

(2007) 05 DEL CK 0096

Delhi High Court

Case No: Criminal M.C. No. 2983 of 2004

Tarun J. Tejpal and Another

APPELLANT

Vs

Jayalkshmi Jaitly and Another

RESPONDENT

Date of Decision: May 31, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 120B, 201, 499, 500, 501
- Prevention of Corruption Act, 1988 - Section 9

Citation: (2008) 1 ILR Delhi 35

Hon'ble Judges: A.K. Sikri, J

Bench: Single Bench

Advocate: Meet Malhotra and Mr. Rajinder Singh, for the Appellant; S.S. Gandhi and Mr. Abhijat, for the Respondent

Judgement

A.K. Sikri, J.

Corruption in this country has become a menace. Various measures are taken to curb this combination. However, it remains unabated. Most of the time these acts are done behind the closed doors and therefore they do not come to light. Notwithstanding the efforts of right minded people in the Government and the law enforcing agencies to apprehend the culprits. Notwithstanding the efforts of ace journalists and media persons to unearth such scandals. Even when some semblance of evidence is procured that may not be sufficient enough to nail the erring officials/persons. A new methodology has now been adopted by some journalists which has come to be known as "Sting Operations". It all started with the first such operation conducted by the petitioners herein and the side effect of that is the present case. Petitioner no. 1 is the Managing Director of the petitioner no. 2 namely M/s. Tehelka Com. Ltd. He is also Managing Director and Editor in Chief of an electronic news portal TEHELKA. COM. It is the case of the petitioner that in their first sting operation, the Tehelka team uncovered organized fixing of international

cricket matches. Encouraged by this operation, the Tehelka team secretly filmed meetings with business wheeler dealers, politicians and serving and retired army personnel, while pretending to be arms dealers. The idea was to expose the deep rooted, multi level corruption in matters relating to equipment purchases for the armed forces. The petitioners named this operation as "OPERATION WEST END" and it was released to print and electronic media on 13.03.2001. The secretly filmed footage, inter alia, showed politicians accepting bribes in money for favours promised to be done. This created huge ripples. The then President of Bharatiya Janta Party Mr. Bangaru Laxman resigned from his post. The Army initiated action against its senior officers who were seen on the tapes. The Government of India set up a one man commission of inquiry under the Commission of Inquiry Act, 1952, to look into all aspects connected with the making and publication of the secretly filmed video tapes.

2. As was expected, the persons who are shown in these tapes have denied these tapes as "rubbish" and their allegations are that these video tapes are doctored.

3. All these aspects are to be looked into in the fact finding inquiries and in other proceedings pending. In the present case, it is not to be judged as to whether the "sting operation" and the video tapes are genuine or whether they are manipulated. This case has arisen because of subsequent developments. Nearly one year after the aforesaid sting operation, the petitioner no. 1 wrote an article entitled:-

TEHELKA FACT SHEET "OPERATION WEST END"

Muddying the message and shooting the messenger"

The said article dealt with various issues in the aftermath of OPERATION WEST END. These issues dealt with the character and conduct of persons touching the public question of corruption. It discussed as to what was revealed by the video tapes. The article stated that the authenticity of those tapes, at no stage, had been successfully assailed and was, indeed, subsequently, established.

4. Broadly the article touched, inter alia, the following issues:

- Why did Tehelka undertake "Operation West End"?
- The witch hunt against the holding company of Tehelka?
- How the Army reacted to Operations West End?
- How the political establishment reacted to Operations West End?

5. Thus according to the petitioners, the main theme of the article was to establish how the Government of India was hounding the owners of the holding company and the journalists of Tehelka merely on suspicion, while going soft on political figures against whom there was clear evidence of criminal wrongdoing. It was against this backdrop that, in order to show the hypocritical and double standards

of the political establishment that the petitioner wrote:-

...In a similar vein, at first Jaya Jaitly, Samata Party president, refused to resign. She called Tehelka's investigation a dubious, "concocted" conspiracy. She accepted that she'd taken the money for party funds, but asserted she had done nothing wrong. She too was forced to resign under pressure on March 15. But she threatened to file a defamation case against Tehelka and fight the "dubious means" that had been used to entrap her.

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Despite this admission, till this date, his ex-parte functionary, Jaya Jaitly, continues to argue that the tapes were doctored. (despite the fact that earlier she too had admitted to taking the Rs. 2 lakh as recorded on the Tehelka tapes, stating that she had done nothing wrong in doing so....

6. Obviously, Ms. Jaya Jaitly felt agitated, annoyed and humiliated with the aforesaid blemish against her. She perceived aforesaid imputations as libelous in nature and looked upon them as a deliberate attempt on the part of the author to willfully harm her reputation, amounting to an offence u/s 499 of the Indian Penal Code which is punishable u/s 500 of I.P.C. Accordingly, she promptly filed the complaint under Sections 499 /500 /501 of Indian Penal Code against the petitioners herein. Pre-summing evidence was recorded. Thereafter on hearing the arguments and perusing the case file, the Learned Metropolitan Magistrate found that there were sufficient grounds to summon the petitioners herein (arrayed as accused no. 1 and 2 in the said complaint) for offences u/s 500 /501 I.P.C. Order dated 22.4.02 was accordingly passed summoning them for 12.08.2002.

7. On receiving the summons, petitioners filed application for dropping the proceedings and for recall of the summoning order. This application was considered by the Learned Metropolitan Magistrate who allowed the application and dismissed the complaint thereby dropping the proceedings against the petitioners. The complainant/respondent no. 1 challenged the aforesaid order dated 19.7.2003 passed by Learned Metropolitan Magistrate by filing an appeal there against. This appeal was allowed by the High Court vide order dated 6.10.2004. The High Court did not deal with the order dated 19.7.2003 passed by Learned Metropolitan Magistrate on merits. It was not required to do so as in the mean time Apex Court has pronounced a judgment in the case of [Adalat Prasad Vs. Rooplal Jindal and Others](#), wherein the Apex Court has taken the view that once summons are issued by the Learned Metropolitan Magistrate, he has no power to recall the summoning order and such a power lies only with the High Court u/s 482 of the Cr.P.C. In view of this legal position, the petitioners have filed this petition u/s 482 of the Cr.P.C. challenging the summoning order.

8. In the complaint filed by the respondent no. 1/complainant, she has alleged that the above extracted statements published in the article published by the petitioners

are totally false and denied that she ever misused office or indulged in venal corruption or ever received supposed arms dealers and middlemen or accepted any sum of money or Rs. 2 lacs in exchange, as alleged in the article. It is further stated that the article has been printed and published by the petitioners with an intention to harm and lower the reputation of the complainant as a social worker, politician and upright citizen of India with a high moral integrity. It is also stated that the petitioners have intended to hurt the feeling of the family and near relatives of the complainant. The objectionable portions of the article against which the complainant is aggrieved and particularly perturbed are the following:-

.....George Fernandes, Defence Minister, exposed allegedly misusing office and power, implicated on the tapes because of his companion and Samta Party President Jaya Jaitly was caught receiving supposed arms dealers and middlemen in his residence and accepting money in exchange for referring a deal to him.

.....

Jaya Jaitly, Samata Party President, misusing officer and indulging in venal corruption under the cloak of the party. She was exposed receiving people she thought to be arms dealers and middlemen in the Defence Minister's house. Seen accepting Rs. 2 lacs for agreeing to help forward the sale of a fictitious product to the army by referring the matter to her companion, the Defence Minister George Fernandes.

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Knowledge of corruption is not new to India-but such staggering visual proof of it is the shot of Laxman taking money was in some senses as powerful as that of an airliner ploughing into the world Trade Center. It demanded action. Redressal. Retribution. As did images of politician-leaders like Jaya Jaitly, Laxman, R.K. Jain.....

.....

George Fernandes, Defence Minister:

Implicated in the Tehelka Tapes because his companion and Samata Party President, Jaya Jaitly was caught in the gross impropriety of receiving supposed arms dealers and middlemen in his, the Defence Minister's house. She also accepted Rs. 2 lakhs from them, for agreeing to help forward the sale of a fictitious product to the army by referring the matter to Fernandes.

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Exposed in the Tehelka Tapes for misusing power and officer; receiving supposed arms dealers the Defence Minister's house; agreeing to help forward the sale of a (fictitious) product to the army by referring the matter to the Defence Minister; accepting Rs. 2 lakh from these supposed arms dealers.....

9. The main ground taken in this petition, on the basis of which the petitioners want recalling of summoning orders and rejecting of complaint, is that the statements in the complaint are reflection of true facts and truth is a complete defence to the charge of defamation. It is submitted that the respondent no. 1 did not challenge the correctness of the episodes shown on video tapes showing her accepting money from supposed arm dealers. It is further submitted that the complaint filed by the respondent no. 1 is only about subjectively selected portions of an article which had been written about an event already well publicized and in which comment was made on the conduct of persons touching the public question of corruption. It was also the submission of learned counsel for the petitioner that her allegations of defamation were covered by exceptions to section 499 I.P.C. and therefore the provisions of Section 499 were not attracted. He attempted to demonstrate that the case was governed by 3rd, 7th and 8th exception to section 499 of I.P.C. His further submission was that entire action was accomplished in "good faith" which constitutes a valid defence rightfully available to the petitioner and therefore on that ground also the complaint filed by the complainant was liable for rejection. He referred to the following judgments of Hon"ble Supreme Court in support of his submission namely:

1. [R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others](#), .
2. [Jawaharlal Darda and Others Vs. Manoharrao Ganpatrao Kapsikar and Another](#), .
3. [Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another](#), .

10. The submission of the Ld. counsel for the respondent on the other hand was that whether the case falls within any of these exceptions or not is for the Ld. Trial Court to decide and this court in proceedings u/s 482 of the Code of Criminal Procedure would not embark on this inquiry. His submission was that these are the disputed questions. Moreover, onus was upon the petitioner/accused persons to prove that case falls in any of the exceptions carved out in Section 499 IPC and, therefore, such an onus can be discharged only by producing evidence. He submitted that there was no doubt about the legal position and doubts were set at rest by the Supreme Court in its pronouncements. He specifically referred to the following cases:

1. [Sewakram Sobhani Vs. R.K. Karanjia Chief Editor, Weekly Blitz and Others](#), .
2. [Balraj Khanna and Others Vs. Moti Ram](#), .

11. As noted above, the submission of the petitioners is that the news item was published in "good faith" and that case falls in exceptions 3, 8 and 9 of Section 499 of Indian Penal Code. We may, therefore, reproduce the provisions of Section 499 of I.P.C. with aforesaid exceptions omitting other portions in this provision which are not relevant for us in the present case:

Section 499. Defamation. -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 expected, to defame that person.

Explanation 1. - 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 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.....

Second Exception.....

Third Exception. - Conduct of any person touching any public question. - It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception.....

Fifth Exception.....

Sixth Exception.....

Seventh Exception.....

Eighth Exception. - Accusation preferred in good faith to authorised person - It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception. - Imputation made in good faith by person for protection of his or other's interests. -- 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.

Tenth Exception.....

12. In nutshell, the case of the petitioners is that the utterances in the article are true which are made in good faith and for public good. Whether on this plea the petitioners can file the petition u/s 482 of Cr.P.C. and this Court can consider such a plea in the proceedings is the question.

13. In *Sewakram Sobhani v. R.K. Karanjiya*, Chief Editor, Weekly Blitz and others (supra), accused had stated that his case was covered by Exception 9 and filed petition u/s 482 of the Cr.P.C. for quashing the order of summoning. High Court had allowed the petition and quashed the proceedings. In appeal the Hon"ble Supreme Court reversed the decision holding that the burden to prove that the case falls in 9th Exception is upon the accused and that is a matter of trial. The relevant portion of the judgment reads as under:

It is for the respondent to plead that he was protected under 9th Exception to Section 499 of the Code. The burden, such as it is to prove that his case would come within that exception is on him. The ingredients of the Ninth Exception are that (1) the imputation must be made in good faith, and (2) the imputation must be for the protection of the interests of the person making it or of any other person or for the public good.

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The Hon"ble Supreme Court referred to its earlier judgment in the case of [Sukra Mahto Vs. Basdeo Kumar Mahto and Another](#), and extracted following portions of their judgment:

The ingredients of the Ninth Exception are first that the imputation must be made in good faith; secondly, the imputation must be for protection of the interest of the person making it or of any other person or for the public good. Good faith is a question of fact. So is protection of the interest of the person making it Public good is also a question of fact.

After referring to the two earlier decisions in [Harbhajan Singh Vs. State of Punjab](#), , and [Chaman Lal Vs. The State of Punjab](#), , the Court held that there must be evidence showing that the accused acted with due care and caution, "He has to establish as a fact that he made enquiry before he made the imputation and he has to give reasons and facts to indicate that he acted with due care and attention and was satisfied that the imputation was correct. The proof of the truth of the statement is not an element of the Ninth Exception as of the First Exception to Section 499. In the Ninth Exception the person making the imputation has to substantiate that his enquiry was attended with due care and attention and he was thus satisfied that the imputation was true.

14. The aforesaid view has been reiterated by the Hon"ble Supreme Court in the case of [Vivek Goenka and Others Vs. Y.R. Patil](#), holding that the burden of proof is on the accused persons to show that they are protected under exceptions.

15. Thus, what follows from the aforesaid judgments is that if the publication in question is accurate and the facts are true and/or it is bonafide, that would be complete answer to the charge of defamation. In the present case, no doubt, whether the publication of the offending material is bonafide or it is true and correct reporting, is a matter of evidence. Again, it is for the defence to discharge the burden viz. the case is covered by these exceptions u/s 499 IPC. So far as good.

16. No doubt Media plays a very vital role in present times. "Media has come to be known as the eyes, and the ears of the people. Over the years, it has also become their brain and tongue." ("A Brief Note on Media and Judicial Independence" by Justice P.B. Sawant, former Judge, Supreme Court of India) Freedom of the Media is an integral part of freedom of expression and essential requisite of democratic set up. The Media is known as the fourth limb of a democratic system. Without commenting as to whether it is right or wrong, the journalists deem it that it is integral part of their function to expose the corruption by public servants etc. The petitioner was the first who adopted novel method now popularly known as "Sting Operations". It is not for me to discuss the morality or otherwise of such operations, which subject is hotly debated. Suffice is to state that Media runs the risk if it publishes the stories, without proper investigation or where truth is distorted, which level allegations against other persons and allegations are recklessly made. If it is their right, as a part of freedom of speech to expose the corruption of public officials in public life, it is also their duty to ensure that the news is based on proper investigation and verification and the publication is not aimed at what is known as "Sensational Journalism". However, even if what is said is truth and bonafide, still threat of facing such defamatory action is always there. It is occupational hazard, when such actions are brought against the author(s). The law is such that all these issues are to be examined at the stage of evidence.

17. Having regard to the principles laid down in the judgments noted above, normally I would have relegated the petitioner to the court of learned MM to face the trial and prove his defence. In the present case, however, there is some material and circumstances available to the petitioner on the basis of which somewhat different course of action is called for. On the basis of such sting operation, styled as "Operation West End", CBI has registered the case and conducted the investigation. On the basis of such investigation, CBI has submitted chargesheet in the Court of Ms. I.K. Kochhar, Special Judge, CBI Case, Patiala House Courts, New Delhi. I had summoned the said record. The chargesheet filed by the CBI runs into thirteen pages. Along with chargesheet, various annexures are filed running into another nine pages which include list of witnesses, list of documents and list of material objects in support of charge as Annexures I, II and III respectively.

18. Perusal of the chargesheet would show that CBI conducted the investigation by recording the statements of various persons. It is not necessary to discuss the investigation as disclosed in the said chargesheet in detail as the matter is pending

before the CBI Judge. However, it is necessary to note that as per the CBI, the investigation has disclosed that during the year 2000-2001, the complainant herein (accused No. 1) in criminal conspiracy with Maj. Gen. S.P. Murgai (Retd.) (accused No. 2), Sh. Gopal Pacherwal (accused No. 3) and Sh. Surendra Kumar Surekha (Approver), Rs. 2 lacs being gratification for herself and/or for any other person from Sh. Mathew Samuel, the representative of the fictitious firm M/s Westend International, London, as a motive to exercise influence with public servant(s) from the Ministry of Defence to get the favour to the company M/s. Westend International. The prayer made in the chargesheet is that the Court should take cognizance of the offence punishable u/s 120-B IPC read with Section 9 of the Prevention of Corruption Act. The case is listed before the CBI Judge for framing of the charge and arguments on charge are to be advanced.

19. No doubt, in the judgments, note whereof is taken above, it is laid down that bringing the case within the third, eighth and ninth exceptions is a matter of trial.

20. At the same time, what is required to be shown in order to establish good faith is explained by the Hon"ble Supreme Court in the case of [Chaman Lal Vs. The State of Punjab](#), and following ingredients are laid down in the said judgment:

In order to establish good faith and bona fide it has to be seen first the circumstances under which the defamatory matter was written or uttered; secondly, whether there was any malice; thirdly, whether the accused made any inquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability that the accused acted in good faith.

21. If prosecution i.e. CBI proves its case against the complainant, the petitioner would naturally be vindicated, as a necessary consequence thereof. Let me at this stage, take note of another judgment of the apex court. Rajender Kumar Sitaram Pande and Others v. Uttam and Another (supra) was a case where complaint u/s 500 I.P.C. was filed alleging that the accused persons made a complaint to the Treasury Officer containing false imputation to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer. The Magistrate directed Treasury Officer to hold inquiry and submit a report. Treasury Officer submitted the report indicating that a departmental inquiry had been initiated and the complainant was found guilty. In view of the fact that the complainant had come in a drunken state had been established, the Supreme Court held that the imputation in the complaint by the accused persons was not false and in such circumstances, the case clearly fell under Exception 8 of Section 499 of I.P.C. and therefore the calling upon the accused to face trial would be a travesty of justice. Discussion on this issue is summed up in paragraph 7 and in order to have the flavour thereof it would be apposite to reproduce the same:

The next question that arises for consideration is whether reading the complaint and the report the Treasury Officer which was obtained pursuant to the Order of the Magistrate under sub-section (1) of Section 201, can it be said that a prima facie case exists for trial or Exception 8 to Section 499 clearly applies and consequently in such a case, calling upon the accused to face trial would be a travesty of justice. The gravamen of the allegations in the complaint petition is that the accused persons made a complaint to the Treasury Officer, Amravati, containing false imputations to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer, Additional Treasury Officer and the Collector and circulated in the office using filthy language and such imputations had been made with the intention to cause damage to the reputation and services of the complainant. In order to decide the correctness of this averment, the Magistrate instead of issuing process had called upon the Treasury Officer to hold an enquiry and submit a report and the said Treasury Officer did submit a report to the Magistrate. The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence u/s 500 or not. Section 499 of the Indian Penal Code defines the offence of defamation and Section 500 provides the punishment for such offence. Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject-matter of accusation. The report of the Treasury Officer clearly indicates that pursuant to the report made by the accused persons against the complainant, a departmental enquiry had been initiated and the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by Exception 8 to Section 499 of the Indian Penal Code. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for quashing the order of issuance of process and the proceedings itself. We, therefore, set aside the impugned order of the High Court and confirm the order of the learned Sessions Judge and quash the criminal proceedings. This appeal is allowed.

22. In view of the aforesaid chargesheet based on investigation conducted by the CBI it would not be proper to force the petitioner to face the trial in defamation case. No doubt, the Court has yet to take the view as to whether to act upon the said chargesheet or not and whether the charge is to be framed or not.

23. Therefore, while holding that at this stage it cannot be possible to quash the summoning order and dismiss the complaint as the grounds on which it is sought

are to be proved by producing evidence before the trial court, at the same time, it is deemed proper to stay the trial of the complaint till the pendency of the aforesaid criminal case registered by the CBI in which the chargesheet u/s 120-B read with Section 9 of the Prevention of Corruption Act has been filed. This course of action is adopted because of the reason that investigation of CBI at least, has vindicated the petitioner for time being and if the charge is framed against the complainant and the complainant is ultimately convicted, the defence of the petitioner in so far as instant complaint lodged by the complainant shall automatically be proved. It may not, therefore, even be proper to have the two proceedings go on simultaneously.

24. This petition is accordingly disposed of with the following directions:

a. The trial in criminal complaint No. 19/2001 filed by the respondent/complainant u/s 499 /500 IPC is hereby stayed:

(i) till the decision on the framing of charge is taken by the CBI Court;

(ii) in case the charge is framed, till the conclusion of trial in the CBI case filed against the respondent/complainant.

b. In case the complainant is discharged or acquitted ultimately after trial, the learned MM shall proceed with the complaint filed by the complainant herein.

c. In case there is conviction and/or the finding by the CBI Court from which it is established that the "Sting Operation" recorded on Videotapes was genuine and not manipulated which is the basis of purported offending article, it would be possible to quash the summoning orders and dismiss the complaint. However, whether this course is to be adopted or not would be considered by the learned MM on the basis of findings recorded in the criminal case filed by the CBI with the CBI Court against the complainant.

No costs.