

HIGH COURT OF GUJARAT

NALINBHAI THAKORBHAI MEHTA V/S LAXMIBEN GORDHANDAS PATEL

Date of Decision: 20 December 1984

Citation: 1984 LawSuit(Guj) 276

Hon'ble Judges: M B Shah

Appeal Type: Misc Criminal Application

Appeal No: 954 of 1984

Subject: Criminal

Editor's Note:

Statement recorded in the course of investigation by a Police Officer - Any privilege whether attaches to such statement - The statement so recorded whether can form the basis of a complaint for defamation. It is clear that the Criminal Procedure Code and Indian Evidence Act are complete Codes and they do not provide any privilege to the maker of the statement under Sec. 161 of the Criminal Procedure Code. It cannot be said that the petitioners (makers of the statement) cannot be prosecuted for the offence punishable under sec. 500 I. P. Code. (Para 16) Khatri v. State of Bihar (1) Ganpatram v. Rambhai (2). Emperor v. Parwari(3) Queen Empress v. Govinda Pillai (4) Manjay v. Shesha Shethi (5). Maroti Sadashiv v. Godubai (6) Hittu Bansi v. Sheolal Dinaji (7) referred to.

Acts Referred:

[Code of Criminal Procedure, 1973 Sec 161](#)

Final Decision: Application dismissed

Eq. Citations: 1985 (2) GLR 957, 1985 GLH 909, 1985 (1) Crimes 414

Advocates: N N Gandhi, M C Patel, A K Patrawala

CASE CITED IN :

[HET RAM; MADAN GOPAL @ MADAN LAL V/S MADAN GOPAL @ MADAN LAL; HET RAM, 2006 \(2\) ShimLC 354](#)

CASES REFERRED :

MANJAY V. SHESHA SHETHI, 11 ILR(Mad) 477

QUEEN EMPRESS V. GOVINDA PILLAL, 16 ILR(Mad) 235

EMPEROR V. PARWARI, I.L.R, 1941 Allhabad 235

EMPEROR V. PARWARI, 1941 ILR(All) 311

[HITTU BANSI V. SHEOLAL DINAJI](#), 1948 AIR(Nag) 243

GANPATRAM V. RAMBHAI, 1950 AIR(Nag) 20

MAROTI SADASHIV V. GODUBAI, 1959 AIR(Bom) 432

[MAROTI SADASHIV V. GODUBAI](#), 1959 AIR(Bom) 443

[STATE OF UTTAR PRADESH V/S N K GOVIL \(HAPPY INDIA INSURANCE COMPANY\)](#), 1960 AIR(All) 623

KHATRI V. STATE OF BIHAR, 1981 AIR(SC) 1070

Judgement Text:-

M B Shah, J

[1] In these applications, the question which arises for my determination is whether the statement made by the accused before the Investigating Officer under sec. 161 of the Criminal Procedure Code is a privileged document and whether a complaint for defamation under sec. 499 of the IPC would be maintainable against the maker of the said statement.

[2] In this case, the Opponent No. 1 had filed Criminal Case No. 54 of 1984 before the Chief Judicial Magistrate Surat for offence punishable under sec. 500 read with sec. 14 of the IPC against the petitioner and the Investigating Officer who is joined in this application as Opponent No, 2. The opponent No. 1 had also filed Criminal Case No. 549 of 1984 against Smt. Nirmalaben N. Mehta for the similar offence. In both these applications, the petitioners who are the original accused in the complaint filed, by the opponent No. 1 are husband and wife. It is the case of the complainant opponent No. 1 in the complaint that Nalinbhai Mehta committed rape on her daughter named Mayaben G. Patel. She filed criminal complaint before the Magistrate. The learned Magistrate directed that the case should be enquired under sec. 156(3) of the Criminal Procedure Code. The investigation was carried out by the opponent No. 2 PSI Borse. The statements of the petitioners i.e. Nalinbhai and his wife are alleged to have been recorded and it is alleged that in the said statements, same defamatory statements are made for which the aforesaid complaints are filed by the opponent No. 1. After recording the statement of opponent No. 1, the learned Chief Judicial Magistrate, Surat had issued process against the petitioners in the complaints. Against that order passed by the learned Chief Judicial Magistrate, Surat, the petitioners have preferred the aforesaid Misc. Applications before this Court for quashing the process.

[3] In these applications, the only contention which was raised by the petitioners' learned advocate was that as the alleged statement is made during the course of investigation under sec. 161 of the Criminal

Procedure Code, the statement is a privileged one and, therefore, complaint for defamation would not be maintainable. He submitted that before the Investigating Officer, accused are bound to answer truly all questions relating to such case put to them by such Investigating Officer and, therefore their statements are privileged ones for which no prosecution would be maintainable.

[4] In my view the submission of the learned, advocate for the petitioners is misconceived because sec. 161 of the Criminal Procedure Code, does not give any privilege to the maker of the statement. Under sec. 161, Investigating Officer is empowered to examine personally any person supposed to be acquainted with the facts and circumstances of the case. Under sec. 161 sub-sec. (2), a person who is examined orally is bound to answer truly all questions relating to such case put to him by the Investigating Officer. It further provides that he is not bound to answer the questions which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. Sub-section 3 provides that the Police Officer may reduce into writing any statement made to him. in the course of an examination. Now, from this section, it is clear that no privilege is given to the maker of the statement under sec. 161 Criminal Procedure Code. It nowhere provides that no prosecution would be against the maker of the said statement. Even the provisions of Evidence Act nowhere give any such protection, to the maker of the statement under sec. 161 of the Criminal Procedure Code.

[5] Sec. 162 of the Criminal Procedure Code affords a limited protection, The relevant part thereof is as under :-

162(1) :

"No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or records, be used for any purpose, save as hereinafter provided, at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. Provided that when any witness is called for the prosecution in such enquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by sec. 145 of the Evidence Act, 1872 (I of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination."

This section, therefore, provides that :

(1) Statement of any person recorded by the police officer shall not be signed by the person making it;

(2) Such a statement or any record thereof whether in a police diary or otherwise, or any part of such statement or records cannot be used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement was made.

(3) Proviso to this section provides an exception and states that such a statement if duly proved may be used by the accused and by the prosecution to contradict the witness in the manner provided by sec. 145 of the Evidence Act.

(4) Such statement can be used as dying declaration under section 32(1) of the Evidence Act and it would not effect the provisions of sec. 27 of the Evidence Act.

[6] Thus, the statement made under sec. 161 cannot be used for any purpose at the enquiry or trial in respect of any offence under investigation at the time when such statement was made, but this section does not protect and say that the said statement cannot be used at any other enquiry or trial in respect of other offence which was not investigated at the time when such statement was made. Accused and prosecution could use the said statement to contradict the witness. So, the limited protection afforded by this section is that statement cannot be used for any purpose at the enquiry or trial in respect of any offence under investigation at the time when such statement was made. Further, this section also nowhere provides that the maker of the statement under section 161 would be protected in any other manner or that it is in any way a privileged one so that no prosecution would be for defamation.

[7] In the case of *Khatri v. State of Bihar*, reported in A.I.R. 1981 SC 1070, the question which arose for the determination before the Supreme Court was whether certain documents called for by the Court with regard to investigation carried out by the C.I.D. and other Investigating Officers could be called for by the Court and whether the State was liable to produce the said documents or not, or whether the production was barred under some provisions of law. The State Government had objected to the production of documents on the ground that they were protected from disclosure under Secs. 162 and 172 of the Criminal Procedure Code. The Supreme Court held that sec. 162 bars the use of any statement made before the Police Officer in the course of an investigation under Chapter XII which is recorded in police diary or otherwise, but by the express terms of the section, this bar is applicable only when such statement is sought to be used at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. If the statement made before Police Officer in the course of investigation is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of section 162 would not be attracted. The Supreme Court, further, held as under :

"Protection against the use of statement made before the police during investigation is, therefore, granted to the accused by providing that such statement shall not be allowed to be used except for the limited purpose set out in the proviso to the section, at any inquiry or trial in respect of the offence which was under investigation at the time when such statement was made. But, this protection is unnecessary in any proceeding other than an inquiry or trial in

respect of the offence under investigation and hence the bar created by the section is a limited bar. It has no application, for example, in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and a statement made before a police officer in the course of investigation can be used as evidence in such proceeding, provided it is otherwise relevant under the Indian Evidence Act."

[8] So, the entire reading of Secs. 161 and 162 makes it clear that there is no absolute privilege to the maker of statement under sec. 161 of the Criminal Procedure Code. The statement can be used as stated above in other proceedings if it is otherwise relevant under the Evidence Act.

[9] The learned advocate for the petitioners, however, relied upon the decision in the case of Ganpatram v. Rambhai, reported in AIR 1950 Nagpur 20 wherein the Court has relied upon the decision of the Madras High Court reported in I.L.R. 1016 Madras 235 and of Allahabad High Court in the case of Emperor v. Parwari, reported in I.L.R. 1941 Allahabad 311 and has observed that a statement made in answer to a question put by police officer in the course of investigation made by him is a privileged one and cannot be made the foundation of a charge of defamation. The learned Judge has not given any reason as to on what account a statement made to the Investigating Officer would be a privilege document except that he has referred to and relied upon the judgments of the Madras High Court and Allahabad High Court. In the case of Emperor v. Parwari, ILR 1941 Allahabad 311, the Court while considering the question whether for the statements made during the course of investigation, a person can be convicted for defamation or not, has held as under :-

"Statements made to the Police as the result of action taken under sec. 154 of Sec. 155 of the Code of Criminal Procedure are privileged statements, and as such, cannot be used as evidence or made the foundation of a charge of defamation. (Manjay v. Sesha Shetti 1888 IL.R. 11 Madras 477 and Queen Empress v. Govinda PilLal 1892 I.L.R. 16 Madras 235). Madras High Court is very positive and consistent upon the view that statements under these circumstances are privileged and cannot be made the foundation of a charge of defamation. I do not know what authority the Police Manual may give, but, whatever authority it may give, if it does give any authority, that cannot override the law."

Thereafter the Court has considered the case on merits. From the last line quoted above, it is clear that though Allahabad High Court has not fully agreed with the view of Madras High Court, yet it has relied upon the said judgment.

[10] In the case of Queen Empress v. Govinda PilLal, reported in 1892 I.L.R 16 Madras 235, the Division Bench of the Madras High Court has held that in view of the principle laid down in the case of Manjay v. Sesha Shetti, persons making statements in the course of investigation by a police officer are bound to answer truly all questions put to them except such as incriminate themselves and are, therefore, entitled to the prosecution which law gives to a witness. The Court, therefore, set aside the conviction under sec. 500

IPC. The Court has merely relied upon previous decision of the same High Court. (Manjay v. Sesha Shetti, 11 I.L.R. Madras 477).

[11] In that case of Manjay v. Sesha Shetti, Manjay was convicted under sec. 500 of the IPC for defaming Sesha Shetti by making a certain statement when under cross-examination as a witness before a Court of criminal jurisdiction. That conviction was set aside by the Court holding that the statements of witnesses are privileged; if false, the remedy is by indictment for perjury and not for defamation. There, the Court relied upon another decision in which it was held that as the rules of public policy which subordinated the interest of the individual to that of a higher interest, public justice requires that the principle of public policy guards the statements of a witness against an action whether the statements were malicious or not. In my view, from this decision of the Madras High Court, it cannot be deduced that the maker of the statement under sec. 161 Criminal Procedure Code cannot be prosecuted for defamation. In that case, prosecution was for making statement during the cross-examination at the time of trial. Therefore, this decision cannot be relied upon for holding that statement under sec. 161 of Criminal Procedure Code is in any way a privileged one. As such, there is no provision in the Criminal Procedure Code or under the Evidence Act which prohibits prosecution for defamation of the maker of statement under sec. 161 of the Criminal Procedure Code.

[12] Hence, all the aforesaid decisions would in no way be helpful for deciding the controversy that the statements under sec. 161 Criminal Procedure Code are privileged ones for which no prosecution for defamation would lie.

[13] The learned advocate for the respondent relied upon the decision in the case of Hittu Bansi v. Sheolal Dinaji & anr., reporter in AIR 1948 Nag. 243. In that case also, applicant was convicted for offence punishable under sec. 500 IPC as it was alleged against the applicant and one other person that during the investigation of an offence relating to a foetus found in a field, the accused made a statement imputing illegitimate pregnancy and miscarriage or abortion to the complainant's unmarried sister. In that case, appellate court held that the statement of the accused was privileged and he was entitled to acquittal. Hidayatullah. J. (as he then was) held that in connection with Sec. 132 of the Evidence Act, it has been held by almost all the Courts in India that there is no absolute privilege in respect of the statement a witness is compelled to make from a witness box and the rule of English law has not been incorporated in Indian Statute Law. The privilege is a qualified one. The Court distinguished the decision of the Madras High Court by holding that the earlier Madras cases must be deemed to have been modified by the later cases of that Court. The Court further observed as under :-

"There is no essential difference between sec. 132, Evidence Act and sec. 161(2) Cr. Pr. Code. If anything the proviso to the former; gives some privilege which the authorities cited above hold not to be absolute, but the latter does not. It is difficult to read sec. 161(2) as going further than sec. 132, Evidence Act."

[14] In the case of Maroti Sadashiv v. Godubai reported in AIR 1959 Bombay 443, the Bombay High Court has held that statements made before the police officer during the investigation were not absolutely privileged, but were having only a qualified privilege.

[15] In the case of Haji Ahmad v. State, reported in AIR 1960 Allahabad 623, the Allahabad High Court has also held that a person who is interrogated under Sec. 161 of the Criminal Procedure Code by a police officer making an investigation is not a witness and, therefore, section 132 of the Evidence Act would not apply to a statement made by a person during an investigation under sec. 161. It further held that sec. 162 of the Criminal Procedure Code barred the use of the statement at an inquiry or trial in respect of offence under investigation and for the defamatory statement made during the investigation, person can be prosecuted under sec. 500 of the IPC. There also, the Court distinguished the decisions of the Madras High Court and Allahabad High Court.

[16] Hence, from the above discussion, it is clear that the Criminal Procedure Code and Evidence Act are complete Codes and they do not provide any privilege to the maker of the statement under sec. 161 of the Criminal Procedure Code. It cannot be said that the petitioners cannot be prosecuted for offence punishable under sec. 500 of the IPC by any other principle or spirit of sec. 161 of the Criminal Procedure Code as contended by the learned advocate for the petitioners.

[17] No other point was urged by the petitioners in this petition.

[18] In the result, applications are dismissed. Rule discharged. Interim stay vacated.

Application dismissed.