

## JOTISH CHANDRA CHAUDHARY

v.

## THE STATE OF BIHAR

April 26, 1968

[S. M. SIKRI AND R. S. BACHAWAT, JJ.]

*Indian Penal Code, 1860, ss. 199, 200—If person can be prosecuted for false statement not shown to be touching on any material point or corruptly.*

After a partition in his joint family in 1952, the appellant, together with his three minor sons, took over and carried on the family business. He thereafter filed a suit in the business name against a firm claiming damages for certain infringements of trade marks. The trial Court rejected a contention of the defendants that the suit was not maintainable because the appellant's three minor sons had not been impleaded and decreed the suit. In the course of an appeal before a Single Bench of the High Court, the appellant filed an application for the addition of his three sons as parties and also filed an affidavit, as required by the Court, giving the respective dates of births of his three sons. As the appellant, who had a large family, did not remember the exact dates, he sought information from the school authorities and on the basis of this information, he stated the date of birth of one his sons as June 9, 1954 instead of December 12, 1951. While dismissing the appeal, the Court directed the appellant to show cause why he should not be prosecuted for committing an offence under sections 199 and 200 I.P.C. The appellant's plea that he had wrongly mentioned the date of birth due to a *bona fide* mistake was rejected and a Division Bench, in appeal, refused to interfere with the order directing the appellant's prosecution.

On appeal to this Court.

HELD : The appeal must be allowed and the complaint against the appellant quashed.

Before a person can be punished under s. 199, it has to be proved, *inter alia*, that the false statement is 'touching any point material to the object for which the declaration is made'. One of the ingredients of an offence under s. 200, I.P.C. is that the declaration should be used or attempted to be used corruptly. Neither of these requirements were shown to have been satisfied. Considering that the date of birth was obtained from the school records, and that the appellant stood to gain no advantage by giving a wrong date, the learned Single Judge should not have directed the lodging of a complaint under s. 199 or s. 200 I.P.C. [133 A—D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1 of 1968.

Appeal by special leave from the judgment and order dated November 10, 1967 of the Patna High Court in Criminal Appeal No. 4 of 1967.

*Sarjoo Prasad and S. N. Prasad*, for the appellant.

*U. P. Singh*, for the respondent.

A The Judgment of the Court was delivered by

B **Sikri, J.**—In this appeal by special leave Jotish Chandra Chaudhary, hereinafter referred to as the appellant, challenges the order of a Division Bench of the Patna High Court in Criminal Appeal No. 4 of 1967, refusing to interfere with the order of the learned Single Judge directing the prosecution of the appellant under s. 199 and s. 200 of the Indian Penal Code or such other sections as may be found to be applicable.

C In order to appreciate the contentions of the learned counsel for the appellant it is necessary to set out the relevant facts. The appellant with his five sons constituted a Joint Hindu Family. In 1952 partition took place. At that time three sons were minors, while two were majors. As a result of the partition the joint family business, which was then being carried on under the name and style 'Ramnath Sarjug Prasad' was allotted exclusively to the appellant and his three minor sons. The appellant filed a suit (suit No. 5 of 1958) for damages against M/s Lakshmi Bombay Thread Factory and others on the ground that the defendants had infringed certain trade marks registered under the Trade Marks Act, 1940. This suit was decreed by the District Judge, Patna, on March 31, 1962. The defendants filed an appeal against the said decree. This appeal was numbered First Appeal No. 227 of 1962. In the suit one contention of the defendants was that the suit was not maintainable because although the suit had been instituted by the appellant in his capacity as proprietor of the firm Ramnath Sarjug Prasad, his three minor sons, who were also proprietors of the firm according to the partition deed dated November 2, 1952, had not been impleaded. The learned District Judge held on this point that it was open to the plaintiff to sue on behalf of the entire family comprising himself and his minor sons as *karta* of his family without impleading the minors. In the course of the hearing of the appeal before the learned Single Judge, the appellant filed a petition under O. 1 r. 10, C.P.C., on May 1, 1967, for addition of parties. On the same day the learned Single Judge directed the appellant to file an affidavit by May 2, 1967, giving the respective dates of birth of his three minor sons who were to be added as parties to the said appeal. The appellant, who has a large family, did not remember the exact dates of birth of his sons and sought information from the school authorities. The appellant received information from the Principal, Ram Mohan Roy Seminary, Patna, on May 2, 1967, that the date of birth of Subhas *alias* Ashok Kumar Jayaswal was June 9, 1954. On the same date the appellant swore and filed an affidavit stating therein the above date of birth of Subhas *alias* Ashok Kumar Jayaswal. The learned Single Judge in the judgment disposing of Appeal No. 227 of 1962 observed :

"In conclusion, I would like to mention that the statement made by plaintiff-respondent Jotish Chandra Chaudhary in the affidavit sworn and filed by him in this Court on 2-5-1967 about the date of birth of his youngest son Subhas being 9th June, 1954 appears to be false to his knowledge, as shown by the fact that this plaintiff-respondent himself was one of the executors in the Partition Deed (Ext. B) which is dated 2-11-1952 and he executed the same for himself as well as guardian of his three minor sons including the aforesaid Subhas. He is therefore directed to show cause by 21-7-1967 as to why he shall not be prosecuted for committing offences under sections 199 and 200 of the Indian Penal Code or such other sections as may be found to be applicable."

The learned Single Judge, on cause being shown, was unable to accept the plea of the appellant that the date of birth of Subhas had been wrongly mentioned due to a *bona fide* mistake. We may mention that Subhas was actually born on December 12, 1951, and not on June 9, 1954. The learned Single Judge observed :

"This plea about *bona fide* mistake does not appear to be all convincing or acceptable. As is well known that the entries in the School Registers regarding the dates of birth are often wrong being based upon wrong information given at the time of admission of the students and Jotish Chandra Chaudhary being himself the father of the boy and being a party to the aforesaid deed of partition, could not be unaware of the fact that the date of birth as entered in the School Register was not correct. In this connection, it may be mentioned that he is not an illiterate villager but a business man living in Patna City and running a business since a long time."

On a consideration of all the above aspects, I am quite unable to accept the plea about the date of birth having been wrongly mentioned in the affidavit due to *bona fide* mistake and it is evident that this date was deliberately given as it was thought at that time that this version could be supported by the certificate obtained from the school, and the fact that could be detected by reference to the registered deed of partition which has been executed in 1952, had been overlooked at that time."

With respect to the learned Judge, he has not considered whether any advantage was likely to accrue to the appellant for giving the date of birth of his son Subhas as June 9, 1954.

**A** instead of December 12, 1951. As far as the appeal pending before the learned Single Judge was concerned, it is not disputed that this change did not make any difference to the decision of the question of impleading the minor son as a party or the decision on the question whether the suit was maintainable or not. Before a person can be punished under s. 199, I.P.C., it has to be proved, *inter alia*, that the false statement is 'touching any point material to the object for which the declaration is made'. There is no suggestion that the change of the birth date touched any material point in F.A. No. 227 of 1962. One of the ingredients of an offence under s. 200, I.P.C., is that the declaration should be used or attempted to be used corruptly. It has not been explained to us how the declaration was used 'corruptly'. Considering that **C** the date of birth was obtained from the school records, and that the appellant stood to gain no advantage by giving a wrong date, the learned Single Judge should not, in our view, have directed the lodging of complaint under s. 199 or s. 200, I.P.C. It is not clear what other section of Indian Penal Code the learned Single Judge had in view.

**D** In view of the above conclusion it is not necessary to consider whether the judgment directing the filing of complaint was in contravention of s. 479A(6), Cr. P.C.

In the result the appeal is allowed and the orders of the Division Bench and the learned Single Judge set aside, and the complaint, which is stated to have already been filed, quashed. **E**

R.K.P.S.

*Appeal allowed.*