

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

Judgment reserved on: August 09, 2011
Judgment delivered on: September 13, 2011

+ **CRIMINAL M.C. NO.4234/2009**

MR. RAJAN BIHARI LAL RAHEJA & ORS
....PETITIONERS

Through: Mr. Rajiv Nayar, Sr. Advocate with
Mr. Akshay Ringe, Advocate

Versus

M/S PLANMAN CONSULTING INDIA PVT. LTD. & ANR
.....RESPONDENTS

Through: Mr. Sidharth Luthra, Sr. Advocate with
Mr. Amit Sharma, Advocate for
respondent No.1.
Ms. Jasbir Kaur, APP for respondent
No.2/State.

WITH

+ **CRIMINAL M.C. NO.4235/2009**

M/S OUTLOOK PUBLISHING (INDIA) PVT. LTD. & ORS.
....PETITIONERS

Through: Mr. A.J. Bhambhani, Advocate with
Ms. Nisha Bhambhani, Advocate &
Ms. Lakshita Sethi, Advocate

Versus

M/S PLANMAN CONSULTING INDIA PVT. LTD. & ANR
.....RESPONDENTS

Through: Mr. Sidharth Luthra, Sr. Advocate with
Mr. Amit Sharma, Advocate for
respondent No.1.
Ms. Jasbir Kaur, APP for respondent
No.2/State.

**CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE**

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

AJIT BHARIHOKE, J.

1. Background facts giving rise to these petitions are that an Article titled "Racket Game Lobs" appeared in the issue of Outlook (English) magazine dated 30th June 2008 wherein the author of the Article wrote on the subject of rampant profiteering by bogus private educational institutes at the cost of unsuspecting students resulting in adverse impact on the future of the students and the financial resources of their parents. In the said article, there was a reference to the respondent No. 1/complainant M/s. Planman Consulting India Pvt. Ltd. and its sister concern Indian Institute of Planning and Management (for short 'IIPM'). M/s Planman Consulting India Pvt. Ltd., aggrieved by the content of above referred article published in the magazine 'Outlook' filed a criminal complaint under Sections 499, 500, 501 and 502 read with Sections 34 & 35 IPC against the petitioners, claiming that the article published in the issue dated 30th June, 2008 of Outlook magazine is derogatory and defamatory, aimed at tarnishing the image of respondent No.1.

2. Criminal Miscellaneous (Main) No. 4235/2009 has been filed jointly by four petitioners namely M/s. Outlook Publishing (India) Private Ltd., Mr.

Vinod Mehta, Editor-in-Chief, Outlook Magazine, Mr. Maheshwar Peri, President & Publisher, Outlook Magazine and M/s. IPP Ltd., Printer, Outlook Magazine.

3. Criminal Miscellaneous (Main) No. 4234/2009 has been filed by M/s. Rajan Bihari Lal Raheja, Mrs. Suman Raheja, Mr. Viren Raheja and Mr. Akshay Raheja. Petitioners Rajan Bihari Lal Raheja, Viren Raheja and Akshay Raheja are Non-Executive Directors-cum-Shareholders of M/s. Outlook Publishing India Pvt. Ltd. and petitioner Suman Raheja is a shareholder in the said company holding 11 shares.

4. The article which is claimed to be defamatory by the complainant/respondent No. 1 is reproduced thus:

"We need systematic checks to stop rampant profiteering by bogus institutes.

It was a bright Monday morning in Delhi. It was informed that a middle-aged gentleman wanted to meet me. He would not give many details, just that he was the parent of a student who had been cheated. It turned out that his son joined an institute that claims to give MBA degrees, has a very good placements record, the best infrastructure, professors from foreign varities, in short, the best things since sliced bread. To fund this dream, the father had sold the only piece of land he had, and collected about ₹4.5 lakhs. At the end of two years, what the student got was degree that wasn't a recognized as an MBA, and there weren't any job offers either.

I feel this father's tragic story has a strong resonance across the length and breath of India. Indian parents wager everything they have for their children's education and in most cases, get nothing in return. While it is good to see private investments in education, there is also occasion for serious concern. Year after year, these 'private' institutes churn out so-called professionals who don't stand a chance in the job market. Four years back I decided to intervene in one

such case and took out an advertisement against one such institute, the Indian Institute of Planning and Management (IIPM). I was hoping that I would be challenged in court. Our ad suggested that all claims made by IIPM were wrong or misleading. I knew there were too many skeletons in their cupboard and, if taken to court, they would stand exposed. So, no, they didn't take us to court.

This brings us to the larger issue why does India have the dubious distinction of the lowest employability ratio? It is no longer a problem of creating employment opportunities. Talk to any corporate honcho, and he'll say he can't find employable people. This lack of employable people is the toughest test yet of the India growth story. A recent on study says that not more than 39.5 percent graduates are employable. Another study talks about not more than 10 percent engineers being employable in the IT sector. These figures might be worse- a senior analyst involved in the preparation of one of the reports confided to me of the need to tinker with criteria to achieve even these ratios.

Can the Institute in question be forced to look at the quality of their delivery before they embark on expansion? Can someone hold them responsible for all their claims so that the integrity of the educational system is restored? Can students who are misled stand up for future student's? Unchecked, unregulated and unchallenged claims by educational institutions need immediate systematic checks. They should not be allowed to get a way with these unsubstantiated-and, in many cases, demonstrably false- claims. The only way to do business in education is to be true, correct and honest. Civil society and those concerned need to step in with corrective measures. Otherwise, I am afraid, our country will be hijacked by people who are into profiteering out of a business that has very high, social and economic repercussions.

As I sat down to write this piece, I went through the claims of IIPM all over again. Nothing has changed: the same old untrue or misleading fantastical claims about salaries, placement records being better than IIMS, world class education, professors from foreign universities... you name it ! Students are placed at Planman, a sister concern, at higher salaries meant to jack up placement ratios and dumped/sucked within two months. "We students realised the problems just three months into the institute but all escape routes had

closed," says a students. Students who were paying Rs. 1.25 lakhs a semester earlier are now made to pay Rs.4 lakh for the entire year. Banks that give out loans are willing conspirators.

The situation is by no means and applies to a whole lot of other "management" and "professional" institutes too. The racket flourishes only because no one is taking it on. Surety, the students who get dumped like this could get together and try to get redressal? "I am still paying Rs.8,000/- per month as a loan instalment thanks to a job I got out of my own efforts," says a student. "We invested two years to earn a liability that we will have to repay for many years," I am numbered by painful encounter with this student: it is too personal to be recounted here.

If you have an experience to share about any such institute, mail us at mp@outlookindia.com. Let us work to make the system cleaner, more responsible and answerable."

5. The learned Metropolitan Magistrate, on consideration of the complaint and the statements of the witnesses examined during preliminary enquiry found that a prima facie case for having committed offences punishable under Sections 500 & 501 IPC was made out against the petitioners. He accordingly took cognizance of the offences and issued processes against the petitioners. Feeling aggrieved by the issue of processes, the petitioners have preferred the above petitions seeking quashing of the complaint filed by the respondent No. 1 as also the summoning order dated 30th September, 2009 passed by the learned Metropolitan Magistrate.

6. Learned Shri Rajiv Nayar, Sr. Advocate appearing for the petitioners in Crl.M.C. No.4234/2009 and learned Shri A.J. Bhambhani, Advocate for

the petitioners in Crl.M.C. No.4235/2009 have argued on almost similar lines.

7. Firstly, it is contended on behalf of the petitioners that the impugned summoning order dated 30.09.2009 is bad in law as the allegations in the complaint coupled with the evidence led by the respondent No.1 in inquiry do not make out a case under Section 500 or 501 IPC. It is contended that the article published in the magazine "Outlook" under the title "Racket Game Lobs" is not defamatory as it had been published in good faith with the intention to caution unsuspecting students from believing the claims made by Indian Institute Planning and Management (for short "IIPM"). Learned counsels for the petitioners submitted that the learned Magistrate has failed to appreciate that the aforesaid article published in the magazine "Outlook" falls within the Ninth and Tenth Exception to the offence of defamation as defined under Section 499 IPC. It is further contended that otherwise also, the complaint filed by the respondent No.1 is an abuse of process of law as it has been filed with the motive to overreach the order passed by the High Court in civil jurisdiction on 01.05.2009. Expanding on the argument, learned counsels submitted that feeling aggrieved by the publication of aforesaid article, IIPM filed a suit for injunction, being CS(OS) No.442/2009, against the petitioners seeking to restrain them from publishing any defamatory article in the magazine "Outlook" against the plaintiff IIPM. Learned Single Judge on 05.03.2009 passed an ex parte order restraining the petitioners from publishing any defamatory article against the plaintiff.

Said order, however, was modified by the learned Single Judge on 01.05.2009 in the following terms:

"11. In order to resolve this controversy, this Court deems it appropriate to modify the interim injunction order in the following terms:-

(i) The interim order dated 5.3.2009 will not be taken as preventing the defendants from carrying out any further publication in relation to affairs of the plaintiff institute subject to the condition that the defendants will publish counter view of the plaintiff on any such publication in the next issue if the counter view is received by them from the plaintiff within two working days of the date of publication of the defendant's article and in the event of delay in receipt of counter view beyond two days, then the counter view will be published in the subsequent issue. Needless to say that the counter view of the plaintiff shall be published by the defendants in their magazine "Outlook" with same prominence in relation to font size and spacing. The counter view of the plaintiff to be given for publication should not exceed half printed page of the magazine. The defendants will not add or subtract anything from the counter view given to them by the plaintiff for publication. But plaintiff before handing over its counter view for publication should ensure that it should not exceed half printed page of the magazine.

(ii) The defendants as and when they intend to publish any article relating to affairs of the plaintiff institute should insert a note at the foot of their article that the readers may look for the counter view of the plaintiff in the next/ subsequent issue, if received.

(iii) The defendants will be entitled to publish a rebuttal to the counter view of the plaintiff."

8. It is contended that M/s. Planman Consulting India Pvt. Ltd. (respondent No.1) in connivance with its sister concern has filed the complaint with an ulterior motive to overreach the order of High Court dated 01.05.2009 with a view to frustrate the fundamental right of freedom of speech and expression of the petitioners guaranteed under Article 19 of the Constitution of India. Learned counsel for the petitioners has relied upon the judgments in the matters of **S. Khushboo Vs. Kanniammal and Another**, (2010) 5 SCC 600, **Ashok Chaturvedi & Ors. Vs. Shitulh Chanchani & Anr.**, Crl.A. No.811/1998 arising out of

SLP (Crl) No.3193/1997 and **M/s Pathfinder Publishing Pvt. Ltd. and Others Vs. The State & Another**, Criminal Misc.(Main) No.368/2010.

9. Per contra, learned counsel for the respondent No.1 has submitted that the plea of the petitioners is untenable in law for the reason that the article published by the petitioners is per se defamatory and it has been published with mala fide intention to harm the reputation of the respondent No. 1 company. It is further contended that the plea that the case of the petitioners falls within the Ninth and Tenth Exception of Section 499 IPC is in the nature of defence which is to be proved by leading evidence. It is also contended that the respondent No. 1 was not a party to the civil suit filed by IIPM, as such, it cannot be said that the complaint filed by the respondent No. 1 is an attempt to overreach the order of the civil court, particularly when the IIPM and respondent No. 1 are two separate organizations.

10. There can be no denial that the freedom of speech and expression, particularly of Press, is the foundation of a democratic set up. The freedom of expression of Press flows from the requirement that the citizens in a democratic set up should be sufficiently informed. In the matter of **Attorney General Vs. Times Newspaper Ltd.** (1973) 3 All ER 54, Supreme Court observed that the freedom of expression has following four broad social purposes to serve:

- “(i) It helps an individual to attain self fulfilment.*
- (ii) It assists in the discovery of truth.*
- (iii) It strengthens the capacity of an individual in participating in decision making.*

(iv) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change."

11. But every individual, whether natural or juristic, has a right to protect his reputation and goodwill. No person, even a journalist, has an unfettered right to make defamatory statement about a person to a third person or persons without lawful basis. This right of an individual was recognized by the Supreme Court in the matter of **State of Bihar Vs. Lal Krishna Advani**, AIR 2003 SC 3357 wherein it was observed that reputation is an integral and important aspect of dignity of every individual. The right to preserve one's reputation is acknowledged as a right in rem i.e. a right against the entire world.

12. The law of defamation is a culmination of conflict between the right of the individual and the right of the society to be informed. On the one hand, there is a fundamental right of freedom of speech and expression guaranteed under the Constitution of India and on the other hand, it is the right of individual to his reputation and goodwill. The question arises as to how to bring about a balance between the two rights? How far can the right of freedom of speech and expression extend and when does it become necessary for the law to step in to safeguard the right of the individual to preserve his reputation and dignity? The law of defamation seeks to attain a balance between the above two competing rights. Section 499 IPC defines the offence of defamation. It consists of three essential ingredients namely:

- (a) *Making or publishing any imputation concerning any person.*
- (b) *Such imputation must have been made by words either written or spoken or by visual representation;*
- (c) *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.*

13. On reading of above noted article published in “Outlook” Magazine, it transpires that the article starts with a claim to highlight the need for systematic checks to stop rampant profiteering by bogus educational institutes. The author, in the initial part of the article refers generally to the profiteering done by private educational institutes at the cost of unsuspecting students by making false claims about their placement record, best infrastructure and professional or foreign universities etc. The article then goes on to make specific reference to the Indian Institute of Planning and Management (IIPM) and its sister concern M/s Planman Consulting India Pvt. Ltd. (respondent) as under:

“Four years back I decided to intervene in one such case and took out an advertisement against one such institute, the Indian Institute of Planning and Management (IIPM). I was hoping that I would be challenged in court. Our ad suggested that all claims made by IIPM were wrong or misleading. I knew there were too many skeletons in their cupboard and, if taken to court, they would stand exposed. So, no, they didn’t take us to court.

As I sat down to write this piece, I went through the claims of IIPM all over again. Nothing has changed: the same old untrue or misleading fantastical claims about salaries, placement records being better than IIMs, world class education, professors from foreign universities... you name it ! Students are placed at Planman, a sister concern, at higher salaries meant to jack up placement ratios and dumped/sucked within two months. “We students realised the problems just three months into the institute but all escape routes had closed,” says a students. Students who were paying Rs. 1.25 lakhs a semester earlier are now made to pay Rs.4

lakh for the entire year. Banks that give out loans are willing conspirators.

The situation is by no means and applies to a whole lot of other "management" and "professional" institutes too. The racket flourishes only because no one is taking it on. Surety, the students who get dumped like this could get together and try to get redressal? "I am still paying Rs.8,000/- per month as a loan instalment thanks to a job I got out of my own efforts," says a student. "We invested two years to earn a liability that we will have to repay for many years," I am numbered by painful encounter with this student: it is too personal to be recounted here."

14. On reading of the above, one gets an impression as if respondent No.1 is in conspiracy to cheat unsuspecting students and in furtherance of the conspiracy, respondent No.1 provides short term employment to the students from IIPM with mala fide intention to enable IIPM to make a false claim regarding very good placement record of the students who pass out from said institution. The aforesaid content of the article is per se defamatory and derogatory to the image and name of respondent company. The author of the article has not named the source of his information. It is not the case of the petitioners that before publishing the article, any attempt was made to contact the respondent No.1 to verify the aforesaid allegation of short-term placement of students passing out from IIPM in M/s Planman Consulting India Pvt. Ltd. with a view to jack up the placement ratio. Therefore, at this stage, it cannot be said that the article has been published in good faith to bring the case of the respondent within the purview of Ninth and Tenth Exception to Section 499 IPC. The contention of the petitioners that their case falls within the Ninth and Tenth Exception to Section 499 IPC is a question relating to the

merits of the case, which cannot be determined while exercising inherent jurisdiction under Section 482 Cr.P.C., as it would require evidence which is subject matter of the trial.

15. I have perused the above noted judgments relied upon by the petitioners. In my considered view, aforesaid judgments do not help the cause of the petitioners as they are based upon entirely distinct facts.

16. The case of **S.Khushboo Vs. Kanniammal** (supra) was in respect of an interview given by Ms. S.Khushboo wherein she expressed her views on premarital sexual relations and high premium placed by the society on the virginity of a girl before marriage. It would be seen that views of Ms. S. Khushboo published in the media, which was the bone of contention before the Supreme Court, did not impute anything derogatory to the reputation of a specific person.

17. Similarly in **Ashok Chaturvedi & Ors. Vs. Shitulh Chanchani & Anr.**, Crl.A. No.811/1998 arising out of SLP (Crl) No.3193/1997, the Supreme Court looked into the question whether or not the allegations made in the complaint, together with the submissions made by the complainant and the witnesses before the Magistrate taken on face value made out the offence for which the Magistrate has taken cognizance. That case related to a complaint filed under Sections 120B, 406, 420, 467 and 468 IPC wherein on analysis of the facts, Supreme Court found that no prima facie case for prosecuting the accused named in the complaint was made out and reversed the order of High Court declining to quash the proceedings in exercise of its powers under Section 482 Cr.P.C.

18. Similarly, the judgment of Uttarakhand High Court in the matter of **Pathfinder Publishing Pvt. Ltd. & Ors. Vs. The State & IIPM** does not help the petitioners as it is based upon its own peculiar facts.

19. Coming to the plea that the complaint filed by respondent No.1 is an attempt to overreach the order of the High Court dated 01.05.2009 with a view to curtail the freedom of speech and expression of the petitioners. I find no merit in the above plea, firstly for the reason that the respondent No.1 Planman Consulting India Pvt. Ltd. is an entity distinct from IIPM in whose case the order dated 01.05.2009 was passed by the High Court. Otherwise also, while dealing with a private complaint alleging commission of an offence, the concerned Magistrate is primarily concerned about the question whether or not the allegations made in the complaint and the preliminary evidence produced before the court, prima facie, make out commission of an offence by the accused. Once prima facie commission of an offence is disclosed, then the motive behind filing of the complaint loses its significance. The accused, who has committed an offence, cannot take shelter of the motive of the complainant in filing the complaint and escape the liability/punishment for commission of an offence. In the instant case, the article published in "Outlook" magazine is per se defamatory. Therefore, the persons responsible for publication of said article are liable to be prosecuted for the offence of defamation.

20. Learned Sh. Rajiv Nayar, Sr. Advocate appearing for the petitioners in Crl.M.C. No.4234/2009 has submitted that the petitioners Rajan Bihari Lal Raheja, Viren Raheja and Akshay Raheja are shareholders-cum-non

executive directors of M/s. Outlook Publishing India Pvt. Ltd. and petitioner Mrs. Suman Raheja is only a shareholder in the company. None of them is the author, printer, publisher or editor of the magazine 'Outlook', which carried the alleged defamatory article against the respondent No.1. They are not involved in day to day business of the company and they do not exercise day to day control over the managerial, editorial or publishing functions of the said company. Thus, in view of provisions of Press and Registration Act, 1867, they cannot be held vicariously liable for publication of the alleged defamatory article.

21. The submissions made on behalf of the above four petitioners of Crl.M.C. 4234/2009 pose a question whether any person other than the author, printer, publisher and editor can be prosecuted for a defamatory article?

22. In order to find an answer to this question, it would be useful to have a look on the relevant provisions of Press and Registration Act, 1867.

23. 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.”

24. In context of afore-noted question, it is relevant to note the following judicial pronouncements.

“(i) State of Maharashtra v. R.B. Chowdhari :- 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 :- 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 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....

(iii) K.M. Mathew v. State of Kerela and 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* ; *D.P. Mishra v. Kamal Narain Sharma and Ors.* AIR 1970 SC 856; *Narasingh Charan Mohanty v. Surendra Mohanty* ; *Haji C.H. Mohammad Koya v. T.K.S.M.A. Muthukoya* .

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 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” .

(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”.

25. From the afore-noted judicial pronouncements, the 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 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 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”.

26. On perusal of the complaint, it would be seen that the respondent No.1 has tried to fix vicarious liability of publication of defamatory article of the petitioners in Crl.M.C. No.4234/2009 by, inter alia, observing thus:

“....Accused No.5 to 8 are Mr. Rajan Lal Bihari Raheja, Mrs. Suman Rajan Raheja, Mr. Viren Rajan Raheja and Mr. Akshay Rajan Raheja, who are Directors, major shareholders and are in day-to-day control, working and management of the company being accused No.1 and are in active supervision control of the article being published in the weekly magazine Outlook. The accused No.1 to 8 have intentionally made false and defamatory imputations against the complainant with the clear and mala fide intention of and having complete knowledge that such false imputations would result in tarnishing the image and reputation of the complainant....”

27. On reading of aforesaid allegations, it is clear that the allegations are vague and do not contain the details on the basis of which it is alleged that aforesaid petitioners were involved in day to day control, working and management of the company and that they were in active supervision and control of the articles being published in the weekly magazine “Outlook”. Thus, in my view the petitioners, who are neither author nor editor nor printer nor publisher of the alleged defamatory article, cannot be held vicariously liable for the offence of defamation punishable under Sections 500/501 IPC.

28. In the matter of **SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla and Anr.**, 2005 (7) SCALE 397, Supreme Court observed thus:

“...The normal rule in the cases involving criminal liability is against vicarious liability, that is, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. Section 141 of the Act is an instance of specific provision which in case an offence under Section 138 is committed by a Company, extends criminal liability for dishonour of cheque to officers of the Company. Section 141 contains conditions which have to be satisfied before the liability can be extended to officers of a company. Since the provision creates criminal liability, the conditions have to be strictly complied with. The conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principal accused is the Company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable. In other words, persons who had nothing to do with the matter need not be roped in....”

29. Even otherwise, as per the general scheme of Indian Penal Code, no person can be prosecuted or punished for an offence committed by another person except for following five situations:

(i) When an act is criminal only by the reason of its being done with criminal knowledge or intention is done by several persons and the person concerned also joins in the act with such criminal knowledge or intention.

(ii) When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

(iii) When a person abets commission of an offence, he who abets is liable for the offence committed in pursuance of abetment.

(iv) When an offence is committed in pursuance of a criminal conspiracy, all conspirators are liable for the offence committed.

(v) When an offence is committed by a member of an unlawful assembly in furtherance of common object of assembly, all persons who were members of such assembly at the time of the commission of the offence are liable for the offence committed.

30. In the instant case, there is no specific averment in the complaint which may bring the case of the petitioners No. 1 to 4 of petition Crl.M.C. 4234/2009 within the purview of Section 34, 35, 107, 120B and 149 IPC. In absence of any such specific averment in the complaint against the aforesaid four petitioners, the Magistrate was not justified in issuing the summoning orders against them. Thus, the summoning order of learned M.M. against the petitioners Rajan Bihari Lal Raheja, Viren Raheja and Akshay Raheja of Crl.M.C. 4234/2009 and the complaint qua them is liable to be set aside.

31. As regards the petitioners in Crl.M.C. 4235/2009, petitioner No.1 M/s. Outlook Published India Pvt. Ltd. is the publisher company, petitioner No.2 Vinod Mehta is the editor, petitioner No.3 Maheshwari Peri is the author and publisher of the article and IPP Ltd., petitioner No.4 is the printer. Therefore, in view of the provisions of Section 7 of Press and Registration Act, 1867, they are prima facie liable for the publication of the alleged defamatory article, as such I find no merit in their petition being Crl.M.C.No.4235/2009. Accordingly, the petition is liable to be dismissed.

32. The result of above discussion is that Crl.M.C. No.4234/2009 is allowed and the summoning order dated 30.09.2009 and the complaint qua the petitioners Rajan Bihari Lal Raheja, Viren Raheja and Akshay Raheja is quashed.

33. Crl.M.C.No.4235/2009 is dismissed.

(AJIT BHARIHOKE)
JUDGE

SEPTEMBER 13, 2011
akb/pst