

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.REV.P. 16/2008 & CRL.M.A. No. 4301/2008

TATA MOTORS LTD

..... Petitioner

Through: Mr. K.T.S. Tulsi and
Mr. Sidharth Luthra, Senior Advocates with
Mr. Sandeep Kapur, Mr. Mehul Gupta,
Mr. S. Trehan, Advocates.

versus

STATE

..... Respondent

Through: Mr. Jaideep Malik, APP.
Mr. Arun Bhardwaj, Senior Advocate with
Mr. Arunabh Chowdhury &
Mr. Arijit Bhumik, Advocates for
Intervenors/applicants in Crl.MA 4301/08.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

ORDER
12.02.2009

1. This revision petition under Section 397 read with Sections 401 and 482 of the Code of Criminal Procedure, 1973 (CrPC) is directed against an order dated 9th October 2007 passed by the learned Metropolitan Magistrate (MM), New Delhi dismissing Criminal Complaint Case No. 911/1 of 2007 titled “*Tata Motors Ltd. v. Arindam Chaudhuri & Others*” under Section 499/500/501/502 read with Sections 34 and 35 IPC.

2. Aggrieved by the publication of an article titled: ‘*People’s Car or*

‘*Blood Car*’? *Is Ratan Tata bent on destroying the JRD legacy: Shame*

in Singur published in the periodical “The Sunday Indian” Vol. I Issue 18, 5th to 11th February 2007, the petitioner filed the aforementioned complaint in the Court of the learned MM against Arindam Chaudhuri, Editor-in-Chief, The Sunday Indian; Malay Chaudhuri, its Chief Consulting Editor; A. Sandeep, its Editor; Sutanu Guru, its Managing Editor; Abhimanyu Ghosh, its Chief Executive Officer & Ashok Bose, its Publisher & Printer. The complaint alleged that the article was defamatory and lowered the esteem of the petitioner and its management. The complaint set out the various alleged imputations in the said article which according to the complainant attract the aforementioned offences under the IPC

3. As part of the pre-summoning evidence led by it in support of the complaint before the learned MM, the petitioner complainant examined its Assistant General Manager (Law) as CW-1, Shri Chander Singh Rawat, a UDC in the Office of the Registrar of Companies, NCT of Delhi and Haryana as CW-2, Shri R.K. Saxena, Regional Customer Support Manager of the petitioner as CW-3 and Major P.C. Sood, General Manager A-One Motors as CW-4. The deponents stated, inter alia, that the derogatory imputations in the article had harmed the long standing reputation, goodwill and public image of the petitioner company and that various dealers and customers of the petitioner had on reading the article expressed their shock and dismay.

4. By a detailed order dated 9th October 2007, the learned MM concluded that “the intention of the writer does not seem to defame the

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complainant or harm the reputation of the complainant. No malice can be made out from the article...no cognizance can be taken of the offences on the basis of the allegations, as no prima facie case is made out”. The complaint was accordingly dismissed.

5. The present petition has been filed essentially on the ground that the learned MM has in contravention of Sections 203 and 204 CrPC exceeded his jurisdiction in dismissing the complaint in limine. It is contended that instead of ascertaining whether on a consideration of the complaint and the pre-summoning evidence a prima facie case had been made out for summoning the accused for the offences mentioned, the learned MM has discussed the merits of the complaint including the possible defence of good faith that might have been taken by the accused for justifying the publication of the defamatory article.

Crl. M.A. No. 4301 of 2008

6. At this stage, this Court would like to first take up Crl. M.A. No. 4301 of 2008 which is an application for intervention, filed purportedly under Section 482 CrPC, by the persons against whom the aforementioned complaint was filed. The prayer in this application is that the applicants must be permitted to intervene and be impleaded as party respondents 2 to 7 in the present revision petition.

7. Mr. Arun Bhardwaj, the learned Senior Counsel appearing for the applicants submits that under Section 401 (2) CrPC if an adverse order is going to be passed by this Court in this revision petition, which

might prejudice either the accused or any “other person” then such person has to be mandatorily given an opportunity of being heard either personally or by pleader in defence. Relying on the judgments of the Supreme Court in *Raghu Raj Singh Rousha v. Shivam Sundaram Promoters (P) Ltd.* 2008 (16) SCALE 369, and *P. Sundarrajan v. R. Vidhya Sekar* (2006) 1 SCC (Cri) 345 and the judgments of this Court in *R.P. Sablok v. Kaushalya Devi* 1982 Cri LJ 1342, and *Mohd. Afzal v. Noor Nisha Begum* 66 (1997) DLT 372 it is submitted that this Court in its revisional jurisdiction has to give an opportunity of hearing to the applicants before passing an order which might prejudice them. Mr. Bhardwaj further submits that the prejudice that might be caused is that the findings of the learned MM to the effect that not even a prima facie case is made for proceeding against the applicants in the criminal complaint might get set aside if this Court were to allow the revision petition.

8. The plea of the applicants is opposed by Mr. K.T.S. Tulsi, learned Senior Counsel appearing for the petitioner complainant. He points out that there is no occasion at all for the applicants to be heard at this stage. They are not accused persons as they are yet to be summoned. According to him not even cognisance has been taken by the learned MM of the offences. He points out that a distinction has to be drawn between the pre-cognizance stage and the post-cognizance stage in a criminal complaint. At the pre-cognizance stage there is no question of the respondents in a criminal complaint being given an opportunity of being heard in a revision petition under Section 401 (2) CrPC. This

distinction has been highlighted in the decisions of the Supreme Court in *Raghu Raj Singh Rousha* (supra), *Divine Retreat Centre v. State of Kerala* (2008) 3 SCC 542 and *Prabha Mathur v. Pramod Aggarwal* (2008) 9 SCC 469. He also refers to the decision dated 4th March 2008 of the Bombay High Court in *Kiran Gokuladas Kalantry v. Prithi Paul Singh Sethi* (Criminal Application No. 40 of 2008 in Criminal Writ Petition No. 1148 of 2007) and of this Court in *Chitra Narain v. M/s. NDTV 109* (2004) DLT 394.

9. In the considered view of this Court this application filed by the respondents in the criminal complaint, seeking intervention in the present revision petition, is misconceived. None of the applicants has yet been summoned in the criminal complaint; no process has been issued against them. They, therefore, cannot be termed as 'accused'. No cognizance has been taken by the learned MM since the complaint has been dismissed in limine. Therefore, the question of the applicants being given an opportunity of hearing at this stage in terms of Section 401 (2) CrPC really does not arise. The law in this regard appears to be well settled.

10. One of the early decisions where this point was considered was *Chandra Deo Singh v. Prokash Chandra Bose @ Chabi Bose AIR 1963 SC 1430*. It was held by the Supreme Court that at the highest, the respondents in a criminal complaint, when they were yet to be summoned, could remain present either in person or through a counsel with a view to be informed of what is going on and nothing more. The

rationale was “since the very question for consideration being whether he should be called upon to answer a question which he has no right to take part in the proceedings nor the Magistrate has any jurisdiction to permit him to do so”.

11. In *A. K. Subbaiah v. State of Karnataka 1987 (4) SCC 557* the Supreme Court discussed the scope of the proceedings under Sections 397 and 401 CrPC. It held, with reference to Section 401 (2) CrPC:

“Apparently this sub-section contemplates a situation where a person may not be an accused person before the Court below but one who might have been discharged and therefore if the revisional court after exercising jurisdiction under Section 401 wants to pass an order to the prejudice of such a person, it is necessary that that person should be given an opportunity of hearing but it does not contemplate any contingency of hearing of any person who is neither party in the proceedings in the court below nor is expected at any stage even after the revision to be joined as party.”

12. In *Mohd. Yosuf v. Afaq Johan (Smt) [(2006) 1 SCC 627]* the Supreme Court made a distinction between a pre-summon cognizance stage and post-cognizance stage. It was opined that an order under Section 156 (3) CrPC could not be passed if the MM intended to take cognizance. In *P. Sundarrajan v. R. Vidhya Sekhar* (supra) it was noticed that the High Court had considered the material produced by the complainant before it “without taking into consideration the defence that was available to the respondents”. The complaint,

therefore, was at the post-cognizance stage. In those circumstances, the Supreme Court observed that the persons against whom the complaint was filed had to be heard in the revision petition before the High Court.

13. In *Prabha Mathur v. Pramod Aggarwal* (supra) it was again reiterated following the decision in *Chandra Deo Singh* that the accused has no locus standi at the stage of investigation and he cannot insist for hearing before process is issued against him. It was emphasized that (*SCC @ p. 473*) “it is equally correct that if a person has no locus standi or right of hearing, such right does not accrue in his favour by an indirect process”. However, on facts it was held that the High Court had exceeded its revisional jurisdiction because it had issued a direction to the learned MM to make further inquiry in the matter and pass an appropriate order in accordance with law. Such a direction, it was felt was prejudicial to the interests of the respondents in the criminal complaint. In *Divine Retreat Centre v. State of Kerala (2008) 3 SCC 542* the High Court had directed an inquiry and an investigation into the allegations. Therefore even while drawing a distinction between such case and the other cases where no such direction was given, the Supreme Court on facts held that an opportunity of hearing had to be given to the accused.

14. In *Raghu Raj Singh Rousha* the question posed before the Supreme Court was whether the High Court, in exercise of its revisional jurisdiction under Sections 397 and 401 CrPC, could pass an

order “in the absence of the accused persons”. In that case a complaint had been filed in the Court of the learned ACMM, New Delhi for the offences punishable under Sections 323, 382, 420, 34 etc., IPC accompanied by an application under Section 156 (3) CrPC. The learned MM refused to direct investigation and dismissed the application filed by the complainant under Section 156(3) CrPC. The complainant was asked by the learned MM to lead the pre-summoning evidence and furnish a list of witnesses. Aggrieved by the aforementioned order of the learned MM, the complainant filed a revision petition before the High Court impleading only the State as a party. On the very first day, the High Court passed an order allowing the petition directing the police to hold a preliminary inquiry and submit a report to the learned MM. This order was challenged in the Supreme Court by the respondents in the said criminal complainant.

15. The issue considered by the Supreme Court in *Raghu Raj Singh Rousha* is set out in para 10 of the said decision which reads as follows:

“One of the questions which arises for consideration is as to whether the learned Magistrate has taken cognizance of the offence. Indisputably, if he had taken cognizance of the offence and merely issuance of summons upon the accused persons had been postponed; in a criminal revision filed on behalf of the complainant, the accused was entitled to be heard before the High Court.”

16. Thereafter the Supreme Court discussed the provisions of Sections 397 and 401 CrPC and the judgments of the Supreme Court including

Chandra Deo Singh, Mohd. Yosuf and P. Sundarrajan (supra). On the facts in *Raghu Raj Singh Rousha* it was observed in para 18 as under:

“18. Here, however, the learned Magistrate had taken cognizance. He had applied his mind. He refused to exercise his jurisdiction under Section 156(3) of the Code. He arrived at a conclusion that the dispute is a private dispute in relation to an immovable property and, thus, police investigation is not necessary. It was only with that intent in view, he directed examination of the complainant and his witnesses so as to initiate and complete the procedure laid down under Chapter XV of the Code.”

17. It is clear to this Court on a reading of the judgment in *Raghu Raj Singh Rousha* that the Supreme Court was concerned with the case where the learned MM had already taken cognizance of the offence. Therefore, it could possibly be said that the accused named in the complaint would have a legitimate grievance since they were already in the picture and any order which had been passed in their favour including or any order in the complainant's application under Section 156(3) CrPC could not be reversed without affording them a hearing.

18. The Bombay High Court has in *Kiran Gokuladas Kalantry* (surpa) after noticing the judgment of the Supreme Court in *A. K. Subbaiah* held that “there is a distinction to be drawn between a case where the process had already been issued and where it had not”. On the facts of the case before the court it was held that the respondents in the criminal complaint had no locus to be heard in the revision petition

since process had not been issued against them as yet. In *Chitra Narain v. NDTV* in answer to the question whether the person against whom the complaint is filed has a right to participate in a revision petition, the answer was given in the negative. It was held (DLT, p.398) that “unless a person becomes an accused after process is issued against him, his presence is like any member of the public.” It was explained that “a person against whom a complaint is filed does not become an accused until Court decides to issue process against him.”

19. The decision of the learned Single Judge of this Court in *Mohd. Afzal v. Noor Nisha Begum* (supra) does help the applicants since it was at a stage after summons had been issued to the accused. Again in *R.P. Sablok v. Kaushalya Devi* (supra) it was at the post-cognizance stage and therefore, distinguishable on facts.

20. The legal position that emerges from the above decisions of the Supreme Court and this Court is as under:

(1) There is a distinction to be drawn between the criminal complaint cases which are at the pre-cognizance stage and those at the post-cognizance stage. There is a further distinction to be drawn between the cases at the post-cognizance but pre-summoning stage and those at the post-summoning stage.

(2) It is only at the post-summoning stage that the respondents in a criminal complaint would answer the description of an ‘accused.’ Till then they are like any other member of the public. Therefore at the pre-summoning stage the question of their right to be heard in a revision petition by the complainant in their

capacity as “accused” in terms of Section 401 (2) CrPC does not arise.

(3) At the post-cognisance but pre-summoning stage, a person against whom the complaint is filed might have a right to be heard under the rubric of ‘other person’ under Section 401(2) CrPC. If the learned MM has not taken the cognizance of the offence then no right whatsoever accrues to such “other person” to be heard in a revision petition.

(4) Further, it is not that in every revision petition filed by the complainant under Section 401(2) CrPC, a right of hearing has to be given to such “other person” or the accused against whom the criminal complaint has been filed. The right accrues only if the order to be passed in the revision petition is prejudicial to such person or the accused. An order giving a specific direction to the learned MM to either proceed with the case either at the post-cognisance or post-summoning stage or a direction to register an FIR with a direction to the learned MM to proceed thereafter might be orders prejudicial to the respondents in a criminal complaint which would therefore require them to be heard prior to the passing of such order.

21. As far as the present case is concerned, the learned MM did not summon any of the applicants against whom the criminal complaint was filed. The learned MM did not even take cognizance of the offences. The complaint was dismissed in limine. Therefore, clearly there is no question of the applicants being heard at this stage in the revision petition.

22. Even if the applicants were to be “other persons” for the purpose of

Section 401 (2) Cr PC, their right to be heard arises only when and if this Court proposes to pass an order prejudicial to them. The respondents cannot possibly anticipate what order this Court is going to pass. In seeking intervention at an anterior stage, they are really seeking to put the cart before the horse. The Court might well not agree with the complainant and dismiss the revision petition. In that sense, their application is premature.

23. In any event, as will be apparent hereinafter, this Court is proposing only to place the complaint again before the learned MM for taking a decision afresh whether any prima facie case is made out for proceeding against the applicants for the offences mentioned in the complaint. No direction is being issued to the learned MM to decide the complaint, or even the existence of a prima facie case, one way or the other. The learned MM, while deciding afresh, may decide any which way. Such an order by this Court clearly cannot be prejudicial to the applicants. It further requires to be clarified that an order of this Court setting aside an order of the learned MM on the ground that it is in excess of jurisdiction cannot be an order that is prejudicial to anyone for the simple reason that such order of the learned MM is not an order in the eye of the law.

24. For the aforementioned reasons, this Court finds no merit in this application and it is dismissed as such.

25. The arguments of Mr. Tulsi, in support of this revision petition have been heard at length. He submits that the learned MM exceeded his jurisdiction in examining the complaints on merits and in particular deciding whether the article in question was written in good faith. Relying on the judgment in *Sewakram Sobhani v. R.K. Karanjia, Chief Editor, Weekly Blitz (1981) 3 SCC 208*, he submits that the defence of good faith cannot be examined at the summoning stage but only after evidence is led by the accused at the trial. He also refers to the decision in *M.Arumugam v. Kittu JT 2008 (11) SC 638*.

26. A perusal of the impugned order shows that the learned MM has not merely discussed the merits of the complaint, but has indeed exceeded his jurisdiction in considering whether the respondents would have a valid defence under the doctrine of 'good faith'. The learned MM in particular has observed as under:

“The intention of the writer does not seem (sic seems) to defame the complainant and to harm the reputation of the complainant. No malice can be made out from the article. The words 'Blood car' and 'War Zone' only seem to be '**exaggeration**' in the circumstances **which does not mean that the comment is unfair specifically when it seems to be made in good faith and for protection of public interest.** In the circumstances no cognizance can be taken of the offences on the basis of the allegations, as no prima facie case is made out.” (emphasis supplied)

27. In purportedly concluding that a prima facie case is not made out,

the learned MM has analysed the article in depth and examined whether the defence of good faith on the part of the persons against whom the complaint was filed was made out. The observations of the Supreme Court in the concurring judgment of Justice O. Chinnappa Reddy in *Sewakram Sobhani* (supra) made in para 18, although in the context of what the High Court ought not to have done, apply afortiori to the learned MM. They read thus (SCC, p.219):

“Several questions arise for consideration if the Ninth Exception is to be applied to the facts of the present case. Was the Article published after exercising due care and attention? Did the author of the Article satisfy himself that there were reasonable grounds to believe that the imputations made by him were true? Did he act with reasonable care and a sense of responsibility and propriety? Was the article based entirely on the report of the Deputy Secretary or was there any other material before the author? What steps did the author take to satisfy himself about the authenticity of the report and its contents? Were the imputations made rashly without any attempt at verification? Was the imputation the result of any personal ill will or malice which the author bore towards the complainant? Was it the result of any ill will or malice which the author bore towards the political group to which the complainant belonged? Was the article merely intended to malign and scandalise the complainant or the party to which he belonged? Was the article intended to expose the rottenness of a jail administration which permitted free sexual approaches between male and female detenus? Was the article intended to expose the despicable character of persons who were passing off as saintly leaders? Was the article merely intended to provide salacious reading material for

readers who had a peculiar taste for scandals? **These and several other questions may arise for consideration, depending on the stand taken by the accused at the trial and how the complainant proposes to demolish the defence. Surely the stage for deciding these questions has not arrived yet. Answers to these questions at this stage, even before the plea of the accused is recorded can only be a priori conclusions. 'Good faith' 'public good' are, as we said, questions of fact and matters for evidence. So, the trial must go on.**” (emphasis supplied)

The recent decision of the Supreme Court in *M.Arumugam* reiterates the “well-settled principle of law” that “those who plead exception must prove it” and that can happen only at the trial of a case.

28. It is, therefore, plain that the question before the learned MM at the pre-summoning stage was not whether the defence of good faith was made out. Such question would arise for consideration only at the post-summoning stage when the accused are called upon to lead their defence and if and when they seek to show that the article in question was published in good faith. Any other defence that the accused may have would also be required to be considered only at the stage of trial. At the present stage all that the learned MM was required to do was to form an opinion whether on the basis of the complaint and the pre-summoning evidence, a prima facie case was made out for taking cognisance and summoning the persons against whom the complaint was filed for the offences mentioned in the complaint. The learned MM was not required to do anything more at this stage. In the

considered view of this Court, the learned MM has exceeded his jurisdiction in considering a defence which could possibly arise only at a later stage.

29. Accordingly, the impugned order dated 9th October, 2007 is set aside. Complaint Case No. 911/1 of 2007 titled “*Tata Motors Ltd. v. Arindam Chaudhuri & Others*” under Section 499/500/501/502 read with Sections 34 and 35 IPC stands restored to file and will now be placed for hearing afresh before the MM for taking a fresh decision whether any prima facie case is made out on the basis of the complaint and the pre-summoning evidence to summon the accused for the offences mentioned in the complaint.

30. Complaint Case No. 911/1 of 2007 will be listed before the learned ACMM on 24th March 2009 for being taken up by either that court or for being assigned to any other court.

31. The petition is accordingly allowed with no order as to costs.

32. Order dasti to the parties.

S.MURALIDHAR, J

FEBRUARY 12, 2009
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