

John Peter Vs. State

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Court : Kerala

Decided On : Jan-27-1953

Reported in : 1953CriLJ1419

Judge : Govinda Pillai, J.

Appellant : John Peter

Respondent : State

Judgement :

ORDER

Govinda Pillai, J.

1. The petition is by one Mr. John Peter Thottam, the Managing Proprietor of Kalavilastal Publishing House, Trivandrum, to pass orders under Section 476, Criminal P.C. to prosecute Mr. Mathew M. Kuzhiveli the Text Book Officer of the Government of Travancore-Cochin State for the offence under Section 199, I.P.C. The petitioner had filed original petition No. 62 of 1951 on 13.6.1951 against the Travancore-Cochin State and the present counter-petitioner for such directions, orders or writs to or against the counter-petitioners as would prohibit and prevent them from further publishing or selling any copies of the book entitled 'Kerala Padya Patavali' prescribed for the fifth form and also to seize and obtain possession of all copies of the said book and to grant other appropriate reliefs.

The State had appointed a committee to select books in Malayalam verses so that they may be prescribed as texts for the different grades and classes under the Education Department. It was stated that the book printed for the use of the fifth Form contained a poem composed by Miss Mary John, the sister of the petitioner and which was included without having obtained the permission of the petitioner in whom the copy right of the said poem vested. In the course of that enquiry, the counter-petitioner filed an affidavit that permission of the authoress had been sought for by a letter dated 22.5.1951, that a reply was received from her on 6.6.1951 that the copy right of the said poem had been transferred to her brother so that he may be contacted in the matter, that he had contacted him over the phone on the same day and obtained his permission and that on the faith of his permission the printing of the book was completed and distribution started in the usual course.

2. It was the petitioner's case that this statement of fact in the affidavit was false, because the book had been printed in May 1951 as is seen from the inner title of the same. Notice of this petition was given to the counter-petitioner and the State and the counter-petitioner had filed an affidavit explaining that though the date of printing was noted on the cover as May 1951, the printing was completed only after the permission of the petitioner was obtained over the phone. He had also filed a statement showing items of textbooks received from the Government Press, Trivandrum and it is seen therefrom that 13,000 copies of this were delivered from the Press on 7.6.1951. He would also say that the date 'May 1951' printed in the inner title of the book was not the date of the completion of the printing nor does it denote the date of publication. The learned Government Pleader stated that it indicated only the date on which the order was issued to the press to print the book and that the last form of this book had been printed only after the petitioner's permission was obtained. The book in question contains 16 selected poems and it has 64 pages on the whole. The poem 'Painkili' about the publication of which the O. P. was filed is the 14th poem printed there & it appears on pages 51, 52 and 53. It is to be seen with these backgrounds whether it is expedient in the interests of justice to start criminal proceedings against the counter-petitioner. The statement now made by the counter-petitioner may or may not be true. It is true that he had not given any explanation at the time when the original petition No. 62

of 1951 was heard why the date 'May 1951' is printed in the book, it is also equally true that this had not been mentioned as a ground of attack in the affidavit filed by the petitioner in the original petition. With the material available then, it was only possible to state that the counter-petitioner's case that the book was printed only after 6.6.1951 cannot be correct. It is possible that the last form might have been struck after obtaining the formal permission. With the facilities available in the press and the emergent state of affairs requiring the supply of the books to the students in the schools which had already opened, the version given by the counter-petitioner now may be true. The counter-petitioner was only acting for the State and he could not have obtained any personal advantage because Of the private publication of a poem without permission. Section 476, Cr.P.C. says that the Court taking action under the same should be of opinion that it is expedient in the interests of justice that an enquiry should be made in respect of the offence alleged to have been committed. It means that the Court should see that the prosecution is undertaken in the interests of Justice and not to satisfy the private grudge of a litigant. All that the Court has to see in the present enquiry is that on the materials before it, there is sufficient ground, to believe that an offence has been committed and that if the offender is prosecuted it will end in a conviction. This is the view expressed by the several High Courts of India, and in arriving at this conclusion and before setting the criminal law in motion, the Courts are to exercise great care and caution. The words 'appears to have been committed' in the section would certainly show that there must be sufficient materials before the Court to show that an offence is likely to have been committed. I have mentioned the background for this petition and also the circumstances under which the counter-affidavit has been filed.

As mentioned already, the counter-petitioner was not one who was to obtain any advantage by swearing a false affidavit. He was only an officer of the State carrying out certain directions entrusted to him by the committee appointed for the purpose. In these circumstances I do not think that in the interests of justice criminal law is to be set in motion against the counter-petitioner. The materials before me are also not sufficient to hold that there are reasonable grounds for starting the prosecution. Taking all the circumstances into consideration I am satisfied that it is not expedient in the interests of justice to start a prosecution

against the counter-petitioner and I therefore dismiss the petition.

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