

In Re: E.V.K. Sampath and anr.

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Court : Chennai

Decided On : Dec-21-1960

Reported in : AIR1961Mad318; 1961CriLJ125; (1961)1MLJ328

Judge : Anantanarayanan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 198B, 198B(4) and 198B(6) to (11); [Constitution of India](#) - Article 14

Appeal No. : Criminal Revn. Case Nos. 1228 and 1243 of 1960 (Crl. Revn. Petn. Nos. 1197 and 1212 of 1960)

Appellant : In Re: E.V.K. Sampath and anr.

Advocate for Def. : Adv. General and ;V.V. Radhakrishnan, Adv. for ;Public Prosecutor

Advocate for Pet/Ap. : V.P. Raman and ;P.R. Gokulakrishnan, Advs.

Disposition : Appeal dismissed

Judgement :

ORDER

Anantanarayanan, J.

1. I desire, at the outset, to state briefly the background of facts with reference to which these revision proceedings have arisen. At the same time, I wish to be very clear that I am making no observations upon the merits of the prosecution of these revision petitioners (accused 1 and 2); since the matter is not merely sub judice, but will continue to be such till the disposal of the case by the learned Sessions Judge of Madras Division. Briefly stated, the facts are that these revision petitioners (Sri E. V. K. Sampath and Sri A. V. P. Asai Thambi) are being prosecuted in respect of an alleged offence under Section 500 I.P.C. of defamation of the Council of Ministers of the Madras Government, which prosecution has been instituted by the public Prosecutor, upon sanction specifically accorded under Section 198-B Crl. P.C.

It is necessary to refer to the actual facts, for the purpose of elucidating one principle which underlies the enactment of Section 198-B Crl. P.C.; but I am not stating the facts for any other purpose, and do comment whatever on the merits is implied. According to the terms of the complaint, accused 1, a member of Parliament, made a public speech in which he alleged, with reference to a prosecution for the counterfeiting of hundred rupee currency notes, which is now pending trial, that an unnamed individual close to a Minister of the Madras Government, was involved, and that the said Minister was making attempts to prevent the arrest of the culprit.

According to the reported speech, the speaker further stated that Ministers were attempting to suppress the offence by exercising their power; and that if the said Ministers did by means of a conspiracy, suppress the truth, it would nevertheless be exposed. Accused 2 (Revision Petitioner in Crl. R. C. No. 1243 of 1900) is the declared Printer and Publisher of the Tamil Daily 'Thani Arasu', and he published this report or article in his issue dated 2-7-1960. The averment in the complaint is that, thereby, the Council of Ministers has been defamed.

2. While this case was pending trial before the learned Sessions Judge, in accordance with the provisions of Section 198-B Crl. P.C., the accused filed a petition into court in which several grounds were taken regarding the maintainability of the proceedings. It was claimed, inter alia, that the complaint was

by a Council of Ministers, and hence not maintainable. The complaint ought to have been signed both by the party aggrieved and by the Public Prosecutor and not by the latter alone. Sub-sections (6) to (9) of Section 198-B Crl. P. C. render it clear that the victim should also join in making the complaint, before a court could take cognizance of it.

A separate plea was taken, with regard to accused 1, that he was not liable, as spoken words were definitely excluded from the purview of Section 198-B (1) Crl. P.C. Accused 2 claimed that he was not liable, since he only reported the speech made by a Member of Parliament, accused 1. There was one plea in addition, with which we are now concerned, to the effect that the provisions of Section 198-B Crl. P.C. offended Article 14 of the Constitution. The learned Sessions Judge dealt with these objections in a preliminary order, and overruled them. It is in this context that the Criminal revision proceedings have been filed.

3. The learned Advocate General specifically declares, and I am placing it on record now, that though these objections were dismissed in limine by the learned Sessions Judge, the accused are free to agitate them as grounds against their conviction at the further stages of the trial also. The arguments advanced before me have hence been confined to one ground, which is alone presented for the adjudication of this court, that the provisions of Section 198-B Crl. P.C. are ultra vires of Article 14 of the Constitution, and hence that the complaint itself is liable to be quashed. Upon the other grounds, therefore, it is not necessary for me to express any opinion whatever.

But I wish merely to state that, after it was held by Bavdekar J. in *C. B. L. Bhatnagar v. State*; : AIR1958 Bom196 and by Raman Nair J. in *Sankar v. State*, I.L.R. (1959) Kerala 195 : (A.I.R. 1959 Kerala 100) that a complaint made under Section 198-B Crl. P.C. must also satisfy the provisions of Section 198, that is, the complaint will have to be made both by the person aggrieved and the Public Prosecutor, the Supreme Court has now held in *P. C. Joshi v. State of Uttar Pradesh*, Crl. Ap. No. 130 of 1960, not so far reported (since reported in : 1961 CriLJ566) that this view does not correctly interpret Sub-section (13) of Section 198-B, and that the complaint need not also be signed by the person or persons

aggrieved.

I may also merely note, without expressing any further comment, thereon, the argument of the learned Advocate General with regard to the plea that accused 2 (revision petitioner in Crl. R. C. No. 1243 of 1960) was not liable, because he merely reported the speech of a Member of Parliament, accused 1. The learned Advocate General has here pressed before me the principle expressed in 'Truth' (N.Z.) Ltd. v. Philip North Holloway, 1960 1 W.L.R. 997, in the following words, quoting Gatley on Republication and Repetition:

'Every republication of a libel is a new libel, and such publisher is answerable for his act, to the same extent as if the calumny originated with him'.

4. I shall now pass on to a consideration of the single ground with which I am concerned in these proceedings, the alleged conflict between the terms of Section 198-B Crl. P.C. and Article 14 of the Constitution.

5. This matter came up for decision before a single Judge of the Allahabad High Court in Muneshwaranand Tyagi v. State of U. P., : AIR1959 All21 . The learned Judge (V. G. Oak J.) held that the terms of Section 198-B Crl. P.C. involved no violation of Article 14 of the Constitution. He pointed out that the persons dealt with in Section 198-B Crl. P.C. were engaged in the discharge of public functions, that trials for defamation often dragged on in courts for several months, that the principle was therefore recognised and enacted that special protection has to be given to such defamed public servants and that that classification in Section 198-B Crl. P.C. was reasonable, and it did not rest on any such grounds as caste, religion or sex.

Further, the learned Judge pointed out that the procedure prescribed seemed actually to be in favour of the accused, as compared with the procedure applicable to an accused in an ordinary case of defamation. This precedent has, undoubtedly, persuasive force, and I could cite the authority and adopt it. But issues not dealt with in this judgment have now been elaborated before me; I consider it, therefore, desirable and expedient that the matter should be examined at some greater length.

6. It is important, at the outset, to set forth in as precise and clear a manner as possible, the arguments of the learned counsel for the revision petitioner (Sri V. P. Raman) seeking to impugn the provisions of Section 198-B CrI. P.C. as violative of Article 14. A somewhat extensive case law has also been cited during arguments, consisting almost exclusively of decisions of the Supreme Court. But this case law can be divided into two broad categories. Firstly, we have the leading decisions expounding the principles of reasonable classification, and the manner in which Article 14 should be interpreted and applied.

Secondly, we have a number of decisions relating to procedures in particular, sometimes striking down those procedures as violative of Article 14, and, in other cases, of upholding the procedures or provisions of law, I may first refer to Kedar Nath v. State of West Bengal : 1953 CriLJ1621 , Budhan Choudhry v. State of Bihar, (S) : 1955 CriLJ374 and Ram Krishna Dalmia v. S.R. Tendolkar, : [1959]1SCR279 . All these decisions emphasise that, firstly, the classification must be based on intelligible differentia which distinguishes persons or things that are grouped together, from others left out of the group; and, secondly, that that differentia must have a rational relation to the object sought to be achieved by the statute in question.

Once this is conceded or established, the classification might be founded on different basis, namely, geographical, or according to objects or occupations. What is necessary is that there must be a nexus between the basis of classification, and the object of the Act under, consideration. If these criteria are satisfied, there is always a presumption in favour of the constitutionality of the amendment, (enactment?). It is also presumed that the legislature understands and correctly appreciates the needs of its own people. But it is not in dispute that Article 14 condemns discrimination not only by means of a substantive law, but even by means of a law of procedure, such as Section 198-B CrI. P. C. essentially is. See (S) : 1955 CriLJ374 and Lachmandas v. State of Bombay, : 1952 CriLJ1167 .

7. If is against this background of principles laid down by authority that Sri V. P. Raman seeks to impugn the provisions of Section 198-B CrI. P.C. in particular. His argument is that it is not a reasonable classification to set apart those who defame

the President or the Vice-President, the Governor or Rajprarmukh of a State, or a Minister, or any other public servant, even in respect of his conduct in the discharge of his public functions from detainers of persons in general under the Criminal law. For, the Criminal law itself recognises no such basis of distinction, or defamation of dignatories; this is against the principle of equality before the law which is guaranteed by Article 14.

The discrimination would have some justification, if the substantive law (S. 500 I.P.C.) contained any hint of such a differentiation, or gave any room for it. But, admittedly, it does not. Sri Raman further argues that this unjustifiable discrimination has led to an actual differentiation in procedure, which is unfavourable to the accused. For instance, if the offence were to be made triable by the court of session, there would be committal proceedings as an essential part of the procedure. This has been done away with. Conceivably, the rights of appeal might also be affected, in case the Sessions Judge happens to impose a non-appealable sentence.

In an ordinary case of defamation, a magistrate of the First Class would deal with the case, and an appeal would be to the Sessions Judge. The provisions relating to prior sanction are also impugned as discriminatory in their effect, since, in all other cases, the proceedings must commence with a private complaint, and a sworn statement made in person by the aggrieved party. Sri Raman does not deny the argument, when the question was mooted, that, if the procedure were to be held, on the whole, in favour of the accused rather than against, he would have no case.

For, it is not in dispute that it is a hostile discrimination which must be made the basis of an objection based on Article 14. I might here refer to certain observations in *Matajog Dobey v. H. C. Bhari*, (S) : [1955]28ITR941(SC) in which the Supreme Court held that Section 197 Crl. P.C. was not ultra vires of Article 14, as the discrimination was based on a rational classification.

8. It appears to me that the purpose of the classification behind Section 198-B Crl. P. C. is fairly evident. It is not merely to protect high dignatories, such as the President, the Vice-president, the Governor, Rajprarmukh of a State, from

defamation in respect of their conduct in the discharge of their public functions, though that is certainly a part of the purpose. It is not merely to protect public servants from being involved in trials for defamations which may be very protracted, and may entail considerable expenditure. The real point for the classification is to deal with those offences upon a different plane altogether, in the large interests of the public.

I shall elaborate this point a little later, particularly in the light of certain observations of the Supreme Court in Crl. A. P. No. 130 of 1960 : : 1961 CriLJ566 which do appear to me to illuminate the deeper implications of the enactment (S. 198-B Crl. P. C.) if I may say so with great respect. For the time being, I shall assume that this is a reasonable classification, and that the purpose of it has been achieved by the special safeguards and procedures enacted under the section. The question is whether, on this assumption, there is anything discriminatory against this class of accused in the procedures which needs to be struck down as violative of Article 14.

9. A scrutiny of the case law on this aspect shows that procedural enactments have been so struck down, not because of the mere letter, form or variation, but only where substantial prejudice has, thereby, been occasioned to the accused. The case law uniformly accepts the application of this principle. It is also well settled that no citizen has a vested interest in a procedure, as such. For instance, in *State of West Bengal v. Anwar Ali*, : 1952 CriLJ510 , the enacted law was struck down, because the procedure involved substantial loss of advantage to the accused. On the contrary, in *Kathi Raning v. State of Saurashtra*, : 1952 CriLJ805 , the court held that it would be going too far to state that in no case and under no circumstances could a legislature lay down a special procedure for trial of a particular class of offences.

Again, recourse to a simplified or less cumbrous procedure could not itself be impugned as such. See also *Qasim Razvi v. State of Hyderabad*, : 1953 CriLJ862 , *Habeeb Mohamed v. State of Hyderabad*, : 1953 CriLJ1158 , and *Asgar Ali Nazar Ali v. State of Bombay*, (S) : 1957 CriLJ605 . Lastly, in *Hanumantha Rao v. State of Andhra Pradesh*, (S) : 1957 CriLJ1463 the Supreme Court upheld the

enactment of Sections 207 and 207-A, Crl. P. C. though the two provisions laid down material procedural differences, according as the case had been investigated by a competent police officer, or was upon a private complaint. Looking at the matter now before me, in the light of these decisions, it is very difficult to see how any procedural discrimination could be alleged.

The trial by a Sessions Judge instead of by a First Class Magistrate is not merely a question of no prejudice to the accused, but is actually a safeguard in his favour, or seems to have been designed as such. Since a Magistrate would ordinarily take cognizance straightaway on the private complaint the elimination of committal proceedings is no disadvantage. As regards the sanction, it could even be argued, as the learned Advocate General actually did argue, that this practically substitutes the committal proceedings, and involves a kind of initial scrutiny at a responsible level, before the prosecution of the accused is decided upon. The omission of trial by Jury is now of purely academic significance, since the system does not prevail even in the city of Madras.

In brief there is absolutely nothing in the procedure which is disadvantageous to these accused, compared to an accused in an ordinary case of defamation. There is much in the procedure which appears to be a kind of special safeguard for accused in this class of cases, including the provision as to limitation in Section 198-B (4), and the provisions as to compensation under Sub-sections (6) to (11) of Section 198-B. The ground of procedural discrimination, whether in respect of the initial sanction or in respect of the special forum and the procedure prescribed, must therefore entirely fail. But I do not desire merely to leave the matter there. I shall now proceed further into the question of the purpose behind the classification, and the extent to which it is sought to be fulfilled by the enactment of Section 198-B, Crl. P. C.

9a. It is here that certain observations of the Supreme Court in Crl. App. No. 130 of 1960 : : 1961 CriLJ566 , appear to me to be highly significant, particularly in relation to the alleged facts of the present case. Their Lordships observed:

'In the vindication of the character or conduct of a private individual who is defamed, the State is primarily not concerned; the party aggrieved may, if he is so

mind, take proceedings for obtaining relief. But in the investigation of defamatory charges against Ministers and public servants in the discharge of their public functions, the State is as vitally concerned as the individual defamed. The legislature has therefore authorised the State to take upon itself the power in appropriate cases to prosecute the offenders. But lest this procedure is abused, provision has been made for the examination of the person defamed and for awarding against him compensation if it be found that the complaint was false and frivolous or vexatious'.

10. In other words, there is an altogether different complexion also to the matter, beyond the question of the protection of the Public servant concerned. Since the public servant may shirk judicial scrutiny, may be unwilling, for many reasons, to initiate criminal proceedings, and since the statutory exceptions to the offence of defamation do include such criteria as justification by truth and publication in the public interest, the matter has been lifted to a different place, and an initiative vested in the authorities competent to sanction the prosecution.

This suggests that the discrimination is, essentially, in the larger interests of the public and of justice, and not merely for protection of the person or persons defamed. This is reflected in the procedural safeguards, which are largely in favour of the accused. Hence I am of the view that the provisions of Section 198-B, CrI. P.C. are not violative of Article 14 of the Constitution.

11. Particularly with reference to the alleged facts of the instant case, or allegations of any similar character, it is clearly in the public interest that the search light of judicial scrutiny should be focused upon the imputation, or the circumstances under which it was made, whether the consequences be pleasant or unpleasant for any of the parties concerned.

Because a great principle is involved, and not merely the vindication of any public servant, of however high a rank, the classification appears to me to be not merely reasonable, but just and equitable, the purpose sought to be achieved is also integrally related to it. I dismiss the revision proceedings, and, in doing so, would reiterate that I am deciding the ground argued before me alone, and that I must not be taken as having expressed any view, in however indirect a manner, upon the

merits of the case, or the other grounds of objections which are still at large.

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