K. KARUNAKARAN

v.

T. V. EACHARA WARRIER

November 16, 1977

[P. K. GOSWAMI AND V. D .TULZAPURKAR, JJ.]

Constitution of India—Article 136—*Exercise of power to prevent gross injustice—Perverse or palpably erroneous orders—Criminal Procedure Code* 1973 *Sec.* 340(1), 341—*Criminal Procedure Code* 1898 *Sec.* 476*B—Indian Penal Code—Sec.* 193—*Sanction for prosecution for perjury granted by High Court—When this Court would interfere.*

The respondent's son was a student in the Regional Engineering College, Calicut, and was a resident of the College Hostel. The respondent received a registered letter from the Principal of the College informing him that his son Rajan was arrested and taken into police custody. This was during the time when the proclamation of emergency was in force, since June, 1975. The respondent had to make numerous efforts and entreaties in appropriate quarters to anyhow ascertain the whereabouts of his son. He saw the appellant who was then the Home Minister of Kerala. He also met the then Chief Minister of Kerala and wrote a representation to the Home Minister of the Government of India with copies to all members of Parliament from Kerala. A reminder was also sent. The respondent, however, did not receive any reply from any source. Thereafter, the respondent filed a Habeas Corpus Petition in the High Court in which the present appellant, *inter alia* was joined as the respondent. The High Court issued a writ of Habeas Corpus to the respondents in that petition directing them to produce Shri Rajan S/o the respondent in the Court. The court also ordered that if for any reason the respondent thought that they would not be able to produce the said Rajan they should file a Memo submitting the information about the steps taken to trace Rajan and that they failed to locate him. In the course of the proceedings in the Habeas Corpus Petition, the appellant filed two affidavits. In the first affidavit the appellant denied having told the respondent that his son was in police custody and he further stated that he had no knowledge that the said Rajan was in police custody at any time. In the subsequent affidavit he deposed that after Rajan was taken into police custody he was belaboured by the Police and there is every reason to believe that he met with his death while in police custody.

The respondent filed an application under Sec. 340(1) of the Criminal Procedure Code before the High Court for taking action against the appellant and others for perjury. The High Court hearing the application came to the conclusion that a *prima facie* case was made out under section 193 of the Indian Penal Code and that it was expedient in the interest of justice to lay a complaint against the appellant before the appropriate Court.

Dismissing the appeal by Special Leave held :—

1. It is well settled that this Court under Article 136 of the Constitution would come to the aid of a party when any gross injustice is manifestly committed by a Court whose order gives rise to the cause for grievance before the Court. If two views are possible, it would not be expedient, in the interest of justice to interfere with the order of the High Court. The order of the High Court can be quashed only if it is manifestly perverse or so grossly erroneous or so palpably unjust that this Court must interfere in the interest of justice and fairply. [217 C-D, F]

2. The High Court has taken good care not to express on the merits of certain aspects. The Court found that there was no justification to interfere with the Order of the High Court. [217 G]

A 3. Under Section 476B of the old Criminal Procedure Code there was a right of appeal against the order of the High Court to this Court. There is, however, a distinct departure from that position under section 341 of the new Criminal Procedure Code. It is, therefore, a new restriction in the way of the appellant when he approaches this Court under Article 136 of the Constitution. [216 B-C]

B 4. The Court made it clear that the reasons contained in the High Court or those mentioned by this Court should not weigh with the Criminal Court in coming to its independent conclusion whether the offence under section 193 of the Indian Penal Code has been fully established against the appellant beyong reasonable doubt [216 H, 217A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 272 of 1977.

C Appeal by Special Leave from the Judgment and Order dated 13-6-77 of the Kerala High Court in C.M.P. No. 7406/77 in O.P. No. 1141 of 1977.

D. Mookherjee, A. S. Nambiar, V. Sivaraman Nair and *Miss Pushpa Nambiar* for the Appellant.

D *Niren De, Ram Kumar, Mrs. Sumithra Banerjee, M. K. D. Namboodiry* and *Dr. N. M. Ghatate* for Respondent No. 1.

N. N. Abdul Khader, Adv. Gen. K. M. K. Nair and K. R. Nambiar for Respondent No. 2.

The Judgment of the Court was delivered by

E GOSWAMI, J.—This appeal by special leave is directed against the judgment and order of the High Court of Kerala of June 13, 1977, sanctioning a complaint against the appellant along with two others, who are not before us, for an offence under section 193 I.P.C. after making an enquiry under section 340(1) Code of Criminal Procedure, 1973. At the time of granting special leave this Court ordered for impleading the State of Kerala and the State is represented before F us by its Advocate General who adopts the arguments of the appellant's counsel, Mr. Debabrata Mookerjee, and also addressed us in support of the appeal.

This particular proceeding is an off-shoot out of a *habeas corpus* application instituted on March 25, 1977, in the High Court of Kerala by T. V. Eachara Warrier who is a retired Professor of Hindi G of the Government Arts and Science College, Calicut. His son Rajan who was a final year student in the Regional Engineering College, Calicut, was a resident of the College Hostel. Shri Warrier received a registered letter from the Principal of the College informing him that his son, Rajan, was arrested and taken into police custody on March 1, 1976.

H This was a time when the proclamation of emergency had been in force in the country since June 25, 1975. Nothing, therefore, could be done in the courts in view of the majority decision of the Constitution Bench of this Court (Khanna, J. dissenting) that

challenge of even *mala fide* orders of detention could not be entertained under article 226 of the Constitution (see *Additional District Magistrate, Jabalpur* v. *S. S. Shukla etc. etc.*(1)

The heart-broken father had to make numerous efforts and entreaties in appropriate quarters, high and low, to anyhow ascertain the whereabouts of his son. The point that is relevant is that Shri Warrier also saw and met the appellant (Shri Karunakaran) who was then the Home Minister of Kerala, on March 10, 1976, after nine days of the arrest. We are referring to this fact since it will assume some importance as will appear hereinafter on account of omission by Shri Warrier to mention about this interview with Shri Karunakaran in the original writ application. Shri Warrier also met the then Chief Minister Shri V. Achutha Menon, several times and on the last occasion when he had met him "he expressed his helplessness in the matter and said that the same was being dealt with by Shri Karunakaran, Minister for Home Affairs". There was also a written representation by Shri Warrier to the Home Minister, Government of India, on August 24, 1976, with copy to all Members of Parliament from Kerala. There was a reminder to him on October 22, 1976. Certain Members of Parliament also took the matter up with Shri Karunakaran in November, 1976. It is sufficient to state that Shri Warrier did not receive any answer to his piteous queries about the whereabouts of his son. This is how the matter had been dragging keeping the parents in great suspense, misery and distress which can only be imagined.

It so happened that the Lok Sabha was dissolved on January 18, 1977, and elections to Parliament and the Kerala State Assembly were to take place on March 19, 1977. Emergency was also necessarily relaxed. Finding all his efforts to trace the whereabouts of his son unavailing, the appellant ultimately printed out a leaflet inviting attention of the general public in Kerala about his utter distress at the time when the people were about to go to the polls. In the leaflet Shri Warrier had detailed that his son was kept in illegal custody without even informing him and the members of his family his whereabouts. It was mentioned in his original *habeas corpus* application that during the election Shri Karunakaran, then, Home Minister, had addressed several public meetings in various constituencies of the State and that he had stated during his speeches that Rajan was involved as an accused in a murder case and that was why he was kept in detention. Shri Karunakaran and his party won in the State Assembly elections and Shri Karunakaran became the Chief Minister in March 1977.

On March 25, 1977, which was a Friday, Shri Warrier filed in the High Court the *habeas corpus* application for production of his son, impleading the Home Secretary, Kerala, the Inspector General of Police, Kerala, and the Deputy Inspector General of Police, Crime Branch, Kerala, as the first three respondents. The application was

(1) [1976] Suppl. S.C.R. 172.

A moved on the next working day, namely, March 28, 1977, and the learned Advocate General took notice on behalf of the respondents in the petition and the case was posted to March 30, 1977, for showing cause as to why the application should not be granted.

Meanwhile Shri Karunakaran, who was by then the Chief Minister, stated on the floor of the State Assembly that Shri Rajan had never B been arrested, and that was published in all the papers. That led to the application by Shri Warrier on March 30, 1977, to implead Shri Karunakaran and the District Superintendent of Police, Kozhikode, as additional respondents to his petition. The learned Additional Advocate General took notice of this petition and the same was allowed by the High Court on that very day.

C Counter affidavits by the respondents, including Shri Karunakaran's, were sworn on March 31, 1977 and filed on April 4, 1977, and the case was posted to April 6, 1977. On April 6, 1977, Shri Warrier filed a reply affidavit. Along with it affidavits of 12 persons were also filed in support of his case that Rajan had been taken into police custody on March 1, 1976.

D Shri Warrier as well as most of the deponents of the affidavits offered themselves for cross-examination and although some of them were cross-examined, the Additional Advocate General declined to cross-examine Shri Warrier. However, the Principal of the Engineering College, who had informed Shri Warrier about Rajan's arrest, was also examined as a witness. The learned Additional Advocate General was candid enough not to question his veracity except to E point out that he had no direct knowledge about the arrest of Rajan which he came to know from the warden and the students. After a full hearing of the matter the High Court delivered its Judgment in the *habeas corpus* application on April 13, 1977, but in the nature of things the proceedings were not closed. The High Court, faced with a unique situation, ordered as follows :—

F "We hereby issue a writ of Habeas Corpus to the respondents directing them to produce Sri Rajan in this Court on the 21st of April, 1977.

If, for any reason the respondents think that they will not be able to produce the said Sri Rajan on that day their counsel may file a Memo submitting this information before the Registrar of the High Court on 19th April, 1977, G in which case the case will stand posted to 23-5-1977, the date of reopening of the Courts after the midsummer recess. On that day the respondents may furnish to the Court detailed information as to the steps taken by the respondents to comply with the order of this Court, and particularly to locate Sri Rajan. Thereupon it will be open to this Court to pass further orders on this petition and to that H extent this order need not be taken to have closed the case".

The Advocate General filed a Memorandum as ordered by the High Court on April 19, 1977, on behalf of respondents, 1, 2 and

4, the Home Secretary, Inspector General of Police and Shri Karunakaran respectively, stating that these respondents were not able to produce Rajan "since the said Rajan is not in the illegal detention or in the custody or control of the respondents anywhere in the State or outside". It was also stated that police sources in Kerala as well as outside were alerted to locate the said Rajan. It was further mentioned in the Memo that certain police officers were placed under suspension by the Government and the Deputy Inspector General of Police was relieved from the Crime Branch on transfer. It was also disclosed that Criminal Case No. 304/77 under sections 342, 323, 324 read with section 34 IPC has been registered in the Crime Branch C.I.D. based on the observations in the judgment of the High Court in the above *habeas corpus* petition. The Memo closed as follows :—

> "From the efforts so far made the said Rajan remains untraced. The efforts to locate him continue unabated and no efforts will be spared to trace him".

The above Memo was filed in the High Court on April 19, 1977, as stated earlier. It also appears that the petition for leave to appeal to the Supreme Court against the judgment was rejected by the High Court on April 23, 1977. Later, the petition for special leave to appeal against the judgment and order in the *habeas corpus* application was also rejected by this Court on April 25, 1977.

It appears that Shri Karunakaran resigned as Chief Minister after the judgment of the High Court in the *habeas corpus* petition on April 26, 1977. On May 22, 1977, Shri Karunakaran filed his second affidavit before the High Court, this time describing himself as a Member of the Legislative Assembly, Kerala State. In para 5 of this affidavit he stated as follows :—

> "To the best of my knowledge and information now available, Sri Rajan after he was taken into custody by the police was belaboured by the police and there is every reason to think that he met with his death while in police custody. It is humbly submitted that in the circumstances stated above, I am not able to comply with the writ of Habeas Corpus issued to me since compliance with the writ has become impossible on account of Sri Rajan having died as a result of police torture at the Kakkayam Investigation Camp on 2-3-1976, while in unlawful custody of the police as disclosed in the report dated 17-5-1977 of the investigating Officer".

It will be of relevance now, as indicated at the outset, to refer to the affidavit of Shri Warrier of March 30, 1977, in support of his application for impleading Shri Karunakaran and it may be appropriate to quote paragraph 2 therefrom :

> "I met the present Chief Minister Sri K. Karunakaran on the 10th of March, 1976 at the Man Mohan Palace at Trivandrum (His Official residence then) and Sri Karunakaran told me then that my son Rajan had been arrested

A from his college for involvement in some serious case and he will do his level best to look into the matter and help the petitioner".

Shri Karunakaran as Chief Minister made his first affidavit on March 31, 1977, and in reply to the above quoted paragraph 2 he stated in that affidavit as follows :—

B "The allegation made in paragraph 2 of the additional affidavit that I told the petitioner on 10th March, 1976, that his son Rajan had been arrested from his College for involvement in some serious cases and he will do his (sic) level best to look into the matter and help the petitioner is absolutely incorrect. I have never told the petitioner that his son Rajan was in police custody at any time and so far, C I have no knowledge that the said Rajan has been in Police custody at any time".

He also denied as false in this affidavit about any reference to Rajan's arrest in his speeches during the election campaign. In his second affidavit of May 22, 1977, referred to above, he made reference to the interview with Shri Warrier of 10th March, 1976, and stated D as follows in para 8 therein :

"Shri T. V. Eachara Warrier, the petitioner in the Original Petition had met me on or about 10th March, 1976 and told me that he suspected that his son is involved in the criminal case registered in connection with the attack by some persons on Kakkayam Police Station on 29-2-1976 and that he wanted me to use my good offices to exclude his son E from that case. I told him this was a crime under investigation by the police and that it would not be proper for me as the Home Minister to interfere with the investigation by the police by issuing directions to them".

He also stated in paragraph 9 as under :—

F "I had stated in the Legislative Assembly that Sri Rajan had not been in police custody on the basis of the report of the Inspector General of Police dated 7-1-1977. Apart from this report I had no other source of information on this matter. I had no means whatever to doubt the correctness of the facts stated in the report of the Inspector General of Police".

G He added in paragraph 10 as follows :—

"It is a matter of intense agony and anguish for me, as the Minister for Home, Government of Kerala, at that time, that Sri Rajan, the son of the petitioner who was taken into custody by the police on 1-3-1976 happened to be tortured while in police custody at the Kakkayam camp as a result of H which he breathed his last while in such custody at the camp on the evening of 2-3-1976 as it has now been revealed by the investigation of Crime No. 304/77 of Crime Branch CID I may be permitted to say in retrospect that the

judgment of this hon'ble Court dated 13-4-1977 had helped me as Chief Minister to apply my pointed attention to this matter and take certain expeditious steps to bring to light the true facts".

In the above backdrop, Shri Warrier filed an application under section 340(1) Cr.P.C. before the High Court for taking action against Shri Karunakaran and others for perjury.

Lie tends to become almost a style of life. Lies are resorted to by the high and the low being faced with inconvenient situations which require a Mahatma Gandhi to own up Himalayan blunders and unfold unpleasant truths truthfully. But when principles are sacrificed at the altar of individuals, selfishness of man, desire to continue in position and power, lining up with the high and mighty, lead to lies, euphemistically prevarication. But all lies made, here and there, ignored by the people or exposed on their own to nudity, are not subject matters for the Court to take action. When the Court takes action it is a species of falsehood clearly defined under section 191 IPC and punishable under section 193 IPC.

The High Court after hearing the said application has come to the conclusion that a *prima facie* case has been made out under section 193 IPC and that it is expedient in the interest of justice to lay a complaint against Shri Karunakaran under that section before the appropriate court. The High Court also passed similar orders against the Deputy Inspector General of Police, Crime Branch and the Superintendent of Police, respondents 3 and 5 respectively in the original application. The High Court, however, declined to take action against the Home Secretary and the Inspector General of Police for certain reasons recorded by it.

It is submitted by Mr. Debabrata Mookerjee, on behalf of the appellant, that the High Court had no legal justification to make a distinction between Shri Karunakaran on the one hand and the Home Secretary and the Inspector General of Police on the other. All the three had no direct knowledge of Rajan's arrest, says counsel. Counsel submits that Shri Karunakaran as Chief Minister could only rely on the official channel of information and he submitted before the Court all the information and he truly derived from the report of the Inspector General of Police of January 7, 1977. Mr. Mookerjee strenuously contends that no *prima facie* case has been made out against Shri Karunakaran, nor is it expedient in the interest of justice to lay a complaint for perjury against him.

On the other hand Mr. Niren De, on behalf of Shri Warrier, submits that in an appeal by special leave under article 136 of the Constitution it will be most inappropriate in a case of this nature to interfere with the discretion exercised by the High Court in laying a complaint under section 193 IPC after a regular enquiry carefully made under section 340 Cr. P.C. According to Mr. De a *prima facie* case has been made out and it is expedient in the interest of justice that Shri Karunakaran should face a trial in accordance with law.

A Chapter XXVI of the Code of Criminal Procedure 1973 makes provisions as to offences affecting the administration of justice. Section 340 Cr.P.C. with which the chapter opens is the equivalent of the old section 476, Criminal Procedure Code, 1898. The chapter has undergone one significant change with regard to the provision of appeal which was there under the old section 476B Cr.P.C. Under section 476B Cr.P.C. (old) there was a right of appeal from the order B of a subordinate Court to the superior Court to which appeals ordinarily lay from an appealable decree or sentence of such former Court Under section 476B (old) there would have ordinarily been a right of appeal against the order of the High Court to this Court. There is, however, a distinct departure from that position under section 341 Cr.P.C. (new) with regard to an appeal against the order of a High Court under section 340 to this Court. An order of the High Court C made under sub-section (1) or sub-section (2) of section 340 is specifically excluded for the purpose of appeal to the superior court under section 341(1) Cr.P.C. (new). This is, therefore, a new restriction in the way of the appellant when he approaches this Court under article 136 of the Constitution.

Whether, *suo moto,* or on an application by a party under section D 340(1) Cr. P.C., a Court having been already seized of a matter may be tentatively of opinion that further action against some party or witness may be necessary in the interest of justice. In a proceeding under section 340(1) Cr.P.C. the reasons recorded in the principal case, in which a false statement has been made, have a great bearing and indeed action is taken having regard to the overall opinion formed by the Court in the earlier proceedings.

E

At an enquiry held by the court under section 340(1) Cr.P.C., irrespective of the result of the main case, the only question is whether a *prima facie* case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.

F The party may choose to place all its materials before the court at that stage, but if it does not, it will not be estopped from doing so later in the trial, in case prosecution is sanctioned by the court.

In this case the High Court came to the conclusion in the enquiry that Shri Karunakaran's first affidavit of 31st March, 1977 filed on 4th April, 1977, contained a false statement to the effect that he had no knowledge that Rajan was in police custody at any time and that G "he could not have believed it to be true". It is only on that basis that the High Court held that an offence under section 193 IPC was *prima facie* made out. Having regard to the second affidavit of 22nd May, 1977 and for any other reasons recorded by it the aforesaid statement in that behalf was considered by the High Court as "deliberately" made.

H We should make it clear that when the trial of the appellant commences under section 193 IPC the reasons given in the main judgment of the High Court or those in the order passed under section 340(1) Cr.P.C., should not weigh with the criminal court in com-

ing to its independent conclusion whether the offence under section 193 IPC has been fully established against the appellant beyond reasonable doubt. It will be for the prosecution to establish all the ingredients of the offence under section 193 IPC against the appellant and the decision will be based only on the evidence and the materials produced before the criminal court during the trial and the conclusion of the court will be independent of opinions formed by the High Court in the *habeas corpus* proceeding and also in the enquiry under section 340(1) Cr.P.C.

An enquiry, when made, under section 340(1) Cr.P.C. is really in the nature of affording a *locus poenitentiae* to a person and if at that stage the court chooses to take action, it does not mean that he will not have full and adequate opportunity in due course of the process of justice to establish his innocence.

It is well-settled that this Court under article 136 of the Constitution would come to the aid of a party when any gross injustice is manifestly committed by a court whose order gives rise to the cause for grievance before this Court. Even when two views are possible in the matter it will not be expedient in the interest of justice to interfere with the order of the High Court unless we are absolutely certain that the two pre-conditions which are necessary for laying a complaint after an enquiry under section 340 are completely absent. The two pre-conditions are that the materials produced before the High Court make out a *prima facie* case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution under section 193 IPC.

We should bear in mind an important aspect. We are not dealing with a case of conviction of an accused under section 193 IPC. The appellant is still to be tried. We are invited to quash the complaint made by the High Court prior to its regular trial. That can be only on the basis that the order of the High Court's *prima facie* view that a complaint should be laid under section 193 IPC is so manifestly perverse, so grossly erroneous and so palpably unjust that this Court must interfere in the interest of justice and fair play.

There is another anxiety on our part not to speak more than what is absolutely necessary in this appeal as any expression or observation on any facet of the case may prejudice either party in the trial which must be free and impartial wherein no party should have any feeling of misgiving, suspicion or embarrassment.

We have seen in the judgment of the High Court that it has taken good care not to express on the merits of certain aspects which it has expressly enumerated. We will only add that even in those aspects where the High Court may be said to have even remotely expressed some views, these shall not certainly weigh with the trial court. We read in the judgment of the High Court their natural anxiety on this score and we are only clarifying the true position so that there need be no embarrassment or apprehension in any quarters about the trial. It is for this very reason that although arguments were heard at length of both sides on every conceivable aspect of

A the case, we deliberately refrain ourselves from making any observation thereon. We feel that any observation one way or the other in respect of certain submissions made before us may have an unintended likelihood of prejudicing some party or the other at the trial. Even a remote possibility of this nature must be avoided at all costs.

The fact that a *prima facie* case has been made out for laying B a complaint does not mean that the charge has been established against a person beyond reasonable doubt. That will be thrashed out in the trial itself where the parties will have opportunity to produce evidence and controvert each other's case exhaustively without any reservation. There may be often a constraint on the part of a person sought to be proceeded against under section 340 Cr.P.C. to come out with all materials in the preliminary enquiry. That constraint will not be C there in a regular trial where he will have ample opportunity to defend himself and produce all materials to show that an offence under section 193 IPC has not been made out. That section contemplates that making of a false statement is not enough. It has to be made intentionally. The accused in a trial under section 193 will be able to place all circumstances bearing upon the ingredient of the intention attributed to him.

D After giving our anxious consideration to all the submissions made by counsel of both sides we do not feel justified in interfering with the order of the High Court to scotch the complaint against the appellant at the threshold.

It is true, we are dealing with the former Chief Minister of a State who happened to be the Home Minister at the time of the E incident. Even the time was singularly unique when the occurrence took place and such cases give rise to emotions and feelings of bitterness. It is also true that a person cannot swear a falsehood in the court as a minister with impunity and come out with the truth only as a commoner. When, however, the court is called upon to ultimately try an offence we do not have any doubt that the matters germane to the offence under section 193 IPC alone will be taken F into consideration on the materials produced by the parties and justice will be done in accordance with law.

Where a Chief Minister, for reasons best known to him, relying entirely on the official channel of information denied knowledge of an event, people were humming about, it is a matter which must go forward for a trial in public interest. Truth does not lie between two lights.

G

Whether the appellant made a false statement before the High Court and intentionally did so will be an issue at large for trial in the criminal court. We decline to put the lid on the controversy, out of hand, since that way does not point to justice according to law. We close by saying *ne quid nimis.*

H The appeal is dismissed.

P.H.P. *Appeal dismissed.*

1042 SCI/77—2,500—3-6-78—GIPF.