R.P. Kapoor vs Pratap Singh Kairon on 6 January, 1965

Equivalent citations: AIR1966ALL66, 1966CRILJ115, AIR 1966 ALLAHABAD 66, 1965 ALLCRIR 229

JUDGMENT

Gyanendra Kumar, J.

1. This is an application under Section 476 of the Code of Criminal Procedure by R. P. Kapur, I.C.S., who was previously Commissioner of Ambala Division against Pratap Singh Kairon, former Chief Minister of Punjab.

2. Briefly stated the facts leading to this case are that one Madan Lal Sethi, Advocate of Chandigarh, had lodged a first information report against the applicant and his mother-in-law Kaushalya Devi on the allegations that in the beginning of 1958, it was represented to him by the applicant that his mother-in-law Kaushalya Devi owned a piece of land in village Mohammadpur Munirka situate on the out-skirts of Delhi and had a right to sell the same. In pursuance of that representation, Kaushalya Devi executed a sale-deed in favour of the wife of Madan Lal Sethi. The sale consideration of Rs. 20,000 was paid by Sethi by means of two cheques of Rs. 10,000 each. Later on, he found that he had been cheated by R.P. Kapur and/or his mother-in-law Kaushalya Devi, inasmuch as none of them was the owner of the land, which had already been acquired by the Government under the Land Acquisition Act.

In view of the fact that R.P. Kapur was a senior officer of the Government, the matter was referred to the Chief Minister, who by his order, dated 16-7-1959 directed the prosecution of the applicant. In consequence, R.P. Kapur was suspended and arrested along with his mother-in-law. The criminal case started against H.P. Kapur and Kaushalya Devi in July, 1959, in the Court of the Additional District Magistrate, Ambala. But on the application of R.P. Kapur the case was transferred by the Supremo Court to the Court of the Additional District Magistrate (Judicial), Saharanpur, who on 17-6-1961 framed charges against the said accused under Sections 120B and 420 of the Indian Penal Code. Against that order, the accused persons instituted Criminal Revn. No. 1402 of 1962 in this Court, which was allowed by us by our order, dated 10-12-1962, on the finding that there was no ground for presuming that the said accused had committed any offence of cheating or conspiracy to cheat, and they were, therefore, entitled to discharge in accordance with the provisions of Clause (2) of Section 251-A of the Code of Criminal Procedure. R.P. Kapur has now filed this application, dated 1-1-1963 under Section 476 of the Code of Criminal Procedure with the prayer that an inquiry by a First Class Magistrate be ordered for the prosecution of the opposite party under Sections 193, 195, 196, 199, 200 and 211 of the Indian Penal Code.

3. The case of the applicant, in brief, is that Madan Lal Sethi, Advocate, had lodged the first information report on 10-12-1958 with the Inspector-General of Police, Punjab, and had handed over its copy to the Secretary to the Chief Minister but the version of facts contained in the said report did not make out a criminal case against the applicant and his mother-in-law, with the result that the said report was made to disappear and was replaced by another so called first information report, which was registered on 23-12-1958. It is further alleged that the opposite party was displeased with the applicant and had ill-will against him, and in order to cause him injury, the opposite party was inspired to bring about his false prosecution and arrest, knowing that there was no just or lawful ground for the same.

4. We decided to hold a preliminary inquiry in the matter and issued notice to the opposite party, who has denied the allegations made against him and has filed his own affidavit in reply, saying that Sethi had not handed over to him or in his office any first information report or complaint on 10-12-1958. It is further contended that Madan Lal Sethi had also not lodged any first information report with the Inspector-General of Police on 10-12-1958, but it was handed over to the Additional Inspector-General of Police sometime between 13th and 22nd December 1958, which was registered on 23-12-1958. The case of the opposite party further is that there was no original first information report apart from the carbon copy, dated 10-12-1958 which was brought on the record of the- trial Court; so there was no question of its replacement by another report. The opposite party also averred that he did not bear any malice or ill-will towards the applicant and had acted bona fide in ordering his prosecution, inasmuch as the Legal Remembrancer, Punjab, had opined that a prima facie criminal case had been made out against the applicant.

5. In support of their respective cases, the parties have also filed a number of affidavits of the persons, who are alleged to have knowledge about the facts and controversy leading to the prosecution of the applicant and his mother-in-law. At the request of the applicant, we had requisitioned certain records and files from the Punjab Secretariat. The contents of the said files have not been formally proved, nor was it necessary to do so at this stage of preliminary inquiry. Both the parties have freely referred to those records and have tried to interpret the same in support of their respective contentious.

6. It may be mentioned at the outset that the applicant has failed to show how the provisions of Sections 196, 199 and 200 I. P. C. can be attracted in the present case. We shall, therefore, leave them out from consideration.

7. Before examining the case on merits, the first thing which has to be determined is the scope and ambit of this preliminary inquiry under Section 476 of the Code of Criminal Procedure, the relevant portion whereof may be quoted with advantage:--

> "When any....criminal Court is,...on application made to it in this behalf...of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Section 195, Sub-section (1), Clause (b) or Clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry....as it thinks necessary, record a finding to

> that effect and make a complaint thereof in writing.... and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of such accused before such Magistrate.
>
> Provided that, where the Court making a complaint is the High Court, the complaint may be signed by such officer of the Court as the Court may appoint."

8. It may be noted that Sections 193, 195 and 211 of the Indian Penal Code are some of those sections which have been referred to in Section 195(b) of the Code of Criminal Procedure. We have, therefore, to determine whether it is expedient in the interests of justice that a further inquiry should be made by a Magistrate for prosecution of the opposite party under Sections 193, 195 and 211 of the Indian Penal Code. There can be no speck of doubt that if there is prima facie material to think that the opposite party was really responsible for the false prosecution and arrest of the applicant, it would be expedient in the interests of justice to order that further inquiry should be made into the offences alleged against the opposite party, inasmuch as it had resulted in the deprivation of the liberty of a citizen, who also happened to be a high officer of the Government. It has to be borne in mind that the term 'inquiry' as defined in Section 4 (1) (k), Cr. P. C. does not include a 'trial' but only refers to a judicial inquiry into the matter by a Magistrate or other Court.

9. It has next to be seen if a prima facie case has been made out upon the evidence and materials on record for enquiring further into the question whether the offences alleged against the opposite party appear to have been committed by him, so as to call for the lodging of a complaint. At the moment, this Court has not to express any opinion on the guilt or innocence of the opposite party. The use of the words "appears to have been committed" in Section 476 or the: Code of Criminal Procedure is significant and it merely shows that at the present stage there should be prima facie material before this. Court to indicate that the offences complained, of are likely to have been committed by the opposite party.

10. Analysing the scope of the alleged offences against the opposite party, viz., of Sections 193, 195 and 211 of the Indian Penal Code, it has to be noted that Section 195 is in a way an aggravated form of the offence contemplated under Section 193 of the Indian Penal Code. The last named Section inter alia, provides that whoever intentionally fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine; while Section 195 provides that whoever fabricates false evidence intending thereby to cause or knowing it to be likely that he will thereby cause, any person to be convicted of an offence punishable with imprisonment for life or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

11. Thus, if there is prima facie evidence to show that originally Madan Lal Sethi had lodged a first information report on 10-12-1958 with the Inspector General of Police a copy whereof was also given to the Secretary of the opposite party, and the same had been subsequently replaced by another report on or about 23-1.2-1958, intending thereby to cause or knowing it to be likely that he will thereby cause the applicant to be convicted of an offence of cheating and/or conspiracy to cheat

within the meaning of Sections 420 and 120B of the Indian Penal Code, the opposite party would be guilty of offence under Sections 193/195 and 211 of the Indian Penal Code, inasmuch as it was he who had admittedly ordered the prosecution of the applicant on the basis of the alleged second report. It has also been conceded by the learned Advocate General, appearing on behalf of the opposite party, that it would be so.

12-15. Now let us sec what is the prima facie evidence and probable circumstances in support of the allegations (a) that Madan Lal Sethi had originally filed his first information report on 10-12-58, and (b) that the same had been lodged with the Inspector General of Police. (After considering evidence in paras 12 to 15 inclusive, the Court held that the existing first information report, which was admittedly said to have been filed on some date between the 13th and 23rd December 1958, was not the original first information report, but its substitute, though its date had been allowed to be shown as 10-12-1958. If that was the position, then offences under Sections 193/195 of the Indian Penal Code clearly appeared to have been committed in the case. At any rate, this was a matter which further needed to be inquired into by a Magistrate).

16. Coming to the question whether a prima facie case under Section 211 of the Indian Penal Code has also been made out against the opposite party, we have first to consider the scope of that Section, the relevant portion whereof reads:--

> "Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person, with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; ....."

The ingredients of Section 211 I. P. C. and malicious prosecution are parallel. The words "with intent to cause injury to any person, institutes any criminal proceeding, knowing that there is no just or lawful ground" as used in Section 211 of the Indian Penal Code are more or less equivalent to the expression 'maliciously prosecutes any person without any reasonable or probable cause' which is the foundation of an action for malicious prosecution. The standard and measure for judging 'malice' and 'want of reasonable or probable cause' have been laid down in various authorities both English and Indian.

17. In Hicks v. Faulkner, (1881) 8 QBD 167, Hawkins, J., delivering the judgment of the Court expressed himself as follows at p. 171:--

> "Now I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed."

18. The above observations were fully approved in Herniman v. Smith, (1938) 1 All ER 1 at p. 8.

19. Likewise in Broad v. Ham, (1839) 5 Bing NC 722 at p. 725 per Tindal, L.J.:--

> "Reasonable cause has been said to be such us would operate on the mind of a discreet man, and probable cause such as would operate on the mind of a reasonable man."

20. In Huntley v. Simson, (1857) 2 H and N 600 and Colson v. Radclyffe, (1887) 4 TLR 59, it was held that where the prosecutor knew that the acts on which the prosecution was founded were done openly and in assertion of a legal right, there is in general no reasonable and probable cause for prosecution.

21. In Brown v. Hawkes, (1891) 2 QBD 718, which was also a case of malicious prosecution, Cave, J. observed as under:

> "Now malice, in its widest and vaguest sense, has been said to mean any wrong or indirect: motive; and malice can be proved, either by showing what the motive was and that it was wrong, or by showing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor....."

In the same case A. L. Smith, J., observed:

> "The question which I have now to determine is ..... whether there was evidence upon which reasonable men could find ..... that the plaintiff had committed an offence..... Upon the question of reasonable and probable cause, in my judgment, the judge was right in asking the jury whether the defendant took reasonable care to inform himself of the true facts before giving the plaintiff into custody, or, as I will amplify the question, whether a prudent and cautious man under the circumstances would have acted in the same way, which, I take it, is the same thing; ..... It is true that the jury found that the defendant honestly believed in full charge he made but as before stated, I read the finding to be that he did so because of the unreasoning state of feeling he had got himself into; and if this be so, it seems to me that, in conjunction with this finding, the jury might find malice in the defendant."

22. In Bhim Sen v. Sitaram, ILR 24 All 363, a Division Bench of this Court quoted with approval the above observations made by the Queen's Bench Division in Hicks case, (1881) 8 QBD 167 (supra) regarding reasonable and probable cause, and had also relied upon the following observation of Park, J. in another English case viz. Mitchell v. Jenkins, (1833) 5 B and Ad 588 (595) regarding the definition of 'malice'.

"The term 'malice' ....is not to be considered in the sense of spite or hatred against an individual, but of mains animus, and as denoting that the party is actuated by improper and indirect motives."

23. In Gaya Prasad v. Bhagat Singh, ILR 30 All 525 (PC) Sir Andrew Scoble delivering the judgment of the Board expressed himself:

> "The foundation of the action is malice, and malice may be shown at any time in the course of the inquiry."

In this connection, the case of Fitzjohn v. Mackinder, (1861) 9 CB (NS) 505 was approved wherein it was laid down--

> "A prosecution, though in the outset not malicious, ... having been commenced under a bona fide belief in the guilt of the accused, may nevertheless become malicious in any of the stages through which it has to pass, if the prosecutor, having acquired knowledge of the innocence of the accused, perseveres malo animo in the prosecution, with the intention of procuring per nefas a conviction of the accused."

24. It is in the light of the standard laid down in the above cases regarding 'malice' and 'reasonable or probable cause' that we have to judge whether the opposite party is likely to have committed an offence under Section 211 of the Indian Penal Code by prosecuting the applicant.

25. In the instant case we have some indication to come to the conclusion that the opposite party had malice, ill-will, or indirect motive (as understood in law) against the applicant and could have instituted criminal proceedings against him, with intent to cause him injury, as will be clear from the following facts:

> 1. On behalf of the opposite party a number of extracts from the remarks made in the confidential service book of the applicant have been filed to show that the applicant was not a desirable man. It may be that the opposite party was prejudiced by the record of the applicant and wanted to do away with him
>
> 2. The conduct of the opposite party before and after prosecuting the applicant has also to be taken into consideration. The applicant was prosecuted at the instance of the opposite party in ten successive criminal cases, out of which nine resulted in his discharge and the tenth was also decided in his favour.
>
> 3. One of the above cases was instituted on the complaint of M.L. Dhingra. On 2-3-1959, the opposite party (Pratap Singh Kairon) wrote a secret note to the Additional Inspector General of Police, Punjab saying, "I. G. P. is sick. Will Additional I. G. please take immediate action in taking over papers from Government Department concerned and the papers with Sri Dhingra? Please give a prima facie report." The Additional Inspector General of Police accordingly directed his subordinate that the case may be registered forthwith
>
> 4. In Civil Appeal No. 75 of 1963 (SC) R.P. Kapur v. Pratap Singh Kairon, (1964 (1) Cri LJ 224 (SC)), a five Judge Bench of the Supreme Court of India in its judgment

> D/-2-8-1963 observed, "The appellant has not been able to produce before us materials to explain why the Punjab Chief Minister should be personally hostile to him. There are several circumstances however which seem to suggest that whatever be the reason the Punjab Chief Minister is not friendly to the appellant."

26. Now it has to be seen whether the opposite party had acted bona fide in ordering the instant prosecution of the applicant, as a man of ordinary reason, prudence and caution would have done in the circumstances of this case. The stand taken by the opposite party, in substance, is that he had taken care and caution to obtain the opinion of the Legal Remembrancer, Punjab on the question whether a prima facie criminal case had been made out against the applicant: and inasmuch as the Legal Remembrancer had written to say that a prima facie case had been made out, the opposite party acting on his opinion and advice, honestly prosecuted the applicant. The material on the record, however, shows that it was not so, as would be evident from the following authentic facts:--

27. As already noted earlier, it was during the investigation of the ease that P.S.I. Lekhraj had prepared a memorandum of the facts dated 28-1-1959 relating to the complaint made by Madan Lal Sethi against the applicant and his mother-in-law (Flag 'J'). Thereupon Shamsher Singh, Additional Inspector General of Police requested the Legal Remembrancer to give his advice. On 19-2-1959 the Legal Remembrancer asked for certain further particulars, and on receiving the same, he (Legal Remembrancer) made a short note dated 29-4-1959 saying in the end. "In the result prima facie case appears to have been made out." (Flag 'P'). The file then went to the Chief Minister's Secretary in due course, who, in his note dated 6-5-1959 stated:

> '" I think this case requires more careful assessment before we proceed to permit the officer being arrested and taken to a Court of Law. The contestants involved in this case are fairly highly educated and highly experienced individuals, and in any matter such as cheating, which is the allegation here, could normally he expected to have their wits about them. While these considerations are not, perhaps, directly relevant in regard to technical assessment as to whether the case lies or not, they are I think relevant to a consideration of whether the procedure of a criminal case is really suitable.
>
> I would, therefore, be grateful for L. Rs advice as to whether the facts and evidence alleged and discovered in this case are such as to make a strong case for the State proceeding against Shri R.P. Kapur. I would like him to consider whether on the facts and evidence available, prima facie criminal culpability is of a degree where a criminal case should be suitably pursued by the State, or whether it would be more appropriate to let the contestants pursue this material in a Civil Court .....

28. Accordingly, the Legal Remembrancer reconsidered the matter and this time he gave a detailed opinion and advice dated 7-5-1959 concluding "I would not say that it is a strong case for prosecution but if some epithet has to be given with regard to its merits I should say that it is a border-line case for prosecution. It may or may not succeed."

29. The file then again went back to the Chief Secretary, who wrote another detailed note dated 8-5-1959, the relevant portions whereof are as follows:--

> "The arrest of a Commissioner of a Division in the Punjab will undoubtedly create a scandal, not merely in regard to the person of the officer but in regard also to the Government of this State. The whole procedure will be high lighted in the press certainly in Punjab and Delhi, and because it is so unusual, probably throughout India ....
>
> In this background, the fact remains that the case is, from the point of view of success, as clearly stated by L. R., a border-line one. It may or may not succeed. The Advocate General, who saw sonic of these papers at an earlier stage but who has not been consulted formally, but with whom I had some talk about it, also shares the view that the case is rather weak from the point of view of success and as likely as not will prove a failure. He states that the main point that a Court is likely to consider is whether they can believe that Shri N.L. Sethi, a man of experience of the world and of law, could be cheated in a matter of this kind. He thinks, it is highly unlikely.
>
> I believe, therefore, that in these circumstances, it will not be creditable for the Punjab Government to create a furore by the arrest and prosecution of one of its officers in circumstances where a case may prove a failure. Shri TV P. Kapur will appear in the event apparently fully vindicated and Government will inevitably be accused of all kinds of mala fide intention. I believe that this Government has been particularly unfortunate in regard to undesirable publicity and high-lighting of some of its activities and if we can avoid repetition of this process, it would be all to the good.
>
> Nor do I feel from the point of view of Justice, as between the individuals concerned, that there is any grave obligation on the Punjab Government to prosecute this case. It is not as if an innocent or illiterate or inexperienced person is alleged to have been cheated, and taken gross advantage of. The contestants are highly experienced men of the world quite knowledgeable as to which side their bread is buttered. It has been more in the nature of a battle of wits than of any kind of gross advantage on an innocent culprit. Here again, I tend to the view that it is not a case where one can work up much moral fervour.
>
> In these circumstances, my considered view is that it would be best not to put this case in Court but allow the contestants to fight it out, if they so wish, by civil process,"

30. In spite of the above repeated warnings and advice by the Chief Secretary not to prosecute the applicant but leave the matter to the contestants to fight it out in a civil Court and in spite of the reconsidered opinion of the Legal Remembrancer that it was not a strong case for prosecution but was only a border-line one, which may or may not succeed and further in spite of being told that the Advocate General was also of the view that the case was rather weak and it was highly unlikely that

Madan Lal Sethi, a man of experience of the world and law, could have been cheated in the matter, the opposite party, by his order dated 16-7-1959, chose to prosecute the applicant, unreasonably suggesting to himself that a prima facie case of cheating had been made out against him, which was not even the final view of the Legal Remembrancer, much less of the Advocate General and the Chief Secretary. Therefore the opposite party did not conform to the standard of an "ordinary, prudent and cautious man in reasonably coming to a conclusion" that the applicant should be criminally prosecuted.

In this country we rely on private initiative in most of such cases for the punishment of crime, particularly when it is only a marginal case and the person aggrieved is an educated and experienced man of the world and of law, who could have himself taken care of the wrong done to him, if any. Ordinary prudence further required that a criminal case should not have been launched against the applicant by the State, inasmuch as the opposite party was fully alive to the fact that apart from involving considerable expense of public money, the Government was also likely to come in disrepute and "mud-throwing." This by itself suggests that the opposite party had some malice, ill-will or oblique motive in unnecessarily ordering criminal prosecution of the applicant.

31. There is yet another factor which is a clear pointer to the inference that the opposite party was not honestly prosecuting the applicant and that his action could only be accounted for by imputing some wrong or indirect motive to him. As mentioned earlier, Pt. G.B. Pant, the then Home Minister in the Government of India, by his letter dated 21-7-1959 had asked the opposite party to supply him full information leading to the arrest and prosecution of the applicant. (Flag 'N'). In his reply dated 1-8-1959 the opposite party wrote to the Home Minister that "a challan against Shri Kapur and his mother-in-law was presented in the Court of a Magistrate as a prima facie case of cheating is considered to have been made out." These words show that the opposite party was obviously making a reference to the original opinion of the legal Remembrancer dated 29-4-1959 wherein he had said that a prima facie case appeared to have been made out against the applicant. This opinion, the Legal Remembrancer had himself revised later on, and he finally said on 7-5-1959 that it was not a strong case for prosecution and that at best it was merely a border line one. The opposite party also conveniently gave a go-by to the opinion of the Advocate General which had already been conveyed to him by the Chief Secretary to the effect that it was rather A weak case from the point of view of success and that it was highly unlikely that Madan Lal Sethi had been cheated by the applicant. Thus the opposite party was obviously milking a deliberate misrepresentation to the Home Minister by withholding the opinions of the Advocate General and the Chief Secretary as well as the revised view of the Legal Remembrancer dated 7-5-1959. Significantly enough, the opposite party, in his said reply to the Home Minister, simply relied upon the earlier opinion of the Legal Remembrancer dated 29-4-1959, which the latter had himself superseded. In these proceedings as well, the opposite party has taken shelter behind the already exploded and shattered opinion of the Legal Remembrancer dated 29-4-1959 which was no longer operative. The action of the opposite party could not be excused on the ground that he had acted under counsel's opinion, unless it was shown that his final advice was properly followed, (vide Andrews v. Hawley, (1857) 26 LJ Ex 323; Re. Clark, (1851) 1 De G. M. and G. 43; and Rewlett v. Cruchley, (1813) 5 Taunt 277). This again shows malice, ill-will and oblique motive on the part of the opposite party, in falsely prosecuting the applicant.

32. In this connection, reference may also be made to two affidavits filed in support of the applicant's case one by Devi Lal, former Chief Parliamentary Secretary, Punjab and President of the State Congress Committee and the other by Sahib Rum a Member of the Ambala Regional Transport Association. Devi Lal aforesaid deposed that in 1958, by virtue of his office as the Chief Parliamentary Secretary and the President of the Punjab Congress Committee he used to move about for hours with the opposite party. He said that in December 1958, he and the opposite party had returned to Chandigarh from tour at about 9-30 or 1.0 P.M. in a car, when the opposite party stopped outside the bungalow of Madan Lal Sethi and returned from inside the house after about half an hour. He further deposed that soon after when he came to know that Madan Lal Sethi had lodged a first information report against the applicant, the deponent asked the opposite party if his visit that night to Sethi's place had anything to do with the matter. Thereupon the opposite party is alleged to have said "Bilkul chup raho" which suggested that it was he who had got the first information report filed by Sethi. Devi Lal went on to depose that at least on two occasions Ujagar Singh, S. P., C. I. D. saw the opposite party in his presence to inform him about the stage of investigation of the case against the applicant and that the opposite party had given detailed instructions as to the line of future investigation and the persons he should contact and persuade to stand as witnesses. About one of the witnesses the opposite party asked Ujagar Singh that he should be brought to him if he proved difficult. Devi Lal further deposed that after some months when the matter had reached the Supreme Court, he had asked the opposite party to withdraw the case as it was said to be false and was doing great damage to the prestige of the Government to which the opposite party replied "Case chahe jhootha ho par Kapur to kucheryiyon me kharab ho raha hai. Withdraw kyon karen. Chalne do. Ise marne do."

33. The above affidavit of Devi Lal, who could very well have been in close touch with the opposite party at the relevant time by virtue of his important position, shows that the opposite party had not only malice against the applicant but was also instrumental in getting the first information report lodged by Madan Lal Sethi, and was guiding the investigation and even creating evidence against the applicant.

34. The affidavit of Sahib Ram shows that the opposite party was displeased with the applicant on account of his granting transport permits in Ambala Region against the wishes of the opposite Party, so the latter wanted to teach a lesson to the applicant for his independence.

35. The only criticism of the learned Advocate General against Devi Lal and Sahib Ram is that they were now political opponents of the opposite party and it was on that account that they had chosen to file false affidavits in support of the applicant. This explanation does not appear to be very convincing. Devi Lal had a high and responsible position in the hierarchy of the Congress and it is not expected of such an eminent person to tell bare-faced lies just because of differences in his present political views with the opposite party. The testimony of these persons bad not yet been tested by cross-examination, and it cannot be said that they have really perjured themselves. It is, therefore, not possible at this stage to reject their testimony outright merely on the ground that they appear to be political opponents of the opposite party. It is noteworthy that these affidavits had been filed in this Court, when the opposite party was still occupying the position of the Chief Minister of Punjab. Hence these two affidavits have to be taken at their face value at this stage. They go the

whole length of making out a case against the opposite party and show that he is likely to have committed offences under Sections 193/195 and 211 of the Indian Penal Code.

36. It is, therefore, expedient in the interests of justice that further inquiry should be made into offences under Sections 193/195 and 211, I. P. C., which appear to have been committed by the opposite party. Let a written complaint thereof be made, which shall be signed by the Registrar of this Court and be forwarded for necessary action to the Additional District Magistrate (Judicial), Allahabad.

37. It may, however, be clarified that the Magistrate concerned shall not be bound by the observations contained in this order regarding the merits or demerits of the case, and would decide the matter on the material and evidence which may be produced before him.