

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

Reserved on: 14th March, 2013

Pronounced on: 8th April, 2013

+ **CRL.M.C. 1248/2008**

PIYUSH SHARMA

..... Petitioner

Through

Mr. Mohit Mathur, Advocate with

Mr. Atul Guleria, Advocate

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through

Ms. Rajdipa Behura, APP for the State.

ASI Om Prakash, PS Hauz Khas.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. By virtue of this Petition under Section 482 of the Code of Criminal Procedure, 1973 (the Code) the Petitioner seeks quashing of the summoning order dated 07.09.2006 and a charge sheet (under Section 173 Cr.P.C.) filed on the basis of the FIR No.108/2006 under Sections 292/500/509 of the Indian Penal Code (IPC) and Sections 3 and 4 of the Indecent Representation of Women Prohibition Act, 1986 (the Act of 1986).
2. To appreciate the contention, the complaint made by the Complainant to the Commissioner of Police is extracted hereunder:-

“... Dear Dr. Paul this is to draw your attention to a dummy issue of a magazine Maxim which is published from K-35, Greet Park New Delhi its Proprietor is O.S. Oberio. The Magazine carries a morphed picture of me which is obscene, degrading insulting is a criminal act I was informed of this by Ms. Harinder Baweja a

Journalist working with Tehelka. I am informed that this dummy copy has been sent to Halverters Priortoits Publication. I suggest you to seize the magazine and proceed against those concerned under the relevant provisions of the law. Thanking you, with best wishes SD English BRINDA KARAT."

3. The learned Metropolitan Magistrate ('MM') while taking cognizance on 07.09.2006 passed the following order:-

"Dated : 07.09.2006

Present : APP for State.

It be checked and registered.

I have gone through the chargesheet, annexed documents and the statement of witnesses, recorded under Section 161 Cr.P.C. I take cognizance of the offence committed.

Issue summons to the accused and notice too surety for 18.11.2006.

All accused persons are on Police Bail. IO be summoned too."

4. The following contentions are raised on behalf of the Petitioner:-

- (i) The cognizance was taken vide a typed order dated 07.09.2006 wherein some blanks were filled in. Although the charge sheet was filed for offences punishable under Sections 292/500/509 of the Indian Penal Code (IPC) and Sections 3 and 4 of the Act of 1986 but the order is completely silent as to for which offences the cognizance was taken by the learned 'MM' which shows complete non application of mind by the learned 'MM'. Reliance is placed on the judgment of this Court in *Anand Srivastava v. State & Ors. 2008 (1) JCC 407* and *M/s. Shriram Centre & Ors. v. State & Ors. 2007 (4) JCC 2827*. It is further urged that the order is also silent whether the Petitioner was summoned to face charges being vicariously liable with the aid of Section 7 of the Act of 1986 or as a principal offender.

- (ii) On the basis of the averments made, it cannot be said that the offence for which the Petitioner was summoned is made out on the basis of the averments made in the report under Section 173 Cr.P.C.
5. Thus, the learned counsel for the Petitioner prays for setting aside of the summoning order as also the charge sheet/FIR on the basis of which the Petitioner was summoned to face trial.
6. Per contra, the learned APP for the State supports the summoning order and submits that the publication of the morphed picture of a female member of the Rajya Sabha wherein certain parts of the body were exposed ipso facto revealed commissions of the offences particularly under Sections 3 and 4 of the Act of 1986.
7. “*Advertisement*” and “*indecent representation of women*” have been defined in Sections 2 (a) and 2(c) of the Act of 1986 respectively which goes to show that the definition of these terms is very wide. The same are extracted hereunder:-

2. Definitions.- In this Act, unless the context otherwise requires,-

(a) "advertisement" includes any notice, circular, label, wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas;

x x x x x x x x x

(c) "indecent representation of women" means the depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals;”

8. Section 4 of the Act of 1986 prohibits publication etc. of any books, pamphlets, etc. containing indecent representation of women. Section 4 lays down that “no person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form”. Section 6 deals with the punishment to the person who contravenes the provisions of Sections 3 and 4 whereas Section 7 deals with the offences committed by the Company and vicarious liability of its officers and Directors.
9. The Petitioner is the Chief Executive Officer and associate publisher of the magazine *Maxim* which allegedly contained the morphed picture of a female Rajya Sabha Member. It will be seen that Section 4 makes every person who takes part in production, selling, letting, distributing, circulating or sending by post of any book, pamphlet, etc. which contains indecent representation of women in any form. Apart from this, as stated earlier, the company indulging in such act and its Directors/officers in charge of and responsible to the company for its business is also liable to be punished.
10. It is well settled that for the purpose of issuing process the ‘MM’ is not required to record any reasons (*Deputy Chief Controller of Imports & Exports v. Roshanlal Agarwal & Ors.* (2003) 4 SCC 139).
11. In *Kanti Bhadra Shah v. State of West Bengal*, (2000) 1 SCC 722 the Supreme Court held that it was unnecessary to write a detailed order at stages such as issuing process, remanding the accused to custody, framing of charges or passing over to next stage in the trial. However, in the

instant case, a perusal of the impugned order reveals that while issuing the process, the learned 'MM' has not only failed to record the offence for which he took cognizance but the order is also silent as to in what capacity the Petitioner has been summoned.

12. Thus, relying on the judgment of this Court in *Anand Srivastava* there is no escape from the conclusion that there is non-application of mind while issuing process against the Petitioner.
13. The impugned order, therefore, cannot be sustained, the same is accordingly set aside. The case is remanded to the file of learned 'MM' with the direction to pass a fresh summoning order, if he finds sufficient grounds to take cognizance against the accused person/accused persons as mentioned in the report under Section 173 Cr.P.C.
14. The pending Applications stand disposed of.
15. The Trial Court record be transmitted to the learned 'MM' concerned through special messenger.
16. CrI.MA.4740/2008 also stands disposed of.

(G.P. MITTAL)
JUDGE

APRIL 08, 2013

vk