'. For the purpose of Exceptions to Section 499, the definition of good faith as given in Section 52 of the Code would prevail as against that given in the General Clauses Act.

13. Before proceeding further in the matter on the question of good faith, I may advert to one aspect of the matter. It is the common case of the parties that the relations of D. W. 18 Shri Jagat Narain, father of the accused with Shri Partap Singh Kairon, the then Chief Minister of the Punjab, were extremely strained. According to the accused, the present complaint has been instituted against him because of the differences between his father and Shri Partap Singh Kairon. As against that, the stand, which has been taken by Shri M. R. Chhibar on behalf of the State in this Court is that the news item in question was published because of that animosity to malign the Government headed by Shri Partap Singh Kairon.

14. The factors, which should weigh with the Court in deciding whether the accused acted in good faith under the Ninth Exception, were considered by the Supreme Court in Harbhajan Singh's case, Criminal Appeal No. 53 of 1961, D/- 2-3-1965: (AIR 1965 SC 97) (supra) and it was observed:

'Thus, it would be clear that in deciding whether an accused person acted in good faith under the Ninth Exception, it is not possible to lay down any rigid rule or test. It would be a question to be considered on the facts and circumstances of each case--what is the nature of the imputation made; under what circumstances did it come to be made; what is the status of the person who makes the imputation; was there any malice in his mind when he made the said imputation; did he make any enquiry before he made it; are there reasons to accept his story that he acted with due care and attention and was satisfied that the imputation was true?' It was also observed--

'So, in considering the question as to whether the appellant acted in good faith in publishing his impugned statement, we have to enquire whether he acted with due care and attention. There is no doubt that the mere plea that the accused believed that what he stated was true by itself, will not sustain his case of good faith under the Ninth Exception. Simple belief or actual belief by itself is not enough. The

appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role. If it appears that before making the statement the accused did not show due care and attention, that would defeat his plea of good faith. But it must be remembered that good faith does not require logical infallibility. As was held by the Calcutta High Court in the matter of the Petition of Shibo Prosad Pandah, ILR 4 Cal 124, in dealing with the question of good faith, the proper point to be decided is not whether the allegations put forward by the accused in support of the defamation are in substance true, but whether he was informed and had good reason after due care and attention to believe that such allegations were true.'

It would follow from the above that a bare assertion of ipse dixit of the accused that he believed the news to be true would not absolve him. Likewise, even if he proves that he actually believed the news item in question to be correct it would not exculpate him unless it is also shown that he acted with due care and attention. For this purpose we shall have to see as to whether the belief was based upon some material which a reasonably prudent man might find to be trustworthy and reliable. If the publisher of the news item exercises that care and attention, he shall be taken to have acted in good faith even if the news item is subsequently found to be not true because logical infallibility is not an essential trait of good faith. If on the contrary it is found that the report, per se defamatory, was readily accepted and published without having rational basis for the belief in its correctness, in such a case the publication would not be protected by the Ninth Exception because the element of due care and attention would be missing. It would also in such an eventuality make no difference so far as the guilt of the accused is concerned whether the readiness to accept the news to be correct was influenced by the background of strained relations between the father of the accused and the then Chief Minister, for that would show malice and not good faith, or whether the readiness was otherwise too hasty because of want of due care and attention.

15. Keeping the above test in view and after taking into account the circumstances of the case, I am of the opinion that the publication of the news item in question

cannot be said to have been made in good faith. According to D. W. 17, Shri Nauhria Ram, Editor of the Hind Samachar, he had no personal knowledge of the subject-matter of the news item in question and the same had been received from Shri Harish Chander Bhanot who was the Correspondent of the Paper at Chandigarh. Shri Harish Chander Bhanot has, however, not been examined as a witness. In the circumstances, it is difficult to hold that there was any apparently reliable material on the basis of which the truth of the news item could be reasonably believed. According to Shri Nauhria Ram, before the publication of the news item he had occasion to talk to Sohan Singh referred to in the news item when he (Sohan Singh) came to the office of the Hind Samachar and confirmed the correctness of the news. Sohan Singh, who was examined as D. W. 14, has, however, denied having gone to the office of the Hind Sahachar or having supplied any copy of his representation to a representative of the Hind Samachar. Sohan Singh has further denied having any talk with any member of the establishment of the Hind Samachar.

It would, thus, appear that Sohan Singh gives a lie to the statement of Shri Nauhria Ram that Sohan Singh went to the office of the Hind Samachar and had a talk with the witness. Apart from that, I find that the material on record indicates that some kind of enquiry was pending against Sohan Singh and as such it cannot be said that the publisher of the Hind Samachar acted with due care and attention even if he issued the news item on the basis of the statement of Sohan Singh who was obviously a disgruntled person. Nauhria Ram has also stated that he received a copy of complaint made by D. W. Har Amarjit Singh against Shri Bachan Singh and that Har Amarjit Singh assured him regarding the correctness of the news item. Har Amarjit Singh has come into the witness box as D. W. 16 and his statement goes to show that he did not make any enquiry into the truth or otherwise of the allegations made by him in the complaint. It would thus appear that Har Amarjit Singh was hardly in a position to vouchsafe about the correctness of the allegations made in the news item. After giving the matter my earnest consideration I am of the view that the accused has failed to prove that he acted with due care and attention, and as such in good faith, in publishing the news item in question. The accused consequently cannot invoke the benefit of Ninth Exception.

16. I would, therefore, hold that the accused has been rightly convicted and dismiss his appeal.

17. A revision has been filed by the State for enhancement of sentence. No notice was issued in this revision and otherwise too I am of the view that the sentence imposed is not so manifestly inadequate as to justify enhancement in revision. The revision too fails and is dismissed.

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