

Ram Kumar Shukla vs The State on 10 November, 1955

Equivalent citations: 1962CRILJ122

ORDER

A.N. Mulla, J.

1. This is an application of revision filed by Sri Ram Kumar Shukla, who is the editor of a Hindi Weekly paper entitled 'Yogantra' which is printed and published at Kanpur. Sri Shukla has been convicted under Section 500 I.P. Code and sentenced to six months' simple Imprisonment and a fine of Rs. 500/- in default further simple imprisonment for six months

2. The charge against the applicant was that in the issue of the Yogantra dated the 29th of August, 1948, he published an article which was printed under the name of 'Vishwa Bharati' which contained defamatory allegations against Sri S.P. Mehra, who is the editor of another English Weekly paper entitled 'Citizen', which is also printed and published at Kanpur. Sri Mehra, apart from being the editor of this English Weekly, is also the Honorary Secretary of the Anti-Tuberculosis Association of Kanpur since its inception in 1946. It was the character of Sri Mehra as the Honorary Secretary of this Association which was assailed in this article.

When this article appeared in the paper, Sri Mehra sent letter to the applicant drawing his attention to the defamatory matter contained in thin article and asked him to disclose the name of the contributor of this article. He also asked him to apologize for the publication of the defamatory article. The applicant neither apologized nor disclosed the name of the, contributor. He took shelter behind some alleged journalistic ethics and further stated in his reply that there was no defamatory allegation contained in this article and the lawyer who gave this notice on behalf of Sri Mehra was wrongly instructed by his client. Sri Mehra then had to file a criminal complaint against the applicant on the 16th of October, 1948.

3. To understand the case in its proper perspective it is desirable to give its history and background. The Anti-Tuberculosis Association, Kanpur, came into being in the year 1946 and Sri Mehra was an ardent worker who secured donations from various persons and institutions and raised a substantial fund. In the beginning one Dr. Sharma was the Medical Superintendent attached to this Association. Sometime about the year 1948 the relations between Sri Mehra and Dr. Sharma became strained. Dr. Sharma was suspected of having embezzled the funds of the Association and a regular inquiry was instituted against him. As a result of this inquiry Dr. Sharma was removed and later on he was also prosecuted.

This was not liked by a group of persons who were the supporters of Dr. Sharma and they first tried to capture the control of the Association. The elections of the Association were to take place shortly and an attempt was made to have a large number of persons elected as primary members of this

Association, so that with the help of their votes the Managing Committee should be packed with their nominees. Sri Mehra and his supporter wire were in the majority in the Managing Committee of the Association realized the danger of recruiting the many members. The applications of several persons who applied for membership were not accepted. That made the feelings between the two groups still worse.

On the failure of this move a campaign against the character of Sri Mehra was started. Letters and articles started appearing in the press in which various allegations were made against Sri Mehra by the contributors. Pamphlets were also issued in support of Dr. Sharma and some of these pamphlets are filed by the applicant and exhibited in the case. All the pamphlets which are at the record of the case have been printed at the 'Yogantra Press'. This shows that the Yogantra Press and those who were in charge of it had taken sides with Dr. Sharma in this, controversy and were his ardent supporters.

4. Sri Krishna Chand, the District Magistrate of Kanpur was the President of this Association. He has appeared as a witness for the prosecution in this case and he has stated on oath that the complainant is a man of high integrity and character to the best of his knowledge and he has not in any way mismanaged the funds of the Association. In spite of this certificate, I find that during the pendency of this controversy the attitude of Sri Krishna Chand was, too hesitating and too noncommittal.

As the President of this Association it was for him to see that false aspersions were not cast upon the persons who were doing their duty with honesty and efficiency. It is true that he did not encourage this controversy, but he certainly did nothing to discourage it. It may be that on account of his official position he did not want to enter into this controversy. This, however, is an excuse and not a justification. In my opinion Sri Krishna Chand, as the President of the Association, should have defended his Secretary against this malicious and defamatory aspersions and not kept silent.

5. It was left to Sri Arjun Arora, a labour leader of Kanpur, to defend Sri Mehra. Sri Arora deplored the unjustifiable attacks that were levelled against the complainant's character and praised his work. He also wrote in his article that this campaign of vilification has been started in the Press by anonymous writers who are supported by the erring members of the staff of the Anti-Tuberculosis Association as well as by those persons whom Sri Mehra had fearlessly exposed as the editor of the 'Citizen'. In the end he wanted the people to realize that whatever had been achieved so far by the Association was due to the single-minded devotion of Sri Mehra.

6. This article was published in the Daily Telegraph an English daily of Kanpur in its issue dated the 24th of August, 1948. Its publication, however, only added fuel to fire. The supporters of Dr. Sharma became still more frantic and their language became still more virulent. The article which is the subject-matter of this case was their reply which was couched in wild and unrestrained language. It was published in the 'Yogantra' of the 29th of August, 1948. The title given to it was as follows: "Sri Arjun Arora ka Mithya Prachar, Ahsan faramosh Sri Mehra ke Karname," Translated into English it would mean:

The false propaganda of Sri Arjun Arora. The proud deeds of Sri Mehra who has forgotten his benefactors.

It is a long article under the name of "Sri Vishwa Bharati" and it is written in a scurrilous style. Several extracts from this article have been separately exhibited in the case, I will incorporate only four of these extracts In this decision. They are:

(a) Years before there was another person in this town Sri Kishan Lal Gupta, Advocate, who is still alive. It was he who for the first time started this work and those papers still exist which prove this, he also was a member of the Managing Committee of this Association, but we are glad that he could not sell his honesty and self-respect to Sri Mehra.

(b) The history of the Anti-Tuberculosis Association is a black chapter. The public knows that it is a worthless organization. No propaganda on it behalf has ever been done by the publicity officer of the Association because the private work taken from him by Sri Mehra never leaves him any time to do so.

(c) Truly Sri Mehra is a fearless journalist and his paper 'Citizen' is really a Pramanpatra of his fearless honesty. Has Arjun Arora forgotten those days when Sri Mehra used to go round from door to door on his bicycles and today he resides in a bungalow, keeps a car and his family enjoys he life of a hill station for months? If these affluent circumstances are not due to his fearless journalism, what else could have brought it about

(d) Is this not an arrangement made by Sri Mehra to misappropriate Rs 60,000/-?

7. In my opinion all these four imputations are defamatory and (c) and (d) are highly defamatory. The reader of this article is told that Sri Mehra is such a dishonest person that honest and self-respecting persons cannot co-operate with him, that he abuses his position as the Secretary of the Anti-Tuberculosis Association by monopolising the time of its employees for his private work to the detriment of the Association, that the change for the better in his circumstances is not due to his ostensible job and that he so arranged matters that he could misappropriate Rs. 60,000/-. An ironical expression is used throughout the article and some other profitable source of income suggested in (c) is clarified in (d), I have no doubt in my mind that these imputations are per se defamatory and they indicate that the writer had a crude and biased mind, a coarse and provocative expression and a malicious and vindictive intent.

8. The counsel for the applicant has advanced two contentions before me. Firstly it was contended that these imputations do not contain any libelous matter, as they were made in the heat of a controversy and their publication by the applicant only amounted to permit a party to present its point of view. This contention was, however, raised only in a half hearted manner. It was not pressed and very rightly not pressed. In view of my opinion expressed above, I think this contention is not maintainable at all. The law makes no distinction between unprovoked imputations which are

made in the midst of a controversy or which are made otherwise. One's character or reputation suffers no lesser harm because the defamatory imputations are published to counteract the appreciation expressed by some one in the opposite group.

Did the friends of Dr. Sharma expect that no one should stand up in support of Sri Mehra and raise his voice in protest against their abusive propaganda? Sri Arjun Arora hurled no abuses at any body and no exception can be taken to his language. Those who were responsible for the publication of this article wanted to brush aside all opposition not on the strength of their facts but by their capacity to use invectives. It is, therefore, a misnomer to describe this one sided campaign, of mud-slinging as a controversy.

9. The real contention pressed before me was that these imputations were published in 'good faith' and are covered by exceptions 1, 3 and 9 of Section 499 I.P. Code. Before the benefit of any of these exceptions can be given to an accused, there should be some basis for holding that the accused acted in good faith. The onus of showing that he had reasonable ground for believing the defamatory imputations to be true and was actuated in publishing such a statement not by malicious reasons but by an intelligent zeal for the public interest lies on the person who publishes such an Imputation. Some allowance can be made for the use of intemperate language but not for a language which transgresses all bounds of decency which attributes a corrupt and dishonest character to a person and which makes imputations for which there is no basis.

Where comments are made on the allegation of facts which do not exist, the very foundation of the plea disappears. Unless there is some substantial foundation for an imputation it cannot by any stretch of language be called a "fair comment", which was made in "good faith". In other words an exaggeration can be overlooked but a misrepresentation of fact for the purposes of defamatory comments cannot be permitted. While logical infallibility is not required, the circumstances should show that the maker or the publisher of the defamatory imputation exercised due care and caution. The observations of Cockburn, C.J., in *Campbell v. Spottiswoode* (1863) 32 LJQB 185 still provides the best test for judging whether an imputation was made in good faith or not. Cockburn, C.J., observed:

But it seems to me that a line must be drawn between hostile criticism on a man's public conduct and the motives by which that conduct may be supposed to be influenced; and that you have no right to impute to a man in his conduct as a citizen - even although it be open to ridicule or disapprobation - base, sordid dishonest, and wicked motives, unless there is no much ground for the imputation that a jury shall be of opinion, not only that you may have honestly entertained some mistaken belief upon the subject, but that your belief is well founded and not without cause.

Judged in the light of these observations the conduct of the applicant not only lacks 'good faith' but appears to be clearly malicious. The reasons on the basis of which the applicant contends that he acted in 'good faith' are as follows:

10. Firstly, a letter by Sri V.C. Mehta who was an Engineer attached to the Development Board of Kanpur was placed before me in which it was mentioned that the estimated cost of certain constructions was first Rs. 1,58,000/- and the revised estimate was Rs. 1,13,000/-. The counsel for the defence contends that the applicant did not know about this revised estimate and knew only about the first estimate and, therefore, in a bona fide manner he agreed to publish against the Secretary, who was the executive head of the Association, a charge of so manifestly pulsating the funds of the Association that it gave an opportunity to him to misappropriate a sum of Rs. 50,000/- to Rs. 60,000/-. I have not been able to follow this argument at all. The letter by Sri V.C. Mehta is dated the 23rd April, 1948, and the defamatory article appeared more than four months later on the 29th Of August, 1948. It is difficult to accept the contention of the applicant that while he was aware of the first estimate, he was not aware of the revised estimate, although it must have been submitted more than four months before the article was published. Even if it is accepted that the applicant was not aware of it, it would hardly be a ground for charging the complainant for either misappropriating this amount himself or permitting someone else to misappropriate it. It was a very wild allegation which was not based upon any information, but was made to blindly support the interests of Dr. Sharma and throw mud on Sri Mehra.

11. Secondly, the defence relies upon the minutes of a meeting of the Anti-Tuberculosis Association. In this document it was mentioned that the income and expenditure account for the clinic was referred back for proper auditing and re-submission. I fail to understand how any argument about the good faith or bona fides of the applicant can be based upon such a document. If there was some defect in keeping the accounts and the auditor wanted it to be corrected, it is not possible to hold that any reasonable mind would come to the conclusion that the funds of the Association were being embezzled. Even if he was foolish enough to come to this conclusion, there is no justification for singling out the complainant for being responsible for this embezzlement. It seems very dear to me that because Dr. Sharma was turned out on an embezzlement charge, a counter charge of the same nature was levelled against the complainant.

12. The third piece of evidence placed before me is Ex. D-14, which is the audit report. This document only shows that the funds were embezzled by Dr. Sharma. I cannot understand why this document was filed by the defence at all. It has been suggested to me that since funds were embezzled, therefore, the applicant honestly believed that the complainant was responsible for it and so he agreed to publish an accusation of embezzlement against him. It is not possible for me to accept this argument at all. The audit report shows not only that the funds were embezzled but it also shows that Dr. Sharma was responsible for it. It seems to me that as a criminal charge was pending against Dr. Sharma, a defence was created for him at that stage by alleging that it was not he who committed this embezzlement, but the complainant.

13. Lastly stress was laid on the fact that some meetings of the Association were held in an unconstitutional manner. The evidence of Sri D.S. Bhargava in support of this allegation is extremely partisan in character and I feel no hesitation in rejecting it. Even if it is alleged that some meetings of the Association were held in an unconstitutional manner there is hardly any ground for alleging that the complainant had misappropriated the money of the Association Or was not acting with honesty and integrity. On the other hand the attempt to brighten up the smeared features of

Dr. Sharma by maliciously blackening the Face of the complainant is very clear.

I have already referred to the pamphlets which were printed by the 'Yogantra Press' before this article was published. Even in this article there is an extract which completely gives away the show and unmask the intention of writer and publisher. This extract translated into English runs as follows Sri Arjun Arora has no culture to understand the high position which Doctor Sharma occupies not only in Uttar Pradesh but in the whole country. There are not more than three or four persona who are his equals in Tubercular surgery. Those who suffer from this disease know full well the hard and devoted way in which Dr. Sharma has served the citizens of Kanpur.

This leaves no doubt in my mind that these imputations were made maliciously and not in good faith.

14. It was also suggested in arguments that as the affairs of the Anti-Tuberculosis Association were agitating the minds of the citizens of Kanpur, the applicant as a journalist only gave an opportunity for a party to express its views and if the exceptions to Section 499, I.P. Code are liberally interpreted they would cover his conduct. I am not aware of any law which gives any added privilege or latitude to a journalist which is denied to other citizens. The rights of a smallest to publish comments upon the public conduct of a citizen are no more and no less than that of any other person. There is no warrant either, in law or equity to hold that the exceptions to Section 499 I.P.C. are to be interpreted in a different manner in the case of a journalist.

15. Although this application was only a revision, I Heard it as an appeal. I have discussed above all the points which were raised before me and commented. upon the evidence which was placed before me. Nothing else to show that there was any justification for the applicant to make these malicious charges against the complainant has been placed before me. The evidence which has been discussed above is quite insufficient to support a plea of 'good faith' either under exception 1 or exception 3 or exception 9 of Section 499 I.P. Code. I, therefore, find myself in complete agreement with the findings and conclusions reached by the lower courts.

16. Lastly it was contended before me that the sentence inflicted against the applicant in this case is too severe and that a sentence of fine alone would meet the ends of justice. I am afraid I am unable to accept this contention either. This question was considered by the lower appellate, court also and for good reasons it did not reduce the sentence. A great number of people have a morbid appetite for scurrilous and scandalous news and the yellow press flourishes by catering to it thus filling its own pockets, while all the time it pretends that it is serving public interests. The greater the stink the larger is the demand for the rag which provides that stink.

A journalist who wantonly indulges in besmirching the character and reputation of honest persons and institutions in order to increase the sale of his paper deserves no sympathy. He has chosen to skate on thin ice and so long as it holds, he as a merry time but when the ice breaks he is bound to have a nasty fall. He should not grumble if he is seriously hurt by such a fall. Apart from this the conduct of the applicant has greatly aggravated his offence. He did not avail himself of the first opportunity that was offered to him by the complainant to apologize but stuck to his allegations and

pleaded justification.

The plea of justification is a dangerous plea in a defamation case. It should be risked only when there are good grounds to do so. Where there are no such grounds, this plea will only indicate his malicious intent. He also did not disclose the name of the writer and took shelter behind a spurious principle of journalistic ethics. Any principle which is devised by any group to defeat the ends of justice obviously cannot be accepted as ethical by any Court of law. If there is any such rule of etiquette, it is hardly any better than the other maxim which prevails in the criminal world "Honour amongst thieves". These rules might provide safety and success to groups engaged in particular law breaking activities, but they are certainly against the interests of the community at large. The only conclusion that a Court can draw from such a conduct is that the publisher was in entire agreement with the writer and he was willing to take the full responsibility for the publication and face the consequences himself.

17. Even after the publication of the defamatory article, the applicant continued to publish letters and articles in "Yogantra" against the complainant which were of a defamatory character. These subsequent issues are also exhibited in the case. He even published those articles which taunted Sri Mehra that he had not guts to take the matter to a Court of law as these imputations are true. In an issue of the Yogantra dated the 3rd of October, 1948, (Ex. P-19) there was another article under the name of Sri Vishwa Bharati. The article was entitled "Lala Ram Ratan Gupta Ki bagli chalen". It was alleged in this article that Lala Ram Ratan Gupta was backing the complainant and it included the following extract:

Notices for committing defamation have been served through a lawyer to some persons, and some others are going to be served with similar notices but so far enough courage could not be mustered to file a case in court. Sri Mehra knows his own position very well, We really wish that somehow with the help of Lalaji's money he may come before a Court and then we would get an opportunity to present the entire account of his deeds which are so far not Shown to the public at large.... A manlike Sri Mehra has not the guts to stand even for two minutes before 'Truth'. How can he dare to come out in the open when his sieve has no less than 72 holes of all kinds?

It is not necessary to refer to other subsequent publications. The extract quoted above is enough to show the exterme malice that was behind the defamatory imputations.

18. The courts in India, in my opinion, have been taking too lenient a view of offences of this type. The character and reputation of a person is no less important than his body and if those who cause severe injuries to his body are normally sent to prison, there is no reason why those who maliciously cast grave aspersions against his character and reputation should be treated differently and merely fined.

A sentence of fine really amounts to no punishment in the case of a journalist who owns a press because he immediately makes up the loss by the sale proceeds of a second scurrilous publication. It

merely encourages him to continue this type of offence as it enlarges the sale of the rag which he owns. I, therefore, think that both the trial Court and the lower appellate Court were right in inflicting a sentence of imprisonment in this case.

19. I, therefore, maintain the sentences pass-ed by the lower courts and dismiss this application in revision. The applicant is on bail. He should surrender forthwith to serve Out the sentence and should also deposit the fine, if it has not been deposited.

20. Prayer for leave to appeal to the Supreme Court is rejected as there is no doubtful point of law involved in this case.