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In Re: G. Vasantha Pai

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Court : Chennai

Decided On : Jul-25-1959

Reported in : (1960)1MLJ21

Appellant : In Re: G. Vasantha Pai

Judgement :
ORDER

P.V. Rajamannar, C.J.

1. These are two applications filed by an advocate of this Court to expunge the remarks and observations against him appearing as counsel for the defendant in three suits, C.S. Nos. 54 and 55 and O.M.S. No. 9 of 1957 made by Subrahmanyam, J., in his judgment, dated 28th October, 1958, disposing of the said three suits. A list of ten passages from the judgment is given as containing remarks and observations sought to be expunged. In the above suits the plaintiff was Mrs. Leelie Kuriakose and the sole defendant was her husband, Mr. T.N. Kuriakose. C.S. Nos. 54 and 55 of 1957 were originally filed in the City Civil Court, Madras, but were transferred to this Court on the application of the defendant. In C.S. No. 54 of 1957 the wife prayed for separate maintenance from the defendant on the ground of cruelty and desertion. In C.S. No. 55 of 1957 she prayed for recovery of possession of a car, furniture and wedding presents which according to her were her exclusive property. In O.M.S. No. 9 of 1957 she prayed for a decree for judicial separation and for alimony. The plaintiff is the daughter of Dr. V.K. John, a senior advocate of this Court. The, defendant was at the time of trial

Deputy Financial Officer in the Southern Railway. The parties were married on 2nd February, 1948. At the time of the marriage the defendant was an Accounts Officer in the Bombay, Baroda and Central Indian Railway. The marriage was celebrated at Madras. After the marriage the husband and wife went to the husband's house and stayed for a short time there. Then they left for Bombay where they lived till 1950 in which year the defendant was transferred to the Southern Railway and posted to Tiruchirapalli. The plaintiff and the defendant were living in the Railway Colony in Golden Rock till 1953. Thereafter the defendant was transferred to Madras. In Madras, the plaintiff and defendant were living for a short period in the Railway Colony at Teynampet and subsequently in a railway bungalow at Sterling Road, Nungambakkam. The residence of the plaintiff's father was three furlongs from where they were staying.

2. It is common ground that on the 17th January, 1957, the defendant left the plaintiff at her father's house. On the night of 5th February, 1957, the plaintiff came to her husband's house. She was there on the 6th and until the evening of the 7th. That night both the plaintiff and the defendant spent in the house of one V. John, a cousin of the plaintiff. On the 6th of February the plaintiff's father took her to his house from Mr. V. John's house. The plaintiff continued to remain there. The two suits, C.S. Nos. 54 and 55 were instituted in the City Civil Court, Madras, in March, 1957 and O.M.S. No. 9 of 1957 was instituted on 22nd July, 1957.

3. It is not necessary to set out at great length the several allegations made by the wife against her husband and by the husband against the wife. Suffice it to say that the plaintiff accused the defendant of physical and mental cruelty and desertion which were denied by the defendant. The learned Judge, Subrahmanyam, J., who tried the three suits together found that the defendant was guilty of acts of physical and mental cruelty against the plaintiff and desertion of the plaintiff and that she was entitled to a decree for judicial separation and for permanent alimony. He granted a decree accordingly fixing alimony at Rs. 420 per mensem. In C.S. No. 54 of 1957 the learned Judge passed a decree directing the defendant to pay the plaintiff maintenance at Rs. 150 per mensem from 8th February, 1957, to 12th August, 1957. The subsequent period was covered by the decree in the matrimonial suit. In C.S. No. 55 of 1957 the learned Judge passed a

decree directing the defendant to deliver to the plaintiff possession of the car or in the alternative to pay the plaintiff a sum of Rs. 7,000 with interest at six percent, per annum from the date of the claim. He also passed a decree for the return to the plaintiff of her wedding presents but dismissed the claim in so far as it related to the furniture. Appeals from the decrees of the learned Judge in the three suits were filed both by the plaintiff and the defendant, (O.S.A. Nos. 97 and 66 of 1958 and 22 and 23 of 1959). These appeals were heard by us and we have recently delivered judgment in them. We did not accept the findings of the learned Judge as regards physical and mental cruelty and. desertion. We dismissed the suit for judicial separation and alimony. We varied the decree in C.S. No. 55 of 1957 in respect of the car and the furniture.

4. In the affidavit filed by the petitioner in support of his two applications he alleged that the learned Judge had made unwarranted and unjustified remarks and observations against him in the conduct of the suits. He submitted that questions were put by him to the witnesses on facts in. issue and relevant facts which made the facts in issue highly probable or improbable and that under no circumstances did he overstep his responsibility as counsel in the case. The questions that were put by him were relevant and were on the instructions of his client. It was his duty to elicit answers from the witnesses regarding all the allegations made in the plaint and the written statement. At no time was any objection taken to the averments made in the written statement in O.M.S. No. 9 of 1957 on the ground that they were scandalous or irrelevant.

5. The learned Attorney-General who appeared for the Petitioner-Advocate before dealing with the particular remarks and observations to which exception was taken dealt at the outset with certain larger questions of general importance, first on the privileges of the Bar and the important role which an advocate has to play in the administration of justice. Next he dwelt on the role of the Judge in the conduct of the trial and the limits within which he should exercise his undoubted right to examine the witnesses giving evidence before him. The learned Attorney-General deplored the attitude of the learned. Judge in his approach to the evidence adduced on the many issues and drew our attention to what according to him was a bias or prejudice in favour of a particular witness.

6. In our opinion, we are not directly concerned in these two petitions with one aspect of the learned Attorney-General's arguments, namely, the undue interference fey the learned Judge with the examination of the witnesses. That has a bearing more on the merits of the findings arrived at by the learned Judge on the main issues. In the judgment delivered by us in the appeals this is what we said condemning the manner in which the learned Judge took over as it were the conduct of the examination of the witnesses.

Mr. S. Govind Swaminathan, learned Counsel for the appellant-defendant, made a grievance that the learned trial Judge interfered too much with the cross-examination of the defendant's witnesses and himself put too many questions to them at vital junctures, preventing effective cross-examination of those witnesses. In mentioning this we should not be understood as commenting upon the conduct of the trial by the learned Judge; but all the same we find whole pages of the oral evidence occupied by questions put by the learned Judge to defendant's witnesses. No doubt, it is the duty and privilege of a Judge to put any question to any witness at any stage; but equally it has been all along well understood that that privilege should not be exercised to the detriment of either party. When once these questions became numerous and prolific there is always the impression left in the minds of the parties that the Judge has overstepped the limits of his privilege. We need not say more on this subject, except to indicate our opinion that there is some justification for this complaint of Mr. Govind Swaminathan. This circumstance also detracts from the value of the learned Judge's estimate of the credibility of various witnesses.

We shall, therefore, content ourselves with the following extracts from the judgment of Denning, L.J., in Jones v. National Coal Board (1957) 2 All E.R. 155:

In the system of trial which we have evolved in this country, the Judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries. Even in England, however, a Judge is not a mere umpire to answer the question 'How's that'? His object above all is to find out the truth, and to do justice according to law; and in the daily pursuit of it the advocate plays an honourable

and necessary role. Was it not Lord Elden, L.C., who said in a notable passage that 'truth is best discovered by powerful statements on both sides of the question.' See Ex. P. Lloyd (1888) 8 Mont. 70. and Lord Greene, M.R., who explained that justice is best done by a Judge who holds the balance, between the contending parties without himself taking part in their disputations? If a Judge, said Lord Greene, should himself conduct the examination of witnesses, 'he so to speak, descends into the arena and is liable to have his vision clouded by the dust of the conflict. See Yuill v. Yuill (1945) 1 All E.R. 183.

The Judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a Judge and assumes the role of an advocate, and the change does not become him well. Lord Bacon spoke right when he said that : 'Patience and gravity of hearing is an essential part of justice; and an over-speaking Judge is no well tuned cymbal.'

Now it cannot, of course, be doubted that a Judge is not only entitled but is, indeed, bound to intervene at any stage of a witnesses' evidence if he feels that, by reason of the technical nature of the evidence or otherwise, it is only by putting questions of his own that he can properly follow and appreciate what the witness is saying. Nevertheless, it is obvious for more than one reason that such interventions should be as infrequent as possible when the witness is under cross-examination. It is only by cress-examination that a witness's evidence can be properly tested and it loses much of its effectiveness in counsel's hands if the witness's is given time to think out the answer to awkward questions; the very gist of cross-examination lies in the unbroken sequence of question and answer. Further than this cross-examining counsel is at a grave disadvantage if he is prevented from following a preconceived line of inquiry which is, in his view, most likely to elicit admissions from, the witness or qualifications of the evidence which he has given in chief. Excessive judicial interruption inevitably weakens the

effectiveness of cross-examination in relation to both the aspects which we have mentioned, for at one and the same time it gives a witness valuable time for thought before answering difficult question, and diverts cross-examining Counsel from the course which he had intended to pursue and to which it is by no means easy, some-times to return.

7. Learned Attorney-General dwelt on the position of counsel and the privileges of the Bar. In spite of occasional adverse comments there can be no doubt that the legal profession is a great and noble profession and for that very reason the advocate owes a bundle of duties, duty to his client, duty to his opponent, duty to the Court, duty to the profession and duty to the public and the State. Primarily, however, it cannot be denied that his duty is to his client. An advocate is engaged to represent the case of his client. He is engaged not to express his own views of the case but to marshall all that can be said in favour of his client's view of it. Vide Macmillan's Law and other things (Ethics of Advocacy). In the discharge of his duties an advocate enjoys several privileges. The learned Attorney General cited the early decision of a Full Bench of this Court in Sullivan v. Norton I.L.R. (1886) Mad. 28, where it was held that, an advocate in India cannot be proceeded against civilly or criminally for words uttered in his office as advocate. The following observations of the Master of Rolls in Minister v. Lamb L.R. (1883) 11 Q.B.D. 588, were cited and followed:

If anyone needs to be free of all fear in the performance of his arduous duties, an advocate is that person. His is a position of difficulty; he does not speak of that which he knows, but he has to argue and to support a thesis which it is for him to contend for; he has to do this in such a way as not to degrade himself; but he has to do it under difficulties which are often pressing. If in this position of difficulty he had to consider whether everything which he uttered were false or true, relevant or irrelevant, he could not possibly perform his duty with advantage to his client; and the protection which he needs and the privilege which must be acceded to him is needed and accorded above all for the benefit and advantage of the public.

8. Whether this privilege is absolute or qualified it is not necessary to decide in these petitions though there have been divergent opinions on the matter and the

later Full Bench decision in Tiruvengada Mudali v. Tripurasundari Ammal : AIR1926 Mad906 , has expressed a doubt as to the correctness of the application of the English Common Law doctrine of absolute privilege to criminal law in India. What is, however, relevant to the present discussion is that an advocate in the discharge of his duties to his client must not be hampered by any fear of offending the opposite party or any witness. There are cases in which the subject-matter of the enquiry is such that questions will have to be asked which cannot be fit for the drawing room or which may appear to be scandalous but as pointed out by Subramania Iyer, J., in Zamindar of Tuni v. Peda Bannayya : (1898)8MLJ304 , 'What is relevant cannot be scandalous'. On this point we might usefully refer to the view which the Supreme Court took of certain questions put by the counsel for the husband in a suit filed by him for dissolution of his marriage with the defendant. There was a letter addressed by the wife to a friend of the husband which was of an amorous nature and capable of furnishing good grounds for the husband to suspect the wife's fidelity. Though adultery as such was not alleged by the husband his counsel put questions suggesting that the letter by implication led to the inference that she might have misbehaved with the husband's friend. The learned Judge of the Appeal Court of Bombay castigated the counsel for the husband for putting such questions to the defendant in cross-examination. But their Lordships of the Supreme Court considered that the criticism was not justified. Vide Bipinchandra Jainsingbhai Shah v. Prabhavati (1957) S.C.J. 144.

9. Before we take up seriatim the passages in the judgment which are sought to be expunged we might make a few general observations. In more than one place the learned Judge has given expression to a feeling that the defendant and his counsel were anxious to create a sensation by slandering the plaintiff and Dr. John. We are convinced that this could not have been so. In paragraphs 9 to 13 of the defendant's written statement in the matrimonial suit there were allegations with reference to which the defendant was anxious that the witnesses for the plaintiff should be cross-examined. When the trial Judge felt disinclined to allow certain questions the defendant made an application (No. 1780 of 1958) and in support of it he filed an affidavit wherein he made it clear that it was not his intention to secure any publicity. He said:

It should not be understood that I am desirous of slinging any mud on anybody but my anxiety is to see that truth is brought to the notice of the Court and the reasons for my insistence that the girl should not visit her parental home. I have absolutely no objection if this Hon'ble Court should so deem fit to have the cross-examination of the plaintiff and her witnesses on this aspect of the case in camera.

The defendant only wanted an opportunity to have a detailed cross-examination on the matters referred to in paragraphs 9 to 13 of his written statement. The learned Judge in dealing with this application observed inter alia:

The petitioner states that he does not desire to sling mud on anybody. I am glad to have that assurance. So long as he does not sling mud, cross-examination will not be interfered with. But any attempt at mere mud throwing will be stopped.

This categorical as ertion on the part of the learned Judge is very important. It is obvious that he had made up his mind to disallow any questions which he considered to be mere mud throwing. If, therefore, be allowed certain questions to be put by the petitioner as the counsel for the defendant, presumably the learned Judge was satisfied that they were not attempts at mere mud throwing. None of the questions which have led the learned Judge to make comments on the conduct of the petitioner was disallowed by him as being irrelevant or scandalous. It is also in evidence that questions relating to Dr. John's personal life were put by the petitioner on the specific instructions of his client, the defendant. (Vide Exhibit R. 120.)

[Then their Lordships dealt with the several passages in the judgment and concluded:]

10. We have no hesitation in holding that the adverse comments made by the learned Judge on the conduct of the petitioner are wholly unwarranted. He was only doing his duty by his client and it might be that part of his duty was neither pleasant nor savoury but it is difficult to exclude such things especially in the conduct of a matrimonial suit.

11. The question then arises whether the petitioner should be granted the relief which he expressly seeks, namely, that the passages complained against by him may be expunged from the Judgment of the learned Judge. The learned Attorney-General referred us to decisions of this Court and other Courts in support of his contention that this Court has got jurisdiction to expunge irrelevant and scandalous remarks made by a subordinate Court particularly when they are likely to cause damage to the reputation of the aggrieved person. In Ramabhadra Naidu v. Subramania Iyer (1916) 3 L.W. 283, it was held by Sadasiva Aiyar and Moore, JJ., that the High Court may in appropriate cases have the power to expunge observations made in a judgment of a lower Court. Sadasiva Aiyar, J., observed at page 285 thus:

I do not wish to restrict the powers of this Court (which has general powers of superintendence under the Charter and it may be that where observations are found in the Judgment of a lower Court which are pointedly seditious, blasphemous or irrelevantly scandalous or indecent, they may be ordered to be expunged but such a power should be exercised only in extraordinary cases.

In Public Prosecutor In re (1944) 1 M.L.J. 153 : I.L.R. (1944) Mad. 614, a similar view was taken by Leach, C.J., who took it as well established that in a proper case the High Court has power to expunge a part of a judgment of a Court subordinate to it. In an earlier case in Panchanan Banerji v. Upendrnath Bhattacharji I.L.R. (1926) All. 255, Sulaiman, J., as he then was discussed the question at some length and held that the High Court had inherent power to direct deletion of passages in the judgment of a subordinate Court which are either irrelevant or inadmissible and which adversely affect the character of persons before the Court. The basis of this conclusion, to quote his own words, was this:

The High Court as the Supreme Court: of revision must be deemed to have power to see that Courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it.

Chagla, C.J., presiding over a Full Bench of the Bombay High Court in State of Bombay v. Nilkanth : AIR1954 Bom65 , took a more limited view of the power of the High Court in the matter of expunging of objectionable matter from the record

of a subordinate Court. As in other decisions Section 561-A of the Code of Criminal Procedure was referred to and construed in a sufficiently wide manner as to afford a lawyer or a stranger to the proceedings before a Magistrate an opportunity to approach the High Court seeking redress in a case where his reputation had been affected by unjust criticism by a Magistrate.

12. The learned Chief Justice however was clearly of the opinion that the High Court had no jurisdiction to expunge that is to say, to remove from the record any remarks in the judgment of a subordinate Court. But the learned Chief Justice was equally clearly of the opinion that it was open to the High Court in appropriate cases to correct the judgment of a lower Court.

13. No instance was cited at the Bar by the learned Attorney General in which a High Court invoked its inherent power to expunge from the judgment of a Judge of the High Court any remarks or observations. A judgment of a single Judge of this Court whether it be on the original side, or on the appellate side, in civil or criminal proceedings, is a judgment of the High Court. We do not think that a Division Bench or a fuller Bench of this Court has the power to delete passages from the judgment of this Court delivered by a single Judge. The High Court is a Court of record and that is another reason why we have no power to direct any expunging from the judgment of a learned Judge which is a part of the record of this Court. In our opinion further discussion is unnecessary because it is really academic. All that the petitioner seeks is a vindication of his conduct at the trial of the suit. His anxiety is only for his reputation a s counsel. What we have said above, namely, that the adverse comments made by the learned Judge against him were not warranted should be sufficient to clear his reputation. In this view no orders are necessary on these petitions.

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