Dr. Jatish Chandra Ghosh Vs Hari Sadhan Mukherjee and Others

Appeal (crl.) 65 of 1958

Court: Supreme Court of India

Date of Decision: Jan. 16, 1961

Acts Referred:
Constitution of India, 1950 â€" Article 132(1), 194, 228#Penal Code, 1860 (IPC) â€" Section 499, 500, 501

Citation: AIR 1961 SC 613 : (1961) CriLJ 743 : (1961) 3 SCR 486

Hon'ble Judges: B. P. Sinha, C.J; S. K. Das, J; N. Rajagopala Ayyangar, J; J. R. Madholkar, J; A. K. Sarkar, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Sinha, C.J.
This appeal by special leave is directed against the judgment and order of the High Court of Judicature at Calcutta, dated April

11, 1956, whereby the appellant"s claim of absolute privilege as a member of the Bengal Legislative Assembly was rejected and the prosecution

launched against him under s. 500, Indian Penal Code, was allowed to proceed.

2. The facts of this case are not in doubt or dispute and may shortly be stated as follows. The appellant is a citizen of India and an elected member

of the West Bengal Legislative Assembly. He is also a medical practitioner at Ghatal in the Midnapore District of West Bengal. In January, 1954,

the appellant gave notice of his intention to ask certain questions in the Assembly. Those questions were disallowed in accordance with the rules of

procedure for the conduct of business of the Assembly. In February, 1954, the appellant was informed that the questions proposed by him had

been disallowed. The appellant published the questions that had been disallowed in a local journal called Janamat, in its issue of February 28,

1955. In July, 1955, the first respondent, whose conduct formed the subject-matter of the questions and who was then functioning as a Sub-

divisional Magistrate, filed a complaint against the appellant and two others, the editor, and the printer and publisher respectively of the journal

aforesaid. The petition of complaint alleged that the appellant had made and published scandalous imputations against him intending them to be

read by members of the public, that those imputations were false and unfounded and had been made with the definite intention of harming or with

the knowledge or having reason to believe that they would harm the reputation of the complainant and that the complainant felt greatly aggrieved

and harmed in mind and reputation. He also alleged that begin a Government servant, the complainant had to obtain the necessary permission from

the Government for instituting legal proceedings for the vindication of his character as a public servant and that accounted for the delay in filing the

petition of complaint. The petition of complaint charged the appellant with an offence under s. 500 of the Indian Penal Code and the second and

third accused, who have been cited as respondents 2 and 3 in this Court, under s. 501 of the Indian Penal Code. After several adjournments, the

petitioner raised, by way of preliminary objection to the criminal prosecution, the question of his absolute privilege and immunity from prosecution

under the provision of the constitution. The learned Magistrate by his order dated October 11, 1955, overruled the objection and held that the

privilege claimed by the accused was not an unqualified one. He relied on a judgment of the Calcutta High Court in the case of 29292 , in support

of his conclusion that the first accused before him, now appellant, was not entitled to the privilege and immunity claimed by him. Thereafter, the

appellant moved the High Court under Art. 228 of the Constitution for having the case withdrawn to the High Court for determination of the

constitutional question raised by him by way of defence, but that application was dismissed by a Bench of the High Court of November 9, 1955,

presumably on the ground that the case did not involve any substantial question of law as to the interpretation of the Constitution. Not daunted by

the adverse order aforesaid of the Bench of the High Court, the petitioner again moved the High Court and obtained a rule on several grounds

including the question of the proceedings being barred by the provisions of Art. 194 of the Constitution. The learned Single Judge, who dealt with

the case on this occasion, noticed the position that strictly speaking the constitutional question could not be allowed to be re-agitated in view of the

Bench decision aforesaid. But the learned Judge all the same dealt with the points raised by the appellant including the question arising under Art.

194 of the Constitution. The learned Judge dismissed the application holding that a member of the Legislative Assembly had no absolute privilege

in respect of the questions sought to be asked by him, which had been disallowed but he had published them all the same. It was also pointed out

that the questions had never been asked in the House and that, therefore, could not be said to form part of the proceedings of the House. He

further held that the publication in the journal at the instance of the appellant could by no means be said to have been under the authority of the

House. The appellant moved the learned Judge for a certificate under Art. 132(1) of the Constitution, but that application was also refused on the

ground that the case did not involve any substantial question of law as respects the interpretation of the Constitution. The appellant then moved this

Court and obtained special leave to appeal from the judgment of the High Court refusing the claim of privilege. He also obtained stay of further

proceedings in the Court of the Magistrate. The hearing of the appeal was ordered to be expedited. That order was passed on October 1, 1956,

but notwithstanding the order of expedition, the case came to be heard only four years later.

3. In this Court, it has been contended on behalf of the appellant that the learned Judge below had erred in his interpretation of the provisions of

Art. 194 of the Constitution and that on a proper construction of those provisions it should have been held (1) that questions sought to be asked by

a member of a Legislative Assembly, even though disallowed by the Speaker, formed part of the proceedings of the House, and, as such, their

publication would not attract the provisions of the Indian Penal Code; (2) the provisions of Art. 194 should be liberally construed in favour of

persons like elected members of the Assembly who are rendering public service not only by making speeches and asking questions in the

Assembly, but also by publishing them in the public press with a view to apprising the country and particularly the constituency of what had been

happening in the House. In other words, it was claimed that there was an absolute privilege in favour of a member and that, therefore, he could not

be prosecuted for having published the questions he sought to put, but had been disallowed by the Speaker.

4. Do the provisions of Art. 194 of the Constitution lend any support to the contentions aforesaid raised on behalf of the appellant ? The first

clause of Art. 194 does not call for any comment in this case because no question as regards freedom of speech in the Legislature of a State has

been raised. Clause (2) of the Article has, firstly, laid down a bar against any proceedings, civil or criminal against any member of a Legislature of a

State in respect of anything said or any vote given by him in the Legislature or any Committee thereof; and secondly, that no person shall be liable

in a civil or criminal proceeding in respect of the publication of any report, paper, votes or proceedings under the authority of a House of such a

Legislature. It is not contended that the publication complained against in this case was under the authority of the Legislative Assembly of West

Bengal. So the second part of the second clause of Art. 194 cannot be pressed in aid of the appellant''s contention. As regards the first part of the

second clause, can it be said that the publication, which forms the subject-matter of the prosecution in this case, can come within the purview of

anything said or any vote given"" by a member of the Legislative Assembly ? The Answer must be in the negative. It is, therefore, manifest that

clause (2) of Art. 194 is equally of no assistance to the appellant. Naturally, therefore, reliance was placed in the course of arguments in this Court

on the provisions of clause (3) of Art. 194. Does the publication of a disallowed question by a member of an Assembly come within the powers,

privileges and immunities of the members of the House ? The answer to this question depends upon finding out what are the powers, privileges and

immunities of the members of the House of Commons of the Parliament of the United Kingdom at the commencement of the Constitution. This

Court in the case of M. S. Sharma v. Shri Sri Krishna Sinha [1959] Sup. 1 S.C.R. 806, has considered in great detail those immunities with

respect to the publication of a portion of a speech which was directed by the Speaker to be expunged from the proceedings of the House. This

Court has held that the publication of such a portion of the proceedings is not within the privilege attaching to the publication of a faithful report of

the proceedings of a House of the State Legislature. That case was not concerned with the penal law of the country. In that case the Court was

concerned with ascertaining the powers of the Assembly to punish for contempt of the House with reference to the privileges and immunities of a

House of the Legislature of a State. Hence, that decision does not assist us in determining the present controversy.

5. If we turn to the legal position in England with reference to the House of Commons, it is clear that the immunity of a member of the House of

Commons is in respect of the speeches made by him in Parliament, but it does not extend to the publication of the debate outside Parliament. If a

member of a House of Commons publishes his speech made in the House separately from the rest of the proceedings in the House, he will be

liable for defamation if his speech contains matters defamatory of any person. In the celebrated case of R. v. Lord Abingdon (1794) 1 Esp. 226;

170 E.R. 337, Lord Kenyon had decided that a speech which had been made in the House of Lords was not privileged if published separately

from the rest of the debate. In May''s Parliamentary Practice, 16th Edition, by Lord Campion, occur the following statements in respect of the two

well-known cases of Abingdon (1794) 1 Esp. 226; 170 E.R. 337 and Creevey, Journal of the House of Commons (1812-13) 704 :-

Abingdon''s case (1794) 1 Esp. 226; 170 E.R. 337. - An information was filed against Lord Abingdon for a libel. He had accused his attorney of

improper professional conduct, in a speech delivered in the House of Lords, which he afterwards published in several newspapers at his own

expense. Lord Abingdon pleaded his own case in the Court of King''s Bench, and contended that he had a right to print what he had, by the Law

of Parliament, a right to speak; but Lord Kenyon said that a member of Parliament had certainly a right to publish his speech, but that speech

should not be made a vehicle of slander against any individual; if it was, it was a libel. The Court gave judgment that his lordship should be

imprisoned for three months, pay a fine of Pounds 100, and find security for his good behaviour.

Creevey"s case [(1813) 1 M. & S. 273; 105 E.R. 102, 1813. - Mr. Creevey, a member of the House of Commons, had made a charge against

an individual in the House, and incorrect reports of his speech having appeared in several newspapers, Mr. Creevey sent a correct report to the

editor of a newspaper, with a request that he would publish it. Upon an information filed against him, the jury found the defendant guilty of libel,

and the King"s Bench refused an application for a new trial (See Lord Ellenborough"s judgment in Rex v. Creevey (1813) 1 M. & S. 273; 105

E.R. 102. Mr. Creevey, who had been fined Pounds 100, complained to the House of the proceedings of the King"s Bench; but the House

refused to admit that they were a breach of privilege.

6. It is clear on a reference to the law in England in respect of the privileges and immunities of the House of Commons that there is no absolute

privilege attaching to the publication of extracts from proceedings in the House of Commons. So far as a member of the House of Commons is

concerned, he has an absolute privilege in respect of what he has spoken within the four walls of the House, but there is only a qualified privilege in

his favour even in respect of what he has himself said in the House, if he causes the same to be published in the public press. The case of

publication of proceedings of Parliament, not under the authority of the House, stands on the same footing as the publication of proceedings in

courts of justice. That was made clear by Cockburn, C.J., in the case of Wason v. Walter (1868) L.R. 4 Q.B. 73. Explaining why the publication

of a single speech in the proceedings in the House would not be absolutely privileged, the learned Chief Justice observed :-

It is to be observed that the analogy between the case of reports of proceedings of courts of justice and those of proceedings in Parliament being

complete, all the limitations placed on the one to prevent injustice to individuals will necessarily attach on the other; a garbled or partial report, or of

detached parts of proceedings, published with intent to injure individuals, will equally be disentitle to protection.

7. So long as Parliament does not crystallise the legal position by its own legislation, the privileges, powers and immunities of a House of a State

Legislature or Parliament or of its members are the same as those of the House of Commons, as stated above. In the present case the appellant

sought to put certain questions bearing upon the conduct of the complainant, the first respondent, in this case. According to r. 27 of the Assembly

Procedural Rules, certain conditions have to be fulfilled in order that a question may be admissible. Amongst other requirements of the rule, one of

the conditions is that it must not contain any imputation or imply a charge of a personal character. Rule 29 of those rules authorises the Speaker to

decide on the admissibility of a question with reference to the provisions of the rules and lays down that the Speaker ""shall disallow any question

when, in his opinion, it is an abuse of the right of questioning, or is in contravention of those provisions."" In view of the conclusion we have already

reached, namely, that there is no absolute privilege, even in favour of a member of the Legislature, in respect of a publication not of the entire

proceedings, but of extracts from them, it is not necessary for us to decide the question whether disallowed questions can be said to form part of

the proceedings of a House of Legislature.

8. In this connection, it is also relevant to note that we are concerned in this case with a criminal prosecution for defamation. The law of defamation

has been dealt with in Sections 499 and 500 of the Indian Penal Code. Section 499 contains a number of exceptions. Those specified exceptions

lay down what is not defamation. The fourth exception says that it is not defamation to publish a substantially true report of the proceedings of a

court of justice, but does not make any such concession in respect of proceedings of a House of Legislature or Parliament. The question naturally

arises how far the rule in Wason''s case (1868) L.R. 4 Q.B. 73, can be applied to criminal prosecutions in India, but as this aspect of the

controversy was not canvassed at the Bar, we need not say anything about it, as it is not necessary for the decision of this case.

9. The legal position is undisputed that unless the appellant can make out an absolute privilege, in his own favour, in respect of the publication

which is the subject-matter of the charge in this case, the prosecution against him cannot be quashed. As we have held, that he has no such

absolute privilege, in agreement with the High Court, he must take his trial and enter upon his defence, such as he may have. As the evidence pro

and con has not been recorded in full, the arguments at the Bar had naturally to be confined to the purely legal question of the absolute privilege

claimed. It need hardly be added that we do not express any opinion on the merits of the controversy which will now be gone into by the learned

Magistrate before whom the case has been pending all these years.

10. For the reasons given above, it must be held that there is no merit in this appeal. It is accordingly dismissed. The pending prosecution, which

has been held up for so long, it is expected, will now be proceeded with without any avoidable delay.

11. Appeal dismissed.