

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

+ **Crl.M.C. 4037/2005**

% Reserved on : 12.02.2009
Date of decision : 04.03.2009

VIVEK GOENKA Petitioner
Through: Mr. N.B. Joshi, Mr. Purshottam
Mishra, advs.

Versus

STATE (N.C.T. OF DELHI) & ANR. Respondents
Through: Ms. S. Kohli, APP.

Crl.Rev.P. 637/2007

SHEKHAR GUPTA Petitioner
Through: Mr. N.B. Joshi, Mr. Purshottam
Mishra, advs.

Versus

K.M. ANEES-UL-HAQ. Respondent
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MOOL CHAND GARG, J.

1. This common order shall dispose of the aforesaid two petition

which arise from a common order passed by the learned Metropolitan Magistrate, New Delhi on 27.09.2007 whereby the Magistrate concerned refused to recall the order of summoning passed in this case against both the petitioners on the basis of an application moved by them to drop the proceedings under Section 258 of the Code of Criminal Procedure (Cr.P.C.)

2. The brief matrix of filing of the present petitions are

- i) A complaint was filed by Sh. K.M. Anees-ul-Haq, against Sh. Shekhar Gupta, petitioner in Crl.Rev.P.637/2007 and Commi Kapoor, Editor (Delhi) of the Indian Express Daily, Sh. Vivek Goenka, Managing Editor (Petitioner in Crl.M.C.4037/2005), Sh. G.R. Saxena under Sections 500/501 of IPC. All the accused persons including the present petitioners were summoned to face trial in the aforesaid complaint by learned Metropolitan Magistrate concerned.
- ii) The petitioners moved an application before the MM concerned to drop the proceedings against them at the stage of deciding the question of framing of notice under Section 251 Cr.P.C. The application was moved by the accused persons on the ground that neither Sh. Shekhar Gupta nor Sh. Vivek Goenka were required to be proceeded further in the aforesaid complaint as there was no specific allegations against them about making any defamatory allegations against the petitioner intentionally or with knowledge and therefore merely because they are named or shown in the publication on account of requirement of Section 7 of the Press and Registration of Books Act, 1867 (hereinafter referred to as 'the said Act') as Editor-in-Chief and Managing Director they ought not to be proceeded further in the complaint filed by the complainant.
- iii) On 27.09.2007 the learned MM dismissed the application by holding that in view of the judgment of the

Apex Court delivered in Adalat Prasad's case..... 2004 (7) SCC 338 it was not within his jurisdiction to drop the proceedings as prayed for under Section 258 Cr.P.C. it was held that the judgment delivered in the case of K.M. Mathew Vs. State of Kerala and Ors. AIR 1992 SC 2006 are no more a good law in view of the later pronouncements in Adalat Prasad's Case.

3. Consequently, the present petitions have been filed for consideration of this Court.

4. Arguments have been heard in respect of both the petitions.

5. Except for the counsel appearing for the petitioners and the State, no arguments have been addressed on behalf of the complainant, Sh. K.M. Anees-ul-Haq, neither a reply has been filed by him.

6. The petitions filed by the petitioners raise the following questions which require determination by this Court:-

i) Whether learned MM becomes functus officio after issuing summons in a complaint case and is not required to hear the accused persons at the time of issuing notices to them under Section 251 Cr.P.C. once they cause appearance before the MM in view of the judgment by the Apex Court in Adalat Prasad's case.

ii) Whether the name of the petitioners should be dropped from the array of the accused persons in the complaint filed by the complainant where no averment has been made by him except identifying the petitioners Sh. Shekhar Gupta as Editor-in-Chief and Sh. Vivek Goenka as the Managing Editor without specifying any role played by them in publishing the alleged defamatory news item

despite of the fact that the Editor Sh. Commi Kapoor, whose name also appears in the news item as is required to be published under Section 7 of the said Act.

7. Insofar as the first question is concerned the judgment of the Apex Court being binding on this Court also it cannot be said that the view taken by the learned MM is illegal. As such the first question is decided against the petitioner.

8. As far as the 2nd issue is concerned, I may observe that in the entire complaint filed by the complainant there is no averment regarding personal responsibility of the petitioners for the publication of the news item which is the basis of taking action against the petitioners and other co-accused persons.

9. The only argument which has been addressed on behalf of the State is that the petitioner becomes responsible for the publication of the news paper in view of their name appearing on the newspaper as are required to be published under Sections 7 of the said Act.

10. It is thus submitted that once the names of the petitioners appear in the newspaper as the persons responsible for publication of the newspaper, there is a presumption that they are responsible for the contents of the newspaper and thus, become liable for any offence which may have been committed on the basis of such publication including defamation caused to the complainant as has been alleged in this case.

11. However, the learned counsel appearing for the petitioner submits that this issue is no more *res integra*. They have relied upon a judgment delivered by this Court in Shobhana Bhartia & Ors. Vs. NCT of Delhi & Anr. 144 (2007) DLT 519 where also in a similar complaint

relying upon Section 7 of the said Act in respect of the defamatory news item not only the Editor but number of other persons, namely, Managing Director, Editor-in-Chief etc. were also impleaded as accused persons.

12. In the above case a learned Single Judge of this Court dealt with the aforesaid case and has pointed that merely because Section 7 raises a presumption with respect to the responsibility of an Editor with respect to the contents of the publication this does not mean that every other person whose name appears in the list though as Managing Director or Chief Editor also becomes responsible for the offences alleged unless and until specific allegations are made against them news item complaint was filed. The relevant observations made in this regard in the aforesaid judgment which clarifies the legal position for which we are also confronted with respect to the decisions of the Second case are as under:

51. The next question which needs to be answered is whether any criminal liability can be fastened on the petitioners or in other words whether the petitioners are the persons responsible for publication of said news items.

52. In Crl. M.C No. 35/05, petitioner No. 1, Ms. Shobhna Bhartiya is the Managing Director, HT Media Ltd, petitioner No. 2, Mr. Vir Sanghvi is the Chief Editor, HT Media Ltd. and petitioner No. 3, Ms. P. Aruna Sharma is the reporter who wrote the news item published in 'Hindustan Times'. In Crl. M.C. No. 350/05, petitioner, Mr. Vineet Jain is the Managing Director, Benett Coleman and Co. In Crl. M.C. No. 2188/05, petitioner, Mr. Ram Kirpal Singh is the Editor of Navbharat Times. In Crl. M.C. No. 3898-99/05, petitioner No. 1, Mr Sanjay Gupta is the Chief Editor of Dainik Jagran and petitioner No. 2, Mr. Naveen Gautam is the Reporter who wrote the news item published in 'Dainik Jagran'. This is precisely how petitioners have been described by the complainant in the complaints.

53. Primarily, a Reporter is responsible for his act of defamation. Then, vicarious liability is fastened on the printer, publisher and editor of the newspaper under the Press and Registration of Books Act, 1967.

54. Section 1(1) of the Press and Registration Act, 1867 defines 'Editor' as a person who controls the selection of the matter that is published in a newspaper. Section 3

stipulates that every book or paper shall legibly print on it the place of printing; the name of the printer and the name of the publisher. Section 5 stipulates that every printer and publisher of a newspaper shall make a statutory declaration before a competent Magistrate in the prescribed form. Section 6 stipulates regarding authentication of a declaration made under Section 5. Lastly, Section 7 stipulates as under:

“7. Office copy of declaration to be prima facie evidence—In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declaration, or, in the case of the Editor, a copy of the newspaper containing his name printed on it as that of the editor shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, or printed on such newspaper as the case may be, that the said person was Printer or Publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every newspaper whereof the title shall correspond with the title of the newspaper mentioned in the declaration or the Editor of every portion of that issue of the newspaper of which a copy is produced.”

55. In view of provisions of Press and Registration Act, 1867, particularly Section 7 unless the contrary is proved, the persons declared as Printer, Publisher and Editor of the newspaper are presumed to be responsible for the contents of the newspaper.

56. Whether any person other than the Printer, Publisher and Editor can be prosecuted for a defamatory article?

57. In context of aforesaid question, it is relevant to note the following judicial pronouncements:

(i) *State of Maharashtra v. R.B. Chowdhari*, AIR 1968 SC 110 : The Public Prosecutor filed a complaint under Section 500, IPC against four persons who were members of the Editorial Board of a Marathi weekly named 'Maharashtra'. One of the accused, Sudhakar Gopal Madane, had filed the declaration in the prescribed form under the Act describing himself as the Editor, Printer and Publisher of the newspaper. The particular copy of the Maharashtra in which the alleged defamatory article appeared bore the name of one Madane as the Printer, Publisher and Editor of the newspaper. It also showed on the front page that the Editorial Board consisted of Madane and three other accused. The question arose whether the members of Editorial Board could be prosecuted for defamatory article. Adverting to Section 7, the Supreme Court held that—

“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."

(ii) *T.K.S. Muthukoya v. Haji C.H. Mohammad Koya*, (1979) 2 SCC 8— Question before Supreme Court was whether the Chief Editor of a newspaper can be prosecuted for publication of a defamatory article. In para 34 of the decision, Supreme Court observed 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 fulfil 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....."

(iii) *K.M. Mathew v. State of Kerala and Anr.*, 1 (1992) CCR 316 (SC)=1992 CriLJ 3779 — In relation to prosecution of Chief Editor of a newspaper for publication of a defamatory news article, Supreme Court observed as under:

"9. In the instant case there is no averment against the Chief Editor except the motive attributed to him. Even the motive alleged is general and vague. The complainant seems to rely upon the presumption under Section 7 of the Press and Registration of Books Act, 1867 ('the Act'). But Section 7 of the Act has no applicability for a person who is simply named as 'Chief Editor'. The presumption under Section 7 is only against the person whose name is printed as 'Editor' as required under Section 5(1). There is a mandatory (though rebuttable) presumption that the person whose name is printed as 'Editor' is the Editor of every portion of that issue of the newspaper of which a copy is produced. Section 1(1) of the Act defines 'Editor' to mean 'the person who controls the selection of the matter that is published in a newspaper'. Section 7 raises the presumption in respect of a person who is named as the Editor and printed as such on every copy of the newspaper. The Act does not recognise any other legal entity for raising the presumption. Even if the name of the Chief Editor is printed in the newspaper, there is no presumption against him under Section 7 of the Act. See *State of Maharashtra v. R.B. Chowdhari*, AIR 1968 SC 110; *D.P. Mishra v. Kamal Narain Sharma and Ors.*, AIR

1970 SC 856; *Narasingh Charan Mohanty v. Surendra Mohanty*, AIR 1974 SC 47; *Haji C.H. Mohammad Koya v. T.K.S.M.A. Muthukoya*, AIR 1979 SC 154].

10. It is important to state that for a Magistrate to take cognizance of the offence as against the Chief Editor, there must be positive averments in the complaint of knowledge of the objectionable character of the matter. The complaint in the instant case does not contain any such allegation. In the absence of such allegation, the Magistrate was justified in directing that the complaint so far as it relates to the Chief Editor could not be proceeded with. To ask the Chief Editor to undergo the trial of the case merely on the ground of the issue of process would be oppressive. No person should be tried without a *prima facie* case. The view taken by the High Court is untenable. The appeal is accordingly allowed. The order of the High Court is set aside."

(iv) *Sardar Nihal Singh v. Arjan Das*, 1983 CrLJ 777 —A learned Single Judge of this Court was considering whether the Chairman and Executive Editor of a newspaper could be prosecuted for publication of a defamatory article. With reference to Chairman, it was observed as under:

"Needless to say that as Chairman of the Company Shri Goenka can be held liable for the publication of the offending news items only if it is shown that he was somehow concerned with the publication of the defamatory news items. It is highly doubtful that he can be asked to answer the charge of defamation merely because he happened to be the Chairman of the Company owning the newspaper without there being any further evidence as regards his participation in the actual management and administration of the affairs of the company. Intention on the part of the accused to harm the reputation or the knowledge or reasonable belief that an imputation will harm the reputation of the persons concerned is an essential ingredient of offence under Section 400, IPC but such evidence is totally missing in the instant case. Under the circumstances the impugned order as regards Shri Goenka cannot be sustained on this short ground."

After referring to Section 3, 4, 5, 6 and 7 of the Press and Registration of Books Act, 1867, the learned Judge added:

"However, it is difficult to draw such a presumption in the case of other petitioners viz., Arun Shourie, petitioner No. 2 and A. P. Dhar petitioner No. 4. Their names do not find place in the declaration printed on the newspaper itself and there is no iota of evidence to show that they are in any manner concerned with the collection, control or selection of the matter printed in the newspaper. Their designations as Executive Editor/Editor of the Express News Service will not per se warrant an inference that they are in any way responsible for the selection of the material. An authority for this view may be found in the *State of Maharashtra v. R.B. Chowdhari*, AIR 1968 SC 110."

(v) *Sardar Bhagat Singh Akali v. Lachman Singh*, AIR 1968 SC 269= Calcutta High Court was considering the extent of the liability of the owner for defamatory statements published in the paper owned by him. In para 5 of the decision, it was observed as under:

“The owner in order to be liable under Section 499 of the Code has to have direct responsibility for the publication of the defamatory statement and he must also have the intention to harm or knowledge or reason to believe that the imputation will harm the reputation of the person concerned. The owner of a journal has thus no responsibility under the section. The Editor of the paper, even though he might not be directly responsible for a defamatory statement published in his paper attract the responsibility by virtue of Section 7 of the Press and Registration of Books Act by virtue of his registration as Editor under the Act which registration is sufficient evidence that he was also the printer or publisher of the paper concerned. The printer and publisher by virtue of their duties as such cannot of course avoid, the legal liability for defamation. The owner’s liability will be attracted provided it can be shown that he was responsible for the publication with the necessary interest, knowledge or reasonable belief in the matter.”

58. From the afore-noted judicial pronouncements, legal position which emerges is as follows:

(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, incharge of, and responsible to, the company for the conduct of its business.

13. In view of the aforesaid the learned Single judge quashed summoning orders against Managing Director, Editor in Chief while dismissing the petition of the Editor.

14. In the present case also in view of there being no allegation made against both the petitioners who have been arrayed as Managing Director and Editor-in-Chief no case is made out for the prosecution of both the petitioners in the complaint subject matter of these petitions.

15. Accordingly, Crl.Rev.P.637/2007 & Crl.M.C.4037/2005 are allowed and proceedings against Sh. Shekhar Gupta, Editor-in-Chief and Sh.

Vivek Goenka, Managing Editor of “The Indian Express” are quashed.

16. A copy of the order be sent to the learned Metropolitan Magistrate.

17. TCR, if received, be sent back.

MARCH 04, 2009
anb

MOOL CHAND GARG,J