

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**CRL.M.C. 1025/2008 & Crl M A 3809/2008**

Reserved on : April 21, 2009

Decision on : April 28, 2009

**SERVANTS OF PEOPLE SOCIETY & ANR** ..... Petitioners

Through Mr. Jagnath Patnaik, Senior Advocate  
with Mr. Avijit Patnaik, Mr. Arunav Patnaik and  
Ms. Soma Patnaik, Advocates

versus

**PODDAR GLOBAL LTD.** ..... Respondent

Through Mr. Barun K. Sinha with Ms. Pratibha  
Sinha and Mrs. Renu Sinha, Advocates

and

**CRL.M.C. 1058/2008 & Crl M A 3956/2008**

**MANORAMA MOHAPATRA** ..... Petitioner

Through Mr. Dhavenidhar Nayak with  
Mr. Sarthak Nayak and Mr. C.K. Rai, Advocates

versus

**PODDAR GLOBAL LTD.** ..... Respondent

Through Mr. Barun K. Sinha with  
Ms. Pratibha Sinha & Mrs. Renu Sinha, Advocates

**CORAM:**

**HON'BLE DR. JUSTICE S. MURALIDHAR**

- |                                                                             |     |
|-----------------------------------------------------------------------------|-----|
| 1. Whether Reporters of local papers may be<br>allowed to see the judgment? | No  |
| 2. To be referred to the Reporter or not?                                   | Yes |
| 3. Whether the judgment should be reported in Digest?                       | Yes |

**JUDGMENT**

**28.04.2009**

**Dr. S. Muralidhar, J.**

1. These petitions arise from the same set of facts and are accordingly being disposed of by this common judgment.

2. The prayer in both the petitions is that the Complaint Case No. 1221/1/2006 titled *M/s. Poddar Global Limited v. Servants People of Society & Anr* pending in the court of the learned Metropolitan Magistrate ('MM') and all proceedings consequent thereto should be quashed insofar as it concerns the petitioners.

3. The Petitioners in Crl M C No. 1025 of 2008 are the Servants of People Society ('Society') and Manubhai Patel, its President who are arrayed in the complaint as accused Nos. 1 and 2 respectively. The accompanying petition Crl M C No. 1058 of 2008 is by Manorama Mohapatra who is arrayed as accused No.3.

4. The aforementioned complaint was filed by Poddar Global Limited ('PGL') alleging that the Society had published a defamatory article concerning the PGL in the newspaper named 'SAMAJ' in Oriya language published by and under the control of the Society. It was stated that the complainant PGL has been supplying the printing paper used in the publication of the said newspaper for more than 10 to 11 years at Cuttack. The said article purported to describe the contents of a complaint lodged with the Cantonment Police Station in Cuttack by the Society alleging that on 12<sup>th</sup> July 2006 an "illegal transaction" had been entered into whereby Sri Braja Bhai, a former life member of the Society and Sri Satya Paul, former Executive Secretary of the Society had issued a cheque in the sum of Rs.

47,08,500 in favour of PGL from the account of Samaj with the Punjab National Bank (PNB) Cuttack. The criminal complaint further alleged that on 6<sup>th</sup>, 20<sup>th</sup> and 31<sup>st</sup> January 2006 three cheques amounting to Rs. 50 lakhs were issued in favour of PGL illegally.

5. It was contended by PGL that the aforementioned criminal complaint was filed on totally false premises. In fact PGL was requested by the accused persons to give Rs.47 lakhs to them. This amount was paid to them in installments against receipts issued. On 12<sup>th</sup> July 2006 PGL received a cheque in the sum of Rs.47,08,500 issued by the SAMAJ through its authorised signatories towards the discharge of the aforementioned liability. As regards the three bearer cheques amounting to Rs.50 lakhs purportedly issued in favour of PGL, and which fact was allegedly communicated by the accused to PGL on 9<sup>th</sup> November 2006, PGL denied receiving any of the said cheques. It was accordingly submitted by PGL that the aforementioned news item in the edition of SAMAJ dated 20<sup>th</sup> November 2006 published by the accused had levelled “false, illegal, defamatory allegations” against PGL.

6. In para 14 of the complaint it was stated that “a person namely Tapan Kumar Munli who is well conversant with the said language had informed the complainant company, M.D. Shri Sunil Poddar in presence of his chartered accountant i.e. Shri Rajeev Gupta at the office of the company at evening on 20.11.2006 that the complainant company has been involved

such illegal activities, similarly a number of clients of the complainant company and informed the M.D. Shri Sunil Poddar that since the company is involved in such type of illegal activities with its clients they are not interested to continue with the business with the complainant company.”

7. It is submitted that PGL had outstanding balance of Rs.75,89,346.15 p which was recoverable from the accused Society and all the accused in collusion with each other got the above news item published in the SAMAJ levelling illegal and defamatory allegations against the PGL with malafide intention to malign its reputation and goodwill. The said article was noticed on 20<sup>th</sup> November 2006 and thereafter the said complaint was filed.

8. Admittedly, the Society is being run under the chairmanship of Manubhai Patel. As regards the roles attributed to each of the petitioners, in para 6 of the complaint it is stated as under:

“6. That the newspaper “SAMAJ” is being published under the accused Society No.1 under the chairmanship of accused No.1 and all the accused persons being the office bearer and editor of the said paper SAMAJ as such all the accused persons are equally responsible for any act and omission committed by the newspaper SAMAJ.”

9. It is pointed out by learned counsel for the Petitioners that in order to make any of the Petitioners liable for the publication of the article in

question, it would have to be shown that they were directly involved in the process of editing the newspaper and responsible for the selection of the articles published therein. As far as Manubhai Patel is concerned, it is submitted that he was not in charge of the day to day management and had no role to play in the decision as to the articles that should be published in SAMAJ. Therefore, not even a prima facie case can be said to be made out against him. As regards the Editor-in Chief Manorama Mahapatra, it is submitted that the necessary averments that she was responsible for the selection of the article in question is missing in the complaint. It is submitted that in her case as well, not even a prima facie case for criminal defamation can be said to be made out. As regards, the Society, it is submitted that the article carried in the SAMAJ is only a true reproduction of the contents of the criminal complaint and therefore protected by the Exceptions to Section 499 IPC and would therefore not attract the offence under Section 500 IPC.

10. On behalf of the respondent complainant it is pointed out that there are two parts to the impugned article. The first concerns the cheque dated 12<sup>th</sup> July 2006 in the sum of Rs.47,08,500 which the Society owed PGL. It is pointed out that the cheque was rightly issued to PGL in discharge of the liability of the Society and therefore it was defamatory to allege that this transaction was illegal and that PGL was in criminal conspiracy to commit such illegal act. The pre-summoning evidence clearly brought out the damage to the reputation of PGL as a result of such publication. Therefore no interference was called for. As regards the other accused, their defence

could be examined at the trial. In any event the said cheques were jointly signed by Shri Braja Bhai and Smt. Manorama Mohapatra, Petitioner and therefore she could not be heard to defend an article which alleges that such payments were illegal. These disputed questions could in any event not be examined at the present stage when the case is yet to go to trial. Reliance is placed on the decision in *Sewakram Sobhani v. R.K. Karanjia AIR 1981 SC 1514*.

11. First this Court proposes to consider the case of Manubhai Patel who is the Chairman of the Society and Manorama Mahapatra, the Editor in Chief of SAMAJ. It is noticed that under Section 7 of the Press and Registration of Books Act 1867 (Act), unless the contrary is proved, a person declared as printer, publisher and editor of the newspaper are presumed to be responsible for the contents of the newspaper. In *State of Maharashtra v. R.B. Chowdhari AIR 1968 SC 110* it was held by the Supreme Court in para 7 of the judgment as under:

“7. The term 'editor' is defined in the Act to mean a person who controls the selection of the matter that is published in a newspaper. Where there is mentioned an editor is a person who is responsible for selection of the material. Section 7 raises the presumption in respect of such a person. The name of that person has to be printed on the copy of the newspaper and in the present case the name of Madane admittedly was printed as the Editor of the Maharashtra in the copy of the Maharashtra which contained the defamatory article. The declaration in Form I which has been produced before us shows the name of

Madane not only as the printer and publisher but also as the editor. In our opinion the presumption will attach to Madane as having selected the material for publication in the newspaper. It may not be out of place to note that Madane admitted that he had written this article. In the circumstances not only the presumption cannot be drawn against the others who had not declared themselves as editors of the newspaper but it is also fair to leave them out because they had no concern with the publishing of the article in question. On the whole therefore the order of discharge made by the learned single Judge appears to be proper in the circumstances of the case and we see no reason to interfere.”

12. Likewise in *T.K. Muthukoya v. Haji C.H. Mohammad Koya (1979) 2*

*SCC 8* it was held in para 34 as under:

“34. From the facts established above, it is manifest that the petitioner has miserably failed to prove either that the appellant was the editor of the paper or that he was performing the functions, duties or shouldering the responsibilities of the editor. It is obvious that a presumption under Section 7 of the Press Act could be drawn only if the person concerned was an editor within the meaning of Section 1 of the Press Act. Where however a person does not fulfill the conditions of Section 1 of the Press Act and does not perform the functions of an editor whatever may be his description or designation, the provisions of the Press Act would have no application....”

13. Recently a learned Single Judge of this Court, after analyzing the entire case law on the subject culled out the principles in *Shobhana Bhartia v. Crl M C No. 1025/208 & 1058/2008*

***NCT of Delhi 2007 (144) DLT 519*** as under:

“(i) Besides persons declared as editor, printer and publisher of a newspaper, only such person could be prosecuted for an action of defamation against whom specific and clear allegations has been made in the complaint that either he was responsible for selection of the defamatory matter or had personal knowledge about the contents of the defamatory matter. In addition, it must also be averred in the complaint that such person had the intention to harm or knowledge or reason to believe that the imputation will harm the reputation of the complainant.

(ii) The Chairman or the Managing Director of the company owning a newspaper is neither the editor, nor the printer nor the publisher and therefore no presumption could be drawn against holder of these offices even though they are, by reason of the offices held by them, in charge of, and responsible to, the company for the conduct of its business.”

14. In light of the above position in law, it is apparent that there is no automatic presumption that an Editor-in-Chief of a newspaper is responsible for the choice of particular articles for publication. The minimum averment of imputing to the Petitioner Manorama Mahapatra the responsibility for the publication of the article in question is absent in the complaint. As regards Manubhai Patel it is seen that he in fact did not have any role to play in the matter. As a chairman of Society he cannot be said to be a person in charge of the decision concerning what was published in the SAMAJ. Here again apart from merely stating that he is the Chairman of the Society his role in

the publication of the article is not adverted to in the complaint. Consequently, not even a prima facie case is made out either against Manubhai Patel or Manorama Mahapatra for the offence under Section 500 IPC. Both of them will therefore stand discharged in the aforesaid complaint. As regards the Society however, any defence it may have can only be examined at the stage of the trial, particularly in view of the law explained in *Sewakram Sobhani*.

15. Accordingly, the petitions and the pending applications are disposed of by directing that Manubhai Patel and Manorama Mohapatra, Accused Nos. 2 and 7 respectively will stand discharged in Complaint Case No. 1221/1/2006 titled *M/s. Poddar Global Limited v. Servants People of Society & Anr* pending in the court of the learned MM and all proceedings consequent thereto. The complaint will continue as regards the remaining accused.

16. Order be given dasti.

17. The trial court record along with a certified copy of this order be returned forthwith.

**S. MURALIDHAR, J.**

**APRIL 28, 2009**

**rk**