
(2006) 08 GAU CK 0052

Gauhati High Court

Case No: None

Damodar Sarma

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Aug. 12, 2006

Acts Referred:

- Constitution of India, 1950 - Article 19
- Criminal Procedure Code, 1973 (CrPC) - Section 292, 313
- Penal Code, 1860 (IPC) - Section 292

Citation: (2007) CriLJ 1526 : (2007) 1 GLR 655

Hon'ble Judges: H.N. Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

H.N. Sarma, J.

Having been convicted u/s 292, IPC, by the Judicial Magistrate, First Class, Jorhat in G. R. Case No. 486/ 2000 and sentencing him to undergo simple imprisonment for a period of one year and also to pay a fine of Rs. 1,000.00, in default to undergo Section I for another 2 months and being unsuccessful in Criminal Appeal No. 35/01, wherein the learned Sessions Judge, Jorhat, vide judgment and order dated 11-12-2001 affirmed the judgment and order of conviction passed by the learned trial Court, the revisional jurisdiction of this Court is sought to be invoked by the accused petitioner by filing this Criminal Revision.

2. I have heard Mr. A. Thakur, learned Counsel for the accused-petitioner and Mr. K. Munir, learned Public Prosecutor, Assam.

3. The prosecution story leading to the conviction of the accused-petitioner, inter alia, is that PW-3, Sri Manik Goswami, Sub-Inspector of Jorhat Sadar P.S. while was

on patrolling duty on 28-6-2000, entered into the shop of the accused-petitioner under the name and style of "Santosh Book Stall" at Garali, Jorhat, wherein he found that the owner of the shop, the accused-petitioner, kept for the purpose of sale a lot of obscene books written in Assamese, Bengali, Hindi and English, kept in exposed state and seized the obscene books having found prima facie committed an offence u/s 292, IPC by him. The police filed charge sheet against accused-petitioner after the investigation u/s 292, IPC and the accused-petitioner was sent for trial.

4. On receipt of the case records and on appearance of the accused-petitioner, the learned trial Court having found prima facie case against the accused-petitioner framed charge against him u/s 292, IPC, to which accused pleaded not guilty and claimed to be tried.

5. In support of its case, the prosecution examined altogether three witnesses and exhibited the seized books, whereas the defence adduced none. After closure of the recording of evidence of the prosecution witnesses, the accused was examined u/s 313, Cr. P.C. pointing out the circumstances that appeared against him. The defence plea is total denial. The defence also denied the seizure of the books from him and that he has no book stall by the name "Santosh Book Stall". After conclusion of the trial the learned trial Court having found that the prosecution has been able to bring home the charge u/s 292, Cr. P.C, against the petitioner, the accused-petitioner was convicted and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs. 1000.00, in default to undergo simple imprisonment for another two months vide judgment and order dated 4-6-2001.

6. The accused-petitioner challenged the said judgment and conviction before the learned Sessions Judge, Jorhat in CA No. 35/2001. The learned appellate Court also independently considered the evidence and materials on record and after hearing the parties dismissed the appeal vide impugned judgment and order dated 11-12-2001, which gives rise to the present revision petition.

7. Mr. Thakur, learned Counsel for the petitioner submits that there is no cogent and reliable materials and evidence on record to attract conviction of the accused petitioner u/s 292, IPC. It is further submitted that PW-3 having lodged the FIR and he having been conducted the investigation, it would not be safe to rely the same in support of the conviction. It is further submitted that the learned Courts below not having specifically mentioned the particular paragraphs of the obscene books, the conclusion that the books seized were obscene is unjust and improper. In support of his submission Mr. Thakur relies on the following decisions rendered in [Samaresh Bose and Another Vs. Amal Mitra and Another, Megha Singh Vs. State of Haryana,](#)

Mr. Munir, on the other hand, submits that the prosecution has been able to prove the case against the accused-petitioner beyond reasonable doubts and in the peculiar facts and circumstances of the case neither the investigation can be said to be invalid nor the same is illegal. It is further submitted that both the learned trial

Court as well as the appellate Court duly considered the materials available on records and the impugned judgment having been passed on such consideration, the same is not illegal and no perversity can be attributed to the same.

I have considered the rival submissions made by the learned Counsel for the parties and also perused the materials available on records.

8. Section 292 of the IPC, falling under Chapter 14 of the Code relates to offences affecting the public health, safety, convenience, decency and morals. To invoke Section 292, IPC, the following ingredients are to be proved by the prosecution:

(1) a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene, if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) (a) That the accused sells, lets to hire, distributes, publicly exhibits, or for purposes of circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlets, papers, representation or figure or any other obscene object, whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) Advertises or makes known by any means whatsoever that any person is engaged or ready to engage in any act which is an offence under this Section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence u/s 292, IPC.

The basic object of the Section is to prevent any circulation or sale of any obscene literature and the purposes behind the Act is to preserve such moral values of which there is universal consensus.

There are also certain exceptions of this Section, which are on the face of it, are not applicable in the case in hand. Keeping in mind, the above ingredients of Section 292, IPC, we are to see whether the learned Court below committed any illegality, irregularity or impropriety in passing the impugned judgment and order, justifying its interference under the revisional jurisdiction of this Court.

9. In the light of the submissions made by the learned Counsel for the petitioner on perusal of the records it is found that the prosecution during the course of trial examined three PWs, out of which PWs-1 & 2 are independent witnesses whereas PW-3 is the person who lodged the FIR. the PW-1 in his deposition stated, inter alia, that on the day of occurrence dated 28-6-2000 while he was coming to the market via Garali, he could see a gathering of people in the shop of the accused "Santosh Book Stall". Having gone nearer to the shop to enquire about the matter he found that the Police has seized some books from the shop of the accused and prepared the seizure list, vide Ext.-1, where he put his signature. It is specifically stated that the names of the books so seized by the Police on that day and those books, were identified in the Court, on that day. In his cross-examination, this witness confirmed that he saw the said books in the shop of the accused. He saw the accused on that day though he does not know him by name and that such type of books and such quantity of books were seized by Police. He further stated that the Police read over the seizure list to him and except taking his signature on the seizure list the Police has not asked him anything. At this stage, the witness was cross-examined by the prosecution as he become hostile wherein he stated that he has not stated anything before the Police and denied having given last statements before the Police in respect of the seizure of books from "Santosh Book Stall".

PW-2, one Chandan Hazarika, stated in his deposition, inter alia, that the accused is having a Book Stall at Garali at Jorhat and he purchased one Hindi obscene book from the shop of the accused. The accused used to refund half of the price on return of obscene books after completion of reading. He went to return the book, his friend also purchased from the shop of the accused and used to get returned half of the price on being returned the books to the accused after reading. The Police seized about 25 Nos. of obscene books from the shop of the books which were in Assamese, English, Bengali and Hindi version. He recognized the Exts. 1 to 18 as those books which were seized by the Police vide Ext. (1) in which he put his signature. Ext-1(2) is his signature. During the cross-examination, this witness confirmed his earlier statements. He stated that he does not know whether there is any seal of the shop on the seized books. The Police has not taken signature of the other shop owners in the seizure list. The Police kept him in the Police Station for one night, he denied the suggestions that he did not state before the Police that the accused returned half of the price of the books when books were returned to the accused after reading. No material contradiction came out from the statements elicited during the cross-examination of the witnesses.

PW-3 is one Manik Goswami, who is the informant and eye-witness of the case and who lodged the FIR. This witness has specifically stated that he saw the obscene books being sold in the shop of the accused and wherefrom he seized books in presence of witness. He also describes the seizure of the books vide Ext.-1, Ext.-2, is the ejahar lodged by him and Ext. 1(3) is his signature. He also stated that he took the signature of the accused in the seizure list and after having found sufficient

materials and on the conclusion of the investigation, he submitted the charge-sheet against the accused u/s 292, IPC and the charge-sheet was proved as Ext-3.

10. In the examination of the accused u/s 313, Cr. P.C., the circumstances that appeared during the course of examination of PWs were put to him which he denied and he stated that he was falsely implicated. He also stated that (he) has no such Book Stall and no such books were seized from him. But he did not adduce any defence witness.

On the basis of the materials on record and on appreciation of the evidence, the learned trial Court convicted the accused-petitioner. The learned appellate Court also considered each and every circumstances that appeared against the accused person and not having found any ground to interfere with the judgment of the trial Court, dismissed the appeal.

11. Mr. Thakur, learned Counsel for the petitioner, strenuously submitted that in the instant case, as the PW-3 who himself lodged the FIR and conducted the enquiry, the investigation is not proper and reliable. The learned Counsel on the basis of the ratio of [Megha Singh Vs. State of Haryana](#), submits that in such circumstances, the investigation cannot be said to be a proper and valid one and on this count the conviction of the petitioner cannot be sustained. In Megha Singh, the accused was charged u/s 6(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 and the Head Constable and the Constable were the only witnesses to prove the genuineness of the allegations made against the accused. The prosecution case that was unfolded shows discrepancies between two witnesses or material particulars and on such consideration the Apex Court did not accept the evidences (and) the facts of that case are totally different from the instant case. In the instant case, during the cross-examination of the witnesses the consistent statements of the PWs that the Police seized the obscene books from the shop of the accused and prepared a seizure list Ext.-I wherein the accused also is a signatory.

12. Referring to the decision of the Apex Court rendered in [Samaresh Bose and Another Vs. Amal Mitra and Another](#), it is submitted that the relevant provisions of the obscenity not having discussed and quoted in the judgment by the Courts below, it attracts the ratio of the said decisions and resultantly the conviction is not sustainable. In Samaresh Bose (supra) the book was a novel written by a well known writer of Bengali. The novel "Prajapati" alleged to have contained certain obscene materials. The Apex Court in the context of the entire case found that the Courts below did not specify as to which part of the book should be considered as obscene and not to be read by the adolescents and had further held that the adolescents will not be in a position to read any novel and in that context, the appeal of the accused was allowed. But in the instant case, the obscene books exhibited in the Court were not of the standard of that novel and had satisfied the requirement and ingredients of Section 292. The exhibited obscene books involved in this case were exhibited and the facts are distinct and different in both the cases quoted than the novel

"Prajapati".

The taste of obscenity came up for consideration before the Constitutional Bench of the Apex Court wherein the validity of Section 292, was also raised, in the case of [Ranjit D. Udeshi Vs. State of Maharashtra](#), wherein the Apex Court observed:

Condemnation of obscenity depends as much upon the mores of the people as upon the individual. It is always a question of degree or as the lawyers are accustomed to say, of where the line is to be drawn. It is, however, clear that obscenity by itself has extremely poor value in the propagation of ideas, opinions and information of public interest or profit. When there is propagation of ideas, opinions and information of public interest or profit the approach to the problem may become different because then the interest of society may tilt the scales in favour of free speech and expression. It is thus that books on medical science with intimate illustrations and photographs, though in a sense immodest, are not considered to be obscene but the same illustrations and photographs collected in book form without the medical text would certainly be considered to be obscene. Section 292, Penal Code deals with obscenity in this sense and cannot thus be said to be invalid in view of the second clause of Article 19.

In the said case, the test of obscenity as laid down in the Hicklin's case *Queen v. Hicklin* (1868) 3 QB 360 and formerly applied in India, and in the said case it was further observed that the test of obscenity is this whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall. It is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character.

13. Applying the said test on analysis of the impugned judgment of the learned Court below as it is seen that the contents of the books were considered by the learned Court and found that the prosecution has been able to prove the necessary ingredients of Section 292, IPC, against the accused-petitioner beyond reasonable doubts. The learned appellate Court also addressing itself to the facts and circumstances of the case and the materials available on record did not find any reason to disturb the findings of the learned trial Court.

14. In the above circumstances and in view of the aforesaid discussions I do not find that the learned Courts below have committed any illegality, irregularity or impropriety in convicting the accused-petitioner justifying interference under the revisional jurisdiction of this Court. Consequently, the revision petition stands dismissed.

15. At this stage, Mr. Thakur, submits that the accused is now leading a different life and he has got several dependants to maintain and accordingly prays for some concession on the sentence imposed upon him. Also heard Mr. Munir, the learned

Public Prosecutor on this point. Upon hearing the learned Counsel for the parties and in view of the facts and circumstances of the case, the sentence of one year Simple Imprisonment imposed upon the accused is reduced to with Simple Imprisonment for 15 days keeping the quantum of fine intact. Consequently, the accused is convicted to undergo Simple Imprisonment for 15 days and to pay a fine of Rs. 1,000.00 and in default to undergo further Simple Imprisonment for 10 days.

16. Subject to the aforesaid modification in sentence, this Criminal Revision stands dismissed.

17. The accused is directed to surrender before the learned Chief Judicial Magistrate to serve out the sentence.