

Mithlesh Kumar Vs Shyam Lal Paik and Others

Court: Calcutta High Court

Date of Decision: March 22, 2004

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 197, 397, 482

Citation: (2005) 2 CHN 680

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Advocate: B.K. Das, for the Appellant; A. Haldar, R.S. Saroop, for the Respondent

Final Decision: Allowed

Judgement

Amitava Lala, J.

This revisional application is made u/s 397 read with Section 482 of the Code of Criminal Procedure.

2. The contention of the applicant herein is that at the time of passing the order the learned Judicial Magistrate ignored the provisions of Section

197 of the Code of Criminal Procedure whereunder when a person of importance under such section wanted to be prosecuted connected with the

discharge of the official duty, no Court shall take cognizance of such offence except with the previous sanction by the authority concerned. The

learned Magistrate of the Court below held that publication of some defamatory matter allegedly springs out from his official course of duty. So it is

amply clear that the complainant sought relief before this Court against the accused person for making false publication in a local weekly

newspaper against him allegedly done by the accused person in discharge of his official duty, sanction under the aforesaid section is not required

for initiating a legal action before the Court of Law.

3. The question hereunder before this Court is whether there was any necessary of granting leave u/s 197 of the Code of Criminal Procedure or

not. The Court dismissed the application of the applicant hereunder and held that complainant wanted to take legal action against the accused

person for the offence of alleged monetary irregularities, then obviously the complainant was to take necessary permission/sanction otherwise it is

not required.

4. Before this Court, the only relevant question is whether the cause of defamatory action is independent of the discharge of the official duty or not

independent of discharge of official duty. If it is independent, obviously, it will not be part and parcel of the provision u/s 197 of the Cr. PC. But if

it appear that the same will spring out from the original cause then obviously a reply is required to prosecute.

5. In State of Maharashtra Vs. Dr. Budhikota Subbarao, , it was held by the Supreme Court in following earlier judgment that the offence alleged

to have been committed by the accused must have something to do, or must be related in some manner with the discharge of the official

duty...there must be a reasonable connection between the act and the discharge of official duty.

6. In this particular case, it appears that an earlier investigation in respect of discharge of the official functions by the person concerned was initiated

and the so called advertisement either made by the applicant or at the instance of the applicant or any forgery has been caused is necessarily a

outcome of original cause. Therefore u/s 197 of the Cr. PC has to be applied hereunder.

7. At the time of argument it has been rightly pointed out by the respondent that it is not such a case where they have not sought for any permission

but they have written a letter to the Director seeking permission and it has also pointed out that the Director in reply, contended that no permission

is required in this case. In any event such letters are not part and parcel of the record. Had there been any reply to that extent the matter should

have been differed altogether. But without having existence in the record it is very difficult for the Court to come to a conclusion in respect of such

unavailable documents.

8. That apart the Court is of the view that in the revisional jurisdiction to come to a finding unlike an appeal, it is restricted only in respect of the

illegality or material irregularity. I can say that element of material irregularity is unavailable. Therefore law requires in such a situation to set aside

the order and demand the matter back to the Magistrate concerned to consider the manner afresh in the light of the judgment and order passed by

this Court.

9. However, in coming to such conclusion, a further embargo was there. The embargo is a revisional application was hit by law of limitation. An

application for condonation of delay has been provided to condone the same giving certain particulars therein.

10. Mr. Das learned Counsel appearing for the applicant cited a judgement reported in N. Balakrishnan Vs. M. Krishnamurthy, , to establish that

sufficient cause for setting aside is the material point of consideration to condone the delay but not the period of delay. I am of the view that if an

order is of such nature which is curable otherwise that difficulties will be perpetrated and the same will lead to nullity or nullifiable cause, in such

case limitation should not stand in the way. The procedural law is made for the convenience of the litigant but not to make inconvenience. I have

spoken in respect of the judgment of the Supreme Court in that score.

11. Therefore, taking into totality of the matter, I am of the view that the delay in making the application shall be condoned and hereby condoned.

12. So far as the merit is concerned, the order of learned Magistrate is hereby set aside.

13. The matter is remanded back for due consideration in the light of the judgment and order passed by this Court taking into account all aspects

of the matter including the letters which the learned Counsel appearing for the respondents wanted to show on this Court about his intimation to the

Director and reply, if any, in connection thereto. If such documents are taken into consideration, the learned Magistrate can proceed independently

on the basis of such information which is to be supplied by the respondents at the time of hearing before the Court below.

14. Thus, both the applications are disposed of. However no order is passed as to costs.

15. It is expected that both the applications on the technical ground and also on merit will be expedited by the Court below.