

Kamal Singh Badalia Vs State and Another

Court: Calcutta High Court

Date of Decision: Feb. 6, 1979

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 179
Penal Code, 1860 (IPC) â€” Section 499, 500

Citation: 83 CWN 566

Hon'ble Judges: M.K. Mukherjee, J

Bench: Single Bench

Advocate: Sekhar Kumar Bose, for the Appellant; S.P. Talukdar and H. Dey for the State, for the Respondent

Final Decision: Dismissed

Judgement

Manoj Kumar Mukherjee, J.

In this revisional application, the petitioner Kamal Singh Badalia, prays for quashing the proceeding of Case

no. C/4803 of 1976 which is now pending against him before the learned Metropolitan Magistrate, 14th Court, Calcutta under S. 500 of the

Indian Penal Code, on the ground that the Court of the Metropolitan Magistrate at Calcutta has no territorial jurisdiction to try the case. The

opposite party No. 2 Dilip Singh Nahata, instituted the case before the learned Chief Metropolitan Magistrate, Calcutta alleging, inter alia, that on

September 18, 1976 he received at his office at 12, India Exchange Place, Calcutta a letter written to him by Sri Bejoy Singh Nahar, President,

Bihar State Board of Swetambar Jain Religious Trusts, enclosing therewith an alleged true copy of a letter dated March 20, 1976 addressed to the

Law Secretary, Government of Bihar by the petitioner. It has been alleged by the complainant that from the said communication, he learned that

the petitioner wrote a letter to the Law Secretary, Government of Bihar, wherein he has intentionally made certain allegations against the petitioner

which are false and highly defamatory. Along with the complaint the copy of the said letter dated March 20, 1976 has been annexed. The learned

Chief Metropolitan Magistrate took cognizance upon the complaint, examined the complainant and his witness Govinda Chandra Dhar, perused the

different paragraphs of the said letter dated March 20, 1976 and being satisfied therefrom that the letter contained defamatory statements against

the complainant, summoned the petitioner under S. 500 of the Indian Penal Code. Pursuant to the process issued the petitioner appeared before

the learned Chief Metropolitan Magistrate who transferred the case to the learned Metropolitan Magistrate, 14th Court, Calcutta for disposal. The

petitioner, thereafter, moved this Court and obtained the present Rule.

2. Mr. Sekhar Kumar Bose the learned Advocate appearing for the petitioner, contended that the petition of complaint will itself disclose that the

offence of alleged defamation was committed within the jurisdiction of Bihar Court and as such the Court of the Metropolitan Magistrate, Calcutta

had no jurisdiction to entertain the complaint. Mr. Talukdar, the learned Advocate appearing for the complainant on the other hand contended, that

the copy of the letter addressed to the Law Secretary, Government of Bihar was received by the complainant in Calcutta where he was defamed

and in view of the provisions of S. 179 of the Code of Criminal Procedure, 1873, the Courts at Calcutta had the territorial jurisdiction to entertain

the complaint and try the case.

3. To appreciate the respective contentions of the parties it has therefore to be determined what are the ingredients of an offence punishable under

S. 500 of the Indian Penal Code and whether S. 179 of the Code of Criminal Procedure is attracted in the instant case.

4. The three essential requirements to constitute an offence punishable under S. 500 of the Indian Penal Code are :(i) making or publishing any

imputation concerning any person, (ii) such imputation must have been made by words either spoken or intended to be read, or by signs or by

visible representations and (iii) such imputation must have been made with the intention of harming or with knowledge or having reason to believe

that it will harm the reputation of the person concerning whom it is made. It is not a necessary ingredient of the offence of defamation that the

reputation of the person, concerning whom such imputation has been made, should have been actually harmed. Once the defamatory imputation is

made or published in the manner indicated in S. 499 of the Indian Penal Code with the requisite intention or knowledge the offence is complete. If

as a consequence thereof the person concerned is defamed, a cause of action arises in his favour to institute a prosecution for such offence against

the person making the imputation but such a consequence does not form part of the offence. Section 179 of the Code of Criminal Procedure

provides that where an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be

enquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. It would thus appear

from a plain reading of the section that ""consequence"" referred to therein must be a part of the offence. In other words, the section can apply only

to a case where a person is charged with an offence which constitutes not only act committed by him but also the consequence which has ensued

from the act. If the consequence is no part of the offence then in my view, S. 179 of the Code has no application.

5. Keeping in view the above principles let me now therefore ascertain whether the Metropolitan Magistrate's Court at Calcutta has jurisdiction to

try the instant case. The letter in question was written by the petitioner in his capacity as Mukhya Karyavahak Bihar Shaka of Shree Akhil Bharat

Varsiya Jain Sanskrit Rakshak Sabha of Parshanath Mandir Path, Patna City and was sent to the Law Secretary, Government of Bihar, Patna

through Sri Rabindra Prosad Sinha. Under Secretary, in-charge Religious Trust, Patna. It appears from the petition of complaint and the initial

depositions of the complainant and his witness that the Law Secretary went through the letter and thereafter forwarded a copy of the said letter to

Sri Bejoy Singh Nahar, President of Bihar State Board of Shetambar Jain Religious Trusts and the said letter was opened by Sri Gobinda Chandra

Dhar, Office Assistant of Sri Nahar at 48, Indian Mirror Street, Calcutta-13. Sri Bejoy Singh Nahar in his turn, with the letter dated September

18, 1976 forwarded a copy of the said letter to the complainant asking for his comments. The materials on record disclose that the letter was

written by the accused at Patna and was also published in the Secretariat at Patna when the contents of them were made known to the Law

Secretary and the Under Secretary of the Government of Bihar. The offence of defamation, as defined under S. 499 of the Indian Penal Code.

Therefore, if any, was complete with its publication at Patna. It is no doubt true that the consequence of alleged commission of such offence ensued

in Calcutta as according to the complainant he was defamed in Calcutta. But as I have already indicated the consequence that ensued in Calcutta

was no part of the offence of defamation. In this connection, it has to be borne in mind that it is not the case of the complainant that while

addressing the letter to the Law Secretary dated March 20, 1976 the petitioner sent a copy thereof to any one in Calcutta so as to entitle the

Metropolitan Magistrate to entertain the complaint on the ground that the accused published the defamatory statement in Calcutta.

6. In view of the foregoing discussions, it must therefore be held that the Court of the Metropolitan Magistrate at Calcutta had no jurisdiction to

entertain or proceed with the complaint. On this ground alone the proceeding of the case must be quashed. In the result, this application succeeds

and the Rule is made absolute. The proceeding of Case No. C/4803 of 1976 pending against the petitioner in the 14th Court of the Metropolitan

Magistrate, Calcutta is hereby quashed. I however make it clear that nothing will prevent the complainant to file a fresh complaint in the

appropriate forum, if the same is otherwise maintainable in law.