K.K. Mishra vs The State Of Madhya Pradesh on 13 April, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2171, 2018 (6) SCC 676, AIR 2018 SC(CRI) 790, (2019) 1 MH LJ (CRI) 437, (2018) 2 PAT LJR 317, (2018) 2 CRILR(RAJ) 321, (2018) 2 BOMCR(CRI) 571, (2018) 71 OCR 477, (2018) 2 MADLW(CRI) 17, (2018) 2 RECCRIR 831, 2018 (3) SCC (CRI) 397, (2018) 2 UC 993, (2018) 5 SCALE 607, (2018) 2 ALD(CRL) 498, (2018) 104 ALLCRIC 625, (2018) 188 ALLINDCAS 132 (SC), 2018 CRILR(SC&MP) 321, (2018) 126 CUT LT 742, (2018) 3 ALLCRILR 272, 2018 CALCRILR 3 265, (2018) 2 CURCRIR 293, (2018) 2 ALLCRIR 2005, 2018 CRILR(SC MAH GUJ) 321, (2019) 2 CALLT 17, (2018) 2 JLJR 307, AIRONLINE 2018 SC 21

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Bench: Mohan M. Shantanagoudar, R. Banumathi, Ranjan Gogoi

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO(S) 547 OF 2018
[ARISING OUT OF SPECIAL LEAVE PETITION
(CRIMINAL] NO.6064 OF 2017]

K.K. MISHRA ….APPELLANT(S)

VERSUS

THE STATE OF MADHYA PRADESH
& ANR. …RESPONDENT(S)

JUDGMENT

RANJAN GOGOI, J.

1. Leave granted.

2. By the order impugned, the High Court of Madhya Pradesh has negatived the challenge made by the appellant to the maintainability of a criminal prosecution/proceeding instituted under Section 199(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) alleging

commission of offences under Sections 499 and 500 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") against the Hon'ble Chief Minister of the State of Madhya Pradesh. The complaint has been filed by the Public Prosecutor on 24th June, 2014 before the District & Sessions Judge, Bhopal (Madhya Pradesh) after receipt of sanction from the Competent Authority of the State Government on the very same day i.e. 24th June, 2014.

3. At the very outset, we deem it necessary to put on record that during the pendency of the present proceedings the prosecution against the accused appellant has been concluded by the learned Special Judge, Prevention of Corruption Act, Bhopal, Madhya Pradesh by judgment and order dated 17th November, 2017 in Sessions Trial No.573 of 2014. The accused appellant has been found guilty of the commission of the offence punishable under Section 500 IPC and, accordingly, he has been sentenced to undergo simple imprisonment for two years with fine of Rs.25,000/- (Rupees twenty thousand). We are told at the Bar that an appeal against the said order is presently pending before the High Court of Madhya Pradesh and the accused appellant is presently on bail.

4. At this stage, we would like to recapitulate our order dated 5th January, 2018 reiterating that, notwithstanding the conviction of the accused appellant, this Court would like to consider the question of the validity of the very initiation of the prosecution against the appellant.

5. While Section 499 IPC defines and deals with the offence of defamation, punishment for the said offence is provided by Section 500 IPC. In the present case, the alleged offence of defamation against the Hon'ble Chief Minister of the State of Madhya Pradesh, according to the prosecution, has been committed by the accused appellant on account of certain statements made with regard to the Hon'ble Chief Minister in the course of a Press Conference that the appellant had addressed as a Chief Spokesperson of the Indian National Congress, Madhya Pradesh organized on 21st June, 2014 at the MP Congress Committee, 1461 Indra Bhawan Shivaji Nagar, Bhopal.

6. Though a reading of the transcript of the Press Conference, which has been placed on record, may indicate a reference to the Hon'ble Chief Minister in respect of several acts and events, for the purposes of the present case we will, necessarily, have to confine ourselves to only three statements allegedly made in the Press Conference with reference to the Hon'ble Chief Minister. This is because in the order granting sanction/permission dated 24th June, 2014 for filing of a complaint under Section 199 (2) Cr.P.C. it is only the aforesaid three statements which have been taken note of as being defamatory and, therefore, taken cognizance for purpose of grant of sanction/permission under Section 199(2) of the Cr.P.C. The aforesaid three statements mentioned in the order dated 24th June, 2014 granting sanction/permission are as follows:

"1. 19 amongst the Transport Inspection appointed in Madhya Pradesh are from the in-laws house Gondiya (Maharashtra) of Chief Minister Shivraj Singh Chouhan.

2. Conversation has been made with the accused persons of the Vyapam Scam from the mobile of Sanjay Chouhan son of Phoolsingh Chouhan-Mama of the Chief Minister Sh. Shivraj Singh Chouhan.

3. Conversation has been made from the Chief Minister's house by an influential woman through 139 phone calls with the accused of Vyapam Scam Nitin Mahendra, Pankaj Trivedi, Lakshmikant Sharma."

7. Section 199(2) Cr.P.C. provides for a special procedure with regard to initiation of a prosecution for offence of defamation committed against the constitutional functionaries and public servants mentioned therein. However, the offence alleged to have been committed must be in respect of acts/conduct in the discharge of public functions of the concerned functionary or public servant, as may be. The prosecution under Section 199 (2) Cr.P.C. is required to be initiated by the Public Prosecutor on receipt of a previous sanction of the Competent Authority in the State/Central Government under Section 199 (4) of the Code. Such a complaint is required to be filed in a Court of Sessions that is alone vested with the jurisdiction to hear and try the alleged offence and even without the case being committed to the said court by a subordinate Court. Section 199(2) Cr.P.C. read with section 199(4) Cr.P.C., therefore, envisages a departure from the normal rule of initiation of a complaint before a Magistrate by the affected persons alleging the offence of defamation. The said right, however, is saved even in cases of the category of persons mentioned in sub-section (2) of Section 199 Cr.P.C. by sub-section (6) thereof.

8. The rationale for the departure from the normal rule has been elaborately dealt with by this Court in a judgment of considerable vintage in P.C. Joshi and another vs. The State of Uttar Pradesh1 [paragraph 9]. The core reason which this Court held to be the rationale for the special procedure engrafted by Section 199(2) Cr.P.C. is that the offence of defamation committed against the functionaries mentioned therein is really an offence committed against the State as the same relate to the discharge of public functions by such functionaries. The State, therefore, would be rightly interested in pursuing the prosecution; hence the special provision and the special procedure.

1 AIR 1961 SC 387

P.C. Joshi (supra), however, specifically dealt with the provisions of Section 198B of the Code of Criminal

Procedure, 1898 ("old Code") which are pari materia with the provisions of Section 199 of the Cr.P.C. ("new Code").

9. The above would require the Court to consider as to whether the statements made by the accused appellant in the Press Conference which have been taken note of in the order dated 24th June, 2014 granting sanction/ permission can legitimately be said to be attributable or connected with the discharge of public functions of the office of the Hon'ble Chief Minister. In other words, whether the

said statements have any reasonable nexus with the discharge of Official duties by the Hon'ble Chief Minister.

10. The problem of identification and correlation of the acts referred to in an allegedly defamatory statement and those connected with the discharge of public functions/official duties by the holder of the public office is, by no means, an easy task. The sanction contemplated under Section 199(4) Cr.P.C. though in the opposite context i.e. to prosecute an offender for offences committed against a public servant may have to be understood by reference to the sanction contemplated by Section 197 Cr.P.C. which deals with sanction for prosecution of a public servant. There is a fair amount of similarity between the conditions precedent necessary for accord of sanction in both cases though the context may be different, indeed, the opposite. While dealing with the requirement of sanction under Section 197 Cr.P.C. this Court in Urmila Devi vs. Yudhvir Singh2 had taken the following view which may have some relevance to the present case. 2 (2013) 15 SCC 624 "59. The expression "official duty" would in the absence of any statutory definition, therefore, denote a duty that arises by reason of an office or position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his official duty or purporting to act in the discharge of such a duty arises for consideration, the court will first examine whether the accused was holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence that the protection under Section 197 CrPC may be available and not otherwise. Just because the accused is a public servant is not enough. A reasonable connection between his duties as a public servant and the acts complained of is what will determine whether he was acting in discharge of his official duties or purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant within the meaning of that expression under Section 197 of the Code."

11. If the allegedly defamatory statements, already extracted, in respect of which sanction has been accorded to the Public Prosecutor to file the complaint against the appellant under Section 199 (2) Cr.P.C. by the order dated 24th June, 2014 are to be carefully looked into, according to us, none of the said statements, even if admitted to have been made by the appellant, can be said to have any reasonable connection with the discharge of public duties by or the office of the Hon'ble Chief Minister. The appointment of persons from the area/place to which the wife of the Hon'ble Chief Minister belongs and the making of phone calls by the relatives of the Hon'ble Chief Minister have no reasonable nexus with the discharge of public duties by or the office of the Hon'ble Chief Minister. Such statements may be defamatory but then in the absence of a nexus between the same and the discharge of public duties of the office, the remedy under Section 199(2) and 199(4) Cr.P.C. will not be available. It is the remedy saved by the provisions of sub-section (6) of Section 199 Cr.P.C. i.e. a complaint by the Hon'ble Chief Minister before the ordinary Court i.e. the Court of Magistrate which would be available and could have been resorted to.

12. There is yet another dimension to the case. In Subramanian Swamy vs. Union of India3 one of the grounds on which the challenge to the constitutional validity of Section 499 and 500 IPC was sustained by this Court was the understanding that Section 199(2) and 199(4) Cr.P.C. provide an inbuilt safeguard which require the Public Prosecutor to scan and be satisfied with the materials on

the basis of which a complaint for defamation is to be filed by him acting as the Public Prosecutor. In this regard, an earlier decision of this Court in Bairam Muralidhar vs. State of Andhra Pradesh4 while dealing with Section 321 Cr.P.C. (i.e. Withdrawal from prosecution) was considered by this Court and it was held as follows:

> 3 (2016) 7 SCC 221 4 (2014) 10 SCC 380 "...It is ordinarily expected that the Public Prosecutor has a duty to scan the materials on the basis of which a complaint for defamation is to be filed. He has a duty towards the court. This Court in Bairam Muralidhar Vs. State of A.P [(2014) 10 SCC 380] while deliberating on Section 321 CrPC has opined that the Public Prosecutor cannot act like a post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion. It further observed that he cannot remain oblivious to his lawful obligations under the Code and is required to constantly remember his duty to the court as well as his duty to the collective. While filing cases under Sections 499 and 500 IPC, he is expected to maintain that independence and not act as a machine." (underlining is ours)

13. In the proceedings before the learned trial Court, the Public Prosecutor who had presented the complaint under Section 199(2) Cr.P.C. was cross-examined on behalf of the accused appellant. From the relevant extract of the cross-examination of the Public Prosecutor, which is quoted below, it is clear to us that the Public prosecutor had admitted the absence of any scrutiny by him of the materials on which the prosecution is sought to be launched. In fact, the Public Prosecutor had gone to the extent of admitting that he had filed the complaint against the accused appellant on the orders of the State Government. The relevant extract of the cross-examination of the Public Prosecution is as under:

xxx 7.3.2015 "47. It is correct to say that I have not given any proposal in capacity of public prosecutor to the Government that I want to file a complaint against Shri K.K. Mishra in connection with giving defamatory statement. It is correct to say that I have filed the present case in the official capacity of Public Prosecutor. It is correct to say that I have not filed the present complaint on behalf of the Government (Volunteered to say) that I have filed the above case being a Public Prosecutor. It is correct to say that on the order of the Government, I have filed the complaint. If the Government had not directed me, then, I would not have filed a complaint as a Public Prosecutor.

48. xxxxxxxxxx

49. xxxxxxxxxx

50. Before receiving the permission, I have not seen any document and did not consider whether complaint has to be filed or not. It is correct to say that I have not submitted any document in connection with this fact that Jagdish Devda was a Minister in the Government of Madhya Pradesh and Shri Shivraj Singh Chouhan was positioned as Hon'ble Chief Minister of Government of Madhya Pradesh on the date of Press Conference (Voluntarily state that) the accused himself, while addressing Shri Shivraj Singh Chouhan as Chief Minister, has made all the allegations.

51. It is correct to say that before filing the complaint, I have not given any legal notice to the accused in connection with this fact that whether objections were raised against the Hon'ble Chief Minister in Press Conference or not."

14. The testimony of the Public Prosecutor in his cross-examination effectively demonstrates that the wholesome requirement spelt out by Section 199(2) and 199(4) Cr.P.C., as expounded by this Court in Subramanian Swamy (supra), has not been complied with in the present case. A Public Prosecutor filing a complaint under Section 199 (2) Cr.P.C. without due satisfaction that the materials/allegations in complaint discloses an offence against an Authority or against a public functionary which adversely affects the interests of the State would be abhorrent to the principles on the basis of which the special provision under Section 199(2) and 199(4) Cr.P.C. has been structured as held by this Court in P.C. Joshi (supra) and Subramanian Swamy (supra). The public prosecutor in terms of the statutory scheme under the Criminal Procedure Code plays an important role. He is supposed to be an independent person and apply his mind to the materials placed before him. As held in Bairam Muralidhar case supra) ".....He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective." In the present case, the press meet was convened by the appellant on 21.06.2014. The government accorded sanction to the public prosecutor to file complaint under Section 500 IPC against the appellant on 24.06.2014. As seen from the records, the complaint was filed by the public prosecutor against the appellant on the very same day i.e. 24.06.2014. The haste with which the complaint was filed prima facie indicates that the public prosecutor may not have applied his mind to the materials placed before him as held in Bairam Muralidhar case (supra). We, therefore, without hesitation, take the view that the complaint is not maintainable on the very face of it and would deserve our interference.

15. On the conclusions that have been reached by us, as indicated above, the conviction of the accused appellant and the sentence imposed would not have any legs to stand. The very initiation of the prosecution has been found by us to be untenable in law. Merely because the trial is over and has ended in the conviction of the appellant and the matter is presently pending before the High Court in appeal should not come in the way of our interdicting the same. The requirements of justice would demand that we carry our conclusions to its logical end by invoking our special and extraordinary jurisdiction under Article 142 of the Constitution of India. Consequently, we allow this appeal; quash the impugned prosecution/proceedings registered and numbered as Sessions Session Trial No.573 of 2014; and set aside the order dated 17th November, 2017 passed by the learned Special Judge, Prevention of Corruption Act, Bhopal, Madhya Pradesh in Sessions Trial No.573 of 2014 convicting the accused appellant under Section 500 IPC and sentencing him as aforesaid. The appeal pending before the High Court against the order dated 17th November, 2017 passed by the learned Special Judge, Prevention of Corruption Act, Bhopal, Madhya Pradesh in Sessions Trial No.573 of 2014 shall also stand closed in terms of the present order. Bail bond, if any shall stand discharged accordingly.

16. The appeal is allowed in the above terms.

....., J [RANJAN GOGOI] ....., J [R. BANUMATHI] ....., J [MOHAN M. SHANTANAGOUDAR] NEW DELHI APRIL 13, 2018.