

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

+ **CRL.M.C. 1862/2007**

% Judgment reserved on : 11th July, 2011
Judgment delivered on: 8th August, 2011

H.K.DUA Petitioner

Through: Mr.N.B. Joshi &
Mr.Purushotam Mishra Advocates

versus

JAGAT SINGH Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

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

SURESH KAIT, J.

1. The matter was taken up on 11.07.2011 and the following order was passed:-

“The matter was called at about 11.00-11.30 am in the morning and no one was present on behalf of the respondent. This Court requested the learned counsel for the petitioner to contact the respondent’s counsel. Accordingly, counsel for the petitioner contacted on telephone No.23973030, stated to be not in existence.

Another attempt made by the learned counsel for the petitioner at Tehsil Building, Chamber No. 17, Tis Hazari Court, Delhi. The advocates occupying the said chamber informed that no such person is operating from the said chamber. This address and telephone are also indicated in the Bar Association Directory.

The order sheet reveals that as many as 13 times, neither the respondent nor counsel for the respondent appeared in this matter.

I note, vide order dated 21.07.2008 a notice of default was issued to Mr. Pramod K. Dubey, Advocate. Another notice was issued vide order dated 16.12.2008. Thereafter, vide order dated 21.04.2009 another notice was issued.

Today, even on second call, none appeared on behalf of the respondent. Having no other option, this Court is constrained to proceed in the absence of the respondent as the ld. Counsel is playing the trick of hide and seek.

Arguments heard. Judgment reserved.”

2. The instant petition under Section 482 Criminal Procedure Code, 1973 (hereinafter referred to as the ‘Cr. P.C.’ is being filed for quashing the Criminal Complaint Case bearing CC No.213/1/1994 titled as ‘Jagat Singh Vs. Chief Editor, Indian Express & Ors’ under Section 500 Indian Penal Code, 1860 (hereinafter referred to as the ‘IPC’) pending

before the Learned Metropolitan Magistrate, Rohini Courts, Delhi, which was filed by the respondent herein.

3. The issue in the aforesaid complaint case was that the complainant/respondent herein was shocked to read a report published in the daily edition of an English newspaper "The Indian Express" on 11.10.1994, in which the petitioner/accused had published a news by a the heading "Court charges Delhi cop with money swindling".

4. The complainant asserts in the said complaint that, the news items published in the said paper were totally false, baseless and contrary to the records and is far from the truth. The news is defamatory in nature, by which, the complainant's reputation, ruined in the eyes of a common man, his family members, friends and his colleagues. As per the respondent, the news clearly shows malicious intentions, pre-planned scheme with ulterior motive of the accused persons to defame the complainant in the eyes of public at large, in family, friends and his colleagues and officials. That news/imputation harmed the reputation of complainant as a lot of people including his colleagues,

relatives, family members and higher officials asked about it and said “What is this?” “How such type of news is published against you?”

5. By filing the aforesaid complaint case, the complainant/respondent strongly condemns that news particularly in para Nos.1, 3, 4, 5 (1).

6. Further he asserts that it was a totally wrong, incorrect and far from the truth and at any Court of law at Delhi has charged the complainant with swindling case property with about ₹ 52,000/- from police station Kamla Market, Delhi.

7. On filing the complaint, Id.Metropolitan Magistrate, after going through the evidence on record, vide order dated 25.09.1995 issued the summoning order under Section 500/34 IPC. Pursuant to aforesaid order the petitioner appeared in Court and bail was granted by the Id. Trial Court.

8. Thereafter, the petitioner moved two applications before the Id. Trial Court. The first application was for dropping the proceedings in terms of the then declared law of Supreme Court in case **K. K. Mathew Vs. State of Kerala AIR 1992 SC 2206**. The second application was filed by the petitioner for exemption from personal

appearance till further orders and be permitted for putting in appearance through his counsel.

9. Vide order dated 20.12.1997, Id. Trial Court exempted the petitioner from his personal appearance through is Advocate Mr. N. B. Joshi.

10. Ld. counsel for petitioner has submitted, according to the complaint, there were only two alleged accused persons, neither of whom had been impleaded by name. Accused person impleaded was the then Chief Editor 'Indian Express'. The other accused who is accused No.2 was described as 'Press- Reporter (concerned)-"Indian Express"'. As such, service has yet not been affected on the accused No.2.

11. Ld. counsel for the petitioner has raised the legal issue that, the petitioner being the chief editor, could not be sued in terms of the Press and Registration of Books Act, 1867 (hereinafter referred to as the 'said Act'). The person responsible for controlling and selection of the matter to appear in a newspaper is the 'Editor'. "The Editor" is defined under Section 1 of the said Act as under:-

"editor" means the person who controls the selection of the matter that is published in a newspaper."

12. The petitioner being the Editor-in-chief of the newspaper was not responsible for the controlling and selection of the matter to be published in the newspaper. He was the responsible at the relevant time only for issuing broad, general policy guidelines that the newspaper was to follow.

13. 'The Indian Express' being a multi edition newspaper had to publish news with regard to the national importance as well as of local importance for each edition of the newspaper. News of local importance would be published under the supervision, control and selection of the metro editor, who for the purpose of the said Act would be 'the editor' in the context.

14. Though the exemption of the petitioner was allowed through his counsel Mr. N. B. Joshi, however, on 03.02.2007 one Mr. Naveen Kumar Trivedi, whose *Vakaltnama* was not on record, appears for the petitioner/ accused and presents the application for exemption from appearance on behalf of Mr.

N. B. Joshi, Advocate. Ld.Magistrate dismissed the aforesaid application by saying that there is no *Vakaltnama* , therefore, no hearing can be granted and the application was dismissed. Further the Id.Magistrate issued NBWs against petitioner/accused and notice to his surety for the next date of hearing.

15. The petitioner filed the instant petition and raised the legal issue - Whether the proceedings in the present complaint can go on against the chief editor, who is the accused No.1 in the complaint case which is pending before the Id.Metropolitan Magistrate, Rohini Courts, Delhi? He has further challenged the NBWs issued vide order dated 03.02.2007.

16. Firstly, I will deal with the first issue.

17. Ld. counsel for the petitioner has relied upon the judgment of the Karnataka High Court in the case of **Prabhu Chawla Vs A. U. Sheriff III (1995) CCR 631**, wherein it was held that, as per the definition of the 'Editor' in Section 1(1) of the Act, means a person who controls the selection of the matter that is published in a newspaper. There is no

reference to Resident Editor, Executive Editor, Managing Editor in the said Act. There are no allegations against the aforesaid persons in the complaint to show that they have any hand in selection of the matter that is published in the 'Indian Express Newspaper'. Further held that, in absence of positive averments against the petitioner Nos.1 to 3, who are described as Executive Editor, Managing Editor and Resident Editor and in the absence of presumption available u/s 7 of the said Act, against them, Id. Magistrate could have not ordered process for the alleged offence u/s 500 IPC.

18. Ld. counsel for the petitioner vehemently argued that in the instant case, there is no averment against the chief-editor, except the ulterior motives attributed to him. Even the imputation is general and vague. The complainant relied upon the presumption under Section 7 of the said Act, which has no applicability for a person who is simply named as 'chief editor'. The presumption u/s 7 of the said Act is only against the persons whose name is printed as 'editor' as required u/s 5 (1) of the said Act. There is a mandatory (though) rebuttal 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 said Act defines 'Editor' to a person who controls the selection of the matter that is published in a newspaper. Section 7 of the said Act 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 recognize any other legal entity for raising the presumption.

19. Even if the name of the Chief Editor is printed in the newspaper, there cannot be any presumption against him u/s 7 of the said Act.

20. This issue was decided long back in the case of **Haji C. H. Mohammad Koya Vs. T.K.S.MA.Muthukoya** (1979)

1 SCR 664:(AIR 1979 SC 154) as under :-

"10. It is important to state that for a Magistrate to take cognizance 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 allegations, 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.”

21. As was decided in the aforesaid case, **Haji C. H. Mohammad Koya(Supra)** that in the absence of positive averments against petitioner Nos.1 to 3, who are described as Executive Editor, Managing Editor and Resident Editor and in the absence, presumption available u/s 7 of the said Act against them, Id. Magistrate, could not have ordered processes for the alleged offence under Section 500 IPC. To ask the Executive Editor, Managing Editor and Resident Editor to undergo the trial because of issuing process against them would be oppressive. Keeping the aforesaid discussion into view, the proceedings was quashed against the petitioners.

22. In the case of **A. K. Jain & Another Vs. State of Sikkim & Another'** 1992 Crl. L J 839, the complainant did

not disclose any facts so as to connect the applicants with the publication of the alleged defamatory item. The mere fact that applicant No.1 was the chairman and applicant No.2 was the Managing Director of the Company that carried on, amongst other businesses, the business of printing and publishing the Nav Bharat Times was by itself, not sufficient to make the applicants liable for the publications. The Nav Bharat Times was managed by the applicants as Chairman and Managing Director did not amount to an evidence of the fact that these persons were concerned with the making, printing or publishing of the time. Thus, there was no evidence whatsoever as to the common intention or participation of the applicants in the publication of the item. Besides there is no presumption u/s 7 of the said Act that the Chairman or the Managing Director of the company that owns a newspaper is responsible for the selection of the matter that is published in a newspaper or for its printing or publishing.

23. Thus, the Court has opined that there is no evidence which shows the involvement of the petitioner with the making, printing, or publishing of the news item in question,

nor there being any presumption of law about the involvement of the incumbents of the respective offices held by them as to the making, printing or publishing of the contents in a newspaper, the issue of process by the Id. Magistrate by the impugned order was not proper in view of the Section 1(1) of the said Act.

24. In the instant case, the petitioner was working at the relevant time as Chief Editor of 'Indian Express'. The other accused was made by the respondent as 'The Press – Reporter (concerned), Indian Express, Express Building, Bahadur Shah Zafar Marg, New Delhi.

25. Keeping in view the above discussion and the provisions of the said Act, the person responsible for the controlling and selection of the matter to appear in the newspaper is the 'Editor'. The 'Editor' is defined u/s 1 (1) of the said Act.

26. In my view opinion, the petitioner being the Editor-in-Chief in the newspaper was not responsible for controlling and selection of the matter to be published in the newspaper.

27. I, therefore, quash the complaint No.213 of 1994 and the proceedings emanating therefrom, qua the petitioner only.

28. The alleged offence has been committed and wrong person has been impleaded. In this situation the respondent/complainant may substitute the right person, if he so desires, as per law.

29. Criminal M.C. No.1862/2007 is allowed in the aforesaid direction.

SURESH KAIT, J

August 08, 2011
Mk/RS