

S.M. Jaffry vs The State on 24 August, 1954

Equivalent citations: AIR1955ALL318, 1955CRILJ767, AIR 1955 ALLAHABAD 318

ORDER

Harish Chandra, J.

1. The opposite party filed a complaint alleging that the applicant was the Editor, Printer and publisher of an Urdu Weekly, 'Khadim', and in the issue of 26-8-1952 of that paper he had published defamatory matters concerning the opposite party and had also made verbal defamatory allegations against him. After this complaint was filed he was examined by the magistrate under Section 200, Criminal P. C., but his examination was not a proper one. In his examination he stated that the facts which were alleged in the complaint were correct and after his examination the accused was summoned and the opposite party was asked to produce his evidence in support of his case. He examined certain witnesses and also filed the issues in which the alleged defamatory matters had been published against him. After a consideration of all that evidence the learned Magistrate found that a prima facie case had been made out against the applicant and he, therefore, framed charges under Section 500, I. P. C., against him. After the charges had been framed the applicant-filed a revision before the Sessions Judge, Banaras, which was disposed of by the learned Addl. Sessions Judge. He rejected the revision. The applicant/has now filed this revision before this Court.

2. It has been contended on behalf of the applicant that the omission of the learned Magistrate to examine the opposite party was illegal, and vitiated the entire proceedings. In support of his contentions he has relied on two cases of this Court reported in -- 'Rekha Chamar v. King-Emperor', AIR 1924 All 664 (1) (A) and -- 'Bhagwan Das v. Emperor', AIR 1935 All 745 (B). Both these cases are the decisions of Single Judge. As against these two cases there is a case reported in -- 'Bateshar v. Emperor', AIR 1915 All 417 (C). This is -the Division Bench case and it was held in this case that the omission to examine a complainant under Section 200, Criminal P. C., was not an illegality but a mere irregularity and was curable under Section 537, Criminal P. C., and did not vitiate the trial. This decision seems to have been followed in 1933 in a case reported in -- 'Baldewa v. Emperor', AIR 1933 All 816 (D). In this case also it was held that the failure to examine the complainant under Section 200, Criminal P. C., was merely an irregularity curable by Section 537, Cr. P. C., and did not vitiate the trial on the subsequent proceedings.

The decision in AIR 1915 All 417 (C) was followed in -- 'Dulan Dayal Singh v. Emperor', AIR 194S Oudh 102 (E) wherein it was held that the failure by the magistrate to take the statements of the complainant on oath before sending the case for an investigation under Section 202 was an irregularity which was curable by Section 537 and did not vitiate the trial so long as the accused had not been prejudiced. In this case reference was also made to -- 'Ramjas Marwari v. Furulia

Municipality' AIR 1938 Pat 145 (F); -- 'P. N. S. Aiyar v. K. J. Nathan', AIR 1948 Mad 424 (G) and -- 'Meher Chiragh Din v Emperor', AIR 1924 Lah 258 (H) wherein similar view was taken. In view of the decision in AIR 1915 All 417 (C), which was followed by this Court in AIR 1933 All 816 (D) and AIR 1945 Oudh 102 (E), I am of opinion that improper examination of the complainant does not amount to an illegality which will vitiate the subsequent proceedings. In my opinion it is merely an irregularity and will not affect the subsequent proceedings unless it has prejudiced the accused in any manner.

3. It has been contended on behalf of the applicant that the framing of the charge has pre-judged the applicant. I am unable to see how the applicant has been prejudiced by mere framing of the charge against him. The learned Magistrate had framed a charge after the examination of the prosecution evidence when a prima facie case had been made out." The applicant knows what the charge against him is and he can very well meet the case. In my opinion the applicant has not been prejudiced by the mere framing of the charge against him. I do not think that merely because there is some irregularity in the examination of the complainant the subsequent proceedings should be quashed. It has also been contended that the complaint does not mention in details (sic) defamatory matters published against the opposite party in the issue of 26-8-1952. It has been further argued that the charge had been framed (SIC) in respect of publication in the issue of 17-8-1952 though it was not mentioned in the complaint. There is no doubt that the complaint (sic) not been properly worded and is rather vague, (sic) it is only from the subsequent evidence pro-(sic) by the prosecution that the proper case of (sic) opposite party has been brought to light. The (sic) to mention the details in the complaint is also in my opinion a mere irregularity.

4. In the circumstances I do not see any satisfactory reason to interfere with the proceedings as I am not satisfied that the applicant has been prejudiced or will be prejudiced in future on account of the above irregularity. He has got full opportunity to meet the case. The application, therefore, is dismissed.