

"PROCEEDINGS-IN-CAMERA"

Azizur Rahman
Addl, Distt. Judge,
Farrukhabad

The enjoyment of good reputation is a cherished desire of the human nature. Reputation is that which a man earns in the public opinion. It is also protected under Article 21 of the Constitution of India. It is not necessary that the instances making good reputation may be known to public.

In matrimonial cases-judicial separation, restitution of conjugal rights and divorce-the common grounds pleaded are cruelty, desertion, impotency, adultery, virulent and incurable form of leprosy, communicable form of venereal disease etc. Cruelty may include physical or mental shock, excessive sexual intercourse or refusal to sexual intercourse. It may also include physical assault, - molestation, sodomy and bestiality. Sections 10, 11 and 13 of the Hindu Marriage Act 1955, Sections 10 and 18 of the Indian Divorce Act 1869, Secs. 25 and 27 of the Special Marriages Act 1954, Section 2 of Dissolution of Muslim Marriages Act 1939 and other like Acts recognise the said grounds in matrimonial disputes. They are directly linked with the reputation of the party in proceeding. In such cases evidence is likely to be of revolting character and may injure the finer instinct of the party and may affect such reputation directly in the eye of general public. It may deter the aggrieved to seek relief in courts.

Although it is cardinal principle of law that the trial shall be held in open court, Order 18 Rule 4 C.P.C. provides as thus:-

"The evidence of the witnesses in attendance shall be taken orally in open court in the presence and under the personal direction and superintendence of the judge."

Hon'ble Mr. Justice Bachawat in Naresh vs. State of Maharashtra (AIR 1967 SC 1) has elaborated it as follows:-

"Long ago Plato observed in his laws that the citizen should attend and listen attentively to the trials. Hegel in his Philosophy of Right maintained that judicial proceedings must be public since the aim of the Court is justice, which is a universal belonging to all. Save in exceptional cases, the proceedings of a Court of justice should be opened to the public",

The object behind the hearing in open court has been to provide legal assistance readily available to a person facing trial and it is in consonance with Article 21 of the Constitution.

But feminist organisations opposed such hearings in open Court, They propagated that it exposes the secrets of marital life. It also discourages the weaker section to tell the truth for fear of being propagated and misunderstood in society.

Section 53 of Indian Divorce Act 1869, Order 32-A, Rule 2 C.P .C. and Section 11 of the Family Courts Act 1984 contain similar provisions on the point.

Sec. 11 of the Family Courts Act provides:-

"In every suit or proceedings to which this Act applies the proceedings may be held in camera if the family court so desires and shall be so held if either party so desires."

Section 153-8 Proviso C.P.C. inserted by Amending Act No.104 of 1976 also lays down:-

"Provided that the presiding judge may if he thinks fit, order at any stage of any particular case, that the public generally, or any particular person, shall not have access *to*, or be or remain in, the room of building used by the Court."

In *Janaki Ballav v. Bennet Coleman and Co. Ltd.* (AIR 1989 Orissa 225) the importance of camera proceedings has been explained precisely as follows:-

"In exercise of its discretion and if court thinks fit, the court may order that the trial of any suit may be held in camera and the public generally shall have no access or to remain in the court room or building used by the Court. The exception by its very nature requires exercise of due care and caution before the court directs trial of a suit out of the public gaze. In exceptional and appropriate cases after exercise of due care and caution, the court may direct that a part of whole of the proceedings shall be conducted in camera. In the instant case the allegations against the plaintiff which he has challenged are mostly obscene..... The allegations, the words and sentences are so filthy and obscene that generally a normal person much less children adolescents, young girls, ladies and men will hate to hear and read... In the background of the peculiar facts of the case and keeping the principles of law in the background, I am of the view that the administration of justice will not suffer if parts of the proceedings of the suit are tried in camera The evidence recorded in camera shall not be printed and published in any newspaper, magazine, periodical, pamphlet, book or otherwise."

But considering the various aspects and increasing obscenity in cross-examination of witnesses and publication, the legislature leaned to make the law mandatory in matters of matrimonial disputes and sexual offences. The Marriage Laws Amendment Act 1976 introduced Sec. 22(1) in Hindu Marriage Act 1955, which provides as follows:-

"Every proceeding under this Act shall be conducted In Camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the Court."

The proviso to Section 327 (1) of the Criminal Procedure Code 1973 contains a provision similar to that in the proviso to Section 153-B of C.P .C. The Sub-Section (2) also makes it mandatory to try cases in camera. It reads as

follows: -

"Notwithstanding anything contained In Sub-Section (1), the inquiry Into and trial of rape or an offence u/s. 376, Sec. 376A, 376 B, Sec. 376-C or Section 376-D of the I.P.C. shall be conducted in camera."

So circumstances desired that the obscene matters and evidence must be kept away from public gaze and hearing, may it be civil or criminal proceedings. Such matters shall not be printed and published in any newspaper, magazine, periodical, Pamphlet, book or otherwise to save our children adolescents, young girls, ladies and men from having an ugly feature of our society and poisoning their minds.

The Courts if they desire to try the proceedings in camera in other like matter shall make order in writing to keep the parties and strangers alike under obligation to obey it. While making such orders it shall also keep in mind the view expressed on obscenity in *Samresh Bose v. Amal Mitra* (AIR 1986 SC 967) as guideline and similar other peculiar and prevailing circumstances. Hon'ble Supreme Court in the said case has observed as follows:-

"in our opinion in judging the question of obscenity, the judge in the first place should try to place himself in the position of the author and from the view point of the author the judge should try to understand what is it that the author seeks to convey and whether what the author conveys has any literary or artistic value. The judge should thereafter place himself in the position of a reader of every age group, In whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have in the minds of the readers. A *judge* should thereafter apply his judicial mind dispassionately to decide whether the book in question can be said to be obscene.....'.

But where the enactment itself makes it mandatory to proceed in camera, it requires no order in writing. The said provision shall have the force of an injunction in itself.

The law has not been silent in regard to consequences on such orders being flouted by the irresponsible persons. In *V .C. Shukla v. Tamil Nadu Olympic Association* (AIR 1991 Mad 323) the Full Bench observed as follows:-

"If violation of the court's order will be ignored, there will be nothing left save for each person to take the law into his own hands. Loss of respect for the courts will ultimately result in the destruction of the rule of law and ultimately the society."

The law provides sanction to enforce its implementation.

Section 22(2) of the Hindu marriage Act 1955 provides as follows:-

"If any person prints or publishes any matter in contravention of the provisions contained in Sub-section (1) he shall be punishable with fine which may extend to one thousand rupees."

Section 327(3) Cr.P.C. provides as follows:-

"Where any proceedings are held under Sub-section (2) it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the court."

The breach of the provision in criminal cases has been made punishable U/S-228 of the I.P.C. Disclosure of identity of the victim of certain offences viz; rape, or printing or publication of a proceeding without prior permission of the Court has been made punishable with Imprisonment for two years and fine U/S-228- A of the I.P.C.

In spite of the said provisions, an interference or assault or interference or wilful disobedience of an order with the process of Justice has also been made punishable with the aid of Chapter XXVI of the Cr.P.C. and the matter may also be reported to the High Court for contempt of Court. The Contempt of Courts Act 1971 deals with civil and criminal contempt as defined in section 2(b) and 2(c) of the Act. Section 7 of the Act deals with publication of information relating to proceeding in chambers or in camera. Such publication has been made contempt, where the publication is contrary to the provisions of any enactment for the time being in force or where the court on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceedings and so on, and In default one shall be held guilty for contempt of the court and .may be punished U/S. 12 of the Act with simple imprisonment for a term which may extend to six months or with fine which may extend to Rs.2000/- or with both.

The courts may sometimes be guilty of default in implementing and observing the mandatory nature of law or where the circumstances itself warrant so. The court may in the situation be guilty of the contempt of its own court. It may also deserve criticism in the

manner as our Hon'ble Mr. Justice N.N. Mittal observed in A.P. (Tee) Private Ltd. v. Addl. District Judge (1989All. C.J. page 445):

I feel pity that in this case an officer of the rank of...who must have put in several years working on the civil side should have passed an order like this in utter disregard to the provisions of...in view of the above, the manner in which the order has been passed betrays serious lack of knowledge of procedure on the part of the learned lower court.

Similarly in rape case Dev Singh v. State (1989 JIC 40) wherein lower court awarded punishment lesser than that provided in the law, the Hon'ble Court observed as under: -

"However ignoring the tenets of the statute he has awarded a sentence... it is thus apparent that ... judge is not aware about the provisions and has awarded the sentences in an arbitrary manner which only deserves to be spurned."

One may naturally inquire whether the publication of proceeding may permanently be suppressed. English Courts and our Supreme Court in Naresh v. State of Maharashtra (Supra) have held that prohibition to publication of such proceeding can not be in perpetuity. If it is so, it is violative of Article 19 (1) of the Constitution of India. A few comments about a case which has been heard and finally decided are protected U/S-5 of the Contempt of Courts Act. All the said provisions provide that the court may hold the trial behind closed doors or may forbid publication of the proceedings during the pendency of litigation but certainly not after the conclusion of the proceedings. However, Section 22 of the Hindu Marriage Act 1955 registered a departure from the existing law; it not only prohibits the publication of the proceedings but also prohibits it in perpetuity. It provides that the printing and publication of the judgment of the High Court or Supreme Court is permissible only if it has accorded permission to do so. It certainly implies that the judgment of the subordinate courts can not be printed or published even with the permission of the court. It clearly makes proceedings or evidence recorded in camera not to be printed or published permanently even after delivery of judgment. The provision itself is violative of Fundamental Rights in view of the observation made in Naresh v. State of Maharashtra (Supra) and how the said provision shall claim justification has yet to be explained.

Laws are framed for common good and to eradicate evil. The demand of dowry, bride-murder and suicidal cases are on increase and are widely reported; in news papers, news and views media. A large number of cases are pending for their disposal in different law courts. The matter has been propagated at large to show its ugly face with the object to create fear and hatred in public mind against such offences but It is taking a reverse effect altogether. One may agree with me that most of women are highly sensitive and emotional and they are easily swayed away to revenge their in-laws or express frustration in affairs by committing suicide. If such provisions of trial-in-camera are extended to these cases, the young mind and coming generation may be saved from such poisonous thinking either way.

[J.T.R.I. JOURNAL – First Year, Issue – 2 - Year – April – June, 1995]