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R. Sankar Vs. State

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Court : Kerala

Decided On : Nov-28-1958

Reported in : 1959CriLJ464

Judge : Raman Nayar and; Vaidialingam, JJ.

Acts : Penal Code (IPC), 1860 - Sections 499; Evidence Act, 1872 - Sections 101 and 104; Constitution of India - Article 14; Code of Criminal Procedure (CrPC) , 1898 - Sections 198, 198B, 198B(3) and 198B(13); Code of Civil Procedure (CPC) , 1908

Appeal No. : Criminal Appeal Nos. 73 and 81 of 1958

Appellant : R. Sankar

Respondent : State

Advocate for Def. : K.V. Suriyanarayana Iyer, Adv. General

Advocate for Pet/Ap. : K. Velayudhan Nayar and; Pananapalli Govinda Menon, Advs.

Disposition : Appeals allowed

Judgement :
ORDER

No. H/4-28800/57 Home (A)

'Sanction is accorded to the Public Prosecutor, Trivandrum, under Sub-section (3) of Section 198B of theCode of Criminal Procedure, 1898 to make a complaint against Sri K. Karthikeyan, Editor, Printer and Publisher of the Newspaper 'Pothujanam' before the Court of Session, Trivandrum for the offences punishable under Sections 500 and 501 of the Indian Penal Code for having published a news item in its issue dated 21-8-1957 under the caption (words in Malayalam omitted), and also the reply of the correspondent under the caption (words in Malayalam omitted.) and the Editorial in the issue dated 23-8-1957 which are highly defamatory of the Minister for Law in respect of his conduct in the discharge of his public functions.

(By order of the Governor) Sd/N.E.S. Raghavachari. Secretary to the Council of Ministers and Chief Secretary'.

37. Now it is quite apparent from its wording, and, in particular from the recital 'By order of the Governor' under which the Chief Secretary and Secretary to the Council of Ministers has subscribed his signature to this document, that the sanction is not his sanction but the sanction of the Government expressed in the name of the Governor as required by Article 166(1) of the Constitution, and authenticated by the Chief Secretary and Secretary to the Council of Ministers in the manner prescribed under Article 166(2). There is no evidence in either case of any sanction accorded by the Chief Secretary to the Council of Ministers himself; and hence the question is whether a sanction by the Government is sufficient under Section 198B (3) (b).

38. We think not, for we are unable to subscribe to the view put forward by the learned Advocate General (which again he has attempted to fortify with reference to the debates in Parliament) that even in a case falling under Clause (b), as distinguished from Clause (c), of Sub-section 3 of Section 198B, the sanctioning authority is really the Government concerned and that the Secretary acts only as a conduit. This is a construction which the language of the section can hardly bear.

For, what it says is that there must be the previous sanction of the Secretary. The sanction is the sanction of the Secretary and not of the Government; and all that is required of the Government or the Government is competent to do, is to authorise

the Secretary to give the sanction. It seems to us that what sub-s. 3 contemplates is that some body other than the person aggrieved should make up his mind whether sanction should be accorded, or not.

And, if he considers that it should be accorded, he should do so with the authorisation, in other words the permission, of the person aggrieved in cases falling under Clause (a) and of the Government concerned in cases falling under Clause (b). The word used is 'authorised' and not 'directed', and sanction is a matter on which the Secretary must independently make up his mind and not one in respect of which he can be directed by the Government, or in which he merely acts as a channel of communication for the Government.

Now an executive act of the Government should be expressed, and how it can be authenticated and communicated are matters for which Article 166 of the Constitution makes due provision so that it were hardly necessary for the Criminal Procedure Code to do so. And where it is a matter of mere signing (which according to the learned Advocate General is all that the Secretary is expected to do), the Code employs appropriate language for the purpose as in the provisos to Sections 476 (1) and 479 (A) (1).

39. A clinching argument against the contention of the learned Advocate General is that ifhis contention were well founded there would beno difference whatsoever between Clauses (b) and (c) of Sub-section 3. In both cases the authority competent to give the sanction would be Government. Then why one might well ask, this special and elaborate provision in Clause (b)? and why all this trouble to name a mere conduit when that was thought unnecessary in Sub-section (c). And why attach any importance at all as to who a mere conduit would be

The answer to these questions obviously is that in Clauses (a) and (b) the Secretary is not a mere conduit but is an authority independent of the person aggrieved and of the Government concerned, and is to independently decide whether sanction should be given or not. That a Secretary is a subordinate of the Government is no impediment to the legislature conferring independent functions on him. This is apparent from Article 154(2)(b) of the Constitution; see also Commissioner of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16, and it

scarcely lies in the mouth of the prosecution to suggest that Parliament could not have expected a Secretary to Government to exercise his own independent judgment in discharging his independent statutory responsibilities,

40. Ext. P5 in C. C. 3 and Ext. P4 in C. C. 4 although signed by the Chief Secretary and Secretary to the Council of Ministers are not orders of sanction by him but by the State Government. There is thus no sanction in either case by the authority mentioned in Section 198B (3) (b).

41. It is contended on the analogy of cases investigated in violation of Section 155 (2) of the Crl. P. C. and Section 5A of the Prevention of Corruption Act (II of 1947) that a violation of Sub-section 3 of Section 198B, Crl. P. C. does not vitiate a trial any more than does a violation of those provisions. Sub-section (3) of Section 198B is an injunction on the Public Prosecutor and not on the court; the only injunction on the court is that in Sub-section (1) which requires that there should be a complaint in writing made by the Public Prosecutor; and that it is said is the only condition of cognizance.

Driven to its logical conclusion this argument would mean that even if there be no sanction at all the court would be bound to take cognizance on a complaint made by the Public Prosecutor, But we did not understand the learned Advocate General to go so far. However that might be, the argument can hardly bear examination once it is remembered that Sub-section (3) of Section 198B is an integral part of a special provision which lays down the conditions on which, other provisions to the contrary notwithstanding a Court of Session may take cognizance.

Whatever might be said of Sub-section (2) there can be no doubt of the mandatory character of Sub-section (3); and the fulfilment of every single condition seems to us a necessary pre-requisite of cognizance. By its wording, Section 198B is no doubt only permissive. But it is statedly an exception to other provisions of the Code, notably Section 198 (1), which prohibit cognizance; and it is not pretended that cognizance by a Court of Session otherwise than under Section 198B could be of any avail.

Therefore there can be no doubt that Section 198B is a mandatory provision governing the competence of the court in the matter of cognizance. Section 155 (2) of the Crl. P. C. and Section 5A of the Prevention of Corruption Act on the other hand do not concern themselves with the question of cognizance by a court but only with the question of investigation by a police officer. And, as pointed out in H. N. Rishbud v. State of Delhi, (S) AIR 1955 SC 198 a defect or illegality in investigation, howover serious, has no direct bearing on the competence of a court to take cognizance.

A valid and legal police report is not the foundation of the jurisdiction to take cognizance. Section 190 Crl. P. C. enacts no bar to cognizance otherwise than in accordance with its provisions; and in any case, the general power of cognizance under that section is not limited to a police report. The special power of cognizance under Section 198B, it can hardly be disputed, is limited to a complaint in writing made by the Public Prosecutor; and that complaint, we have no doubt, must be in accordance with the provisions of the section. It is as if Sub-section (1) said that the court may take cognizance on a complaint made by the Public Prosecutor with the previous sanction required by Sub-section (3). In other words, a valid and legal complaint by the Public Prosecutor is the very foundation or the power of cognizance.

42. There are two other objections taken by the defence. Both seem to us unfounded; but we may refer to them briefly. One is that it does not appear that the sanctioning authority (whoever it was) applied its mind to the facts of the case before granting the sanction. It is only necessary to read the two orders of sanction to repeal this contention for they show that the sanction was accorded in full advertence to the facts of each case.

43. The other contention is that, on the very averments in the complaint, and on the evidence adduced by the prosecution, the Minister was not competent to make an appointment under the Electricity Board which is an independent and autonomous corporation with power to make its own appointments. Therefore it cannot be said that the alleged libel is in respect of the Minister's conduct in the discharge of his public functions so as to attract Section 198B. The argument is

fallacious.

For, what we have to consider under Section 198B is not whether the disgraceful conduct attributed to the public servant concerned is something which he could or could not properly have done in the discharge of his public functions -- as likely as not, as in this case, it might not have been done at all--but whether the libel is in respect of his public functions; in other words, whether the imputation is that he committed the disgraceful conduct in the discharge of his public functions.

To put it shortly, whether the imputation is against what we might call his official character. That it is so in these cases cannot be doubted, for the allegation is, that Sri Krishna Iyer made an irregular appointment, and conducted himself disgracefully, in his capacity as Minister. And the innuendo that his administration is a corrupt administration is obviously a libel in respect of his conduct in the discharge of his public functions.

It seems to us unnecessary to refer to the several decisions cited at the bar dealing with Section 197 of the Crl. P. C. and Section 270 (1) of the Government of India Act; or to pause to consider whether the, 'in respect of his conduct in the discharge of his public functions' of Section 198B (1) of the Code is of larger import than the, 'acting or purporting to act in the discharge of his official duty' of the former or the, 'act done or purporting to he done in the execution of his duty as a servant of the Crown' of the latter.

As we have already remarked under Section 198B the inquiry is not whether any act was done by the public servant in the discharge of his official duty -- there might have been no act done at all--but whether the imputation was in respect of his public functions.

44. It is of course not disputed that cognizance taken in violation of Section 198 or Section 198B is something that goes to the very root of the matter and renders the trial one without jurisdiction. It follows from what we have said that the trial in these cases was without jurisdiction.

45. We allow the appeals and set aside the convictions and sentences recorded against the accused persons in both of the cases.

46. It is perhaps unnecessary to say that this. does not operate as an acquittal.

47. We might however add that, despite our finding that cognizance was barred, we have thought fit to pronounce on the merits of the case because the merits were very elaborately argued before us and both sides seemed anxious for an adjudication on the merits. It might be that our finding on the question of cognizance is canvassed in further appeal; and in that event a finding by us on the merits might become necessary for the final disposal of the case.

C.A. Vaidialingam, J.

48. I agree with the judgment just now delivered by my learned brother Raman Nayar, J., excepting on the question about the scope of sub-s. 13; of Section 198B of the Crl. P. C. With great respect, I regret, I am not able to agree on this point with the views expressed by my learned brother.

49. The contention of Mr. P. Govinda Menon, learned counsel for the appellants, based upon this sub-section is that in a complaint filed under Section 198B by the Public Prosecutor, the public servant, in this case the Minister for Law, should have also joined in the complaint. I did not understand Mr. Govinda Menon to contend that there should be two complaints in such cases namely, one by the public servant himself under Section 198 of the Cr. P. C., before the proper forum, and another under Section 198B jointly by the public servant and the Public Prosecutor.

50. The learned Advocate General on the other hand, appearing for the complainant, the State of Kerala, in both the appeals, contended that in a complaint filed under Section 198B, Cr. P. C. by the Public Prosecutor after the necessary formalities, it is not necessary that the person against whom the offence is alleged to have been committed, should also join as a party. According to the learned Advocate General, the effect of Sub-section 13, of Section 198B is only to give an additional right to the public servant to have a complaint filed before a

court of session by the Public Prosecutor also,

It does not take away the right of a public servant, if he so chooses, to launch a complaint himself before a proper court under Section 198B. There is nothing in the wording of any of the clauses of Section 198B to warrant the contention that the public servant also should be a party, to the complaint filed by the Public Prosecutor.

51. The short point therefore, is whether the Minister for Law in this case, should have also joined in the complaint filed by the Public Prosecutor and whether the non-joining of the Minister is fatal to the prosecution launched by the Public Prosecutor alone.

52. In my view, Sub-section 13 of Section 198-B does not lead to the conclusion that the person against whom the offence is alleged to have been committed, should also be a party in a complaint filed by the Public Prosecutor under Section 198-B.

53. Though Section 198 of the Cr. P. C. is worded in such a way as to prohibit a court from taking cognizance of the offence mentioned therein, excepting upon a complaint made by the person aggrieved by such offence, in cases not covered by the provisos thereto, the object underlying the section is that the jurisdiction of the Court can be invoked only by the aggrieved person himself making a complaint. The right of the aggrieved person to invoke the jurisdiction of the Court by making a complaint himself is clearly recognised by, that section.

Such a complaint can be made only to the Magistrates who are empowered to exercise jurisdiction in that behalf; whereas under Section 198-B, in the case of offences stated therein and alleged to have been committed against persons and under the circumstances enumerated therein, power is given to a Court of session to take cognizance of such offence when a complaint in writing is made by the Public Prosecutor.

Two factors emerge from this section, namely(1) a Court of session, which otherwise gets jurisdiction only when the accused is committed to it for trial, is

empowered to take cognizance straightway, &(2) such jurisdiction of the Court of session can be invoked by the Public Prosecutor making a complaint.

54. According to Mr. P. Govinda Menon, Section 198-B must be read along with the prohibitions mentioned in Section 19y. That such a contention cannot be accepted will be seen from the opening words of Section 198-B Clause (1), viz. 'notwithstanding anything contained in this Code'. These words clearly mean that Section 198-B stands by itself, irrespective of whatever is said in the Code about such matters. It is rather difficult to understand that the legislature by incorporating Sub-section 13 in Section 198-B intended the prohibition under Section 198 to have full force and effect especially when the Legislature has very clearly stated in Section 198-B, Clause (l) that those provisions are to apply 'Notwithstanding anything contained in this Code'.

It is a canon of interpretation that all the parts of a Statute should be read in a reasonable manner so as not to conflict with one another. So read, in my view, the object of Sub-section 13 of Section 198-B is only to preserve the rights of the person, against whom the offence is alleged to have been committed to directly approach if he so chooses the proper Court by himself making a complaint under Section 198 of the Cr. P. C.

55. Mr. P. Govinda Menon further contended that there is intrinsic evidence in some of the sub-sections of Section 198-B to show that the person against whom the offence is alleged to have been committed, should also join in a complaint made by the Public Prosecutor and for this purpose, the learned counsel relied upon Sub-sections 6 to 11 of Section 198-B. Those Sub-sections give power to the Court of session which tries the offence, to award compensation to the Accused when it is of opinion that the accusation against the accused was false, frivolous or vexatious.

56. Sub-section 6 gives power to the court of session to direct the person against whom the offence was alleged to have been committed, other than the President, Vice-President, Governor or Rajpramukh of a State, to show cause why he should not pay compensation to the accused on the ground that the Court is of opinion that the accusation was false, frivolous, or vezatious,

57. Sub-section 7 empowers the Court of Session to consider any cause shown by the person so directed and to award compensation not exceeding Rs. 1,000 to be paid by such person.

58. Sub-section 8 provides for recovery of compensation so awarded, as if it were a fine.

59. Sub-section 9 provides that the person who has been directed to pay compensation, is not exempted from any civil or criminal liability.

60. Sub-section 10 gives a right of appeal to the person who has been so ordered to pay compensation.

61. Sub-section 11 states that the compensation need not be paid before the expiry of the period for presentation of an appeal or during the pendency of the appeal, if one such is filed.

62. According to Mr. P. Govinda Menon, these Sub-sections contemplate the public servant also being a party along with the complainant, in a complaint filed under Section 198-B; otherwise these subsections have ausolutely no place or meaning. The Sub-sections relied upon by Mr. P. Govinda Menon, do not, in my opinion, in any way, assist the contentions of the learned counsel for the accused. As pointed out by the learned Advocate-General, Sub-section 5 of Section 198-B makes it obligatory, for the person against whom the offence is alleged to have been committed, being examined as a witness for the prosecution.

The evidence of that person can be dispensed with, only if the Court of session otherwise directs by recording reasons. Therefore, the person against whom the offence is alleged to have been committed, will be before the Court as a prosecution witness. Further Sub-section 6, on which the learned counsel for the accused has so strongly relied, itself begins by saying 'if in any case instituted under this section'.

63. Again Sub-section 9 ends by saying; 'In respect of the complaint made under this section'. Therefore the words 'in any case instituted under this section' as contemplated under 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 198-B. Sub-section (i) clearly contemplates: 'a complaint in writing made by the Public Prosecutor'. Therefore, the complaint that is contemplated, is only that made by the Public Prosecutor and it is to such complaint, and a case commenced by such a complaint, that Sub-sections 6 and 9 have application.

64. Further, Sub-section 6 specifically confers a special power, and but for that provision, and the subsequent Sub-sections, the Court of session would have no jurisdiction whatsoever to deal with the person, against whom the offence is alleged to have been committed. In this connection, reference may be made to the provisions of Section 250 of the Cr. P. C. whereby identical powers, as those conferred on the Court of session under Sub-sections 6 to 11 of Section 198-B have been conferred on a Magistrate in dealing with a case instituted upon complaint or upon information given to a police officer or to a Magistrate.

Under that section, power is given to a Magistrate to call upon the complainant to show cause why he should not be directed to pay compensation, when the Magistrate is of the view that the accusation was false, frivolous or vexatious. Section 250 gives power to a Magistrate dealing with summons and warrant cases. If a complaint has been made by the aggrieved person under Section 198 straightway, the Magistrate would have power under Section 250 to direct the complainant to pay compensation under the circumstances mentioned therein.

The legislature, by incorporating Sub-sections 6 to 11 in Section 198-B, intended that the Court of session also should have such a power to proceed against the person against whom the offence is alleged to have been committed, notwithstanding the fact that a complaint, under the said section, is to be made only by the Public Prosecutor. Therefore, Sub-sections 6 to 11 of Section 198-B, in no way suggest that the Public officer, against whom the offence is alleged to have been committed, should also figure as a complainant under this section.

65. The learned counsel for the accused finally relied upon a decision of a single Judge of the Bombay High Court reported in AIR 1958 Bom 196. That decision no doubt, prima facie appears to support the contention of Mr. P. Govinda Menon that

the effect of Sub-section 13 of Section 198-B, is that a complaint under Section 198-B, will have to be made both by the person aggrieved and by the Public Prosecutor. At page 197 of the reports, Mr. Justice Bavdekar observes:

'What Section 198-B (13) consequently means, when St 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 provisions of Section 198, that is, the complaint will have to be made both by the persons 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'.

66. If the learned Judge intended to lay down as a proposition of law that a complaint filed under Section 198-B of the Cr. P. C. should be by both the person aggrieved and by the Public Prosecutor, with great respect, it is not possibles for me to agree with that reasoning.

67. The Public Prosecutor had not signed the complaint as required under Section 198-B, and the only point before the learned Judge was whether the Court of session could take cognizance on such a complaint which has not been made by the Prosecutor. The observations made by the learned Judge were not really necessary for the purpose of that case and they are only obiter. In any event, as mentioned earlier, it is not possible for me to agree with that line of reasoning. In my opinion, it is not necessary that the person aggrieved should also join as a complainant in a complaint filed by the Public Prosecutor under Section 198-B.

68. It follows that the non-joining of theMinister for Law in this case, in the present complaints does not on that account, vitiate the proceedings initiated by the Public Prosecutor alone underSection 198-B.

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