

John Manjooran Vs. C.M. Stephen and ors.

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Court : Kerala

Decided On : Feb-28-1973

Reported in : 1973CriLJ1722

Judge : K. Bhaskaran, J.

Appellant : John Manjooran

Respondent : C.M. Stephen and ors.

Judgement :

K. Bhaskaran, J.

1. Whether the impugned portion of Ex. P-I (a) report of the speech alleged to have been made by the first accused, published in the Mathrubhoomi daily of which the second accused is the printer and publisher, is defamatory of the complainant, and, if so whether the accused are protected by Exceptions 1 and 9 to Section 499 of the Indian Penal Code, are the main questions involved in this appeal against acquittal. The prosecution was launched by Sri Mathai Manjooran, the Minister for Labour, Government of Kerala, in the Ministry that was sworn in on the 6th of March 1967, and was on his death on 15-1-1970, continued by his brother Sri. John Manjooran, claiming to be the legal representative of the deceased, and the General Secretary of the Kerala Socialist Party.

2. Section 499. IPC and Exceptions 1 and 9 to that section read as follows:-

499. 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.

Explanation I - It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that Person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. - It may amount to defamation to make an imputation, concerning a company or an association or collection of persons as such.

Explanation 3, - An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4. - No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as

disgraceful.

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.

Ninth Exception.- 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 interests of the person making it. or of any other person, or for the public good.

3. Ext. P-I is the copy of the Mathrubhoomi daily (Cochin Edition) dated the 12th February 1968. Ext. P-I (a) is the news item published on page 5 of Ext. P-I with respect to the Trichur District Convention of the I. N. T. U. C. at Ali Nagar. Thekkinkad Maidan, Trichur, held on the evening of 11th February 1968. The meeting, according to the report, was attended by about half a lakh of people. The caption of the report is 'Thozhil Rangathu Arajakathwam Azhi-chhuvittu'. It is boldly printed and is conspicuous- Immediately below the main caption it is printed 'Saptha Kakshi Sarkarine patti Skephen', and it is in the nature of a Sub-caption. The second paragraph of the report in which the imputation is contained reads as follows:-

Yaathoru thozhil Nayavum Saptha Kakshi Sarkarinillennu Sri Stephen par-anju. Kendrathhilum Samsthanangalilum ettavum prabalanmaraya manthrimaranu thozhil vakuppu kykaryam cheithu-ponnittullathennadeham paranju Saptha kakshi Sarkarilakatte. Marxist Communist Partiyude oru Sampalakkarananu thozhil vakuppu manthri ennaddeham kuttappe-tuthi. Thozhilali rangathho, rashtreeya rangathho enthengilum nedano. nashtappe dano ellathha oraale, pidichu thozil vakuppu elpichhirikkayanu, Rashtreeyaadhi- karam prayofiichu thozhilali union ketti-ppetukkan Sramickukayum Samkhatitha thozhilali vangathhe phakarkkukayum cheyyunna adavukalanu Sweekarikkap-pettittullathu

Paragraph 3 of the complaint presented by Shri Mathai Manjooran on 22-3-1968 reads as follows:-

On the evening of the 11th day of February 1968 a public meeting was arranged at Thekkinkad Maidan, Trichur under the auspices of the Trichur District of the Indian National Trade Union Congress. That meeting was largely attended and was inaugurated by the 1st 'accused as President of the Kerala Indian National Trade Union Congress. During the course of his inaugural speech the 1st accused as part of his speech after stating that the Labour Department has been handled by eminent Ministers in the Centre and the State has made the following imputation:

Sapthakakshi Sarkarilakatte. Marxist Communist Partiyude oru Sampalakka-ranu thozhil vakuppu manthri.

He has further stated as follows:-

Sapthakakshi Sarkar Statile thozhil rangathu arajakthwam azhichhuvittirik- kukayanu,'

This statement is obviously intended as an innuendo against the complainant since the Labour portfolio is being handled by the complainant.

Out of Ext. P-I (a) report only two sentences appearing in paragraph 3 quoted above have been reproduced in the complaint, and those sentences would mean that in the seven party Government the Minister for Labour is a salaried employee ('Sarnpalakkaran') of the Marxist Communist Party and that the seven party Government has let loose anarchy in the labour sector in the State.

4. The background of the complaint, as could be gathered from the evidence, is as follows: The complainant Sri Mathai Manjooran was a well-known politician and a labour leader. To start with, he was a Congressman, but later, in the year 1947. he left the Indian National Congress and founded a political party known as the Kerala Socialist Party, briefly referred to as the K. S.P. In the year 1952 he was elected as a Member of the Rajya Sabha (Council of States) In 1954. 1965 and 1967 he had contested elections to the Assembly, but was

successful only in 1967. when he was returned by the Matayi Constituency in Cannanore District.

5. The first accused Sri C. M. Stephen is an eminent politician and an outstanding labour leader. During the material time he was the President of the Kerala Branch of the I. N. T. U. C. He had contested in the election held in the year 1967 on the ticket of the Indian National Congress, but was defeated. The second accused. Sri Kurur Neelakantan 1 Nambudiripad, also is a veteran Congress man, now advanced in age. He is the printer and publisher of the Mathru-i bhoomi, a Malayalam daily published simultaneously from Calicut and Cochin. For some time he was a Congress M. L. A. in the Kerala Assembly.

6. The subject-matter of the present case is certain imputations alleged to have been made by the first accused in the course of his inaugural address in connection with the Trichur District Convention of the I.N.T.U.C. That the first accused, due to difference in political opinion and ideology, was opposed to the Government then in power admits of no doubt. Ext. P-I (a) report, read as a whole shows that the first accused had severely criticised the Government for the policies pursued by it with particular reference to industrial peace, law and order situation, place of judiciary and Constitution etc., and the Minister for Labour incidentally became a target for attack, obviously for political reasons.

7. The contention of Sri P. F. Thomas, the learned Counsel for the appellant, is that the imputation which has given rise to the complaint is intended to defame the complainant and that the complainant had suffered loss of reputation in the public eye. He also contends that the imputation is made without due care and caution inasmuch as there is not even an iota of truth in the allegation that the complainant was a salaried employee of the Marxist Communist Party. The plea put forward by the learned defence counsel, Sri. M. Rajase-kharan Nair and Sri M. P. R. Nair. who appeared for respondents 1 and 2 respectively, is that the statement is not defamatory, and in any event they are protected by Exceptions 1 and 9 to Section 499, IPC It may incidentally be noted that the charge against the first accused is under Section 500, IPC and that against the second accused is under Section 501, IPC

8. Seven witnesses have been examined on the side of the prosecution. PW. 1 is the complainant himself. In his evidence he has narrated the events of his public life which extended to a period of four decades and also the objective of the K. S.P. He has also emphatically denied the allegation that he received salary from the Marxist Communist Party. PWs. 2 and 3 have deposed that they had listened the speech in the course of which the first accused made the impugned imputation. PWs. 4 and 5 are persons who are said to have read Ext. P-I (a) report and wondered whether it could be possible that a man in the position of the complainant would have received salary from the Marxist Communist Party. PW. 6 a prominent Marxist leader of the State and the Convenor of the Co-ordination Committee of the United Front, deposed that no salary was being paid by the Marxist Communist Party to the complainant. PW. 7 who was the Health Minister in the seven party Government deposed that Ext. P-I (a) report was in-, tended to lower the reputation of the complainant in the eyes of the public.

9. Unfortunate as it is, the full report of the speech is not before the court. It is in evidence that the first accused is a powerful speaker and the| speech, portions of which alone are contained in Ext. P-I (a), lasted for about 45 minutes. The context in which certain expressions are used will be very relevant while construing whether the imputation is defamatory or not. As has been observed by Mukerji, in *Bhola Nath v. Emperor* AIR 1929 All I : (30Cri LJ 101)-

Where the question arises as to whether the words used were intended to harm or had the effect of harming the reputation, the Court must be put in possession not only of the words used but also of the context in which they were used, in order to find the intention and the effect of the words. If the Court would accept instead of the words and the context, the 'impression left on the minds of the witnesses' it will be yielding its duty to witnesses with the result that the accused person will have no benefit of the opinion of the Court itself.

Considered within the ambit of the in-, complete report of the speech, as is available in Ext. P-I (a) itself. I have

great doubt as to whether the words used, in the context, would convey, or were intended to convey, the literal meaning which the prosecution would like to assign to them. The main grievance of the complainant is that he has been characterised as a salaried employee of the Marxist Communist Party whereas the truth is that he did not receive any salary from that party. As I have already observed, it is in the course of a critical survey of the policies pursued by the Government that the imputation happened to be made by the first accused. Either in the impugned statement or in the evidence that has been let in on the side of the prosecution, there is hardly anything to suggest that there was any personal element involved in the imputation. As the sub-caption rightly puts it, the criticism was against the Government. What difference it would make in construing the impugned statement if the entire speech is available, one cannot now say. However, considered in the context of the second paragraph of Ext. P-1 (a) taken as a whole, one could reasonably understand that the word 'Sampalak karan' is not used as a 'salaried man', as it may mean when considered in isolation. The first accused was wanting to highlight the draw-backs in the Government's labour policy, which he considered to be detrimental to the workers, and in characterising the complainant as 'Sampalakkaran', the intention of the first accused appears to have been only to stress the dependance of the complainant as a politician on the Marxist Communist Party for his entrance to and continuation in the Ministry. In Gundert's Malayalam - English Dictionary the word 'Sampalakkaran' is stated to be equivalent to 'Maasappatikaran', and the meaning given to the term 'Maasappatikkar' includes servants and peons. In the Concise English Dictionary the meaning of the word 'servant' includes 'subordinate', 'assistant' or 'helper'. Some of the word 'servant' may carry the meaning 'dependant' also. In this context it will be pertinent to note that the second accused in Ext. P-6 reply to Ext. P-4 notice sent by the complainant had categorically stated that what was meant and understood by the statement 'Marxist Communist Partiyude Sampalakkaran' is that the complainant for drawing his salary as the Minister was depending on the Marxist Communist Party. If the imputation is understood in this sense. I do not think that it is per se defamatory.

10. Though this plea was taken up by the second accused even in Ext. P-6, no attempt was made by the prosecution to elicit any evidence from the witnesses that such a meaning is not possible. The attempt, and the whole attempt, if I may say so, was to establish that the complainant was not receiving any salary from the Marxist Communist Party. In the context of the statement made before and after the particular sentence in which the words 'Marxist Communist Partiyude Sampalakkaran.' appear, the expression could not have been understood to convey the idea that the complainant was receiving salary from the Marxist Communist Party. On the other hand, the attempt of the defence was to stress that a person who could not have otherwise legitimately aspired to be a Minister, and who owes his office of ministership, and depends for the continuation in that post, on the support and good-will of the Marxist Communist Party, was being used by the Marxists to pursue an injurious labour policy causing disunity among the working class, without at the same time owning responsibility for it. It is for that reason that the first accused emphasised that the complainant was a person who had nothing much to gain or lose in the political or labour field. It may be that, as the complainant had rightly believed, he had his own identity and had his own following, both in the political and labour fields. However, the fact remains that the United Front found it possible to allot to his party only one out of 133 seats in the election, and to that extent it stands proved that the K. S.P., as a political party, was not yielding much of an influence in the State. There might also have been an attempt on the part of the first accused to minimise or belittle the importance of the complainant both as a politician and as a labour leader. But that cannot be considered to be defamatory.

11. The trial court has made a passing observation that Ext. P-1 (a) report is per se defamatory. However, in its discussion, subsequently, it does not appear to adhere to this as a finding. Sri M. P. R. Nair, the learned Counsel for the second respondent, argues that this passing observation cannot be treated as a finding, for, as a matter of fact, there is hardly any discussion as to whether there is material on record to come to the conclusion that the statement is per se defamatory. I think there is considerable force in this contention, as there is no discussion on this aspect of the matter in the trial court judgment. Whether the expression 'Sampalakkaran' in the context really conveys or could convey the meaning as put forward by the second accused also has not been considered by the trial court.

12. Even assuming that the impugned statement is per se defamatory, as the trial court appears to have considered, I am of the opinion that the evidence on record would not warrant an inference that the statement is not within the scope of Exceptions 1 and 9 to Section 499 of the IPC

13. As has been held by a Division Bench of this Court in A. K. Gopalan v. V. Mariarputham, 1961 Ker LT 615-

There is no universal rule that the accused cannot be convicted unless the actual words used by him are proved. It is enough if the witnesses are agreed in a substantial measure on the words of imputation uttered. It is not necessary to reproduce every word of expression.

The above Division Bench ruling is relied on by the counsel for the appellant to stress his contention that even though the first accused's speech in its entirety has not been reported, that may not matter if the words stated to have been spoken to by the first accused, as deposed by the witnesses, are found to be defamatory. The case cited was one where the accused did not admit to have made the speech as reported in the 'Kerala Kaumudi.' The argument was that the offending speech was not proved in court by the witnesses repeating the identical words uttered by the accused or even words analogous to those used by the accused, but the evidence given by them was only about the impression created in their minds by the speech. Annachandy J. who delivered the judgment, while agreeing with the soundness of the proposition laid down by the Allahabad High Court in AIR 1929 All 1 : (30 Cri LJ 101) already extracted in this judgment, distinguished the facts of the case and held that what was spoken to by the witnesses was the speech made by the accused, not the impression left on the minds of the witnesses by the speech. In this case the first accused has no case that he did not utter the impugned words. Therefore, this decision cited by the learned Counsel for the appellant is of no assistance for a decision of this case.

14. The decisions reported in Sanker v. State, 1958 Ker LJ 1262: (1959 Cri LJ 464); G. Chandrasekhara Pillai v. G. Raman Pillai; 1964 Ker LT 317; and Chamanlal v. The State of Punjab. : 1970CriLJ1266 have been cited by the learned Counsel for the appellant to emphasize that the burden of proof to plead protection under the Exceptions is on the accused. This is a well-accepted principle of law. However, the nature of the evidence and the extent of proof required would be quite different, from that required of the prosecution. In G. Chandrasekhara Pillai v. G. Raman Pillai. 1964 Ker LT 317 Govinda Menon, J. has observed as follows:-

It may be that the burden that is cast on the accused in a criminal case by virtue of Section 105 is not so onerous as the primary burden cast on the prosecution to prove the offence beyond reasonable doubt. It is sufficient if the accused who pleads an exception satisfies the court of the probability of what he has been called upon to establish and that if on the evidence it appears probable that the defence set up is true he is entitled to a decision in his favour even though he may not have succeeded in proving the truth of his version beyond reasonable doubt But it is not sufficient if the accused is able to create a doubt that the statement may or may not be true. If what is said is true then that is a defence. On the other hand if there is doubt as to whether it is true or not there is no defence at all and as the matter tends to bring the person defamed into contempt it is defamatory under Section 500. I.P.C.

This is the view taken by the Supreme Court also in Harbhaian Singh v. State of Punjab. : 1966CriLJ82 , wherein the observation is as follows:-

There is consensus of judicial opinion In favour of the view that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt This, however, is the test prescribed while deciding whether the prosecution has discharged its onus of proving the guilt of the accused. It is not a test which can be applied to an accused person who seeks to prove substantially his claim that his case falls under an Exception. Where he is called upon to prove that his case falls under an Exception, law treats the onus as discharged if he succeeds in proving a preponderance of probability. As soon as the preponderance of probability is established the burden shifts to the prosecution which still has to discharge its original onus. Basically, the original onus never shifts and the prosecution has, at all stages of the case, to prove the guilt of the accused beyond a

reasonable doubt

15. We have to examine whether the accused have succeeded in establishing preponderance of possibility of the explanation offered by them. In doing so, certain facts become relevant. The complainant had contested from Matayi Constituency which, according to PW 6 was a stronghold of the Marxist Communist Party. He had discarded the Angamaly Constituency from where in 1965 election he had contested and lost as an independent candidate supported by the Marxists the S. S.P. and the K. T. P. Even according to PW 1, from 1962 to 1964 he was a little out of picture of the Kerala politics. Whatever be the reason for that. Ext. D-I resolution to which Sri. John Manjooran, brother of the complainant, who got himself impleaded as the legal representative of the deceased complainant, and the General Secretary of the K. S.P., was one of the signatories proved by DW. 1 Vivekanandan, who was the then General Secretary of the party, shows that there was a decision to dissolve the party in the year 1964. No doubt, the complainant has an explanation to offer with respect to Ext. D-I, and he has also stated that as a matter of fact the dissolution of the party did not take place. In spite of the best efforts of the complainant to conceal the annihilation of his party from the political scene of Kerala, it is fairly clear that the party had suffered severe setback by 1964. even if it did not get itself completely extinguished as claimed by the defence. This inference is further reinforced -by the fact that in the election in the year 1965 the complainant contested not on the ticket of the K. S.P.. but only as an independent candidate supported by the Marxists, the S. S.P. and the K. T, P. Thereafter the complainant's party's revival, as we see from the evidence, is with its joining the United Front, an alliance of seven parties forged in the fabric of a common minimum programme with the declared object of defeating the Congress. Though technically it may be argued that the success of any one of the constituent parties of the United Front is the success of all the parties, the dependence of the complainant to a very large extent on the Marxist Communist Party which had offered him a safe seat In its strong-hold of Matayi where the influence of the K. S.P. seems to be little or negligible, evident from the fact (that the address of the candidate was given as 'C/o the Marxist Communist party. Matayi'; cannot be overlooked.

16. The allegation, based on inference that the dependence of the complainant for his political survival and ministership on the Marxist Communist Party was being exploited by that party and was made use of for pursuing an injurious policy causing disunity among the workers may or may not be true. The question is one of preponderance of probabilities. In Ext. P-8, report in the 'Indian Express' of the press conference held by the complainant, the complainant has been described as a person who was hitherto the staunchest supporter of the Marxist Communist Party, and as one who had begun a virulent attack on the party, A portion of the report of the Press Conference under the caption 'Manjooran Hays Communists' in Ext. P-8 reads as follows:-

The Kerala Labour Minister. Mr. Mathai Manjooran, today charged both the Communist Parties with a record of intrigues to split and destroy the trade Union movement in the country.

Stoutly defending the replies given to the National Labour Commission by the Kerala Labour Department, Mr. Mani jooran said that the Communist Parties and the AITUC had launched their vile propaganda against these replies out of sheer ignorance.

'Theirs is the purely political motive of harassing me personally and I will resist them unto the last. I am not concerned with either of the Communist Parties or the AITUC and I am not prepared to accept their dictates', the Minister declared.

Mr. Manjooran said that no part of the replies given by the department, which he claimed was mere progressive than the replies given by the AITUC, would be withdrawn at the behest of the Communists.

Replying to a question. Mr. Manjooran ruled out a crisis in the cabinet, over his refusal to budge but 'because the communist parties were only talking through their noses'. In any case, Mr. Manjooran said, he was not much concerned with his ministership' 'I am in the ministry only by accident', he said.

The Minister also charged the Communist Parties with absolute failure in implementing any of their policies

so far.

The approach of the AITUC and the Communist Parties, the Minister said, would suit the capitalists rather than the working class.

Ext. P-8 produced and relied upon by the prosecution throws much light on the controversy that existed not only between the United Front parties on the one hand, and the parties in the opposition on the other, but also among some of the constituent parties in the United Front itself. If the trouble was in the brewing stage earlier, and the first accused, having got the scent of it, in good faith thought it his duty to bring it to the notice of the public, especially to the working class which he claims to represent, as he thought that it was their interest to know the developments, could it be said that the first accused is not protected under Exception 9 of Section 499, I. P. C? There is indication that the Marxist Communist Party, whose representative headed the Ministry, was attempting to dominate small parties, which move, in course of time, was resented at and resisted by persons like the complainant himself. Ext. P-8 would be relevant only to the limited extent that it provides an index of the Browsing difference of opinion among the various parties with particular reference to the labour policy, and the transformation of the relationship between the complainant and the Communist Parties-

17. Regarding the second accused, personally, there is no allegation of malice except to the allegation that during the election in 1967 the 'Mathrubhoomi' was supporting the Indian National Congress and that it was opposing the policies of the United Front Government. If the statement is defamatory, absence of malice, however, will not be a valid plea even for the journalist unless he can establish that his plea comes within one of the Exceptions to Section 499. IPC The journalist is entitled to equal protection with others., but, ordinarily cannot claim to belong to a privileged class entitled to special treatment. As a matter of fact, the publication in a newspaper, if it is defamatory, creates greater harm on account of the publicity it gains, reaching the large circle of people. While defamation in general is made punishable under Section 500. I. P. C, defamation relating to printing or engraving of defamatory statement in a newspaper is made punishable under Section 501. I. P. C-, bearing in mind this distinction.

18. It is argued by the learned Counsel for the second respondent that in the absence of malice, it is in public interest to publish a report, in the nature of Ext. P-1 (a), a speech made by a prominent leader of a prominent political party touching a burning question that was agitating the minds of the people, particularly the working class. It Is further submitted that the impugned statement can also be justified as one made by the first accused in the interest of himself, and of the trade unions he claims to represent. It is pointed out by the counsel for the respondents that the criticism or the comment is against the public affair, not against the private life, of the Minister concerned. In the democratic set up it is usual that persons occupying public posts would be exposed to criticism which normally should not be token as an attack on the individual personally, in the absence of malice. Exaggeration, or even gross exaggeration in which newspapers occasionally indulge is not in modern times considered to be an act of defamation. As the speech in this case has been reported without embellishment and it contains no comments, not to speak of any unfair comment, the counsel submits that the second accused is entitled to protection of justification by truth, falling under Exception 1 to Section 499 IPC The dependence of the complainant on the Marxist Communist Party for his position in the Government, which alone the first accused wanted to expose, could be spelt out from the prosecution evidence itself, and the burden of the second accused in that behalf could be taken to have been discharged - this is the argument of the counsel.

19. The journalists have a twofold responsibility: the first is to inform the people as to what the Government and their officials are doing; the second is an ethical responsibility to deal fairly with all, including Ministers and officials, in reporting the news truthfully, accurately and sincerely. The total weight of these standards, regardless of legal freedom, requires that sincere efforts be made by all newsmen to publish truthful and accurate reports about men and matters, Judged by these standards. I do not think that there has been any abuse of the right by the newspaper printed and published by the second accused. The freedom of speech

and press has been progressively broadened. The ever increasing latitude for discussing acts of Government and Government officials, evolved in recent times, reflects the need of our age and the country in the democratic set up. To meet the current need, a liberal standard of criticism that uniformly guarantees a wide freedom of discussion for every one. as is now available in this country, is absolutely necessary. Future needs, -perhaps, will rest on how that freedom is exercised.

20. Having given my anxious consideration to the whole matter, I find that there has not been any intention on the part of the first accused to defame the complainant personally. He has indulged only in a criticism of the Government that was in power at that time, and accidentally the status of the Labour Minister who. according to him. was being used as a stooge in the hands of the Marxist Communist Party, also came up for criticism. Nothing more than this could be attributed to this statement, and I think, it has not resulted in undermining the prestige or reputation of the complainant as an individual. A man of the complainant's standing in public life could be expected to know that comments and criticism of this nature are the appendage to public life and have to be tolerated to some extent. In interpreting as to whether there was due care and caution on the part of the second respondent in publishing the speech made by the first accused, the court ought not to weigh any comment on it in a fine scale. As has been observed by N. K. Sen, J. in *Sanatan Daw v. Dasarathi Tah.* : AIR1959Cal677 -

Some allowance must be made on even intemperate language provided however that the writer kept himself within the bounds of substantial truth and does not misrepresent or suppress facts.

In determining the question of good faith the Court should take into account the intellectual capacity of the accused and the surrounding facts. It is certainly in public interest that anything shaky or unjust or improper in the conduct of a Minister should be brought out to the notice of the country at large. Whether the conduct of any particular individual should be publicly criticised and such criticism would be in public interest, would naturally vary with the circumstances of each case. In this case if there was an assertion by the first accused that the complainant had received a certain amount illegally as in *Mariarputham's case*, 1961 Ker LT 615. different consideration would have arisen. The allegation here, of a sweeping nature, couched in a rather figurative language, only has a bearing to the status of the complainant and Ms party in Kerala politics, without referring to any specific transaction.

21. Even if the complainant felt that the first accused did not exercise the restraint expected of him. and did not express his views in a palpable form, being a Minister, considering the background in which the expressions were used, the complainant could have rather Ignored it than making an issue about it. This aspect of the matter cannot be better expressed than in the words of the Supreme Court in *Kartar Singh v State of Punjab*, 1956 SCR 476 : (1956 Cri LJ 945). Bhagawati, J. has observed as follows:-

So far as these Individuals were concerned, they did not take any notices of these vulgar abuses and appeared to have considered the whole thing as beneath their notice. Their conduct in this behalf was consistent with the best traditions of democracy. 'Those who fill a public position must not be too thin skinned in reference to comments made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust? yet they must bear with them and submit to be misunderstood for a time' (Per Cockburn. C. J. in *Seymour v. Butter-worth* ((1862) 3 F & F 372) and see the dicta of the Judges in *R. v. Sir R. Carden* (1879) 5 QBD 1). Whoever fills a public position renders himself open thereto. He must accept an attack as a necessary, though unpleasant, appendage to his office' (Per Bramwell B., in *Kelloy v. Sherlock* (1866) 1 QB 686)). Public men in such positions may as well think It worth their while to ignore such vulgar criticisms and abuses hurled against them rather than give importance to the same by prosecuting the persons responsible for the same.

22. One other contention raised by the learned Counsel for the appellant is that the court has acted without jurisdiction in expunging the evidence of Dw. 3 after the case was dragged on for nearly about an year to examine him in complete. According to him. the defence gave up Dw. 3 because it was felt that his evidence

would not only be unhelpful to the defence but also would strengthen the prosecution case. The legal position seems to be that if a witness is not examined in full in chief and also allowed to be cross-examined, that evidence cannot be considered except in the circumstances mentioned in Section 33 of the Evidence Act. The observation in *Phani Bhusan v. Sibakali Basu.* : AIR1952Cal218 is to the effect that

Unless examination of a witness is complete, that is to say, unless he has been cross-examined and re-examined or unless his cross-examination or re-examination has been declined, his evidence cannot be considered except, in the circumstances mentioned in Section 33 of the Evidence Act.

Here there is no case that Section 33 of the Evidence Act comes into play. I, therefore, find no merit in the contention raised by the learned Counsel for the appellant, apart from the fact that objection was not raised with respect to this aspect of the matter in the trial court,

23. Even assuming that on a reappraisal of the evidence on record it is possible for this Court to take a view different from the one that has been taken by the trial Court, propriety requires not to set aside the decision of the trial Magistrate, in an appeal against acquittal unless the conclusion reached by him is manifestly wrong or is bound to result in grave miscarriage of justice. In a situation like this, this Court will be guided by the observations of the Supreme Court in *Khedu Mohton v. State of Bihar* (1970) 2 SCWR 440 : (1971 Cri LJ 20) which are extracted below³

It is true that the powers of the High Court in considering the evidence on record in appeals under Section 417 are as extensive as its powers in appeals against convictions but that Court at the same time should bear in mind the presumption of innocence of the accused persons, which presumption is not weakened¹ by their acquittal. It must also bear in mind the fact that the appellate Judge has found them not guilty. Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice the High Court should be reluctant to interfere with his conclusion. If two reasonable conclusions can be reached on the basis of evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal.

In the result, I find no ground for interference with the acquittal that has been ordered by the court below and, therefore, the appeal is dismissed.

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