(1969) 04 BOM CK 0022

Bombay High Court

Case No: None

Harikishan Agrawal		APPELLANT
	Vs	
The State of Maharshtra		RESPONDENT

Date of Decision: April 24, 1969

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 198B
- Penal Code, 1860 (IPC) - Section 500

Citation: (1970) CriLJ 788

Hon'ble Judges: Wagle, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Wagle, J.
This petition raises a question whether the City Sessions Court had the jurisdiction to entertain a complaint filed by the Public Prosecutor under the provisions of Section 198-B of the Criminal Procedure Code.

2. The few facts which require to be stated are these:

3. On October 17, 1968, the accused, who is the Editor of ''Rashtradoot'', published a statement in Hindi at Nagpur. Two copies of this statement were received in Bombay and on December 19, 1968, the Public Prosecutor filed a complaint charging the accused of defamation u/s 500 of the Indian Penal Code for having made aspersions against Balasaheb Desai, the Revenue Minister of Maharashtra. Service was effected on the accused on December 20, 1968, and after a witness Diwakar Gaonkar was examined, the charge was framed on February 4,, 1969.

4. Thereafter on 17th and 18th the Revenue Minister and the other witnesses in. support of the prosecution were examined and the prosecution closed its case. The case now waited the statement of the accused u/s 342 of the Criminal Procedure

Code. It appears from the record that the case was adjourned from time to time from February 25, 1969, to 7th of April 1969, during which time the accused did not appear in person, but sought adjournments. On April 9, 1969, this petition in revision was filed challenging the order passed by the learned Principal Judge of the City Civil and Sessions Court framing the charges against the accused u/s 500 of the Indian Penal Code on a complaint being filed by the Public Prosecutor u/s 198-B of the Criminal Procedure Code.

5. Two grounds were mainly taken. The first ground was that Section]98-B of the Criminal Procedure Code would not apply to the facts of the case to enable the Public Prosecutor to file a complaint in the Sessions Court straightway. Second ground was that there was no publication in Bombay so as to give jurisdiction to the City Sessions Court in Bombay to hold this trial.

6. A copy of an official translation of the marked portion in Hindi appearing on the front page of Hindi evening daily ''Rashtradoot'' in its issue dated 17th October, 1968, Dak edition, dated 18th October 1968, was supplied by the Advocate-General. Except for an objection regarding one word with which I shall deal later on, the rest of the translation was not objected to by the learned Counsel for the accused.

7. Mr. Kotecha, who appeared for the accused, contended that the requirements of Section 198-B were not satisfied in the instant case. At the outset, I may state that Section 198-B provides for a departure in the usual procedure regarding cases to be tried by the Sessions Court. Normally, the Sessions Court gets jurisdiction to try cases after the same are committed to the Court of Session by the Magistrate after holding committal proceedings. Section 198-B is a departure from this procedure. It provides for a complaint being filed in the Court of Session and it also provides for a trial in the Court of Session without an accused being committed to it for trial. This procedure is provided where an offence falling under Chap, XXI of the Indian Penal Code, with one exception, is alleged to have been committed against the President, or the Vice-President, or the Governor or Bajpramukh of a State, or a Minister, 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. Mr. Kotecha urged that the essential ingredients of Section 198-B are: (i) That the allegations must be made against the persons who are mentioned therein, and (ii) that the allegations must be in respect of the conduct of the said person in the discharge of his public functions. A person holding a public office may act in is capacity of the office which he holds and he may also act in his individual capacity. What was urged by Mr. Kotecha was that if a person holding a public office acts in his capacity as an individual dissociated from his official functions, then the provisions of Section 198-B would not apply to that case. It was Mr. Kotecha''s further argument that in the instant case the allegations that are made, if at all they could be called defamatory, were against Balasaheb Desai in his individual capacity and not in his capacity as a Minister nor in regard to his actions in respect of his conduct in

discharge of his public functions. The first sentence of the article states that ''Bala'' Desai takes possession of ''Mojhari Ashram'' and property. The second sentence refers to the fact that there are various news reports or rumours and calls upon the authorities to throw light on the true facts. The third sentence refers to the fact that news reports are being received or circulated from ''Mojhari Ashram'' after the death of Bashtrasant Tukdoji, The translation of the sentences on which reliance was placed by the complainant, which follows next, is the following:

It is said that the new ''Sant'' (President) of the Ashram, the Revenue Minister of Maharashtra, has taken possession of all the property of the ''Ashram'' and has locked it up. It is also said that Rs. 20.25 lakhs were found from the safe of the ''Bashtrasant''. It is also said by some persons that only ''Rambhajan'' was found from the safe of the ''Rashtrasant''.

People also say that Balasaheb Desai, by giving ''Bhay'' (threat) in respect of certain matters, grabbed the Presidentship from the ''Bashtrasant'' and had himself become the President and during the last days of the ''Bashtrasant'' he remained (in the Ashram) till the last to get possession of the Ashram and of the property.

It is expected that Balasaheb Desai, the District Collector, Amravati, and the Commissioner, Nagpur Division, should throw light as to what the true facts arc.

8. Mr. Kotecha''s argument was that nowhere in this article is there any mention that Balasaheb Desai was acting in his capacity as a Revenue Minister in respect of what he did. Firstly, it was only stated that ''Bala'' Desai took possession of ''Mojhari Ashram''. Thereafter it was stated that the new ''Sant'' has taken possession of all the property of the ''Ashram'' and has locked it up. The new ''Sant'' was given a description so that the people should know who the new ''Sant'' was, viz., the ''Revenue Minister of Maharashtra''. This expression, according to Mr. Kotecha, has no reference to the acts of Balasaheb Desai as the Reveune Minister. The last paragraph which refers to the District Collector and the Commissioner was according to Mr. Kotecha only a reference to the authorities in the district and the Commissioner''s Division for information regarding the true facts as to what rumours were spread. They were certainly not connected with their functions either in the revenue district of Amravati or in the Revenue Division of Nagpur. The entire article, according to Mr. Kotecha, was only with reference to the acts of an individual for having taken possession of an Ashram after the death of Tukdoji Maharaj, who was called a ''Rashtrasant''. It was further urged by Mr. Kotecha that the evidence given by the Minister very clearly brought out the fact that this act of the Minister in becoming the President had no connection whatsoever with his functions as a Revenue Minister. It was, therefore, urged by Mr. Kotecha that the essential ingredient that the act must be in respect of his conduct in discharge of his public functions was not satisfied in the instant case. He, therefore, urged that this complaint was certainly not maintainable in the Court of Session and that the learned Principal Judge of the City Sessions Court should have dismissed the

complaint in limine without framing any charge.

9. The second point that was attempted to be urged by Mr. Kotecha was that the City Sessions Court at Bombay had no jurisdiction to entertain this trial as there was no publication at Bombay. This question is dependent upon appreciation of evidence regarding the publication in Bombay, The trial Court which has recorded the evidence is, according to me, the proper authority to decide the question of fact whether there was publication of this article in Bombay and upon an answer to this issue an inference would necessarily follow. If the Court comes to the conclusion that there was publication in Bombay of this article, then necessarily it would follow that the Bombay Court has jurisdiction. If, however, the Court comes to the conclusion on appreciation of the evidence of the witnesses that there is no publication at all in Bombay, then necessarily it would follow that the City Sessions Court has no jurisdiction. But in either case this question has to be decided by the trial Court and [think it would be proper if the trial Court decides this question. I have, therefore, not permitted Mr. Kotecha to argue the question of jurisdiction upon the publication of article in Bombay.

10. The learned Advocate-General raised two points. His first argument was that a revising Court should not revise the order passed by the trial Court in the instant case. A reference was made by the learned Advocate-General to a decision of a Division Bench of this High Court in Gandhinagar Motor Transport Society Vs. State of Bombay, , in support of this contention. However, I will deal with this question after I deal with the question regarding the application of Section 198-B of the Criminal Procedure Code.

11. The learned Advocate-General made a reference in detail to the translation made of the passage in Hindi on which the complaint was filed. His argument was that the description of Balasaheb Desai as the Revenue Minister of Maharashtra considered along with two other facts was quite sufficient to raise an opinion in any lay man that the actions of Balasaheb Desai were to be considered as of a Minister of Maharashtra. The two factors upon which this argument was based were: (1) regarding the threat given by Balasaheb Desai in respect of certain matter while grabbing the Presidentship from the ''Rashtrasant.'', and (2) that there were expectations from not only Balasaheb Desai but the District Collector and the Commissioner, Nagpur Division, of throwing light as to what the true facts were. The entire tenor of the article appears to bring in several things. The article starts with the fact that about 20.25 lakhs rupees were found from the safe of Tukdoji and thereafter there is a question mark. Thereafter it proceeds that ''Bala'' Desai takes possession of ''Mojhari Ashram'' and property. Another question mark follows. Thereafter in the particular portion on which reliance is placed it is stated that the new ''Sant'' of the Ashram, the Revenue Minister of Maharashtra, has taken possession of all the property of the ''Ashram'' and has locked it up. The manner in which possession was taken and the Presidentship was earned is described as

follows:

People also say that Balasaheb Desai, by giving threat (Bhay) in respect of certain matter, grabbed the Presidentship from the ''Rashtrasant''.

12. If this article had no reference to the capacity of Balasaheb Desai as a Revenue Minister, what was the occasion for mentioning that the District Collector, Awravati, and the Commissioner, Nagpur Division, should throw light as to what the true facts are. Here it may be noticed that out of the Revenue Officers, who must be presumed to be acting under the Revenue Minister, the Commissioner and the Collector are the two topmost officers. If information on this point could be given or should be given by the two topmost Revenue Officers, can it be said that the act that was alleged had no reference to capacity of Balasaheb Desai as the Revenue Minister of Maharashtra? In addition to this, there is the further mention that Presidentship was grabbed by Balasaheb Desai by giving threat in respect of certain matter. An objection was taken by Mr. Kotecha that the word in the original is "Bhay" and that the translation whereof would not be ''threat''. Whether it is fear, fright or threat, a mention is made that by giving threat Presidentship was grabbed. An inference would, therefore, follow that the person who gave the threat was capable of causing fright or fear such as would make any person such as ''Rashtrasant'' part with an important office or property. This power of giving threat having a reaction of making another person give up the power or the property when considered along with the description of Balasaheb Desai as Revenue Minister would certainly raise in the mind of a lay man a feeling that the article is intended to show that the power was exercised by Balasaheb Desai as the Revenue Minister. The description of Balasaheb Desai as a Revenue Minister, the capacity to give threats in certain matter, which is not described, and calling upon the Collector and the Commissioner to throw light would only lead to a positive inference that the intention in writing this article was to lay before the public the conduct of a Revenue Minister. It may not be that this was one of the functions of the Revenue Minister. But the article was so written as to show that the Revenue Minister was exercising his power where he has no such power. It is not one of the functions of the Revenue Minister to be a President of an Ashram or to be in possession of the Ashram, but the article is so written as to show that this was done probably by the Revenue Minister with the help of threat of consequences which would raise a fear or fright in those persons. In my opinion, the reading of the entire article is likely to create in the minds of the public who read it or and who may even be unaware of the functions of the Revenue Minister that this was an act of the Revenue Minister done probably by the abuse of his power.

13. I am not dealing with the merits whether the allegations made are defamatory or otherwise. But on reading the whole article it appears to me that the learned Sessions Judge was justified in framing a charge u/s 500 of the I. P. C. upon a complaint being filed by the Public Prosecutor u/s 198-B of the Criminal Procedure

Code.

14. The other point that was urged by the learned Advocate-General was about the practice of this Court to interfere in matters as a Court of supervision. The learned Advocate-General said that one of the important factors which is usually taken into consideration when entertaining a petition in the capacity of a supervisory Court is whether the party has come to the Court as expeditiously as possible. In this respect the analogy of the powers of this Court to interfere under the provisions of Articles 226 and 227 of the Constitution were referred to by the learned Advocate General. A reference was made by him to Gandhinagar Motor Transport Society Vs. State of Bombay, . This was of course a case of a petition under Article 226 of the Constitution. But the learned Chief Justice while dealing with this petition considered also the provisions of Article 227 of the Constitution and the High Courts power to interfere. The learned Chief Justice referred to the principle that was accepted by the English Courts in such matters that the party must come to the Court expeditiously. The observations in this respect at p. 923 are the following:.

A suit may be filed within the period of limitation; the Judge trying the suit does not non-suit the plaintiff because he came to Court towards the end of the period of limitation; but this Court tells the petitioner: ''You must come to this Court expeditiously''. Equally so a defendant may not raise the question of jurisdiction in the Court of first instance, he may not raise the question of jurisdiction in the appellate Court, he may postpone raising the question of jurisdiction up to the stage of the Privy Council or the Supreme Court, yet if the Court has no jurisdiction, the highest Court in the land will allow the point to be raised and decide in favour of the defendant. But the principle is different when the petitioner comes to this Court for a writ. The Court must tell the petitioner: ''It was open to you to raise that point before the tribunal whose order you are challenging. You have sat on the fence, you have taken a chance of the tribunal deciding in your favour, and it is not open to you now to come to us and ask for a writ''.

15. The learned Advocate-General pointed out that so far as the jurisdiction of this Court to interfere in revision under the provisions of Sections 434 to 439 of the Criminal Procedure Code is concerned, it is similar to the power of superintendence of this Court under Article 227. If anything the powers under the Constitution would even be wider. He, therefore, urged that the analogy of this decision or the ratio of this case should be applied to the instant case, to hold that although the point may be open, this Court should not interfere with the order passed by the lower Court framing a charge on February 4, 1969. The history of the trial of this case is already mentioned by me above. It shows that although the summons was served on December 20, 1968, and the charge was framed on February 4, 1969, after the trial Judge delivered a short order, no action was taken by the accused till April 9, 1969. Between February 25, 1969 and April 9, 1969, there were several dates of hearing of this case. On the 17th and 18th, the Revenue Minister and the other witnesses were

examined in support of the prosecution case and in fact the prosecution case was closed on the 18th. Thereafter the case was set down for hearing presumably for recording the statement of the accused u/s 342 of the Criminal Procedure Code on six different dates. The present petition is made against the order dated February 4, 1969, and the charge framed on the same day. The learned Advocate-General points out that the expression ''sitting on the fence'' applies with greater force in the instant case. Immediately after the summons was served, the objection that the City Sessions Court has no jurisdiction to entertain the complaint was not taken up nor does it seem to have been urged before the learned Judge at the time the order was passed directing the framing of the charge. Even after the charge was framed on February 4, 1969, the accused waited till the entire prosecution case was over, and it was urged by the learned Advocate-General that probably feeling that the things are now beyond control the present action was taken to stay further proceedings in this case. It was, therefore, urged that the supervisory powers of this Court may not be exercised in the instant case.

16. It also appears to me that no great hardship would be caused to the accused if this Court does not interfere at this stage. In Muneshwara Nand Vs. State, , the learned Judges considered the question of jurisdiction of the Court for the application of Section 198-B of the Criminal Procedure Code. The facts in this case were materially different from the facts of the instant case, but the observations made therein do show that even if a decision is prima facie taken that the Court has jurisdiction, there is nothing to prevent the learned trial Judge from taking a contrary view after considering the entire evidence in the case. The observations in para 36 to this extent are the following:

For conferring jurisdiction on him it is sufficient if prima facie the defamation falls within the terms of the phrase ''conduct in the discharge of public functions'' as just expounded, but whether the conviction of the accused is justified or not will depend on whether after due investigation in the resulting trial the defamation is judged to come within those terms--if on the merits the finding is otherwise, the Court of Session has no power to convict.

17. This would show that no great hardship would bo caused to the accused even if I do not interfere in this case at this stage. The whole of the trial is practically over and it awaits only the recording of the statement of the accused u/s 342 of the Criminal Procedure Code and the defence evidence, if any, alter which and after hearing the arguments the case will be decided by the trial Court. Even if, therefore, I was to come to the different conclusion on the first point regarding the application of Section 198-B of the Criminal Procedure Code, I would have held that it was not necessary to interfere in this case in view of the facts to which I have made a reference above.

18. In the result, the rule is discharged Rule discharged.