

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No. M-15741 of 2010
Date of Decision: 06.02.2015.**

Ashok Aggarwal

.....Petitioner

Vs.

Harbans Lal and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Anupam Gupta, Senior Advocate with
Mr. Gautam Pathania, Advocate
for the petitioner.

Mr. P.S.Jammu, Advocate
for respondent No. 1.

Ms. Dimple Jain, AAG, Haryana.

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SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of criminal complaint No. 746-12001/05 under Section 500 of the Indian Penal Code, 1860 ('IPC' for short) titled 'Harbans Lal versus Ashok Aggarwal and others (Annexure P-1) and all the subsequent proceedings arising therefrom.

Learned senior counsel for the petitioner has submitted that petitioner is the Chairman of Amar Ujala Publications Limited. Petitioner is the Chief Editor of all 18 editions of the newspaper. As Chief Editor of the newspaper, the job of the petitioner was administrative in nature. Petitioner did not have any role with regard to selection and scrutiny of news and articles published in any edition of the newspaper. Editors

working in the area were controlling the publication of the newspaper. Petitioner was stationed at Agra and was not responsible for the publication made by the newspaper at Sirsa. In support of his arguments, learned counsel has placed reliance on '**Gambhirsinh R. Dekare versus Falgunbhai Chimanbhai Patel (2013) 3 Supreme Court Cases 697**', wherein it was held as under:-

“18. Therefore, from the scheme of the Act it is evident that it is the Editor who controls the selection of the matter that is published in a newspaper. Further, every copy of the newspaper is required to contain the names of the owner and the Editor and once the name of the Editor is shown, he shall be held responsible in any civil and criminal proceeding. Further, in view of the interpretation clause, the presumption would be that he was the person who controlled the selection of the matter that was published in the newspaper. However, we hasten to add that this presumption under Section 7 of the Act is a rebuttable presumption and it would be deemed a sufficient evidence unless the contrary is proved. The view which we have taken finds support from the judgment of this Court in the case of [K.M. Mathew v. K.A. Abraham](#), in which it has been held as follows: (SCC P. 676, para 20)

“20. The provisions contained in the Act clearly go to show that there could be a presumption against the Editor whose name is printed in the newspaper to the effect that he is the Editor of such

publication and that he is responsible for selecting the matter for publication. Though, a similar presumption cannot be drawn against the Chief Editor, Resident Editor or Managing Editor, nevertheless, the complainant can still allege and prove that they had knowledge and they were responsible for the publication of the defamatory news item. Even the presumption under Section 7 is a rebuttable presumption and the same could be proved otherwise. That by itself indicates that somebody other than editor can also be held responsible for selecting the matter for publication in a newspaper.

19. Now reverting to the authority of this Court in the case of K.M. Mathew v. State of Kerala, relied on by Mr. Dave, in our opinion, the same instead of supporting his contention, goes against him.

19.1 In the said case it has been observed as follows:

“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."

19.2 In this case the accused was the Chief Editor of Malyalam Manorama and there was no allegation against him in the complaint regarding knowledge of the objectionable character of the matter published. In the absence of such allegation, the Magistrate decided to proceed against the Chief Editor. On an application by the Chief Editor, the process issued against him was recalled. The High Court, however, set aside the order of the Magistrate and when the matter travelled to this Court, it set aside the order of the High Court. This Court made distinction between 'Editor' and 'Chief Editor'. In no uncertain terms the Court observed that the Press and Registration of Books Act recognizes

'Editor' and presumption is only against him. The Act does not recognize any other legal entity viz., Chief Editor, Managing Editor etc. for raising the presumption. They can be proceeded against only when there is specific allegation.

Learned senior counsel has further placed reliance on **'K.M. Mathew versus State of Kerala and another AIR 1992 Supreme Court, 2206**, wherein it was held 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. Dr. R.B.Chowdhary, (1967) 3 SCR 708 : (AIR 1968 SC 110); D.P.Mishra v. Kamal Narain Sharma, (1971) 3 SCR 257: (AIR 1971 SC 856); Narasingh Charan Mohanty v. Surendra Mohanty, (1974) 2 SCR 39: (AIR 1974 SC 47) ; and Haji C.H.Mohammad Koya v. T.K.S.M.A. Muthukoya, (1979) 1 SCR 664 : (AIR 1979 SC 154)]”

Learned senior counsel has next placed reliance on

'The State of Maharashtra vs. Dr. R.B.Chowdhari and others AIR 1968 Supreme Court 110', wherein it was held as under:-

“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 articles. 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.”

Learned senior counsel for the petitioner has also placed reliance on '**Haji C.H.Mohammad Koya vs. T.K.S.M.A. Muthukoya AIR 1979 Supreme Court 154**' wherein it was held as under:-

“The intention of the rule is merely to clarify who the editor of the paper is and once this is shown then there is a substantial though not a literal compliance of the rule. Secondly, the Press Act does not recognise any other legal entity except the editor in so far as the responsibilities of that office are concerned. Therefore, mere mention of the name of the Chief Editor is neither here nor there nor does it in any way attract the provisions of the Press Act particularly Section 7. Thirdly, it is not even pleaded in the petition, much less proved that the appellant being the Chief Editor, it was part of his duty to edit the paper and control the selection of the matter that was published in the newspaper which in fact has been demonstrably disproved by the appellant.”

Learned senior counsel has further placed reliance on

'H.K.Dua vs. Chander Mohan Deputy Chief Minister of

Haryana 2008(3) RCR (Criminal) 64', wherein it was held as under:-

“From the foregoing discussions the legal position boils out that petitioner as an Editor-in-Chief of the Dainik Tribune did not fall within the expression ‘editor’ in the Press Act and no presumption under Section 7 of the Press Act could be raised that he was responsible to control selection of the matter that was published in the news item. If no such presumption could be raised, then there remains no evidence or basis for criminal prosecution of the petitioner as stated earlier. The petitioner was impleaded as an accused merely on the ground of his being “Editor-in-chief” of “Dainik Tribune” without any other averment in the complaint that he controlled selection of the matter that was published in the news item.”

Learned counsel for the complainant, on the other hand, has opposed the petition and has submitted that the petitioner being Chief Editor of the newspaper, was liable to be prosecuted qua defamatory news article published in the newspaper at Sirsa.

In the case of **State of Haryana vs. Bhajan Lal**, **1992 Supp(1) Supreme Court Cases 335**, the Apex Court has held as under:-

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. Can be exercised by the High

Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

- (1) Where the allegations made in the first information report or the complainant/respondent No.2, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is

permitted by a Police Officer without an order of Magistrate as contemplated under Section 155(2) of the Code.

- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or

otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

Case of the complainant as per the complaint Annexure P-1, in brief, is that he was the resident of Sirsa. On 9.12.1999, a news item was published in Amar Ujala with the title *“Kamra Band Kar Shikhshika Ne Parcharya Ko Peeta (A Teacher gave beating to the Principal by bolting the room)”*. As per the news item, the incident had taken place on 7.12.1999. The contents of the news item were that a lady Lecturer had come to the school on transfer and the complainant had not entrusted any work to the said Lecturer and due to this reason, accused Payal had given beatings to the complainant and had made a complaint to the police of Police Station Sadar Sirsa with the allegations that her modesty had been outraged. As per the news item, complainant had himself told about the beatings given to him.

A perusal of the complaint reveals that no specific allegation has been levelled against the petitioner. Petitioner is the Chief Editor of the newspaper. Petitioner cannot be held responsible for selecting the material for publication in Sirsa edition.

As per the Press and Registration of Books Act 1867 (for short 'the Press Act'), the term 'Editor' has been defined as under:-

“Editor” means the person who controls the selection of the matter that is published in a newspaper.”

Section 7 of the Press Act reads as under:-

*“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 declarations [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]”*

Thus, the 'Editor' of the newspaper performs various functions and duties and is responsible for selection of matter published in the newspaper. The petitioner is not the Editor of the newspaper. Petitioner is the Chief Editor of the newspaper and is stationed at Agra. A perusal of the complaint does not lead to the inference that the news-item in question was published with the knowledge and consent of the petitioner.

The question involved in the present case is, thus, no longer *res integra*. In view of the judgments relied upon by the

learned senior counsel for the petitioner, the complaint qua the petitioner is liable to be quashed as the petitioner cannot be proceeded criminally qua the news item which was published in Sirsa edition.

Accordingly, this petition is allowed. Criminal complaint No. 746-12001/05 under Section 500 IPC, titled 'Harbans Lal versus Ashok Aggarwal and others' (Annexure P-1) and all the consequential proceedings, arising therefrom, qua the petitioner, are quashed.

**(SABINA)
JUDGE**

February 06, 2015
Gurpreet