

Munnalal vs D.P. Singh on 23 February, 1950

Equivalent citations: AIR1950ALL455, AIR 1950 ALLAHABAD 455

ORDER

P.L. Bhargava, J.

1. Shri D.P. Singh, who was at one time Collector and District Magistrate of Gorakhpur, has filed a complaint under Section 500, Penal Code against Shri Munna Lal, the local correspondent of certain newspapers at Gorakhpur. In the complaint, it is alleged that the accused tried to interfere with matters connected with the administration of the district and approached the complainant to seek undue favour of preferential treatment for himself and others, and had to go back disappointed. It is further alleged in the complaint that, in consequence of this disappointment, the accused started carrying on defamatory propaganda against the complainant and the district administration, with a view to lower the complainant in the estimation of the public and with the ultimate object of bringing an indirect pressure upon him, in his capacity of the District Magistrate, to yield to the persuasions of the accused. It is also alleged in the complaint that, in pursuance of his objectionable propaganda against the complainant, the accused maliciously made certain baseless imputations against him in the presence of a number of persons intending, knowing and having reason to believe that the imputations would harm the complainant's reputation and lower him in the estimation of the public.

2. The case is pending in the Court of the Additional District Magistrate of Gorakhpur. So far only the complainant has been examined in the case. While the complainant was being cross-examined, the following questions were put to him and disallowed by the learned Magistrate on the ground that they were irrelevant and also because, he thought, "it cannot ever be the purpose of the provisions of the Evidence Act governing cross-examination to make the forum of a case of alleged defamation the forum for several more defamatory allegations."

Q. 1--"Kya apne Basti Zila men apne chacha key namsey yah khandan kay kisi doosre admi ka nam sey zamin lekar farm kar rakha hai aur yah zamin apne jab ap Gorakhpur ka A. D. M. yah D. M. the leya ?"

Q. 2--"Did the representatives of the public meet you and say that in Gorakhpur B. S. S. and Hindu Mahasabha activities were substantial and the public were in fear and to arrest their workers ?"

Q. 3--"Did you disagree with the views of the District Supply Advisory Committee in connection with Cloth and Yarn license recommendations or decision I give you the instance of Bal Bhanddra Prasad Bankas's case ?"

Q. 4--"Was a complaint filed by Gauri Shankar Misra in your Court ?"

Q. 5--"Did you take Shri Nisarullah's land under C. U. Act when the entry in the papers was that it was a tenancy land ?"

Q. 6--"Did Shri Guptar Misra Vakil in January 1948 criticise the administration of this district in an article to the Press ?"

3. The accused filed a revision in the Court of the Sessions Judge of Gorakhpur challenging the validity of the Magistrate's order disallowing the questions. The revision came up for hearing, before the Additional Sessions Judge of Gorakhpur; and it was contended before him that the object of the first five questions was to show that the complainant was an unscrupulous person and did not conscientiously follow the Government orders, and that the object of the last question was to show that the complaint against the applicant was not bona fide, as other persons had also criticised the complainant and no action had been taken against them- A decision of this Court in *Laidman v. Hearsay*, (1885) A. W. N. 272 : (7 ALL 906) and another decision of the Lahore High Court in *Devi Dial v. Crown*, A. I. R. (10) 1923 Lah. 225 : (24 Cr. L. J. 693) were cited before him.

5. Mr. S. C. Asthana, who holds the brief of Government advocate, has supported the reference and made no attempt to dispute the relevancy of the questions.

6. On behalf of the accused, Mr. Z. H. Lari has appeared to support the reference. He has contended that the questions' were relevant to show that the complaint was not a bona fide one and that the complainant's character and dealing with the public were such that the imputations were not likely to harm his reputation or lower him in the estimation of the public.

7. In disallowing the questions the main consideration, which seems to have weighed with the learned Magistrate, was that having made one imputation the accused was not entitled to make other imputations likely to defame the complainant. He, however, failed to consider what the accused was entitled to establish in his defence. Apart from denying or attempting to justify the alleged imputations, he was entitled to rebut the complainant's case that the imputation was likely to harm his reputation. He could do that by showing that the complainant's reputation was, in view of certain acts of omission or commission already at a low ebb. He was also entitled to show that the complaint was not bona fide.

8. Mr. Lari has referred to me the two cases relied upon by the learned Sessions Judge, and they do support his view point. In *Laidman v. Hearsay* (1885) A. W. N. 272 : (7 ALL. 906), the complainant was a judicial officer, who was alleged to have used offensive expressions from the Bench for some suitors, whose case was fixed before him and who entered his court room on the date for hearing in the case, in the presence of the accused. The latter wrote a letter to the Government of India and the Provincial Government and published the same. In the letter he mentioned the alleged incident, criticized the conduct of the complainant and said that it was not only illegal and cruelly oppressive but also ungentlemanly and cowardly in the extreme. He also stated that that was not an isolated case of the complainant abusing respectable persons in his Court. He further alleged that the

complainant had deliberately postponed the case of the suitors whom he had absued, with the view to harass and cause loss to them. The accused was prosecuted for the criminal offence of defamation. When the complainant and his witness were being cross-examined, questions were put to them about the complainant having used offensive expression for suitors on other occasions. The questions were objected to on the ground that inquiry against the accused related to a particular incident. The questions were allowed by Petheram C. J., before whom the trial was proceeding in the High Court, on the ground that they were relevant to the fact in issue namely whether the complainant had any character or reputation to be defamed.

9. In the other case, *Devi Dial v. Crown*, A. I. R. (10) 1923 Lab. 225: (24 Cr. L. J. 693), the imputation was that the complainant, an Extra Assistant Commissioner, had compelled the accused to pay bribe to avoid prosecution for a certain offence. The accused was convicted and his conviction was upheld. One of the grounds urged before the High Court in revision was that the accused was not allowed to produce evidence as to the complainant having taken bribes on other occasions and general evidence as to the complainant's reputation. This contention was upheld and it was observed:

"It is settled law that in an action for damages for libel or slander evidence may be given in mitigation of damages to show that the plaintiff had general bad character, *Scott v. Sampson*, (1882) 8 Q. B. D. 491 : (51 L. J. Q. B. 380). and *Odgers on Libel and slander*, 5th Edition, page 402). Similarly in criminal: prosecution where it is essential, in order to constitute the offence of defamation, that the person who makes or publishes the imputation complained of should intend to harm, or know or have reason to believe that the imputation will harm the reputation of the person concerning whom it is made or published, the question what reputation the complainant had, is irrelevant. If the petitioner in the present case were able to prove that the complainant had notoriously bad reputation as a bribe-taker it might reasonably be argued that the imputation made as to his having taken a bribe on the particular occasion in question, even if false, could not damage his reputation as he had none to lose; and in any case proof of the complainant's bad reputation would affect the sentence to be passed in case of conviction."

10. The English law on the point under consideration has been thus summed up in *Halsbury's Laws of England*, vol. 20, Edn. 2 at p. 513:

"An action of libel or slander is an action for damages for injury to the reputation of the plaintiff. Therefore the defendant is entitled by the common law to give general evidence in such an action of the plaintiff's bad reputation. But the defendant is not entitled to adduce evidence of particular facts as tending to show the character and disposition of the plaintiff, nor is he entitled to give evidence of rumours and suspicions to the same effect as the defamatory matter complained of. The same considerations and limitations apply to cross-examination designed to the same end."

11. The law of libel is generally applicable alike to civil actions and to criminal prosecutions for defamatory libel. Consequently, the evidence which may be relevant in mitigation of damages in a civil action, may also be relevant in mitigation of sentence in a criminal trial.

12. One of the main ingredients of the offence of defamation, as defined in Section 499, Penal Code, is that the imputation must have been made with the intention of harming, or with the knowledge or reason to believe that it would harm the reputation of the person concerning whom it is made. While the complainant is entitled to lead evidence to prove this ingredient, the accused is entitled to produce evidence, or put questions in cross-examination of the complainant or his witnesses, to rebut it. In so doing, however, he cannot lead evidence of or put questions relating to rumours and suspicions to the same effect as the defamatory matter complained of, or particular facts tending to show the general character and disposition of the complainant. That being so, an important duty rests upon the trial Court to see, on the one hand, that the accused is not prejudiced in any manner by shutting out evidence, which he is entitled to produce, or disallowing questions, which he is entitled to put ; and, on the other hand, that the complainant, who complains of defamation, is not unnecessarily harassed. The learned Magistrate should, therefore, have considered the questions before disallowing them, from this point of view.

13. I have considered the questions, which were disallowed by the learned Magistrate. The questions which can have some bearing on the complainant's reputation are the first and the third questions. These questions suggest that the complainant had abused his position as District Magistrate. The first question does so clearly; and the third question is capable of that interpretation. It says that the complainant had issued a licence to Balbhadra Prasad Banka in disregard of the views of the District Supply Advisory Committee, thereby suggesting that he had shown him undue favour. It is true that as District Magistrate he was the final authority in the matter; but the accused seems to suggest that in the particular instance cited by him the complainant was moved by extraneous considerations. If the accused is able to establish these allegations, they will have an important bearing on the question of the complainant's reputation as District Magistrate.

14. The second question relates to certain representations made by the public, regarding the action to be taken against the Rashtriya Swayam Sewak Sangh and the Hindu Mahasabha activities; and it is said that the complainant did not take any action on that representation. The fourth and the fifth questions seem to relate to his judicial or executive functions. These questions seem to have no bearing on the present case.

15. It is said that the last question was intended to show that the complaint was not a bona fide one, inasmuch as the complainant had taken no action when other persons had criticised him or his administration. The question suggests that in January 1948 Shri Guptar Misra Vakil had criticised the complainant's administration of the district in the press. It does not appear how that fact would be relevant to the question whether the present complaint is bona fide or not. A district officer may not take notice of a particular criticism of his administration in the press ; but, there is nothing to prevent him from taking action against persons who attack his personal character or integrity.

16. The learned Sessions Judge has rightly pointed out that the accused is entitled to show that he expressed his opinion in good faith and the case falls within the second and third exceptions to Section 499, Penal Code. The alleged imputation was that the complainant while presenting a purse to the Hon'ble Minister for Revenue had announced that the purse contained Rs. 11,000 while it actually contained only Rs. 4,500 and that the complainant had failed to explain what happened to the balance of Rs. 6,500. The accused may be entitled to show that these imputations were made in good faith ; but none of the questions, which were disallowed tends to show that; and as such the questions cannot be made relevant to that fact.

17. In my opinion, therefore, only the first and the third questions were relevant and they should have been allowed by the learned Magistrate.

18. The reference is, therefore, accepted and the Magistrate's order disallowing the first and the third questions is set aside. As the examination of the complainant is over, he will now be recalled and an opportunity will be given to the accused to put the said questions and the questions which may arise from the answers given to them. Before allowing the third question to be put to the complainant the accused would be asked to state clearly whether by that question he intends to show that the complainant in granting license to Balbhadra Prasad Banka was moved by extraneous considerations.