

Shyamesh Vs. Public Prosecutor, Pali

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Court : Rajasthan

Decided On : May-17-1968

Reported in : AIR1969Raj61; 1969CriLJ314

Judge : C.M. Lodha, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4(1), 198B, 259, 270 and 492

Appeal No. : Criminal Revn. Nos. 84 and 86 of 1968

Appellant : Shyamesh

Respondent : Public Prosecutor, Pali

Advocate for Def. : S.K. Tiwari, Deputy Govt. Adv.

Advocate for Pet/Ap. : S.D. Rajpurohit, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

C.M. Lodha, J.

1. These are two connected revisions arising out of the orders of the learned Sessions Judge, Jodhpur dated 14th December, 1967 in Criminal Original cases

No. 5 of 1964 and No. 6 of 1965.

2. In view of the short point involved in these cases it is not necessary to set out the facts in detail. Suffice it to say that the petitioner Shyamesh who is an editor and publisher of a weekly newspaper 'Karwat' published an alleged defamatory article against Shri Gumansingh, the then Superintendent of Police, at Pali. After obtaining the previous sanction of the Government of Rajasthan in this behalf, the Public Prosecutor, Pali filed a complaint under Sections 500, 501 and 502, Indian Penal Code on 6-7-1964 in the Court of Sessions Judge, Pali against the accused petitioner in accordance with the provisions of Section 198-B, Criminal Procedure Code.

3. It appears that the accused petitioner moved an application before this Court for transfer of the case to some other Court for reasons which it is not necessary to relate here. This Court eventually withdrew the case from the Court of Sessions Judge, Pali and transferred it to the Court of Sessions Judge, Jodhpur for trial. I am informed that an objection about misjoinder of charges was taken before the learned Sessions Judge on behalf of the accused as a result of which there were two cases registered in respect of this complaint, and they were numbered as Criminal Original cases No. 5 of 1964 and No. 6 of 1965. After some evidence on behalf of the prosecution had been recorded Hon'ble Shri Lehar Singh Mehta, who was seized of these cases as Sessions Judge, Jodhpur, was elevated to the High Court and Shri Kalyan Dutt Sharma succeeded him as Sessions Judge, Jodhpur.

Consequently there was a de novo trial before Shri Kalyan Dutt Sharma and when the case came up before him on 14-12-1967 for recording the prosecution evidence an application was moved wherein a preliminary objection was taken on behalf of the accused petitioner to the effect that the cases should be dismissed under Section 259, Criminal Procedure Code as the complainant viz. the Public Prosecutor, Pali was absent. To be more specific the contention of the accused-petitioner was that the cases had been taken cognizance of upon a complaint made in writing by the Public Prosecutor, Pali and as such the Public Prosecutor, Pali was the complainant and since the procedure prescribed for the trial of such a complaint was the same as prescribed for the trial by a Magistrate of warrant cases

instituted other-wise on a Police report, Section 259, Criminal Procedure Code had full application and therefore it was prayed that the Court may be pleased to exercise its powers under Section 259, Cr. P. C., and dismiss the cases on account of the failure on the part of the complainant to appear before the Court.

It may be stated that the Public Prosecutor, Jodhpur attached to the Court of Sessions Judge, Jodhpur was looking after these cases ever since they were transferred to the Court of Sessions Judge, Jodhpur. He, therefore, opposed the preliminary objection raised on behalf of the accused petitioner and contended that he was entitled to appear and act on behalf of the State in the case and that his presence was sufficient. The learned Sessions Judge disallowed the preliminary objection and held that the appearance of the Public Prosecutor, Jodhpur who held charge of the case was sufficient in the eye of law. He also held that Shri Guman Singh the aggrieved person, who was present in the Court had put his signatures on the complaint, and, therefore, in his view no case for dismissal of the complaint on account of the non-appearance of the Public Prosecutor, Pali was made out. In this view of the matter the application by which the aforesaid preliminary objection was raised by the petitioner was rejected. The petitioner has therefore come up in revision before this Court.

4. The controversy raised by the learned counsel for the petitioner centres round one question viz. whether the appearance of the Public Prosecutor, Jodhpur in these cases before the Sessions Judge, Jodhpur was sufficient in the eye of law. In other words whether the cases were liable to be dismissed on account of non-appearance of the Public Prosecutor, Pali.

5. It may be stated at the outset that no authority exactly, on the point has been cited at the Bar and the question has therefore to be decided on the interpretation of the relevant sections of the Criminal Procedure Code and on first principles. For a correct appraisal of the point canvassed before me it would be necessary to reproduce the relevant portions of Section 198-B, Criminal Procedure Code:

'198-B (1) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code is alleged to have been committed against the President, or the Vice-President, or the Governor or

Rajpramukh of a State, or a Minister, or any other public servant employed in connection with the affairs of the Union or of a State, in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor:

(2)

(3) No complaint under Sub-section (1) shall be made by the Public Prosecutor except with the previous sanction,--

(a) in the case of the President or the Vice-President or the Governor of a State, of any Secretary to the Government authorised by him in this behalf;

(b) in the case of a Minister of the Central Government or of a State Government, of the Secretary to the Council of Ministers, if any, or of any Secretary to the Government authorised in this behalf by the Government concerned;

(c) in the case of any other public servant employed in connection with the affairs of the Union or of a State, of the Government concerned.'

(4).....

(5) When the Court of Session takes cognizance of an offence under Sub-section (1), then, notwithstanding anything contained in this Code, the Court of Session shall try the case without a jury and in trying the case, shall follow the procedure prescribed for the trial by Magistrates of warrant cases instituted otherwise than on a police report and the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution.'

6. It would appear from the above mentioned provisions contained in Section 198-B, Cr.P.C. that this section engrafts a kind of exception on the general rule that only a person aggrieved by a defamatory statement should be permitted to move the Court for redress. The section provides for a special procedure for the trial of a certain category of offences of defamation of high dignatories of the State and

public servants in respect of their conduct in the discharge of public functions. In order that a Court of Session may take cognizance of such offence it is necessary that there must be a complaint made in writing by the Public Prosecutor with the previous sanction of the authorities specified in Sub-section (3). The object of the section is obviously to save a public servant from the embarrassment of a private prosecution in respect of a defamatory statement made against him in the discharge of his public duties.

7. Sub-section (5) of Section 198-B further prescribes the procedure regarding trial of such cases and it is mentioned therein that the Court of Session shall follow the procedure prescribed for the trial by the Magistrates of warrant cases instituted otherwise than on a police report. The procedure prescribed for cases instituted otherwise on a police report is contained in Sections 252 to 259, Criminal Procedure Code. Thus there is no doubt that the provisions of Sections 252 to 259, Cr.P.C. would be applicable mutatis mutandis to the trial of such cases. As a necessary corollary if the complainant is absent and the offence may be lawfully compounded (as it is so in the present case) the Sessions Court may, in its discretion, at any time before the charge has been framed discharge the accused. The word 'complainant' has not been defined in the Code of Criminal Procedure, though the word 'complaint' has been defined in Section 4 (1) (h).

In the absence of any definition, the word 'complainant' has to be interpreted in the light of the definition of the word 'complaint' which has been defined as below:

'Section 4 (1) (h) 'Complaint' means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police-officer;'

8. Since 'complaint' means the allegation made orally or in writing to a Magistrate with a view to his taking action under the Criminal Procedure Code, a complainant, therefore, is a person (of course other than a Police Officer) who moves the machinery of a Magisterial Court by making certain allegations before it for taking action against a person who has committed an offence.

9. We may now refer to the definition of term 'Public Prosecutor' which has been defined in Section 4 (1) (t) as follows:

'(t) 'Public Prosecutor' means any person appointed under Section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of Government in any High Court in the exercise of its original criminal jurisdiction.'

10. Section 493, Cr. P. C. provides that the Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has a charge is under enquiry, trial or appeal. It is not disputed before me that the Public Prosecutor, Pali as well as the Public Prosecutor, Jodhpur have been duly appointed by the State Government. It is also true that the Public Prosecutor, Pali has charge of the cases instituted or pending in the Court of Sessions Judge, Pali whereas the Public Prosecutor, Jodhpur has charge of cases which are under enquiry, trial or appeal in the Court of Sessions Judge, Jodhpur. Thus the Public Prosecutor, Jodhpur must be held to be authorised on behalf of the State to appear and plead without any written authority. The learned counsel for the petitioner has vehemently contended that even though the Public Prosecutor, Jodhpur may appear and plead without any authority in these cases he cannot put in appearance as a complainant because the complainant in this case is the Public Prosecutor, Pali.

On the other hand Dr. Tiwari, learned Deputy Government Advocate submits that the complainant in these cases is the Public Prosecutor by virtue of his office and if any Public Prosecutor duly appointed by the State Government holding charge of the case puts in appearance, he must be deemed to be the complainant for all purposes, and the cases are not liable to be dismissed on account of the non-appearance of the Public Prosecutor, Pali. It may be stated here even at the risk of repetition that the complaint under Section 198-B, Criminal Procedure Code has to be made by the Public Prosecutor i.e. it is by virtue of his office as Public Prosecutor that a Public Prosecutor acquires the authority to file a complaint with the previous sanction of the Government. In the present case the complaint was filed by Shri Sumer Raj Daga, an Advocate of this Court, who was appointed as a

part-time Public Prosecutor for Pali District. He instituted the complaint as a Public Prosecutor in charge of the cases in the Sessions Court, Pali. In these circumstances it would not be unreasonable to infer that the complainant in the case was the Public Prosecutor though of course at the time he filed the complaint he was holding the charge of cases in particular Sessions Court.

If the contention of Mr. Rajpurohit were driven to its logical conclusion it would mean that the complainant in the present case was Shri Sumerraj Daga and it is he alone who can put in appearance as complainant. Such an interpretation, in my opinion, would not only lead to insurmountable difficulties but would defeat the very purpose with which Section 198B, Criminal Procedure Code was incorporated in the Criminal Procedure Code. It is clear from the provisions contained in this section that the intention of the legislature was that there should be an independent authority apart from the person aggrieved to set the law in motion, and in order to avoid cumbersome and more expensive procedure laid down in Section 194 (2) this exceptional procedure was provided in Section 198-B. In these circumstances I am inclined to hold the complainant in the pre-sent case was the Public Prosecutor holding the charge of the case. Previously the Public Prosecutor, Pali was holding the charge of the case and had instituted the complaint. When the case was transferred to the Court of Sessions Judge, Jodhpur, the Public Prosecutor to whom the charge of the case was given stepped into the shoes of the Public Prosecutor, Pali and will be deemed to be the complainant for all purposes. The Sessions Judge, Jodhpur was therefore in my opinion right in not dismissing the cases on account of the non-appearance of the Public Prosecutor, Pali in his Court and the appearance of the Public Prosecutor, Jodhpur was in my opinion sufficient for proceeding with the cases.

11. The learned Sessions Judge, Jodhpur has mentioned in his order that the complaint was signed on 14-12-1967 by Shri Guman Singh, who was present in the Court, and, therefore, the complaint could not be dismissed. In my view the presence of Shri Guman Singh and the fact of his having signed the complaint on that day did not make any difference. Section 198-B does not require the complaint to be signed by the aggrieved person nor does it make the presence of the aggrieved person necessary as a complainant. His appearance, therefore, was

immaterial.

12. There is, however, another aspect of the matter which I must mention before taking leave of the case. Section 259, Criminal Procedure Code, does not make it obligatory on the part of the Magistrate to discharge the accused on account of the absence of the complainant and therefore apart from anything else the learned Sessions Judge, Jodhpur had ample discretion to discharge or not to discharge the accused in absence of the complainant and if he did not do so, his order does not necessarily become illegal. This is another consideration which tilts the scales against the petitioner.

13. The result is that there is no force in these revision applications and hence they are dismissed.

14. Learned counsel for the petitioner prays for leave to appeal to Supreme Court. Leave can be granted only under Article 134 of the Constitution of India from any judgment, final order, or sentence in a criminal proceeding. Since the judgment sought to be appealed is not a final order, no leave can be granted under Article 134 of the Constitution of India. Besides I do not consider it a fit case for grant of leave to appeal to the Supreme Court of India. The prayer is rejected.

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