A

D. P. MISHRA

v.

KAMAL NARAIN SHARMA & ORS.

December 18, 1970

[J. C. SHAH, C.J., K. S. HEGDE AND A. N. GROVER, JJ.]

B

Representation of the People Act, 1951, *s.* 98—*Proceedings for 'naming' person responsible for corrupt practice—Finding given by High Court—Circumstances in which Supreme Court would reconsider.*

Press and Registration of Books Act, 1867, *s.* 7—*Person's name printed as editor in paper and recorded with Registrar—If responsible for everything printed in paper—Presumption as to—If can be rebutted.*

C

At the time of dismissing an appeal by the appellant against the finding by the High Court that the appellant was guilty of a corrupt practice under s. 123(4) of the Representation of the People Act, 1951, the Supreme Court directed that S an editor, publisher and printer of a daily newspaper, *Mahakoshal* which published the offending material relevant to the personal character or conduct of one of the candidates, should be given a notice to show cause why he should not be named under s. 98.

D

At the hearing pursuant to the notice issued by the High Court, S admitted that he was the registered printer, publisher and editor of the newspaper in the record of the Press Register at the relevant time and that the offending material was published in the *Mahakoshal;* but he claimed that it was so printed without his knowledge, that he had left the entire management of the newspaper with T, and did not himself come to learn about the publication until after the election petition was filed.

E

After hearing further evidence, the High Court accepted the plea set up by S.

In the appeal to this Court it was contended on behalf of two interveners who had undertaken the defence of the appeal that S was liable to be named under s. 98, (i) in view of the provisions of section 7 of the Press and Registration of Books Act, 1867, and the fact that S was

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the registered printer, publisher and editor of the newspaper; (ii) because in certain proceedings taken in the High Court for committing the editor of the same newspaper for contempt of court for publishing certain scurrilous matter concerning a Civil Judge in 1962, S had admitted his responsibility for the publication and tendered an apology; (iii) because on October 24, 1963, the first respondent had addressed a letter to S inviting his attention to the publication of the offending matter in April-May, 1963, which was the subject matter of the election petition, requir-

G

ing him to disclose the identity of the writer within three days and stating that otherwise S would be assumed to be the author of the publication; S had no reply to the said letter.

HELD : The order passed by the High Court must be confirmed.

(i) Section 7 raises a presumption that a person whose name is printed

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in a copy of the newspaper is the editor of every portion of that issue. However, this presumption may be rebutted by evidence. In a charge under s. 123(4) of the Representation of the People Act, the presumption under s. 7 would come with greater or less force, according to the circumstances, to the aid of a person claiming that the editor was res-

ponsible for the publication and that the publication was to the knowledge of the editor. The High Court had accepted the testimony of S and T to the effect that T was in sole management of the newspaper at the relevant time and no reason was shown why this Court should not agree with this conclusion. Granting that there was close association between the appellant and S, and even granting that *Mahakoshal* was exclusively carrying on propaganda on behalf of the appellant, unless there was evidence to prove the S had either authorised the publication of the offending matter, or had undertaken to be responsible for all the publications made in the *Mahakoshal*, no inference that the offending publications were made to the knowledge and with the consent of S may be raised. [262 E-G; 264 E]

A proceeding for naming a person who is found responsible for publication of offending matter is in the nature of a quasi-criminal proceeding. In an appeal against the order of the High Court holding on appreciation of evidence that a person charged before the High Court is not proved to be guilty of a corrupt practice, this Court does not normally proceed to reappraise the evidence, unless the High Court has misconceived the evidence or the conclusion is perverse or so basically faulty that interference by this Court is attracted, of the procedure adopted by the Court has resulted in mis-carriage of justice or for similar reasons. [261 A]

Amar Nath v. *Lachman Singh & Ors.* C.A. No. 1717 of 1968 decided on Dec. 23, 1968; *Jagdev Singh* v. *Pratap Singh*, A.I.R. 1965 S.C. 183; *Dr. M. Chenna Reddy* v. *V. Ramchandra Rao and Anr.*, C.A. No. 1149 of 1968 decided on Dec. 17, 1968 and *Meghraj Patodia* v. *R. K. Birla and Ors.* [1971] 2 S.C.R. 118; referred to.

(ii) The position taken by S in the contempt proceedings was not inconsistent with the case set up by him in these proceedings. Although responsibility for publication was accepted by him, he had clearly stated that the publication of news-item from the correspondents were attended to by the sub-editors and that he generally laid down the policy of the newspaper and gave general directions. He admitted his responsibility because he was the Chief Editor and not because he personally had, with knowledge published the article which constituted contempt of Court. [265 D]

(iii) If the story of S that he came to know of the offending publications for the first time after the petition was filed is accepted, failure to repudiate the publications after the election petition was filed will not lead to an inference against S that he was responsible for the publications. [266 C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1738 of 1969.

Appeal by special leave from the judgment and order dated March 12, 1969 of the Madhya Pradesh High Court in First Appeal No. 49 of 1967.

E. C. Agarwal, for the appellant.

M. C. Setalvad, S. V. Gupte, K. A. Chitale, U. N. Bachawat, A. K. Verma, Sreenivasa Rao and *J. B. Dadachanji*, for *Mr. S. C. Shukla.*

M. C. Chagla, R. S. Dabir, Rameshwar Nath and *Swaranjit Sodhi*, for respondents Nos. 3 and 4.

A The Judgment of the Court was delivered by

Shah, C.J. In compliance with our order dated March 13, 1970 the High Court issued a notice to Shukla. Shukla submitted his reply contending, *inter alia,* that he did not publish or cause to be published the offending statements in the newspaper B Mahakoshal as alleged by Sharma. In paragraph 1(ii) he submitted that :

> "He learnt about their publication only after and during the pendency of the election petition for declaration of the election of Shri D. P. Mishra as void. The person in sole charge of the newspaper was Shri C Vishnudatta Mishra 'Tarangi' whose name has been printed as the Editor. The declaration under Rule 8, Form VI prescribed under the Press and Registration of Books Act (No. XXV of 1867) for the year 1963 shows that the said Shri Vishnudatta Mishra 'Tarangi' and not the opposite party (Shukla) was the editor at the material time. . . . . At the D time of his appointment the said Shri Vishnudatta Mishra 'Tarangi' had insisted that there would be no interference by the opposite party (Shukla) in the conduct of the newspaper."

Several witnesses were examined before the High Court in E support of the case that Shukla was instrumental in publishing and distributing the offending statements Annexures I, II & III in the daily newspaper Mahakoshal of which Shukla was the editor, printer and publisher. Some witnesses who had been previously examined were recalled for examination. Shukla and Tarangi were also examined at the hearing.

F At the hearing of the appeal and in the proceedings for naming Shula, Sharma the petitioner who instituted the election petition took no interest. But two persons who were permitted to intervene in the proceeding took upon themselves the defence of the appeal and also to prosecute the proceeding after it stood remanded to the High Court.

G The interveners submitted that Shukla had published the offending matter contained in Annexures I, II & III. They said that—(1) D. P. Mishra prepared the offending matter, read it over to Shukla and handed it over to him for publication and the same was published in the Mahakoshal and was widely dis- H tributed; (2) the copies of the newspaper containing the offending matter were personally distributed by Shukla; and (3) Shukla was the printer, publisher and editor of the newspaper and was the owner of the Printing Press in which the copies

of the newspaper were printed, that he was attending to the publication of the newspaper and copies of the newspaper were supplied to him and that "Tarangi had nothing whatever to do with the publication of the newspaper Mahakoshal" at the relevant time.

The High Court on a review of the evidence was of the opinion that the case under the first and the second heads in support of the plea of the interveners was not proved. The High Court also held that even though the name of Shukla was printed in the newspaper Mahakoshal as the Chief Editor and that fact was printed in the report of the Press—Registrar published for the information of the Government showing that Shukla was between the years 1962 and 1965, the publisher, printer and editor of Mahakoshal, that Shukla had in June 1962 appointed Tarangi as editor of Mahakoshal, that Tarangi was in exclusive charge of the publication; that Shukla was not at the relevant time when the offending matter was published attending to the publication of Mahakoshal; that Shukla had no knowledge of the publication of the offending matter till it was brought to his notice in the course of the election petition; that Shukla was not proved to be the agent of Mishra and that even if it be held that he was the agent of Mishra, it was not proved that Mishra had given his consent to the publication of the offending matter in the Mahakoshal.

Section 123(4) of the Representation of the People Act, 1951, provides :

> "The publication by a candidate or his agent or by any other person, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election",

is a corrupt practice. Section 99(1) requires the Tribunal in making an order under s. 98 to record the names of all persons, if any, who are proved at the trial to have been guilty of any corrupt practice and the nature of that practice. But a person not a party to the petition cannot be named in the order, unless he has been given notice to appear before the Tribunal and to show cause why he should not be so named, and if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the Tribunal and has given evidence against him, of calling evidence in his defence and of being heard.

A proceeding for naming a person who is found responsible for publication of offending matter is in the nature of a quasi-criminal proceeding. In an appeal against the order of the High Court holding on appreciation of evidence that a person charged before the High Court is not proved to be guilty of a corrupt practice, this Court does not normally proceed to reappraise the evidence, unless the High Court has misconceived the evidence or the conclusion is perverse or so basically faulty that interference by this Court is attracted or the procedure adopted by the Court has resulted in miscarriage of justice or for similar reasons. See *Amar Nath* v. *Lachman Singh & Ors*(1); *Jagdev Singh* v. *Pratap Singh*(2); *Dr. M. Chenna Reddy* v. *V. Ramchandra Rao and Anr.*(3); and *Meghraj Patodia* v. *R. K. Birla and Ors.*(4).

Mr. Chagla on behalf of the interveners contended that the conclusion of the High Court was perverse because the High Court had ignored important circumstances and evidence bearing on the question in dispute, and had reached a conclusion wholly inconsistent with normal probabilities. In dealing with this contention we may first eliminate matters in respect of which there is no serious controversy. Annexures I, II & III which constitute the offending matter were published in the newspaper Mahakoshal during the course of the election campaign of D. P. Mishra. The newspaper Mahakoshal was published from Raipur, and Shukla was registered as the printer, publisher and editor in the record of the Press Registrar. The issues dated April 12, April 26 and May 4, 1963, were printed in the Mahakoshal Printing Press and were published and distributed. The matter published in those issues was in relation to the personal character and conduct of Sharma and in relation to his candidature. It was also a statement reasonably calculated to prejudice the prospects of Sharma's election.

Shukla admitted that the offending matter was published but claimed that it was printed in the Mahakoshal without his knowledge. He claimed that he had left the entire management of the newspaper with Tarangi and that he did not come to learn about the publication till the election petition was filed.

The High Court accepted the plea set up by Shukla that he did not know about the publication of the offending matter at or about the time when it was published. In support of the contention that Shukla was liable to be named, Mr. Chagla relied upon s. 7 of the Press and Registration of Books Act, 1867, upon

(1) C.A. No. 1717 of 1968 decided on Dec. 23, 1968
(2) A.I.R. 1965 S.C. 183
(3) C.A. No. 1149 of 1968 decided on Dec. 17, 1968
(4) [1971] 2 S.C.R. 118

certain proceedings in contempt taken before the High Court of Madhya Pradesh in which Shukla had admitted his responsibility in regard to the publication made some time in June 1963 and also upon the service of a notice upon Shukla by Sharma who filed the election petition requiring Shukla to disclose certain facts regarding the publication, upon the evidence that Shukla was closely associated with Mishra in carrying on the election campaign, and that the daily Mahakoshal carried on propaganda exclusively on behalf of Mishra and not of any other candidate. Counsel submitted that Shukla's denial could not be accepted as there was clear evidence that copies of the daily Mahakoshal were supplied at his residence at all relevant times and it is unlikely that he did not read them.

Section 7 of the Press and Registration of Books Act, 1867, insofar as it is relevant, provides :

> "In any legal proceeding whatever, ... the production of . . . . ., in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be . . . . printed on such newspaper, ... that the said person was . . . the editor of every portion of that issue of the newspaper of which a copy is produced."

Section 7 raises a presumption that a person whose name is printed in a copy of the newspaper is the editor of every portion of that issue. The presumption may be rebutted by evidence. In the copies of Mahakoshal dated April 12, April 26, and May 4 1963, it was printed that Shukla was the Chief Editor. Shukla was also described as the printer and publisher of the newspaper. The presumption under s. 7 of the Press and Registration of Books Act, undoubtedly arises, but in a charge under s. 123(4) of the Representation of the People Act the presumption under s. 7 of the Press and Registration of Books Act, 1867, would come with greater or less force, according to the circumstances to the aid of a person claiming that the editor was responsible for the publication and that the publication was to the knowledge of editor.

Tarangi in his evidence has stated that he was working between June 1962 to January 1964 as editor of Mahakoshal and that he was in sole incharge of the newspaper including its management, and that he was solely responsible for editing, printing and publishing the newspaper, and that he had made a special condition when accepting his appointment as editor that he

A would be in sole charge of managing and editing the newspaper. He said that Shukla never visited the office of Mahakoshal during the period of his management. that he—Tarangi—wrote Annexures I, II & III and got them printed and published, that he had written them by himself on information which he received, and B not at the instance of any other person, that he had not obtained the consent of Shukla before writing or publishing the offending matter, and that when he heard the matter contained in those articles he thought that it had news value and he printed and published it. He also stated that Shukla was not informed of the offending matter.

C Tarangi had printed on March 1, 1963, a statement in the daily issue of Mahakoshal that he was the editor. That is clear from Annexure A. It was urged by Chagla that Shukla, to conceal his activities in the course of the elections which it was expected would take place in the near future made a mere appearance of printing the name of Tarangi as editor, while in fact he remained the editor and in charge of management of the Maha- D koshal. But it is clear from the issues of the Mahakoshal daily dated July 11, July 16, July 30, July 31, September 24, October 12 and October 18. 1962, that on the title page Tarangi was shown as the editor of the newspaper. The story that Tarangi was placed in charge of the newspaper Mahakoshal between June 1962 and January 1964 is amply supported by copies of the E Mahakoshal produced in the Court. It is not in dispute that in the publication of the newspaper Mahakoshal which contained the offending Annexures I, II & III it was published that Tarangi was the editor.

Shukla stated in hise evidence that he had left Tarangi in sole management of the newspaper, that during the months of F April and May 1963 he visited his house at Raipur only once, and that he had no occasion to read the previous issues of the Mahakoshal. Shukla said that he was moving about from place to place during that period. The High Court has accepted that testimony and we see no reason to disagree with the same. Annexure A on which reliance is placed was made pursuant to s. 19D G (b) of the Press and Registration of Books Act, 1867. There was no attempt to prove that the return submitted before the Press Registrar differed from the return published under s. 19D (b). Section 19K(c) makes it an offence for the publisher of any newspaper to publish in pursuance of cl. (b) of s. 19D any particulars relating to the newspaper which he has reason H to believe to be false. Mr. Chagla contended that Shukla should have taken steps to produce before the High Court the original return or at any rate a copy of the return filed before the Press Registrar. We do not think that in the circumstances of the case

any such obligation lay upon Shukla. If it was the case of the interveners that the statement in Annexure A was not consistent with the return made to he Press Regisrar they could have summoned the Press Registrar or a member of his Office with the original return. But that was not done. It is true that in the annual report published by the Press Registrar for the use of the Central Government for the years 1963, 1964 and 1965 Shukla alone is shown as the editor of Mahakoshal and the name of Tarangi is not al all mentioned. But the annual report of the Press Registrar which contains hundreds of entries is secondary evidence of the contents of the return. There is no reason why, when the interveners have made no atempt to have the original return produved, we should accept the annual report as probative of the fact that Tarangi's name was not mentioned in the return submited to the Press Registrar. The annual reprot is only for the information of the Government and a mere summary in the annual report, to which the Legislature has not attached any importance and which is not made under any statutory provision, cannot be regarded as displacing the effect of a statutory provision made under s. 19D(b) of the Press and Registration of Books Act, 1867.

Granting that there was close association between Mishra and Shukla and even granting that Mahakoshal was exclusively carrying on propaganda on behalf of Mishra, unless there is evidence to prove that Shukla had either authorised the publication of the offending matter, or had undertaken to be responsible for all the publications made in the Mahakoshal, no inference that the offending publications were made to the knowledge and with the consent of Shukla may be raised.

Strong reliance was placed by Mr. Chagla upon two circumstances : (i) that in certain proceedings taken in the High Court for committing the editor of Mahakoshal for contempt of court for publishing in June 1962 certain securrilous matter concerning a Civil Judge. Shukla admitted his responsibility for the publication and tendered apology; and (ii) that Shukla did not send any reply to the notice served by Sharma, and published no repudiation.

The circumstances in which the proceeding for commitment for contempt of court was started may first be set out. On June 16, 1963, a news-item defamatory of one R. P. Awasthy, Civil Judge, was published in Mahakoshal 1. The District & Sessions Judge, Bilaspur, submitted the papers relating to the publication, to the High Court of Madhya Pradesh with a report that one Dr. Saraf Baloda a correspondent of the newspaper was responsible for the publication, and recommended that proceeding

A be started for committing for contempt Saraf and the editor, printer and publisher of the newspaper. A notice was issued to the editor, printer and publisher of Mahakoshal. Shukla appeared before the High Court and admitted that he was the Chief Editor of the paper, but he stated that the day to day work was done by the Sub-Editors, that he used to lay down the principle B and policy of the paper and also gave general directions, that the news item received from correspondents from various places was scrutinised by the Sub-editors and the sub-editors that on June 16, 1963 they did not understand the implications of the offending news-item, and published it, and that when it came to his (Shuklas) notice he immediately published a contradic- C tion and expressed his regret. He said that being the Chief Editor he accepted his responsibility. He submitted that since amends had been made soon after the facts came to his notice, his apology to the "concerned officer and assuring him that no item will be published from the correspondent" be accepted. In view of this apology no action was taken against him by the High Court. The statement filed by Shukla is not inconsistent D with the case set up by him in this proceeding. Responsibility for publication was accepted by him but he had clearly stated that the publication of news-items from the correspondents were attended to by the Sub-editors, and that he generally laid down the policy of the newspaper and gave general directions. He admitted his responsibility because he was the Chief Editor, and E not because he personally had with knowledge published the article which constituted contempt of Court.

On October 24, 1963, Sharma addressed a letter to Shukla as printer, publisher and editor of Mahakoshal inviting his attention to the three Annexures I, II and III dated April 12, April 26 and May 4, 1963 and calling upon Shukla to "disclose the F full identity of the writer within three days of his receiving the letter." He intimated that in case Shukla failed to comply with the request, he would assume that Shukla was the author of the publications, and would take suitable legal action. No reply was sent to this letter. Nor did Shukla publish any repudiation that it was without his knowledge that the matter was published. G Shukla has in his evidence stated that after receiving the letter he consulted his lawyer, and he was "advised that reply was not necessary" and it "was not proper to send a reply". He stated that he remembered that his counsel advised him that since he was "involved in the petition" he should not act on the letter. These matters were elicited in cross-examination by counsel for H the interveners. Mr. Chagla submitted that the testimony of Shukla in this behalf may not be accepted, because the lawyer had not been examined as a witness and even his name was not disclosed. But the matter was not probed further by the cross

examiner nor any question asked which would suggest that any doubt was sought to be thrown on the testimony of Shukla that he acted on the advise given by his lawer. It is true that no repudiation of Annexture I, II & III was published in the Mahakoshal, even after the letter was received from Sharma. But it must be remembered that in June 1963 an election petition was filed for setting aside the election of Mishra and in paragraph 5 it was asserted that Annexures I, II & III were published in the newspaper Mahakoshal of which Shukla was the printer, publisher and editor. It was further asserted that Shukla was the agent of Mishra. If the story of Shukla that till October 1962 he was not aware of the offending publications and he came to know of the publications for the first time be accepted, failure to repudiate the publications after the election petition was filed will not, in our judgment, lead to an inference against Shukla that he was responsible for the publications.

We have carefully considered the evidence and the circumstances, and we do not think that a case is made out justifying us in taking a view different from the view of the High Court. The proceeding before us is quasi-criminal in character, and this Court will not normally disagree with the view of the High Court, where the High Court has reached, on appreciation of evidence, the conclusion that the corrupt practice charged against a person is not proved. This Court has jurisdiction in appropriate cases to disagree with the conclusion reached by the High Court, but the power to interfere is sparingly exercised. It is not exercised merely because this Court may take on the evidence a different view. An appellate Court is reluctant to disregard the conclusion on matters of appreciation of evidence by the Court which had occasion to watch the demeanour of the witnesses examined before it, and to substitute its own view thereon. Where the proceeding tried by the Court of First Instance is of a quasi-criminal nature, the reluctance of the appellate court is greater. The question is not one of power or authority of the appellate court, but of the respect and consideration due to the Court of First Instance, and of the limit inherent in the exercise of the appellate functions.

The order passed by the High Court is confirmed. Having regard to the circumstances of the case, there will be no order as to costs of the proceeding against Shukla. The appeal filed by Mishra will be dismissed. Since the original applicant Sharma did not appear in this Court, there will be no order as to costs in the appeal.

R.K.P.S. *Appeal dismissed.*