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(2007) 11 GAU CK 0025

Gauhati High Court

Case No: Criminal Revision No. 665 0/2002

Tilak Hazarika — APPELLANT

Vs

Nakul Chandra Paul — RESPONDENT

Date of Decision: Nov. 29, 2007

Acts Referred:

- Criminal Procedure Code, 1973 - Section 482
- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (2008) 2 GLR 545

Hon'ble Judges: H.Baruah, J

Bench: Single Bench

Advocate: J.M.Choudhury, P.Kataki, Advocates appearing for Parties

Judgement

1. Heard Mr. J.M. Choudhury, learned senior counsel for the applicant. None appears for and on behalf of the opposite party/respondent.

This application is preferred under the provisions of section 482 of the Cr.PC for quashing the proceedings of Complaint Case No. 192/2002 pending in the Court of SDJM/Tezpur/District Sonitpur. By this application the petitioner, Sri Tilak Hazarika has challenged the legality and validity of order dated 20.3.2002 by which cognizance has been taken by the learned SDJM under sections 500/501, IPC against the revision petitioner and three others.

At this stage, it would be appropriate for this court to make a survey of the case of the opposite party/respondent, Sri Nakul Chandra Paul. Respondent/opposite party, Sri Nakul Chandra Paul is a resident of C.K. Das Road, Tezpur and he filed a Complaint Case being C.R. Case No. 192/2002 in which he arrayed the petitioner as one of the accused < in the complaint. It has been alleged that in the editions of the weekly newspaper "Sadin" dated 18.01.2002 and 25.1.2002, two news items captioned "Nari Byabasayeer Kabalat SumiPunam" and "Bitarkai Dhowajal Sristi Karishe Nari Byabasayar" were published

wherein some imputations in regard to his character and profession and reputation of the respondent/opposite party were made. In the complaint, it is further alleged that the respondent/opposite party had been branded as "Kukhyat Byabasayee" and "hero of woman business in Tezpur Town" and "that he had been recently arrested and got bail in a case of that offence". That apart another imputation was made and published in the news item that he got married to a Arunachalee women while he was working at Naharlagun in Arunachal Pradesh and subsequently deserted both the women and engaged himself in illicit trafficking of Rhino Horns along with his brother Khakhan Paul.

It is contented in the complaint that vide this newspaper publication in the manner as stated above eroded his reputation in the eyes of the public at large not only at Tezpur but elsewhere within the State of Assam. That apart the news items also harm his family peace and also the reputation. This complaint was filed against this petitioner along with 3 (three) other persons namely Smt. Anuradha Sarma Pujari, Editor, "Sadin", Sri Jatin Choudhury, Printer and Publisher and Sri Pranab Priyankush Dutta, Correspondent, Sadin. This complaint was filed before the CJM, Tezpur which was subsequently made over to the Court of SDJM, Tezpur for disposal. The respondent/opposite party Nakul Chandra Paul was examined by the SDJM, Tezpur under the provisions of section 200, Cr.PC and having found a prima facie case took cognizance of the offence under sections 500/501 of the IPC against all the accused persons including this revision petitioner.

The petitioner being aggrieved by this order of taking cognizance of offence filed this present petition of quashing of the Complaint Case No. 192/2002 and order dated 20.3.2002 as well against him.

Sri J.M. Choudhury, learned senior counsel in support of the revision petition has raised a pertinent issue to be decided and argued that no legal action can be taken in respect of publishing those two news items in "Sadin". Chief Editor of a Newspaper cannot be booked in view of the provisions of section 7 of the Press and Registration of Books Act, 1867. Sri Choudhury in support of his contention has relied on the case ofHaji C,H. Mohammad Koya v. T.K.SM.A. Muthukoya, AIR 1979 SC 154. Referring to the provisions under section 7 of the Press and Registration of Books Act, 1867. Sri Choudhury argues that the petitioner, Sri Tilok Hazarika, the Chief Editor of "Sadin", is protected under this provision since for all news item published, the Editor as defined under Section *L of this Act is responsible. At the stage, it would be appropriate to refer to the definition of "Editor" as provided in section 1 of the Press and Registration of Books Act, 1867, which reads as under :

""editor'' means the person who controls the selection of the matter that is published in a newspaper."

In the case of Haji C.H. Mohammad Koya v. T.K.S.M.A. Muthukoya, AIR 1979 SC154 (supra), the hon''ble Supreme Court in para 19 of the Judgment speaks as under :

"19. As against this Dr. Chitale, counsel appearing for the petitioner submitted two points before us. In the first place, he argued that the provisions of rule 8 thereof have not at all been complied with, and, therefore, the appellant cannot escape his liability even though he was the Chief Editor. It was argued that the note to rule 8 as also the form mentioned in rule 8, subrule (2) clearly provide that the editor''s name must be separately shown in every paper and in the instant case the issue of the paper Chandrika shows in a composite form that the editor, printer and publisher of the paper was P.W.2 Aboobaker. It was thus contended that the provisions of rule 8(2) have not been complied with because the name of the editor has not been separately shown. In these circumstances, it was argued that as the name of the Chief Editor was separately shown he must be taken to be the editor of the paper under the provisions of the Press Act and the rules made thereunder. We are however unable to accept this argument. In the first place, the paper clearly shows the name of the editor as Aboobaker. As the printer, publisher and the editor was one and the same person it cannot be said that merely because the name of the editor was not shown at a separate place he was absolved of his responsibilities as the editor. The intention of the rule is merely to clarify who the editor of the paper is and once this is shown then there is a substantial though not a literal compliance of the rule. Secondly, the Press Act does not recognize any other legal entity except the editor insofar as the responsibilities of that office are concerned. Therefore, mere mention of the name of the Chief Editor is neither here or there, nor does it in any way attract the provisions of the Press Act particularly section 7. Thirdly, it is not even pleaded in the petition, much less proved, that the appellant being the Cliief Editor, it was part of his duty to edit the paper and control the selection of the matter that was published in the newspaper which in fact has been demonstrably disproved by the appellant. Thus, we are unable to accept the finding of the High Court that any presumption under section 7 of the Press Act can be drawn against the appellant." Admittedly the revision petitioner Sri Tilak Hazarika is the Chief Editor of "Sadin" while Anuradha Sarma Pujari is the Editor. Rule 8 of the Registration of Newspapers (Central) Rules, 1956 provides for particulars to be published in every newspaper. Subrule (2) of this rule speaks as under :

"(1) Every copy of every newspaper shall have printed legibly on it the names of the printer, publisher, owner and editor and the place of its printing and publication in the following form....."

JUDGMENT

1. The writ petitioner is an employee of the Mahanagar Telephone Nigam Ltd., New Delhi. He seeks to challenge the investigation in R.C. No. 3(A)/2001/SIL under section 13(1)(d) and 13(2) of the Prevention of Corruption Act which has been registered against him by the Central Bureau of Investigation. The allegations/charges in respect of which the aforesaid case has been registered pertain to the earlier tenure of the petitioner as the Divisional Engineer of Telephone at Guwahati (199697).

2. The basis of the challenge made in the writ petition is that the constitution of the C.B.I, by Government decision dated 1.4.1963 to investigate offences earlier handled by the Delhi Special Police Establishment is contrary to the Constitution. Specifically the petitioner contends that the Delhi Special Police Establishment was brought into being by an ordinance dated 12.7.1943 ("the first ordinance") promulgated by the Governor General in exercise of power under section 72 contained in the 9th Schedule of the Government of India Act, 1935, The said ordinance was issued by the Governor General when an emergency occasioned by the World War II was in force. According to the petitioner, the emergency stood terminated on 1.4.1946, whereafter, the first ordinance issued by the Governor General on 12.7.1943 had lapsed. Thereafter, according to the petitioner, another ordinance ("the second ordinance") to the same effect was issued by the Governor General on 25th September, 1946 which was beyond the powers of the Governor General under section 72 of the 9th Schedule to the Government of India Act, 1935 as no proclamation of emergency under section 102 of the Government of India Act, 1935, was in force. The aforesaid ordinance was replaced by the Delhi Special Police Establishment Act, 194H which came into force on 30.9.1946. The petitioner contends, on the aforesaid facts, that as the second ordinance promulgated on 25.9.1946 was beyond the powers of the Governor General, the Delhi Special Police Establishment Act, 1946, as originally enacted, is ultra vires the Government of India Act, 1935.

3. The contention of the petitioner, ex facie, appears to be misconceived. Even if the second ordinance issued on 25.9.1946 was beyond the powers of the Governor General under section 72 of the 9th Schedule to the Government of India Act, 1935, the same, ipso facto, would not invalidate the Delhi Special Police Establishment Act unless the same can be understood to be ultra vires the scheme of distribution of legislative powers between the federal (Indian) and provincial legislatures as provided for by the Vllth Schedule to the Government of India Act, 1935. The invalidity of the Act, therefore, does not automatically follow even it the absence of power in the Governor General to issue the second ordinance is assumed. The matter, therefore, would require a closer examination which could constructively begin by briefly tracing the history behind constitution of the Central Bureau of Investigation by Government resolution dated 1.4.1963.

4. The decision of the Apex Court in the case of The Management of Advance Insurance Co. Ltd, v. Shri Gurudasmal and Others, AIR 1970 SC 1126, contains a very elaborate recitation of the background facts making the task of this court easier. Another judgment of the Madras High Court in L.E. Mohamed Hussain and Others v. Deputy Superintendent of Customs, R.I. V. Tiruchirapalli and Others, AIR 1970 Mad. 464, has been taken assistance of by this court in its attempt to trace the aforesaid history behind the origins of the present day Central Bureau of Investigation.

5. The Special Police Establishment (War Department) Ordinance, 1943 (Ordinance XXII of 1943) (earlier referred to as the first ordinance) was promulgated by the Governor General in exercise of powers under section 72 contained in the 9th Schedule to the

Government of India Act, 1935. The federation visualized by the Government of India Act, 1935 being still born, perhaps, the ordinance making power contained in sections 42, 43 and 44 of Chapter IV of the Act was not available requiring exercise of powers by the Governor General under section 72 of the 9th Schedule to the Act. The power under section 72 of the 9th Schedule was available for exercise as a war time emergency had been declared by the Governor General under section 102 of the Government of India Act, 1935. Though the "normal" life of an ordinance under section 72 was six months, by virtue of the provisions contained in the India and Burma (Emergency Provision) Act, 1940 such an ordinance was to remain in force till the end of the emergency. Under the aforesaid first ordinance, specifically section 2(4) thereof, the Special Police Establishment (War Department) was constituted to exercise throughout British India the power and jurisdiction exercisable in a province by the members of the police force of that province with all powers, duties, privileges and liabilities of such members. The superintendence of the Special Police Establishment was vested by section 4 in the Central Government whereas by section 3 of the Ordinance power was conferred to the Central Government to specify the offence or classes of offences committed in connection with departments of the Central Government which are to be investigated by the Special Police Establishment. The said ordinance which was to lapse on 30th of September, 1946 was replaced by another ordinance of the same name (Ordinance No. XXII of 1946) (earlier referred to as the second ordinance). The date on which the first ordinance was to lapse, i.e., 30th September 1946 is recorded in the decision of the Apex Court in the Management of Advance Insurance Co. Ltd. (supra) though according to the petitioner the said date is 1.4.1946 when the emergency invoked on account of World War II was revoked. However the aforesaid dates will not be relevant to the present adjudication for reasons already recorded in a preceding part of the present order, i.e., the validity of the Delhi Special Police Establishment Act, 1946, has to be determined irrespective of the validity of the second ordinance which had preceded the Act. To continue with the narration, by the aforesaid second ordinance a special police force for the Chief Commissioner"s Province of Delhi was constituted for investigation of certain offences in connection with matters relating to departments of Central Government. Under section

2 of the second ordinance, a special police establishment was constituted for the Chief Commissioner"s Province of Delhi. Section 3 provided for specification of the offences or classes of offences in respect of which investigation can be carried out by the Special Police Establishment. Under the second ordinance the special police establishment had the same powers, duties, privileges and liabilities of the regular police officers while investigating the specified offences or classes of offences in the Chief Commissioner"s Province of Delhi. Section 5 of the Ordinance provided for the requirement of consent of the Government of a Governor"s province or of another Chief Commissioner"s Province before power under the ordinance can be exercised in those territories.

7. Ordinance No. XXII of 1946 was repealed by the Delhi Police Establishment Act, 1946. After coming into force of the Constitution the said Act was adapted under several adaptation of law orders issued under Article 372 of the Constitution. The Act was also amended on several occasions. The present position of the statute in question providing for constitution of a special police force, i.e., Delhi Special Police Establishment for investigation of offences notified under section

3 in any Union Territory and vesting of powers in members of such special police establishment throughout any Union Territory while investigating the notified offences are a sequel to the aforesaid amendments and adaptation of laws order referred to above. Under the Act, as originally enacted, the aforesaid position was only in respect of the territories included in the Chief Commissioner''s Province of Delhi. Sections 5 and 6 of the Delhi Special Police Establishment Act would be of particular significance. Sections 5 and 6, as originally enacted, provided for extension of the powers and jurisdiction of the members of the Delhi Special Police Establishment for investigation of any notify offence to any Governor''s province or a Chief Commissioner''s province, as the case may be, but with the consent of the Government of such province. By virtue of certain amendments to the Act, details of which need not be specifically recorded herein, the power of investigation was of specified offences extended to all Union Territories (earlier Chief Commissioner''s Province) which power could also be extended to the States but with the latter''s consent. While the aforesaid position continued the Government of India, Ministry of Home Affairs, by a resolution dated 1st of April, 1963 set up, with effect from 1.4.1963, the Central Bureau of Investigation at Delhi with six divisions including the investigation and anticorruption division for investigation of crimes earlier handled by the Delhi Special Police Establishment. This is how the Central Bureau of Investigation came to be born.

8. The arguments offered by the writ petitioner that the second Ordinance is ultra vires the power conferred on the Governor General by section 72 of the 9th Schedule to the Government of India Act, 1935 need not be considered by the court as the said question is in no way connected with the validity of the Delhi Special Police Establishment Act, 1946 as originally enacted. Though under the Government of India Act, 1935, Item 3 in the Provincial Legislative List (ListII) of the Vllth Schedule "declared police including Railway and Village police" to be a subject of legislation by the provincial legislatures, sections 46(3), 100(4) and 316 of the Government of India Act, 1935 empowered the Indian Legislature to make laws in respect of matters enumerated in ListII of the Vllth Schedule for a Chief Commissioner''s Province (to be later known as Union Territory). By virtue of the aforesaid provisions contained in the Government of India Act, 1935, which are extracted below, there can be no doubt that the Delhi Special Police Establishment Act 1946 was a valid piece of legislation duly enacted under the Government of India Act, 1935. The provisions of the Government of India Act, 1935, earlier referred may now be noted.

"46. (3) In this Act the expression "Province" means, unless the context otherwise requires, a Governor''s Province and "Provincial" shall be construed accordingly,"

"100. (4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof."

"316. The powers conferred by the provisions of this Act for the time being in force on the Federal Legislature shall be exercisable by the Indian Legislature and accordingly references in those provisions to the Federal Legislature and Federal Laws shall be construed as references to the Indian Legislature and laws of the Indian Legislature and reference in those provisions to Federal taxes shall be construed as references to taxes imposed by laws of the Indian Legislature:

Provided that nothing in this section shall empower the Indian Legislature to impose limits on the power of the Governor General in Council to borrow money."

9. Insofar as the extension of the provisions of the Delhi Special Police Establishment Act, 1946 to Governor''s provinces and the Chief Commissioner''s provinces other than Delhi is concerned, legislative power to effect such extension is contained in Entry 39, ListI of the Vllth Schedule to the Government of India Act? 1935. sections 5 and 6 of the Delhi Special Police Establishment Act, 1946, which visualized such extension subject to the consent of the concerned provinces is, therefore, in conformity with the legislative power conferred by the aforesaid Entry 39.

"39 Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor''s Province or Chief Commissioner''s Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit."

10. After coming into force of the Constitution, the Delhi Special Police Establishment Act, 1946 was continued by the various adaptations of laws orders, already referred to, issued under the provisions of article 372 of the Constitution. The provisions of article 246(4) of the Constitution empowering the Parliament to make laws on any subject including those included in the State List for any part or the territory of India which is not included in a State (therefore a part of a Union Territory) and the power conferred by Entry 80 of ListI of the Vllth Schedule to the Constitution bears ample testimony that not only the Delhi Special Police Establishment Act is a valid piece of legislation, as originally enacted, but the same has been validly continued after coming into force of the Constitution and is in harmony with the provisions thereof and, therefore, the said legislation validly continues to hold the field.

11. In view of the discussions that have preceded this writ petition is found to be wholly without merit and/or substance. It is accordingly dismissed. However, there will be no order as to cost.