

## **Raghubir Saran Agarwal vs Ram Prasad Misra on 26 August, 1955**

**Equivalent citations: AIR1956ALL267, 1956CRILJ470, AIR 1956 ALLAHABAD 267**

ORDER

Roy, J.

1. A complaint had been lodged by Raghubir Saran Agarwal in the Court of the City. Magistrate, Banaras, against two persons under Section 500, Penal Code on the allegation that certain utterances made to them were defamatory to him. The City Magistrate convicted Munnisingh but he acquitted the other accused, namely, Sub-Inspector Ram Prasad Misra. Raghubir Saran preferred a revision before the learned Sessions Judge of Banaras against the acquittal of Ram Prasad Misra, but his revision was rejected by the learned Sessions Judge on 6-8-1953 on the ground that while making the order of acquittal the City Magistrate did not commit any illegality and that the order passed by him was not in any way perverse.

Raghubir Saran Agarwal has come up in revision to this Court and it has been contended by him that the words imputed to Ram Prasad Misra were really defamatory and that Ram Prasad was not protected under Exception 9 of Section 499, Penal Code as was held by the Magistrate.

2. The charge against Ram Prasad Misra was as follows;

"That you on 17th day of September 1951 in the Courts of Sri Rama Nandan Prasad Magistrate and Sri A. Kumar, City Magistrate, Banaras defamed the complainant Raghubir Saran, by calling him a "Dalai" and also wrote in your report dated 10-6-1951 and called him a 'Dalal' in October 1951 at the shop of Munnisingh accused intending to harm the reputation of the said Raghubir Saran and thereby committed an offence punishable under Section 500, Penal Code."

It would thus appear that the charge comprehended four instances. The last two have been found by the learned Magistrate to constitute no offence punishable under Section 500, Penal Code. The Magistrate very rightly observed that a report submitted by Sub-Inspector Ram Prasad Misra to his superior officers intended for official use only was not meant for the public and could not constitute the offence of defamation as contemplated by Section 499, Penal Code. In fact Illustration (b) of the Ninth Exception of Section 499 of the Code would cover the present case so far as that allegation is concerned. Illustration (b) is to the following effect:

"A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception."

3. The report submitted by Sub-Inspector Ram Prasad Misra to his superior officer in which the imputation in question was made was intended for official use only and it was made in good faith and for the public good. Consequently both the Courts below were right in coming to the conclusion that it would not constitute an offence punishable under Section 500, Penal Code.

4. The allegation that the Sub-Inspector, Ram Prasad Misra, called the complainant a "Dalal" at the shop of Munnisingh intended to harm the reputation of the complainant was not legally proved. Consequently both the Courts were right in coming to the conclusion that that cannot be made the basis of a charge.

5. We are, therefore, left only with the first two instances mentioned in the charge. Both the instances refer to one common date, namely, 17-9-1951. On that date a Criminal Case No. 112 of 1951, State v. Kanhaiya Lal Dom of Englishia. Lines, police station Cantonment, Banaras was pending under Section 60, U. P. Excise Act in the Court of Sri Rama Nandan Prasad, Excise Magistrate, Banaras, The petitioner Raghubir Prasad Agarwal and Sub-Inspector Ram Prasad Misra were present in the Court of the Excise Magistrate during the trial of the case aforementioned. The presence of Sub-inspector Ram Prasad Misra in that Court at the time -the case was taken up was intelligible inasmuch as the case related to police station Cantonment, Banaras and Sub-Inspector Ram Prasad Misra was then attached to that police station.

In that case Sri Ram Krishna was the counsel engaged by the accused Kanhaiya Lal Dom, He was cross-examining some witness for the prosecution in that case. During the course of cross-examination of that witness Sub-Inspector Ram Prasad Misra drew the attention of the Magistrate that the petitioner Raghubir Saran Agarwal was standing in the court-room and said that he was a "Dalai". Exception was taken to it by Raghubir Saran Agarwal by means of an application. The Magistrate made an order on that very day on that application which indicated that Raghubir Saran Agarwal was found standing by the side of the accused Kanhaiya Lal Dom in the court-room when Sub-Inspector Ram Prasad Misra stated before the Magistrate that Raghubir Saran Agarwal was a "Dalal" or a tout for the accused Kanhaiya Lal Dom.

At the present trial Sub-Inspector Ram Prasad Misra admitted having made that statement before the Excise Magistrate. His contention, however, was that that statement was made not with a view to defame Raghubir Saran Agarwal but was made in a 'bona-fide' manner in the interest of the public and of the State, because he had discovered for himself that day that Raghubir Saran Agarwal was tampering with the witnesses for the prosecution even though he had no concern whatsoever with that case. Raghubir Saran Agarwal was neither a party to the case nor was he a witness. He did not place any material before the Court to show as to how he was concerned with the case or interested in the accused Kanhaiya Lal Dom.

It was no doubt true that Kanhaiya Lal Dom was a Harijan and Raghubir Saran Agarwal was the President of the Harijan Samiti, but that would not lead to the conclusion that the Harijan Samiti had taken up the cause of Kanhaiya Lal Dom in defending him in Court or that Raghubir Saran Agarwal as a president of that Samiti had been authorised by the Samiti to defend the accused. A stranger to the case standing by the side of the accused giving instructions to a counsel would well raise a genuine suspicion in the mind of 'Sub-Inspector Ram Prasad Misra who was directly concerned with the prosecution of that case that Raghubir Saran Agarwal was to all intents and purposes acting as a 'Dalal' or a tout for Kanhaiya Lal Dom.

No doubt evidence was not led on behalf of Sub-inspector Ram Prasad Misra to show that the prosecution witnesses were being tampered with by Raghubir Saran Agarwal that day, but that circumstance alone would not lead us to the necessary conclusion that Sub-Inspector Ram Prasad Misra uttered the words with respect to Raghubir Saran Agarwal before the Excise Magistrate with intent to harm the reputation of Raghubir Saran Agarwal or that he uttered those words without due care and caution. The imputation in question as has been found by both the Courts appears to have been made in good faith and with a view to draw the attention of the Excise Magistrate to the fact that the presence of Raghubir Saran Agarwal in his courtroom by the side of the accused Was likely to impair the evidence which was being led by the prosecution.

The imputation was a 'bona fide' one made with a view to ensure a fair trial & with a view to the stopping of the undesirable interference with the case by Raghubir Saran Agarwal. Exception 9 to Section 499, Penal Code says that it is not defamation to make an imputation on the character of an-other provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

In order to come within Exception 9 an accused person is not bound to prove that the imputation made by him is true. It is sufficient for him to prove that he made it in good faith for the protection of the interest of any person or for the public good. If he proves that on reasonable grounds he believed the imputation to be true and in that belief he 'bona fide' made it, he will be protected. Exception 9 to Section 499, Penal Code would, in the circumstances of the case, protect Sub-Inspector Ram Prasad Misra in relation to the imputation made by him against Raghubir Saran Agarwal in the Court of the Excise Magistrate.

6. On 17-9-1951 another case under Section 19 (f), Arms Act, 'State v. Sita Ram' was pending in the Court of Sri A. Kumar, City Magistrate, Banaras. Sub-Inspector Ram Prasad Misra was witness for the prosecution in that case. During the course of his cross-examination he was asked whether he had called Kanhaiya Lal Dom and the accused Sita Ram in that case to police station Cantonment, Banaras and rebuked them for having made some application. Sub-Inspector Ram Prasad Misra replied in the negative. A further question was put to him whether he knew Raghubir Saran Agarwal and it was in answer to that question in the course of his cross-examination that he stated that he knew Raghubir Saran Agarwal who was a "Dalal" and his business was to give applications as a tout.

The statement thus made in the Court of the City Magistrate was said to constitute the second incident upon which the charge for defamation had been founded. Sub-Inspector Ram Prasad Misra

admitted having made that statement in the course of the cross-examination. But in regard to that statement as well he claimed protection, under Exception 9 of Section 499, Penal Code. His contention was that he made that statement for public good and for the benefit of the State inasmuch as he noticed that even in that case Raghubir Saran Agarwal was tampering with the prosecution witnesses without being in any way concerned with that case.

It may again be noted that even though Sub-Inspector Misra had not examined those witnesses for the prosecution who were alleged to have been tampered with by Raghubir Saran Agarwal yet by reason of the incident in the Court of the Excise Magistrate Sub-Inspector Ram Prasad Misra could have valid ground for thinking that the petitioner Raghubir Saran Agarwal standing in the Court of the City Magistrate at the time when the Arms Act case was taken up and who had not had any connection with the accused in that case was possibly acting as a tout.

It has been urged on behalf of the applicant that there was no positive evidence on the record to prove that Raghubir Saran Agarwal was present in the Court of the City Magistrate when the Arms Act case was taken up. Both the Courts below have, however, found that he was present. Assuming, however, that he was not present in that Court at that time, the question, therefore, would be whether upon certain information elicited from Ram Prasad Misra in cross-examination by the accused when Ram Prasad Misra was figuring as a prosecution witness, can it be said that an imputation made by Ram Prasad Misra based upon what he had observed in an earlier case against Kanhaiya Lal Dom was made 'mala fide' with a view to harm the reputation of Raghubir Saran Agarwal or whether the imputation was made for the public good with due care and caution.

Having regard to the circumstances of the case I am in agreement with the view taken by the two Courts when they held that that imputation would also be protected by Exception 9 of Section 499, Penal Code.

7. Great stress has been laid by learned counsel for the applicant that on determining the charge under Section 500, Penal Code the learned City Magistrate wrongly relied upon certain entries in a confidential book maintained at police station Chetganj, Banaras for the use of the Station officers posted at that station from time to time. The confidential entry is supposed to be an entry to the effect that Raghubir Saran Agarwal acts as a habitual tout. A defence witness was produced to prove that confidential entry.

The learned Sessions Judge was of the opinion that no reference to these entries should have been made by the learned Magistrate and those entries, if they exist, were noted for the guidance of the station officers at police station Chetganj and were not intended for Sub-Inspector Ram Prasad Misra who had not been found to have had any access to that confidential book. The learned Sessions Judge, further observed that since Sub-Inspector Ram Prasad Misra in his statement before the Magistrate did not rely upon those confidential entries, the production of defence witness B. W. Khare, station officer of police station Chetganj was not well-founded.

The learned Sessions Judge accordingly excluded from consideration the entry in the confidential register as also the evidence of Sub-Inspector B. N. Khare. Learned counsel for the applicant has

urged that since the Magistrate arrived at a decision of fact by considering material which was irrelevant to the enquiry and based his decision partly on conjectures, surmises and suspicions and partly on evidence, then in such a situation the order of acquittal should be set aside and a retrial should be ordered. Reliance has been placed upon a decision of the Supreme Court in -- 'Dhirajlal Girdharilal v. Commr. of Income-tax, Bombay', (S) AIR 1955 SC 271 (A). That was a case where the High Court summarily dismissed an application made under Section 66(2), Income-tax Act, 1922 requiring the Income-tax Appellate Tribunal to consider the case and refer to it the questions of law said by the appellant to arise out of the order of the Tribunal.

It was held by the Supreme Court that if the Court of fact whose decision on a question or fact is final, arrives at a decision of fact by considering material which is partly relevant & partly irrelevant or bases its decision partly on conjectures, surmises and suspicions and partly on evidence then in such a situation clearly an issue of law arises; and in such a case, it is well established that when a Court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant material used by it in arriving at its finding, and that such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises.

Here, in the present case, the facts are different and they stand out in different context. The irrelevant evidence that was admitted by the learned Magistrate and acted upon by him had been excluded from consideration by the learned Sessions Judge and upon the remaining evidence that was relevant and material a clear finding has been arrived at, viz., that the imputations alleged to Sub-Inspector Ram Prasad Misra were imputations made by him 'bona fide' and for public good and therefore protected under Exception 9 of Section 499, Penal Code. Consequently, therefore, it cannot be said that the decision of the trial Court is vitiated so as to call for an interference in revision by this Court.

8. My attention has been drawn to two other cases. The one is a case of this Court in -- 'Baldeo v. Deo Narain', AIR 1954 All 104 (B) where it was observed by a learned Judge of this Court that a High Court is no doubt reluctant to interfere with an order of acquittal by the trial Court but if the trial is full of errors and Indicates that the Court had deliberately shut its eyes to patent facts on record and provides an instance of flagrant breach of fundamental principles regarding judgment, the judgment is vitiated and cannot be sustained. A perusal of that reported case would show that that case bears no parallel to the present one.

Here the acquittal by the trial Court was not in any way full of errors, and the Court did not deliberately shut its eyes to patent facts on record, and the case did not provide an instance of flagrant breach of fundamental principles regarding judgment. The judgment, therefore, cannot be said to be vitiated. The other case to which my attention has been drawn is the decision of the Calcutta High Court in -- 'Satish Chandra v. Chinta Haran', AIR 1938 Cal 613 (C). It was laid down in that decision that the High Court has power to interfere in revision with an appellate judgment of acquittal, and though that power should be sparingly exercised, it would be wrong to refuse to exercise it in cases where there has been a failure of justice by reason of the appellate Court not having brought a judicial mind to bear upon the evidence. In the present case I am of the opinion

that in deciding the case the two Courts below had brought a judicial mind to bear upon the evidence and consequently the order of acquittal should not be interfered with.

9. For reasons stated above the application in revision is rejected.