B.P. Bhaskar Vs B.P. Shiva

Court: Madras High Court

Date of Decision: Dec. 22, 1992

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 179, 482
Evidence Act, 1872 â€" Section 126, 127, 129
Penal Code, 1860 (IPC) â€" Section 499, 500

Citation: (1993) CriLJ 2685 : (1994) 2 LW(Cri) 601

Hon'ble Judges: Janarthanam, J

Bench: Single Bench

Advocate: Mr. V. Sairmm, for the Appellant; Mr. V. Suchitra Sagar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner was the accused C.C. No. 13659 of 1989 on the file of the XVIII Metropolitan Magistrate, Saidapet, Madras, which was one

instituted by the respondent - complainant for refraction or violation of the provisions of Section 499, punishable u/s 500, IPC.

2. The sum and substance of the allegations in the complaint was that in the process of exchange of legal notices between them, the accused was

stated to have incorporated certain scurrilous imputations against the complainant in the notice issued by him. The notice so issued by the accused,

it is said, had also been circulated to the friends and relations of the complainant. Consequently, it is said, the good name and fame enjoyed by the

complainant was brought down and he was despised and neglected in many social functions by his close relatives and friends circle.

3. After receipt of process, the accused entered appearance through a Counsel of his choice and before ever the trial commenced, he came

forward with the present action, invoking the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, 1973, (for short "the

Code"), to quash the criminal proceedings initiated against him.

4. Learned Counsel appearing for the petitioner - accused would urge the following points for consideration; -

1. Even per se defamatory allegations or imputation contained in a notice exchanged between the parties can, by no stretch of imagination, be

stated to amount to "publication", in the eye of law, attracting penal consequences u/s 500 of IPC for violation or refraction of Section 499, IPC.

2. There is no cause of action warranting institution of prosecution in a Court located at Madras, when especially there is no iota of averment or

allegation in the complaint as respects publication, having been made, in the sense of copies of notice, stated to have been insued by the accused,

having been received by any of the friends or relations at Madras and read by them.

5. Learned Counsel appearing for the respondent - complainant would however repel such submissions.

6. On the face of the points urged for consideration, there is no need at all to consider as to whether the allegations in the complaint are per se

defamatory or not. There could not have been any pale of controversy that the so-called scurrilous allegations or imputations contained in the

notice exchanged between the parties can, by no stretch of imagination be construed to be ''publication'' in the eye of law. Such a question arose

for consideration by the Kerala High Court in the case of P.R. Ramakrishnan Vs. Subbaramma Sastrigal and Another, . His Lordship K. T.

Thomas, J. answered such a question by expressing thus in paragraphs 8, 9, 11 and 12; -

8. The making of imputation involves the translation of the imputation into some form. If the libel is in writing, the making of the libel is incomplete

without writing it down. The author himself can be its scribe or it can be a different person. Dictation by a lawyer to his clerk is part of his

professional exercises and merely because the clerk in the course of his professional work heard it, cannot amount to factual publication. The

privilege attached to the professional communications between a lawyer and his client is further fortified by providing S. 127 of the Evidence Act at

per which the ban against disclosure is extended to clerks and servants of the lawyer. The clerk of a lawyer, in the professional sphere, has to

maintain confidence regarding matters conveyed to him, if it relates to communication between the counsel and the client. If a notice, or a letter or

even a pleading is dictated to the clerk by a lawyer, it does not, in practical sense go beyond the lawyer''s professional range. The fact that ''''the

clerk, as a different human being, comes to know of the contents of the notice cannot make it publication to a third person.

9. In Pullman v. Walter Hill, (1891) 1 QB 524, a letter was directed by the Managing Director of a company to a shorthand clerk who transcribed

it with the help of a typewriting machine, and the letter was sent by post addressed to the plaintiff. The trial Court held that it did not amount to

publication, but court of appeal reversed the finding. Lord Eshor M. R. and Lopes LJ. wrote separate judgments holding that the dictation to the

shorthand clerk will amount to publication. But their Lordships in Boxsius v. Goblet, (1884), 1 QB 842 distinguished Pullman''s case on the ground

that when solicitor dictated to a clerk in his office a letter containing defamatory statements, the occasion was privileged and the dictation to the

clerk ""was necessary and shall in the discharge of his duty to his client and was made in the interest of client."" In Edmondson v. Birch, (1907) I KB

371, Collins M. R. and Lopes LJ, reiterated the principles laid down in Boxsius''s case. A single Judge of the Bombay High Court in Sukhdeo

Vithal Pansare Vs. Prabhakar Sukhdeo Pansare and Another, , accepted the contention that the advocate dictating to his clerk or typist any matter

which the typist or clerk transcribes in the discharge of his duties does not make publication of that matter. These decisions lend support to the

view that the dictation given by the lawyer to his clerk and transcription made by him of a per se libellous matter cannot amount to publication.

11. Now, I shall consider the question whether the sending of Ext. P. 1 to the advocate of the complainant would make it publication. As pointed

out earlier, it was sent as reply to a notice issued by the complainant''s advocate. As between advocate and his client, principles of agency would

apply depending on the context. It is true that an advocate is not a mere agent of a client, for, duties of the advocate are far greater and far more

sublime than that of a mere agent. But there can be functions which an advocate may have to perform for his client which may fall within the

amplitude of principal and agent relationship. Receiving a reply by the advocate on behalf of his client is one of the instances where the function of

an agent is involved. The receipt of the reply by the advocate is, in effect, receipt of the client himself. It is one of the recognised modes of

communicating to the client. The confidential communications between client and advocate have protection from compulsory disclosure as

envisaged in S. 129 of the Evidence Act. Neither the advocate nor the client is under any obligation to spell it to a third person. The interdict

provided in Sections 126 and 127 and the prohibition of communication embodied in S. 129 of the Evidence Act are intended to keep the

communications confidential as between the advocate and client. In ordinary law of agency the above protection is not afforded either to the agent

or to the principal. So the relationship between the lawyer and client is far more salubrious than the ordinary principal and agent relationship. Yet

the idea of agency inheres in it. So the mere fact that the advocate is a different person does not make the receipt of the reply as amounting to

publication. As early as in 1934 a Division Bench of the Bombay High Court observed that a pleader is a special kind of agent. Hormusji K.

Bhabha v. Nana Appa AIR 1934 Bom 299. ""He is a special kind of agent, or an agent selected out of a special class, for whom this kind of

agency contract is reserved by law but nevertheless governed by the law relating to agency.

12. For the above reasons, I take the view that the sending of a communication to an advocate on behalf of his client is virtually a communication

made to the client himself. As such there is no publication of the imputation concerning the client.

7. I respectfully agree with the view expressed by learned Judge in that case.

8. A careful scrutiny of the various averments in the complaint does not at all reveal anything as to the receipt of the copy of the reply notice stated

to have been issued by the accused by the witness at Madras. No doubt true it is, in the list of witnesses cited in the complaint witness, No. 6,

Mrs. N. T. Sanjiva had been described as a person residing at No. 24, Ormes Road, Kilpauk, Madras-10. Rest of the witnesses cited therein,

namely, witnesses Nos. 1 to 5 are admittedly state to have been residing at Mangalore while witness No. 7 at Bangalore. It is only through these

seven witnesses, the publication as respects the scurrilous allegations said to have been made by the accused in the reply notice is sought to be

proved. But so sordid fact it is that nothing had been mentioned by incorporation of any specific allegation in the complaint that witness No. 6 Mrs.

N. T. Sanjiva received the copy of the notice containing the scurrilous imputations at Madras.

9. What all allegations made in the complaint in respect of publication is to this effect; ""I fact, the witnesses 1 to 7 have also read the applications

effected by the accused and also as a result they have come to know the defamatory allegations by such imputations in the reply notice dated 25-

5-89 and 18-10-1989.

Such an allegation does not take us anywhere. It is not plausible to come to any conclusion as to whether the alleged scurrilous imputations

contained in the copy of the notice were read by those witnesses either in Madras or in Mangalore or Bangalore, in such state of affairs. No doubt,

the notice containing the alleged scurrilous imputations had been received by the complainant at Madras. The receipt of such a notice by the

complainant by itself, as already stated, will not at all amount to "publication" in the eye of law.

10. Pertinent it is at this juncture to refer to the provisions of Section 179 of the Code, dealing with offences triable where act is done or

consequence ensues. The section prescribes,

When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into

or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

11. It is clear from what has been stated by the sanguine provisions contained in the section referred to, as above, that the cause of action for

initiation of a complaint may arise at the place where the act is done or consequences ensure. In the case on hand, the act of issuance of reply,

notice had happened at Mangalore and the consequence of receipt of such notice by the complainant ensued at Madras. As already stated, the

receipt of notice by the complainant by itself is not sufficient to amount in law as "publication". Further, no one in Madras, other than the

complainant, as already stated, received a copy of such notice containing the so-called scurrilous allegations. In such state of affairs, it cannot be

stated that there is any cause for launching of the prosecution at Madras where the consequence of publication did not at all ensue.

12. As such, the Court of the XVIII Metropolitan Magistrate, Saidapet, Madras, before which the complaint is filed, is not having any jurisdiction

to entertain the complaint. In this view of the matter, the petitioner deserves to be allowed.

13. In the result, the petition is allowed and the Criminal Proceedings initiated in C.C. No. 13658 of 1989 on the file of XVIII Metropolitan

Magistrate, Saidapet, Madras shall stand quashed.

14. Petition allowed.