

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No.M- 28531 of 2012
Date of decision : 31.08.2015**

Barjinder Singh Hamdard

.....Petitioner(s)

Versus

Bhupinder Singh Khangura

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. S.S. Narula, Advocate with
Mr. J.S. Mehndiratta, Advocate
for the petitioner.

Mr. Manu K. Bhandari, Advocate
for the respondent.

ANITA CHAUDHRY, J.

The petitioner is the Managing Editor in Daily Ajit (Punjab), a newspaper published at Jalandhar. He had been summoned in a defamation complaint filed by Bhupinder Singh, a Junior Engineer. The petitioner is assailing the correctness and legality of the order passed by the Judicial Magistrate who has summoned the petitioner and impugns order dated 14.10.2011.

The complainant was working as a Junior Engineer in Punjab State Electricity Board, Ahmedgarh, District Sangrur. The allegations contained in the complaint are that he was admitted in a private Nursing Home on 18.6.2005. He was discharged three days

later and was advised rest up to 26.06.2005. On 18.06.2005, a Lineman had died in an accident. The complainant was not on duty and was hospitalized and was not responsible for the death. The accused is said to have levelled false and defamatory allegations and published a news on 01.07.2005. The allegations against the petitioner (arrayed as accused no.11) are being reproduced verbatim from the complaint. It reads as under:-

“That the accused have levelled false and defamatory allegations against the complainant by publishing the news in the Daily Ajit Jalandhar dated 1.7.2005, through which the accused leveled false and defamatory allegations on the complainant. Even the accused no.11 did not clarify the actual facts and he in order to gain publicity of his newspaper wrong report has been published without going into the reality and thereby the accused lowered the reputation of the complainant in the estimation of the general public. The said news items also read over and heard by several people at village Ranguwal, P.S. Dehlon where the complainant resides and the people of village Ranguwal also showed the copy of the newspaper to the complainant levelling the false allegations against him at his house.”

The counsel appearing for the petitioner contends that the petitioner was the Managing Editor and not the Editor and even otherwise a fair and accurate reporting was made in the newspaper which squarely falls within the domain/ambit of explanation 4 and explanation of Section 499 of the Indian Penal Code and the criminal proceedings against the petitioner was an abuse of process of the Court and deserves to be quashed. It was urged that what was

reported in newspaper, was not an allegation as would be evident from Annexure P-5 which is true translation of the news which was reported. It was urged that the Junior Engineer was not reporting for duty and a show cause notice/Memo (Annexure P-7) had been sent to him on 24.06.2005 and the Lineman had died earlier regarding which there was a protest rally and the employees were resenting the fact that the Junior Engineer had run away and that fact was verbatim reported in the news and the Junior Engineer was subsequently transferred and this fact was included in the news item. It was urged that the news was given on 30.06.2005 and was printed in the newspaper, the next day and whatever was reported was factually also correct. It was urged that the petitioner was not the Editor and Annexure P-10 would show that Harjinder Singh and Smt. Parkash Kaur were the Publishers and Secretary and responsible for the news published and a declaration Annexure P-11 was made under Section 5 of the Press and Registration of Books Act XXV of 1867. It was urged that under the law it is the Editor who goes through the various columns and there is no averment in the complaint that the petitioner was responsible for going through the material which was to be published and the complaint and the summoning order qua the petitioner be quashed. Reliance was placed upon ***Vineet Jain, Arindam Sen Gupta and others Vs. State NCT of Delhi and others 2013(6) RCR (Crl.) 1324, N. Ram, Vs. Rashtriya Swayamsewak Sangh, Haryana 2012(3) RCR (Crl.) 161, Virendrabhai M. Chandalia and another Vs. Mohan Kanayalal***

Parwani and another 2003(4) RCR (Crl.) 787, Aroon Purie and others Vs. State of Haryana and another 2007(4) RCR (Crl.) 6, Prabhu Chawla and others Vs. Sri. A.U. Sheriff 1995(1) RCR (Crl.) 600, Girish Sandhi Vs. State of A.P. 2002(4) CCR 422, K.M. Mathew Vs. State of Kerala 1992(1) RCR (Crl.)232 and Jawaharlal Darda and others Vs. Manoharrao Ganpatrao Kapsikar (1998) 4 SCC 112.

The submission on the other hand was that a newspaper is available and the petitioner admits that he was the Managing Editor and he cannot be immune from prosecution and there is a presumption that the Editor or the Managing Editor are aware of what is being printed and the petitioner cannot be deprived of the opportunity to prove that the defamatory news item was published at the behest of the petitioner. Reliance was placed upon ***Vivek Goenka Vs. Col. Ram Singh 2002(2) RCR (Criminal) 700.***

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.

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.

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 in judgment dated 21.9.2007 in 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 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.

In **T.K.S. Muthukoya vs. Haji C.H. Mohammad Koya, (1979) 2 SCC 8**:- The 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...."

In ***K.M. Mathew v State of Kerela & Anr., 1992 Cri.LJ***

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.

The petitioner had contended that he was not the Editor and a fair reporting of the meeting was published and a truthful reporting cannot be prosecuted for the offence of defamation. The petitioner had placed on record the newspaper published on 01.07.2005. A perusal thereof shows that Harjinder Singh and Smt. Parkash Kaur Hamdard are shown as Printer, Publisher and Secretary of the press. The petitioner had also placed on record the declaration Annexure P-11. According to which Harjinder Singh is the Editor of the newspaper.

The contention of the petitioner is that since he was not the Editor, therefore, he was not responsible for having knowledge of the publication. They have also placed on record the show cause notice issued to the complainant as he was not reporting for duty then.

There is a presumption under Section 7 of the Act and there is a statutory immunity against prosecution against others. The complainant has not attributed any knowledge to the petitioner nor it has been specifically averred in the complaint. The argument put forth by the petitioner is tenable. It is important to state that the Magistrate has taken cognizance of the offence against the petitioner who is the Managing Editor. Section 7 raises a presumption in respect of a person who is named as Editor. The Act does not recognize 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. Since the

complaint does not contain any such allegations, the Magistrate was not justified in summoning the petitioner so far as it relates to the Chief Editor, he could not be proceeded with. To ask the Chief Editor to undergo the trial merely on the ground on issue of process would be oppressive. No person should be tried without a prima facie case. In the absence of any express averments against the petitioner, the summoning was not justified. The petitioner was not the person who was controlling the selection of the matter published in the newspaper. There was a person who was mentioned as an Editor and he alone was responsible for selection of the material. The declaration in Form-I as well as the newspaper make it evident that the petitioner was not the Editor. Therefore, the petition has to be accepted. The complaint qua the petitioner is quashed and the summoning order is set aside.

Copy of the order be sent to the Court below.

31.08.2015

sunil

(ANITA CHAUDHRY)
JUDGE