

(2011) 2 ALD(Cri) 538

Andhra Pradesh High Court

Case No: Criminal Revision Case No. 1007 of 2004

Mr. Vemuri Radha
Krishna, Printer and
Publisher, Mr. K.
Ramachandra Murthy,
Editor and Mr. M.
Madhav, Chief Reporter

APPELLANT

Vs

The Public Prosecutor,
High Court of Andhra
Pradesh

RESPONDENT

Date of Decision: July 11, 2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 199, 199(2), 199(6), 397(1)

Citation: (2011) 2 ALD(Cri) 538

Hon'ble Judges: G. Krishna Mohan Reddy, J

Bench: Single Bench

Advocate: B. Nalin Kumar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

G. Krishna Mohan Reddy, J.

The revision petition is filed u/s 397(1) Code of Criminal Procedure against the order passed in CrI.M.P.

No. 111 of 2004 in C.C. No. 81 of 2003 dated 5.4.2004 regarding the plea of the revision Petitioners to discharge them in C.C. No. 81 of 2003

on the file of the Court of Metropolitan Sessions Judge, Hyderabad on the ground that the filing of the corresponding complaint u/s 199(2) Code

of Criminal Procedure was misconceived.

2. The Petitioners herein are the Accused and the Respondent herein is the complainant in the calendar case.

For the sake of convenience, the parties hereinafter referred to as they arrayed in the calendar case.

3. The main accusation against the accused in the calendar case is as follows: They are Printer and Publisher, Editor and Chief Reporter of Andhra

Jyothi Telugu Daily respectively. A news item came in the daily on 2.7.2003 under the caption ""C.M. Secretary-Consultant to private cases Sudan

Double Game"" alleging that; (a) there were several allegations that Randeep Sudan, a senior officer, who was expected to be a role model for

others was resorting to various irregularities bypassing the Service Rules; (b) he was going abroad on casual leave and was working in foreign

companies as consultant drawing salary from the Government; (c) in the past also he rendered service unofficially in Philippines and European

countries as consultant (d) he had taken up the responsibility of selecting companies for several I.T. schemes in the State; (e) he was consultant

unofficially to some of the I.T. companies in Dhaka and Khatmandu; (f) it was against the Government Service Rules to go abroad and work for

foreign companies while drawing salary from the State Government and (g) the Government was silent while he was working as a consultant for

foreign companies against the service rules. It is also clarified therein that All India Service Officers got authority to take up project works officially.

4. Thereafter, the Government issued clarification or rejoinder on the same day pointing out that all the allegations made in the publication were

wrong and the act of the public servant was within the legal parameters and as assigned and approved by it and he was officially permitted to take

undertake short time consultancy with the Asian Development Bank which was Multilateral Funding Agency based in Manila and not a private

company and so on.

5. Consequently, in Andhra Jyothi daily newspaper dated 3.7.2003 a clarification was issued by the accused to the effect that a representative of

the Government informed that the public servant worked as consultant for Asian Development Bank at Manila (Philippines) and there was No.

publication that he went abroad without Government permission, whereas it was published earlier that he worked in Philippines and later he

worked at Dhaka, Bangladesh, but No. clarification was given by the Government about the assignment at Dhaka while reiterating the other

allegations made.

6. Aggrieved by it, consequently, the matter was referred to the Government and the Government issued sanction order vide G.O.Rt. No. 4063

dated 30.8.2003, on the basis of which and also on the basis of the allegations made, the complainant filed the complaint before the lower Court

u/s 199(2) Code of Criminal Procedure stating that the impugned notice would give an impression that the public servant was misleading the

Government and he committed irregularities violating the service rules, whereas in fact whatever private assignments were taken up by the public

servant abroad, they were with the permission of the Government and also in terms of the relevant service rules and No. allegation of any

irregularities and illegalities pertaining to the execution of private foreign assignments of the public servant were made by which, therefore Section

199(2) Code of Criminal Procedure would be applicable.

7. On behalf of the Accused before the lower Court, it was accordingly contended that the impugned news dated 2.7.2003 did not touch upon any

irregularities in the course of the execution of official work by the public servant, whereas it would refer to only his private assignments abroad and

the Government issued clarification with regards to his assignment for private companies in Philippines, but not with regards to his private

assignments at Dhaka or any other country and therefore, Section 199(2) Code of Criminal Procedure should not be applied, whereas Section

199(6) Code of Criminal Procedure could be applied by the public servant directly when it was with reference to his private assignments abroad

and the accused should be discharged.

8. Basing upon the material available, it is the observation of the lower Court that in the present case what is sought to be commented upon in the

impugned news item dated 2.7.2003 is that the public servant has violated the service rules and has assumed special powers and has taken up

private assignments in foreign countries and has abused his official position as Special Secretary to Chief Minister and so on, in other words, it is

observed that as seen from a reading of the entire news item dated 2.7.2003 as a whole not only the private assignments taken up abroad, but also

the conduct of the public servant in the discharge of his functions as such, is adversely commented upon asserting that his conduct is unbecoming a

public servant and amounts to indiscipline and so on.

9. Heard the learned Counsel for the revision Petitioners-accused and the learned Public Prosecutor and perused the record. Learned Counsel for

the Accused has advanced arguments as argued before the lower Court for the Accused and he has also contended that the public servant can

resort to Section 199(6) Code of Criminal Procedure in the circumstances of the case when the alleged imputation is only with reference to his

private assignments abroad.

10. Now the point for consideration is whether the provisions of Section 199(2) Code of Criminal Procedure are not applicable on the ground that

the impugned news item is only with regards to the private assignments of public servant abroad by reason of which only Section 199(6) Code of

Criminal Procedure is to be invoked.

11. It is necessary to refer to Section 199 Code of Criminal Procedure which reads as follows:

199. Prosecution for defamation - (1) No. Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45

of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a

complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person

may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged

to have been committed against a person who, at the- time of such commission, is the President of India, the Vice-President of India, the

Government of a State, the Administrator of a Union Territory or a Minister of the Union or of a State or of a Union territory, or any other public

servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court

of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public

Prosecutor.,

(3).....

(4).....

(5).....

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed to make a complaint in

respect: of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such

complaint.

12. Section 199(2) of Code of Criminal Procedure makes it categorical that it is applicable only when an offence is committed under Chapter-XXI

I.P.C with reference to the conduct of a Government Servant in the discharge of his official duties enabling concerned Public Prosecutor to file

complaint before concerned forum. On the other hand, Section 199(6) Code of Criminal Procedure postulates that anybody against whom such

offence is committed can file a complaint before the forum for taking necessary action. There is No. restriction to extend the benefit provided

thereunder when such contingency arises. Even a public servant can take recourse under this provision [199(6)] when the alternative remedy

provided u/s 199(2) Code of Criminal Procedure is not revoked even though such an offence is committed.

13. It is pertinent to note here that in the publication dated 2.7.2003, it is clearly alleged that the public servant while taking salary from the

Government was in the habit of going abroad on normal leaves and work for institutions there and previously he worked as consultant unofficially in

Philippines and Europe countries and later he was in the tour of Bangladesh and Nepal, whereas in the publication dated 3.7.2003 it is conceded

that in fact he worked as consultant for Asian Development Bank at Manila on the permission given by the Government officially, which is quite

contradictory to the earlier publication made on 2.7.2003 with regards to his work at Manila (Philippines). Therefore, prima facie it appears that

the publication to the effect that he went to Philippines and worked there unofficially in the light of the other imputations made prima facie amounts

to defaming him as public servant.

14. However, it is not understood why there is No. specific clarification from the Government about his visit to Dhaka and Khatmandu or any

other country as consultant, whereas it is only asserted by the Government of A.P. that it actually permitted the public servant to work as

consultant abroad, which may not be suffice. There is also No. definite material before this Court with reference to which consultancy he had taken

up and worked abroad. It is for the Government to take necessary measures in order to ascertain whether he did so officially or unofficially and

while doing so whether he collected remuneration illegally and take necessary action against him if it is found that he committed irregularities or

illegalities while doing so.

15. It is needless to emphasize that every public servant is bound by the service rules and if he violates the service rules, he is liable for suitable

punishment. The citizens of the country observe how the public servants conduct themselves while discharging their official duties and if the public

servants violate the service rules they got every right to question that. In a democratical set up everybody is equal before law which is meant that

the public servants are not exceptions to it, in addition to that the public servants got a greater responsibility to carry out their duties in the interest

of the public at large. The Government has to work out necessary remedies in true spirit when the public servants fail to discharge their duties as

prescribed by law.

16. Also in a country, where democracy prevails, the accused being the publisher and printer, editor and chief reporter owe special duty or

responsibility to bring to the notice of the public by way of publication every violation of the service rules by the public servants in view of the larger

interest of the country to take necessary measures, which definitely keep the erring public servants under constant check which also enables them

to set-right themselves and work with good sense or consciousness. The public servants are allowed to occupy their seats as such as long as they

carry out their duties in accordance with law, for which constant vigil on them is required.

17. However, when there is prima facie material that defamatory statement was published with regards to his consultancy at Philippines, it cannot

be said that Section 199(2) Code of Criminal Procedure has No. application here. Further, it is for the trial Court to consider the evidence to be

adduced and decide the matter within the ambit or true spirit of Section 199(2) Code of Criminal Procedure.

18. For the reasons discussed above, I find No. reason to uphold the contention of learned Counsel for the Petitioner. Further, I am of the opinion

that the lower Court properly examined the matter and I find No. reason to interfere with its order. In the result, the revision is dismissed.