

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 30th September, 2011
Judgment Delivered On: 10th October, 2011

+ CRL.M.C.2111/2007

VINEET JAIN Petitioner
Through: Mr.Manish Shukla and
Mr.Yoginder Handoo, Advocates

versus

NCT OF DELHI & ORS. Respondents
Through: Mr.H.R.Khan Suhel, Advocate
with Mr.Archit Upadhayay and
Mr.Ankit Mishra, Advocates for R-
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SI Sanjay, ARC/Crime Branch

CRL.M.C.2704/2007

ARINDAM SEN GUPTA & ANR. Petitioners
Through: Mr.R.K.Handoo, Mr.Yoginder
Handu, and Mr.Manish Shukla
Advocates

versus

NCT OF DELHI & ORS. Respondents
Through: Mr.H.R.Khan Suhel, Advocate
with Mr.Archit Upadhayay and
Mr.Ankit Mishra, Advocates for R-
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SI Sanjay, ARC/Crime Branch

CRL.M.C.2863/2007

RAMESH CHANDER AGARWAL Petitioner
Through: Mr.R.K.Handoo, Mr.Yoginder
Handu, Mr.Pramod Kumar
Dubey, Mr.Kunal Sood,

Mr.Himanshu Gupta and
Mr.Manish Shukla Advocates

versus

STATE & ANR. Respondents
Through: Mr.H.R.Khan Suhel, Advocate
with Mr.Archit Upadhayay and
Mr.Ankit Mishra, Advocates for R-
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SI Sanjay, ARC/Crime Branch

CRL.M.C.3082/2007

DURBAR GANGULY Petitioner
Through: Mr.Subash Gulati, Mr.Ravi Nayak
and Mr.Samarjit Pattnaik,
Advocates

versus

NCT OF DELHI & ANR. Respondents
Through: Mr.H.R.Khan Suhel, Advocate
with Mr.Archit Upadhayay and
Mr.Ankit Mishra, Advocates for R-
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SI Sanjay, ARC/Crime Branch

CRL.M.C.3083/2007

CHANDAN MITRA Petitioner
Through: Mr.Subash Gulati, Mr.Ravi Nayak
and Mr.Samarjit Pattnaik,
Advocates

versus

NCT OF DELHI & ANR. Respondents
Through: Mr.H.R.Khan Suhel, Advocate
with Mr.Archit Upadhayay and
Mr.Ankit Mishra, Advocates for R-
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SI Sanjay, ARC/Crime Branch

CRL.M.C.182/2008

MAHINDER MOHAN GUPTA Petitioner
Through: Mr.Jagmohan Sharma, Advocate

versus

NCT OF DELHI & ANR. Respondents
Through: Mr.H.R.Khan Suhel, Advocate
with Mr.Archit Upadhayay and
Mr.Ankit Mishra, Advocates for R-
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SI Sanjay, ARC/Crime Branch

CRL.M.C.1052/2008

JAGRAN PRAKASHAN LTD. & ORS. Petitioners
Through: Mr.Jagmohan Sharma, Advocate

versus

NCT OF DELHI & ANR. Respondents
Through: Mr.H.R.Khan Suhel, Advocate
with Mr.Archit Upadhayay and
Mr.Ankit Mishra, Advocates for R-
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SI Sanjay, ARC/Crime Branch

CRL.M.C.1224/2008

MANOJ CG Petitioner
Through: Mr.Jainendra Maldahiyar,
Advocate for Mr.Anurag Ranjan,
Advocate

versus

NCT OF DELHI & ANR. Respondents
Through: Mr.H.R.Khan Suhel, Advocate
with Mr.Archit Upadhayay and
Mr.Ankit Mishra, Advocates for R-
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SI Sanjay, ARC/Crime Branch

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

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

PRADEEP NANDRAJOG, J.

1. Backdrop facts giving rise to the present petitions are that on 03.06.2006 the Crime Branch of Delhi Police raided Rajdoot Hotel on Mathura Road and arrested 13 girls allegedly performing obscene dance in the hotel.
2. FIR No.391 dated 4.6.2006 for offences punishable under Section 294/109/34 IPC read with Section 8 of Immoral Trafficking Act was registered at PS Nizamuddin on the statement of Sh.Rajeev Kumar Choudhary, a decoy sent, English Translation of which reads as under:

“It is stated that I have been residing at the above-said address and I am a Horticulture Contractor by profession. Today I came towards Jangpura for some work. At about 10.40 pm you met me on the Mathura Road towards Bhogal side opposite Rajdoot Hotel. You told me that the Hotel Management of Eldorado Bar of Rajdoot Hotel illegally performing the dances with obscene actions. You have further told me that the Dancing Girls with their indecent acts exciting for sex activities and that they grab customers for illegal work. You have asked about this from 7-8 other persons for their

participation in the Raiding Party but except Dilip Kumar, S/o Shri Shyam Sunder, Employee of G-Star Hotel 22/7, Old Rajinder Nagar, no one agreed to join and had left after giving excuses without disclosing their names and addresses. I, Dilip Kumar agreed taking it as social responsibility. You handed over to me 4 currency Notes of denomination of ₹500/= each bearing Nos. (1) 1-5 AA 67434, (2) 2-5 AJ 663436, (3) 3-2 AA 797785, (4) 4-7 AA 334165. After taking my search and after taking signature on the Memo. You have given us instructions and advised us to buy the Entrance Ticket of ₹500 each for entering into Eldorado Restaurant, Rajdoot Hotel and advised us to witness the show. In case the girls do any obscene activity then Dilip Kumar shall come out of the Main Gate where Darban stands through the Reception and shall give the signal by keeping both his hands on his head. On this advice, we both went to Rajdoot Hotel around 11 PM. There I purchased two Tickets of ₹500/- each from the Counter near the Reception from the Hotel Staff bearing Ticket No.23609 and 23610. We entered into the Bar and we saw that on the stage in the corner four girls at a time wearing colourful and half nude dresses are dancing and near the stage the owner of the Hotel who has a French beard, whose name we came to know as Babbu Kalra. He was telling the girls dancing on the stage to show more obscene gestures and dance. On this the girls were showing their cleavage and thighs and also made gestures by hand towards their private body parts. On seeing this I started getting thoughts about sex. On this the entire atmosphere became dirty and I also got excited and I started feeling bad. But these girls carried on with their dance of obscene gestures. And like this two other girls came on the dance stage turn by turn and made same obscene gestures to excite for sex by showing such obscene gestures and after seeking this we felt really bad. They crossed all the moral limits.

On seeing this we were not able to tolerate and as per the instructions given by you, Dilip Kumar at about 11.30 AM went out to give signal to the Raiding Party. In the meanwhile this obscene dance was going on. All these Girls were performing these actions on the instigation of the owner of the Hotel Babbu Kalra. During this time, you along with Police party came inside the Hall and took under control the 13 girls with the help of the Ladies Police whose names are disclosed as under:

1. Pooja w/o Sumit Mahajan, R/o 52/16, Ground Floor, CR Park, New Delhi age 24 years.
2. Kiran D/o Chotelal Gupta, R/o Asira Bazar, Tehsil Hasia, Zila Allahabad (UP) age 19 years.
3. Maya D/o Suresh Kumar R/o Room No.117, Rajdoot Hotel, New Delhi
4. Isha D/o Kabir R/o 40/50, 2nd Floor, CR Park, New Delhi
5. Karishma W/o Kapil Dev gilani, R/o I 3/68, Sector 16, Rohini
6. Nancy D/o Islam R/o Hall Address, Room No.166, Hotel Rajdoot, New Delhi
7. Rekha W/o Robin R/o 797, Sector 19, Pocket-3, Dwarka, New Delhi
8. Lily Dass D/o Pooran Kumar Dass R/o SF-16, Block-D, Kohey Fiza Bhopal, Madhya Pradesh
9. Kareena D/o Kishan La, R/o F-40, Jawahar Bagh, Shakarpur, Laxmi Nagar, Delhi
10. Tabassum D/o Siddharth Bhardwaj R/o 200, Lodhi Road Complex, New Delhi.
11. Anjali D/o Surender Yadav R/o A-703, Seventh Floor, Kanchanjunga Apartment Dwarka, New Delhi
12. Maya Singh W/o Rajender Singh R/o I-Block, Saurabh Vihar, Jaitpur, Badarpur, New Delhi.
13. Reenu Saxena, W/o Sarab Saxena, R/o 727, Sector 19, Pocket 111 Dwarka, New Delhi.

These girls with their gestures and talks were instigating the customers for the wrong deeds and the customers were getting instigated to involve in wrong deeds. Apart from us, Shri

Ramesh Bahl, S/o Shri Amar Nath, R/o 1692 Arya Samaj Road, Karol Bagh, Delhi and Shri Anil Kumar S/o Preetam Kumar R/o C-34, Shakti Nagar, Delhi had also come to see the dance and they were also shocked and angry to see the show with about 50 to 60 audience who were also watching the show. Out of all these audience, most of them were also instigated with the same vulgar feelings as we were. In this regard, police investigation shall be carried out against Shri Babbu Kalra whose full name is Man Mohan Kalra S/o Shri Kishan Lal Kalra and I have handed over the two tickets whose numbers I have already given you along with the two ₹500 denomination notes. Statement heard and it is correct.”

3. An endorsement was made beneath the statement which reads as under:-

“ACP had the information of Rajdoot Hotel that the owner Babbu Kalra and Prem Kalra are running a dance Bar in the Hotel where they serve drinks and girls from different cities of India perform obscene dances. Where these girls with their obscene gestures instigate the customers. This information was brought to the knowledge and secretly it was investigated and it was found to be correct. We the Raiding Team alongwith ACP, Inspector Jeet Singh Special Team, Inspector Raj Vir Singh, AATS/Crime Branch and Staff SI Raj Kumar, SI Bhagwati Prasad, SI Buddh Parkash, ASI Ravinder Const. Sanjay Kain. Special Team SI Pankaj Yadav, SI Sehdev Rana, HC Bheem Singh, HC Tanveer, AATS Staff, SI Surinder Rana, ASI Sameer Singh, Const. Pardeep Hudda, Const.Sat Pal, Lady SI Pushap Yadav and Lady Const.Kavita, 48, Crime Branch, Lady Const.Mukesh No.303 DRP, Lady Const.Anita No.2947/Crime. This team had already been called and instructed to develop on

the information and the Police Station of the area Jangpura Mathura Road was informed about it and the team was present there. The secret informer informed that at this time also there are obscene dances/Cabra is going on in the Hotel Rajdoot. On this information one Raiding Party alongwith a Staff and Rajiv Kumar Chaudhary along with Dilip Kumamr was prepared and the instructions were given to both the witnesses and were also handed over two notes of denomination of ₹500/- each and were instructed to go into the Rajdoot Hotel and watch the dance and were further instructed that if any obscene activities are taking place then witness Dilip Kumar would come out and would make the instructed indication. Thereafter, all of us also took position around Rajdoot Hotel. At about 11.30 PM, on the indication given by the Witness Dilip Kumar the whole Raiding Party went into Bar Hall of the Rajdoot Hotel i.e. Eldorado Restaurant where 13 girls who were dancing turn by turn on the stage and were making obscene gestures to instigate the people sitting in the Bar Room and Babbu Kalra who was also instigating them to perform such obscene gestures were taken under custody. The complainant Rajeev Kumar Chaudhary S/o Ram Veer Singh recorded his statement and case u/s 294/109/34 IPC and u/s 8 of ITP Act was registered. That Case may be registered."

4. The police released a press release, which reads as under:-

"With the arrest of 13 bar girls caught while performing obscene, sex provocative, semi-nude floor dancing shows at Rajdoot Hotel, Mathura Road, last night, sleuths of crime branch Delhi Police have been able to smash a well organized, scandalous racket being run by the owners of the said hotel where the dance bar girls from Bombay dance openly enticed/allure the visiting guests for

sexual acts while dressed in alluring and scanty dresses. One of the partners of said hotel namely Manmohan @ Babbu Kalra has also been arrested for abetting, aiding these dance bar girls to achieve their illegal designs.

An information was received at crime branch that the owners of Rajdoot Hotel are flourishing there business by organizing floor dance shows where dance girls allure customers through obscene gestures, words, actions, wilfully exposing their person to attract the attention of spectators/guests for the purpose of prostitution. For this purpose the hoteliers facilitates them by providing accommodation at their hotel for carrying out their illegal, nefarious and antisocial activities in the garb of floor dance playing sexy songs/tunes. The hotel management charge each guest ₹500.

This information was developed by the officers of Anti Robbery Cell crime branch, specifically entrusted with this task. On verification through secret sources the information was found to be authentic. The hotel owners used extra ordinary vigilant system using Hi-tech security/monitoring gadgets installed at the various locations of hotel to ward off any checks on their anti social activities. They have hired a number of musclemen, bouncers, extra guards to inform them.

A raid was organized on a specific tip off at the premises of hotel Eldrado dance bar, under the supervision of A.C.P. P.P. Singh comprising the selected staff of crime branch, after the decoy gave the predetermined signal. 13 dancing girls of the bar cum dancing hall of Eldrado in turn were detained along with Manmohan @ Babbo Kalra a partner in the said hotel. A case vide F.I.R.No.391/06 dated 4/5/06 U/S 294/109/34 I.P.C. & 8 I.T.P. Act has been registered at P.S. Nizamuddin. Sufficient number of lady police

officers were also member of the raiding party. Investigation of the case has been taken by Insp. Ran Singh of A.R. cell crime branch.”

5. It is apparent that the matter was of public concern and that was the reason why the police released a press release. The incident was published in various newspapers the day next i.e. 5.6.2006 and since the above-captioned petitions pertain to news published in 4 newspapers, we reproduce the contents thereof.

6. In the newspaper ‘The Times of India’ it was reported as under:-

“Police Swoop on S.Delhi ‘dance bar’ 13 Girls, Hotel Owner Nabbed

New Delhi: An illegal dance bar being run in a south Delhi hotel was busted by crime branch on Saturday. Fourteen persons – 13 dance bar girls and one of the hotel owners – were arrested on several charges, ranging from obscenity to immoral trafficking and abetment.

The accused girls were allegedly caught dancing in a scantily clad state. “A raid was conducted on the premises of El Dorado dance bar in Hotel Rajdoot after a signal from an undercover cop, who had been present inside. The girls were caught red-handed,” said Tejendra Luthra, DCP (crime branch). “We also arrested Manmohan alias Babbu Kalra, who is a partner in the hotel,” he added.

An FIR was registered at the Nizamuddin police station under the relevant sections of the IPC and the Immoral Traffic (Prevention) Act on Sunday. The girls were later released on bail.

Police said the girls were aged between 20 and 30 and hailed from lower middle-class families. While four of them are from Delhi, two each are

from Bihar, Noida and Punjab and one each from Kolkata and Allahabad. The last woman, the only married person among the girls, said she was a hotel guest. Police suspect that her husband was also involved in the racket. He was detained for questioning.

During interrogation, it was revealed that some of the accused girls were employed in Mumbai dance bars but after those establishments were shut down they were forced to shift base to the Capital. Crime branch officials were tipped-off about the hotel's flourishing business on account of floor dance shows.

Rajdoot Hotel had apparently been hosting clandestine shows for their clients since the past six years or more, charging ₹500 as entry fees. Inside Eldorado bar the dance girls "lured customers with obscene gestures". The owners of the hotel allegedly facilitated the dance bar girls with rooms where they indulged in flesh trade, apart from providing the dance floor.

Further investigations revealed that the hotel owner had an elaborate system in place to avoid detection by the police. "Sophisticated gadgets used for security monitoring were installed at strategic points to alert the hotel administration at the slightest hint of trouble," a senior official said. "That apart, they had hired several bouncers muscle men and additional security guards to keep them informed of any law-enforcement activity in and around the hotel," added the official.

Undercover cops entered the bar as guests late on Saturday night, and signaled the raiding police team around 11.30 pm, after the "erotic dancing" began. Within minutes, the hotel was surrounded by uniformed policemen."

7. In the newspaper 'Dainik Bhaskar' it was published as under:-

"13 GIRLS INVOLVED IN FLESH TRADE ARRESTED

Bhaskar News. New Delhi, 4 June, Delhi Police Crime Branch has arrested 13 girls who were in the flesh trade from Rajdoot Hotel on Mathura Road.

The Police have said on Saturday night the Crime Branch raided Rajdoot Hotel and arrested 13 girls. They said the ages of all the girls were between 20 to 25 years. They are residing in Mumbai and working in Dance Bars. After the Dance Bar shut down the shifted to Delhi and started working in Rajdoot Hotel and under the cover of doing massage, started working in the flesh trade. The Police have arrested one middleman in connection with this. His name is Manmohan."

8. In the newspaper 'The Pioneer' it was published as under:-

"13 dance bar girls, owner of posh hotel arrested

The owner of a hotel in a posh south Delhi locality and 13 dance bar girls performing there were arrested after police raided its premises in the wee hours today, police said.

Acting on a tip-off, Delhi Police sleuths raided Hotel Rajdoot near Nizamuddin and arrested Babbu Kalra, one of the partners of the hotel, and 13 bar dancers most of them brought here from Mumbai. The girls were arrested on charges of performing obscene and provocative

sexual acts, while Kalra is being charged with aiding and abetting them, police said.

Most of the girls have been brought from Mumbai, where they were working in bars before the Maharashtra Government closed them down, police added”

9. The next day i.e. on 06.06.2006 in the newspaper ‘The Pioneer’ it was further published as under:-

“Bar Girls back on Rajdoot Floor

Hotel earns more from dance bars than room occupancy

Neeraj Chauhan New Delhi

The 13 girls, who were caught while dancing, serving drinks and enticing guests at Rajdoot Hotel on Sunday were back, in business at the hotel’s Eldorado, bar on Monday.

According to a senior police officer, failing to have a brisk business, the three star-rated hotel served everything – girls, wine and music against provisions of licensing act. More than 90 percent business of the hotel was from dance bar girls, as room occupancy rate was very low. Rajdoot hotel is the only three star hotel in Delhi where floor shows take place.

The officer also informed that all these girls are from lower middle class families and most of them are unmarried or divorcees. They had worked in Mumbai bars earlier and know how to attract customers. They were being paid ₹10,000/- per month apart from what they get on the dance floor.

Earlier 79 girls were arrested by Crime Branch from this hotel in 1988. Manmohan Kalra alias Babbu (50) runs this hotel in partnership with his brother Prem

Kalra but Prem, has nothing to do with Eldorado bar. The hotel managed to book only seven to eight rooms on a normal day and Kalra was unable to pay the salary to its 80 staff.

He used to run two shows daily for two hours each from 8:30 pm till midnight. Entry ticket here was ₹500 out of which ₹250 went towards entertainment tax. Liquor was too served in the bar and was very expensive – a bottle of beer cost ₹485.

Customers were charged heavily for food. The bar has a capacity 50 to 60 people. According to the officer, prostitution was allowed in the hotel rooms itself and big customers were given a better deal.

The officer says, “If a customer liked any girl and wanted her to dance again on his favourite song then he was charged ₹2,500 for that particular song”. Babbu himself used to prompt girls to make eye contact with the customers so that they throw more money. Every show yielded over ₹One lakh to Babbu. He kept 50 percent himself, 10 percent was given to the waiters and bouncers and rest was given to the other staff. The girls used to keep some amount from the tip money.

According to the officer, Babbu himself lived in room no.318 with a Russian girl. He told the police that the girls themselves contacted him. Most of the girls are in the age group of 20 to 24 except one Neelu (name changed) who used to design dresses for the shows.

Four girls are from Mumbai and were staying in hotel rooms. Rest of these girls are from areas like CR Park, Dwarka, Rohini, Lodhi Road and Laxmi Nagar of Delhi. The Delhi girls also used to stay in hotel rooms and indulge in prostitution. Babbu used hi-tech monitoring gadgets like CCTV cameras and magic eyes which

were monitored from Room No.512 and 513 of the hotel and if a local cop visited there then the set-up was changed.”

10. On 05.06.2006, in the newspaper ‘Dainik Jagran’ the news was published in Hindi and its translation reads as under:-

“13 Bar Girls arrested from Hotel

New Delhi, JS. Thirteen Bar Girls, dancing in provocative and semi-nude condition, arrested from Rajdoot Hotel at Mathura Road, by the Crime Branch of Delhi Police on Saturday night. Police has also arrested Manmohan alias Bablu Kalra, a partner of the Hotel. With these arrests, police has unearthed a racket of bringing Mumbai Bar Dancers to Delhi and making them to dance in Hotels.

It has been reported, that police had received a secret information that the Bar Girls, brought from Mumbai, are being used to lure the customers for prostitution by their stimulating dances in the Rajdoot Hotel. For this purpose, the Hotel is providing the rooms and other facilities to its customer illegally. For reaching on the dance floor, for obscene dancing with music, the Hotel is charging Rupees Five Hundred from each customer.

Police had information that to avoid any kind of raid, Hotel had got installed highly sophisticated Cameras and other equipments at various places in the Hotel including Entry Gate. It was also learnt that Hotel owner has deputed Bouncers, Wrestlers and additional security guards to stop any raiding staff at the gate itself. This information was found correct when these were confirmed by the sources. Thereafter, one police team, led by ACP P.P.Singh, conducted a raid at Elderado Dance bar and arrested 13 Bar Girls

alongwith Manmohan. A case under various sections for indulging in the prostitution has been registered at Police Station Nizamuddin. The investigations of case have been entrusted to Inspector Ran Singh. On enquiry, it has been learnt that these Bar Girls belong to poor families and they are in this profession, since their minor age, due to compelling circumstances. The Bar Girls, in the age of 20 to 30 years, are in this profession for years together. However, the Patiala Court has granted Bail to these Bar Girls."

11. On 27.6.2006 as a follow up story in the newspaper 'Dainik Jagaran' a further publication was made in Hindi, translated version thereof reads as under:-

"Mumbai Bar Girls enticing the hearts of Delhians

Pradeep Kumar Singh, New Delhi

The love for Mumbai Bar Girls in Delhi is famous these days. These Bar Girls, came in Delhi in the search of jobs, are not only enticing the general public but also becoming a headache for Delhi Police. The number of girls reaching from Mumbai to Delhi can be presumed with the fact that more than one and a half dozen girls have been arrested by the police within a period of one month. As per sources, the numbers of these Girls have reached in hundreds, who are staying at Five Star Hotels, Kothis and Farm Houses.

It is well known that hundred of girls from Bihar, Uttar Pradesh, Madhya Pradesh, Gujrat and Delhi were earning from Dance Bars at Mumbai, but the closing of Dance Bars in Mumbai, disturbed their routine and they get their new shelter at Delhi. There is another reason behind this, that most of the customers staying with these girls in Dance Bars and Five Star Hotels have connection with Delhi also. Some have their business in Delhi and some others used to visit Delhi often

for their business. The geographical condition of Delhi also helps them. Some days back, the Crime Branch of Delhi Police had arrested 11 Bar Girls from Rajdoot Hotel of South Delhi in a raid.

All these Dancers were enticing the public of Delhi after the closure of Dance Bars in Mumbai. Arrests have been made from Greater Kailash, Lajpat Nagar and Sarojini Nagar areas also. Another Bar Dancer of Mumbai was arrested with Raju Sansi, a notorious Bank Dacoit, by the Special staff of South District, but she was released as she had no criminal records. It is surprising that Bar Girls have made connection with criminals also. These criminals have connection with Mumbai also. As per police, it is a matter of concern. The gangs of criminals can use these lucrative girls for kidnapping, loot etc. crimes. Their Company is giving double benefits to criminals. The Company of girls gives them easy way to get shelter and also in spreading their network. Police has information of all these incidents, but they hesitate to nab them in the absence of evidence. According to a senior officer, despite the dismissal of one Sub-Inspector of Crime Branch in the matter of Dance Bar case and Police Commissioner's keeping it in the category of an organized crime, the Station House Officers are opting to close their eyes from this side.

Hite-outs of middlemen: Besides the posh colonies of Greater Kailash, Defence Colony, South Ex, Saket PVR, Vasant Vihar, Vasant Kunj and Connaught Place, facility of dealing is available on mobile phones also. After finalization of deal, the Bar Girls are dropped and picked-up in luxurious vehicles."

12. Alleging that the afore-noted news items were defamatory of Hotel Rajdoot and its owner, Sh.Manmohan Kalra, the stated owner of the hotel filed complaints before

the learned ACMM alleging that the accused named in the complaints had committed offences punishable under Section 499/500 IPC.

13. I reproduce in a tabular form the name of the accused as also the designation and the concerned petition filed by the person concerned in respect to the 4 criminal complaints filed by respondent No.2 pertaining to the news items published in the Times of India, Dainik Bhaskar, The Pioneer and Dainik Jagran. It reads as under:-

(A) Newspaper- THE TIMES OF INDIA

Name of Accused	Designation	Petition No.
Vineet Jain	Managing Director	Petitioner in Crl.M.C. 2111/2007
Arindam Sen Gupta	Editor	Petitioner No. 1 in Crl.M.C. 2704/2007
Balraj Arora	Printer and Publisher (Bennett Coleman & Co. Ltd.)	Petitioner No. 2 in Crl.M.C. 2704/2007

(B) Newspaper- DAINIK BHASKAR

Name of Accused	Designation	Petition No.
Ramesh Chander Agarwal	Editor	Crl.M.C. 2863/2007

(C) Newspaper- DAINIK JAGARAN

Name of Accused	Deisgnation	Petition No.
Mahinder Mohan Gupta	Chairman cum Managing Director	(Petitioner CrI. M.C. 182/2008).
Sanjay Gupta	Editor	Petitioner No. 1 CrI. M.C. 1052/2008
Pradeep Kumar	Reporter	Petitioner No. 2 CrI. M.C. 1052/2008

(D) Newspaper- PIONEER

Name of Accused	Designation	Petition No
Durbar Ganguly	Joint Managing Director	Petitioner CrI.M.C.3082/2007
Chandan Mitra	Printer and publisher	Petitioner CrI.M.C.3083/2007
Manoj CG	Reporter, PTI	Petitioner in CrI.M.C.1224/2008

14. Defamation has been defined as a false statement which has the tendency to disparage the good name or reputation of another person. Strictly speaking, in terms of the statute, as per Section 499 Indian Penal Code, the offence of defamation consists of three vital components which can be categorised as under:-

(i) Making or publishing any imputation concerning any person.

(ii) Such imputation must have been made by words either written or spoken or by visible representation.

(iii) Such imputation must be made with the intention to cause harm or with the knowledge or having reasons to believe that it will harm the reputation of the person concerned.

15. Petitioners contend that apart from the reporter, the editor, printer and publisher would be liable if a scandalous publication relates to a newspaper and additionally would urge that if a newspaper truthfully reports a news item, pertaining to a fact which is of public interest, nobody can be prosecuted for the offence of defamation.

16. The complainant alleges that the news items are per se defamatory and that all accused would be liable.

17. A fair reporting pertaining to a matter of public concern, without insinuations and innuendos i.e. a news item containing statements of true facts is not actionable for the offence of criminal defamation.

18. I have a relook at the news reports. They have been extracted by me in paras 6 to 11 above.

19. Pertaining to the newspaper 'The Times of India' the news item is extracted in para 6 above. The contents of the FIR have been noted in para 2 and 3 above. The press release has been noted in para 4 above.

20. The news item simply publishes the fact of the raid conducted and 13 dance bar girls being apprehended. The nature of activity as per the FIR at the dance bar has been reported. Similar is the position with the news item published in the 3 other newspapers.

21. I would highlight that the source on which the publishers acted was a proper source i.e. the police. The 9th exception to Section 499 IPC is prima facie attracted. There are no innuendos in the publications. A fact pertaining to an FIR being registered with reference to the activities found to be carried out from Hotel Rajdoot as recorded in the FIR has been published. The FIR was made public by the police along with a press release.

22. Pertaining to the liability, primarily a reporter is responsible for his act of defamation and vicarious liability is fastened only on the printer, publisher and editor of the newspaper as held by me in my judgment dated 21.9.2007 disposing of Crl.M.C. No.35/2005 'Mrs.Shobhana Bhartia & Ors. vs. NCT of Delhi & Anr.'. Thus, unless the contrary is proved the persons declared as printer, publisher and editor of the newspaper who would be presumed to be responsible for the contents of the newspaper on the question whether any person other than the printer, publisher and editor can be prosecuted for a defamatory article, apart from the reporter, needs a few decisions to be noted:-

“(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 & Anr., 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 & 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 S. 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 Shorie, 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.”

23. From the afore-noted judicial pronouncement, it can safely be said that besides persons declared as editor, printer and publisher of a newspaper, only such persons could be prosecuted for an action of defamation against whom specific and clear allegations have 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 had knowledge or reason to believe that the imputation will harm the reputation of the complainant. The chairman or the managing director of a company owning a newspaper is neither the editor, nor the printer, nor the publisher and therefore no presumption can

be drawn against the holder of these offices even though they are, by reason of the office held by them, in charge of and responsible to the company for the conduct of its business.

24. I do not find any such pleadings in the complaint against Vineet Jain, Mahinder Mohan Gupta and Durbur Ganguly and thus qua them the complaints are liable to be quashed on the sole ground that merely because Vineet Jain is the managing director of Bennett Coleman & Co. Ltd., Mahinder Mohan Gupta is the Chairman-cum-Managing Director of the company publishing the newspaper 'Dainik Jagran' and Durbur Ganguly is the Joint Managing Director of the company publishing the newspaper 'The Pioneer', on the reason of the office held by them, they cannot be made liable.

25. Qua the rest I hold that the news items contain no innuendos. A fact of an FIR being registered with the contents thereof has been published. The publication of the news item pertains to a matter of public interest. The publication is a true and a faithful report of a fact. I highlight that the reporters have not carried out any 'investigative journalism'.

26. The petitions are allowed. The complaints impugned in each petition as also the summoning order are quashed.

27. No costs.

(PRADEEP NANDRAJOG)
JUDGE

October 10, 2011
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