

(1996) 07 AHC CK 0122

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 1733 of 1994

Santosh Tewari and
Others

APPELLANT

Vs

State of U.P. and
Another

RESPONDENT

Date of Decision: July 8, 1996

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 200, 202, 482
- Penal Code, 1860 (IPC) - Section 499, 500

Citation: (1996) 20 ACR 808

Hon'ble Judges: G.P. Mathur, J

Bench: Single Bench

Advocate: Gopal S.Chaturvedi, for the Appellant; G.A., for the Respondent

Judgement

G.P. Mathur, J.

This petition u/s 482, Code of Criminal Procedure has been filed for quashing the complaint and the summoning order dated February 3, 1994.

2. The complaint-Respondent No. 2 Nirbhai Mehrotra was initially appointed as Accountant in the Kamla Nehru Hospital, Allahabad and was subsequently designated as Deputy Director (Finance). A news item was published in "Our Leader" an English daily on October 13, 1994 of which applicant No. 1 Santosh Tewari is the publisher, applicant No. 2 Anupam Mishra is the editor and applicant No. 3 H.P. Srivastava is the working editor. The Respondent No. 2 Nirbhai Mehrotra felt that the news item defamed him and accordingly he filed a criminal complaint for prosecuting the applicants u/s 500, I.P.C. in the Court of C.J.M. 1st, Allahabad on January 15, 1994. The learned Magistrate after recording the statement of the complainant u/s 200, Code of Criminal Procedure and that of two witnesses u/s 202, Code of Criminal Procedure passed an order on February 3, 1994 summoning the

applicants to face trial u/s 500, I.P.C.

3. Before advertng to the facts of the case it is necessary to bear in mind the constitutional and statutory provisions which have a bearing on the controversy raised. Article 19(1)(a), the Constitution of India guarantees freedom of speech and expression to every citizen. Clause (2) of the same Article however lays down that nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, In so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in relation to contempt of court, defamation or incitement to an offence. Section 499, I.P.C. defines defamation which is made punishable u/s 500, I.P.C. The first exception to Section 499 lays down that 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 should be published. Whether or not it is for the public good is a question of fact. Second exception lays down that it is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions or respecting his character, so far as his character appears in that conduct, and no further. First exception to Section 499 thus shows that if the imputation made against a person is true and if it is for public good that the imputation should be made or published then even if the imputation is defamatory in character it will not amount to a criminal offence. Similarly the second exception shows that if any opinion is expressed regarding conduct of a public servant in the discharge of his public function or respecting his character so far as his character appears in that conduct and if the opinion is expressed in good faith, it will not be a criminal offence even if the opinion is defamatory in character. The legal position in U.K. appears to be almost similar. In Halsbury's Laws of England (Fourth Edition) Vol. 28, Note 284 the law on the point has been stated as under:

284. Justification and public benefit.--On the trial of any indictment for a defamatory libel, in addition to the regular plea of not guilty, the Defendant may enter a special plea that the alleged defamatory matter is true, and that its publication is for the public benefit. The plea of truth follows the style and manner of a plea of justification in a civil action for defamation. However, in addition to the plea of truth, without which the truth of the matter charged may not be inquired into, the Defendant must further allege that it was for the public benefit that the defamatory matter charged should be published, and must state the particular fact or facts by reason of which he maintains that the publication of the matter charged was for the public benefit. Thus, truth alone is no answer to the charge.

There can be no doubt that freedom of speech or freedom of Press does not extend to publishing any imputation concerning any person intending to harm or, any one having reason to believe that such imputation will harm the reputation of such person, unless the case is covered by one of the exceptions to Section 499, I.P.C. There is often a conflict between the right guaranteed to a citizen under Article

19(1)(a) of the Constitution and the provisions of Chapter XXI of the Indian Penal Code which deals with defamation, such conflict has also frequently arisen before the courts in U.S.A. The framers of our Constitution have borrowed Article 19(1)(a) from the American Constitution. The First Amendment of American Constitution, which came into force as far back as November 3, 1791, provides that Congress shall make no law abridging the freedom of speech or of the Press. It will, therefore, be useful to notice the legal position on this question in U.S.A. In 50 American Jurisprudence 2nd Article 1 (Page 513), it has been stated as under:

The law relating to defamation is a limitation upon the constitutional guaranty of freedom of speech and of the press, and the vagarious and complex structure of such law, as it exists today, is to a large extent a direct result of the friction between it, as a restriction on untrammelled freedom of expression, and the highly cherished rights of freedom of speech and of the press. On the one hand, the constitutional guaranty does not condone unjustifiable defamation, but on the other hand, court decisions and State statutes relating to libel and slander should not be violative of a proper exercise of the constitutional privilege. Needless to say, a State statute relating to defamation should conform to other applicable constitutional requirements.

4. Freedom of speech and expression is one of the most cherished right of a citizen in a free society. It will be appropriate to recall the famous words of Voltaire:

I disapprove of what you say, but will defend to the death your right to say it.

and that of Benjamin Franklin:

They that give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.

The Press has an important role to play in a democratic society like ours and the fundamental rights guaranteed under the Constitution depend a good deal upon freedom of Press. It will not be out of place here to reproduce the words of a few great persons regarding freedom of Press:

Our liberty depends on the freedom of the Press, and that cannot be limited without being lost.

Thomas Jefferson:

The free press is the mother of all our liberties and of our progress under liberty.

Adlai E. Stevenson:

The press is not only free, it is powerful. That power is ours. It is the proudest that man can enjoy.

Benjamin Disraeli

Let it be impressed upon your minds, let it be instilled into your children, that the liberty of the press is the palladium of all the civil, political, and religious rights.

Junius

5. The right of liberty, though fundamental to human nature, is neither absolute in exercise nor is it an act of charity by the ruler of the day. It is inherent in the complexion of any civilised society. At the same time no liberty in a civilised society is as absolute as to become licence, which in turn may change into anarchy or the rule of jungle. When a majority of us refuse to interfere with the liberty of others and voluntarily submit to a curtailment of our private liberty, we do so to enjoy a social order which makes our liberty a reality. The question of putting legitimate limits to the exercise of liberty becomes inevitable when such liberty becomes a social nuisance or smacks of bullying tactics or feudal fads. The question of defamation is primarily linked up with one's reputation that one commands among one's fellow beings and it is the infringement of this right to have one's reputation preserved intact that gives the cause of action. Thus there is paramount public interest that a person be permitted to speak or write freely without fear of civil or criminal liability and individual should be free to enjoy his reputation unimpaired by false and defamatory attacks.

6. While considering whether a statement is defamatory in character or not, a question arises as to how the statement should be read. In 50 American Jurisprudence 2nd Article 501, the law on the point has been stated as under:

As a general rule, the principles of construction applicable in civil cases govern the construction of language claimed to be criminally defamatory. Thus, in the absence of any showing that the words composing the statement complained of were used in a special sense, the court must assign them their plain, natural and popular meanings, and then, taking the expression as a whole, determine its true meaning and effect, in the same manner as a stranger to the controversy would do. An alleged libelous article should be considered in its entirety, and not as cut up in sections or paragraphs.

The same view is expressed in 53 Corpus Juris Secundum Para 283(c) where the law has been stated as under:

In determining whether the offence of criminal libel has been committed, defamatory words are to be construed as a whole, and are to be taken in their plain, natural and ordinary meaning; but it is not necessary that the charge be made directly or that the person defamed be mentioned by name.

It is, therefore, well settled that the whole of the statement complained of must be read and not merely part or parts of it.

7. The offending news item bears following caption in bold letters: **BUNGLING IN KAMLA NEHRU HOSPITAL**. The news item begins as follows:

A bungling in the hospital funds of the Kamla Nehru Hospital came to light recently when Rs. 20,000 were found missing from the cash chest of the hospital on 1st October last. An inquiry was instituted in the matter and all the documents were sealed on 7th October in the presence of the Administrator, but despite the knowledge the Administrator decides to keep the issue under wraps for reasons best known to him.

Thereafter, it is mentioned that the Administrator had instituted an inquiry by constituting a committee of two doctors to hold an inquiry and submit its report. In the third paragraph, it is mentioned that when the scribe contacted Administrator, he denied that any bungling of cash had taken place but when he was shown the office order regarding initiation of enquiry, he said that he would not give any comments. In the fourth paragraph, it is mentioned that when other members of the committee were contacted, they replied that they had been instructed not to give any comments. In the fifth paragraph, it is mentioned that an accountant Sri Chandra Shekhar Srivastava said that Mr. Mehrotra was the only one to handle the cash chest. In the sixth paragraph, it is mentioned that the General Secretary of the Kamla Nehru Hospital Karmachari Sangh said that the hospital is mired in corruption and recently a jeep of the hospital was stolen but no enquiry was carried out. In the next three paragraphs reference is made to the complainant and it is said that he was an accountant in the hospital in the year 1985 and was made Deputy Director in September, 1993 and on 1st October the cash fell short. He enjoyed clout in the hospital and that in 1992 the police seized a truck with teak furniture of the hospital which he was allegedly carrying. In the last paragraph, it is said that the whole episode of missing Rs. 20,000 is mired in mystery as every official was keeping mum on the issue thus giving rise to the belief of greater corrupt practices in the hospital.

8. In paragraph 9 of the affidavit filed in support of this petition, it is averred that following instructions of the high command namely Kamla Nehru Trust, New Delhi, the complainant Nirbhai Mehrotra had been placed under suspension in view of prima facie evidence regarding bungling of funds by him. A copy of the order dated October 1, 1993 passed by the Administrator has been filed which shows that a committee had been constituted consisting of two senior doctors of the hospital to hold an enquiry regarding shortage of Rs. 20,000 from the cash chest. A second supplementary affidavit has been filed by the applicants wherein it is stated that the complainant was dismissed from service following report of the enquiry committee. It is further stated therein that the Administrator has written a letter to the Provident Fund Commissioner, Varanasi, on January 28, 1995 requesting that the provident fund of the complainant Nirbhai Mehrotra, who had been dismissed from service due to mishandling of cash, should not be released to him without giving prior intimation to the employer and that money should not be unilaterally paid to him. These facts have not been controverted by Respondent No. 2 (complainant) and in fact his counsel Sri Sanjay Goswami fairly accepted that his client, who had

been initially placed under suspension, has been dismissed from the services of the hospital on account of shortage of money from the cash chest.

9. Kamla Nehru Hospital was founded by Pt. Jawahar Lal Nehru in the memory of his wife. It is undoubtedly the best maternity hospital in Allahabad and in the neighbourhood. It has also got a Cancer Wing and well equipped Radio diagnosis facilities. The hospital is run by Kamla Nehru Trust and so long as Smt. Indira Gandhi was alive, she used to take keen interest in the management of the hospital. The hospital is rendering very good service to society at large. The whole public is therefore interested in seeing that the hospital is properly run. Any financial bungling in the hospital is a matter of public concern as it is bound to affect its efficiency.

10. The affidavits exchanged by the parties reveal that the news item relating to shortage of Rs. 20,000 is correct. Similarly the fact that an enquiry was held against the complainant and subsequently he was dismissed from service on account of shortage of funds, is correct. The applicants have not filed any material here which may show that the part of the news item wherein it is mentioned that in 1992 the police seized a truck with teak furniture of the hospital which Mr. Mehrotra was allegedly carrying is correct and, therefore, for the purpose of the present petition, it has to be taken as defamatory. The news item also mentions that Mr. Mehrotra enjoys clout in the hospital as his sister is P.A. to the Secretary of Kamla Nehru Trust. In my opinion, this part is not defamatory in character. The last part of the news item that sources further alleged that Mr. Mehrotra also runs a loan shark business in the hospital can be held to be defamatory. However, if the news item is read as a whole, it will show that basically it is regarding the affairs of Kamla Nehru Hospital. No doubt it also mentions certain things about the complainant Nirbhai Mehrotra but it cannot be said that the object of publishing the news item was to highlight his activities.

11. There cannot be even a slightest doubt that there is wide spread corruption in the country and persons holding public positions are adopting most dubious methods to acquire wealth. Mind boggling scams involving astronomical figures are being brought to light almost every day. The Press has an important role to play in exposing the corruption at Public places and to inform the people about the misdeeds of those who are indulging in such nefarious activities. In fact, it is the duty of the Press to highlight the cases of the corruption. The Press must publish reports about such incidents immediately after they are brought to light. Investigation into matters relating to financial bungling takes a long time. The Press has to publish the news about such matters forthwith and it cannot wait indefinitely for the investigation to be completed and complete facts to be ascertained as waiting for such a long period would make the news stale. Public good demands that such people, if not actually convicted and sentenced by a Court of law, at least get a bad name in the society by publication of their names and misdeeds in the

media. This may act as some sort of check or deterrence on those who have no qualms in misappropriating public funds. If a reporter or editor is under threat or fear of criminal prosecution for an offence of defamation, he is not likely to report or publish anything regarding those who have indulged in financial bungling till at least the investigation is over. This may take months or years and by that time the news will become stale and will cease to be worth reporting. It has been held in *Radha Govind v. Saila Kumar* 1950 Cri LJ 1293 and [Shivage Gowda Vs. T. Narayana and Another,](#) that for application of First Exception to Section 499, I.P.C., it is sufficient if the accused can show that the statements are substantially true in regard to the material portion of the allegation or insinuation. Therefore, if the news published by the Press is substantially correct, the persons responsible for reporting or publishing the same cannot be held liable for defamation merely because it is not true on some minor matters.

12. As shown earlier, the news item was published basically to highlight the affairs of Kamla Nehru Hospital and not particularly for the complainant.

The main allegation made against the complainant has been found to be true. Further It is for the public good that the imputation regarding bungling of funds or property of the hospital and misdeeds of its employees should be published. The prosecution of the Petitioners u/s 500, I.P.C. is, therefore, wholly unjustified and illegal.

13. In India, defamation may amount to a civil wrong as well as a crime. According to Salmond, the distinction between the crimes and civil wrongs is roughly that crimes are public wrongs and civil wrongs are private wrongs. Wrongs are divisible into two sorts or species, private wrongs and public wrongs. The former are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals, and are thereupon frequently termed civil injuries; the latter are a breach and violation of public rights and duties which affect the whole community considered as a community; and are distinguished by the harsher appellation of crimes and misdemeanours. A crime then is an act deemed by law to be harmful to the society in general, even though its immediate victim is an individual. Those who commit such acts are proceeded against by the State in order that if convicted, they may be punished. Civil wrongs are deemed only to infringe the rights of individual wronged and not to injure society in general and consequently, the law leaves it to the victim to sue for compensation in the Courts. (See Salmond on Jurisprudence, 1988 Ed. P. 91). According to the theory on Criminal Law of England, the essence of the crime on private libel consists in its tendency to provoke the breach of peace. However under the Indian Penal Code, defamation has been made an offence without any reference to its tendency to cause acts of illegal violence. But the Code was drafted nearly one and a half century ago in the year 1837 by the first Indian Law Commission of which Lord Macaulay was the President and was passed by the Legislative Council on October 6, 1860. Many provisions in

the Code were enacted with the object of preventing the voice of dissent or criticism of the administration and for strengthening the British Rule. The position has vastly changed with the enforcement of Constitution and the Society becoming more and more free and open and a demand for transparency in public dealings. There can be no denial that there is rampant corruption in the country and the legal system takes a long time in bringing the guilty to book. In such a situation, the Press has an important role to play and in fact, it is its duty to expose the corrupt and wrong people. This can be done only if the publisher, reporter or the writer is free from the threat of a criminal prosecution. Section 499, I.P.C. may be a valid piece of legislation in view of Clause (2) of Article 19 but it should be interpreted in a manner which permits Clause (1) to have its full amplitude.

14. It is noteworthy that the current thinking in U.S.A. is that the person aggrieved should pursue his civil remedy and not by initiating prosecution in a criminal court. In 50 American Jurisprudence 2nd Article 495, the law on the point has been stated as follows:

The United States Supreme Court has made reference to the changing mores, and to the virtual disappearance of criminal libel prosecutions, and it has been said that even though a defamation may be a crime as well as a civil wrong, the injured person generally should content himself with his civil remedy.

15. In U.K., newspapers enjoy a special protection in view of the Law of Libel Amendment Act, 1888 and without the leave of a Judge, which can be granted only if the imputation is very serious or public interest demands prosecution, no prosecution can be launched. The legal position has been stated as under in Halsbury's Laws of England (Fourth Edition) Vol 28, Note 280:

280. Leave to prosecute publication in newspaper.--No criminal prosecution may be commenced against any proprietor, publisher, editor or any person responsible for the publication of a newspaper for any libel published in it, without the order of a Judge in chambers. The application for such an order must be made on notice to the person accused, who must have an opportunity of being heard. Leave will only be granted where there is a prima facie case, where the libel is so serious that the criminal law ought to be invoked and where the public interest requires the institution of criminal proceedings. No appeal lies from the Judge's order allowing or refusing leave to prosecute.

16. It is a legitimate function of all newspapers in a democratic set up to act as a champion of clean administration and sentinels of public interest and as such, they are well within their rights to expose and bring to the notice of general public any lapse or malpractice in the administration including that of nepotism and favouritism and by doing so, they will be acting for public good. In view of long passage of time which has elapsed since the enactment of Penal Code, change in the pattern of society and instances of corruption, misappropriation of public funds

and favouritism, etc., being brought to light very frequently, the development of law in the leading democracies like U.K. and U.S.A. should be taken notice of. It will, therefore, be appropriate to hold that if a substantially true news item is published for public good, no criminal prosecution of the persons responsible for the publication is partly untrue or incorrect unless the report was made or published maliciously. Furthermore the prosecution should be allowed only if the damage done cannot be met by a civil action and it will be in the public interest to do so.

17. Learned Counsel for the complainant has referred to [Sardar Amar Singh Vs. K.S. Badalia](#) ; [Sahib Singh Mehra Vs. State of Uttar Pradesh](#) , in support of his submission that the news item is defamatory in character and the proceedings cannot be quashed in exercise of Jurisdiction u/s 482, Code of Criminal Procedure. In my opinion, the authorities cited are clearly distinguishable and can have no application on the facts of the present case as the news item is substantially true and it is for public good that it should be published. There is no allegation that the publication was malicious.

18. Before parting with the case, I would like to observe that it is high time the Parliament considered the desirability of bringing in a legislation on the pattern of Law of Libel Amendment Act, 1888 and also Defamation Act, 1952 of the United Kingdom where publication in a newspaper of matters mentioned in the Schedule to the Act is privileged unless the publication is proved to be made with malice.

19. For the reasons mentioned above, the petition succeeds and is hereby allowed. The proceedings of Criminal Case No. 301 of 1994, Nirbhai Mehrotra v. Santosh Tewari and Ors., pending in the Court of 1st A.C.J.M., Allahabad are quashed.