

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.6710 OF 2005

Mr. Vivek Goenka,
aged 46 years,
The Chairman and Managing
Director of Indian Express
Newspapers (Mumbai) Ltd. having
his office at Express Towers, Nariman
Point, Mumbai 400 021.

...Applicant

Versus

1.Mr. Rajabhau Damodar Raikar
Age 49, Occupation Social Service
R/at 1516, Sadashiv Peth,
Pune – 411 030.

2.Mr. George Verghese
the then Printer and Publisher of
“The Indian Express” Pune edition
residing at Kalpataru Habitat, Lower
Parel, Mumbai- 400 012.

3.Mr. Prakash Kardaley
The then Resident Editor of
“The Indian Express”, Pune edition
having his office at 3/11 Aurora
Towers 9A, Moledina Road,
Pune 411 001.

4.Ms. Yogita Pandurang Bankar
Residing at 626, Ghorpadi Peth
Pune 411 042.

5.Mr Pandurang Baburao Bankar
Residing at 626, Ghorpadi Peth
Pune 411 042.

6.State of Maharashtra

Through the Public Prosecutor
PWD Building, High Court,
Mumbai 400 001.

...Respondents

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Mr. S.R. Chitnis, Senior Advocate with Mr. Amol Joshi, Suziyan Shaikh,
Tasneem Kantawala i/b Ms Poorvi Kamani for the Applicant.

Mr. Anil V. Anturkar, Senior Advocate with Mr. Amol Gatne i/b. Mr. S.B.
Deshmukh for Respondent No.1.

Mr. D.P. Adsule, APP for the Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

JUDGMENT RESERVED ON : 2nd AUGUST, 2016

JUDGMENT PRONOUNCED ON: 5th AUGUST, 2016

JUDGMENT :

By this application filed under section 482 of the Criminal Procedure Code, the Applicant, who is the original accused No.1, has prayed for quashing and setting aside the order of issuance of process in Criminal Case No.217 of 1997 for offence punishable under section 500 of the IPC.

2. The Applicant, is the Chairman and the Managing Director of Indian Express Newspaper (Mumbai) Ltd. The company is the proprietor of various newspapers and magazines including the multi edition English newspaper "The Indian Express" and multi edition Marathi daily "Loksatta". On 3.10.2000 the Applicant received summons to appear before the J.M.F.C. Court No.4, Pune on 5.10.2000

to answer the charge under section 500 of the IPC in Criminal Case No.217 of 1997 filed by the Respondent No.1/complainant against the present Applicant and others in respect of the news item published in the Indian Express, Pune edition issue of 19.5.1997 under the heading “Tea vendor takes on ST bosses”. The Respondent No.1 alleged that the said news report was defamatory. The Respondent No.1 alleged that by publishing the said news report the Applicant and the other accused lowered his image in the eyes of public and had thereby committed offence under section 500 r/w. 34 of the IPC.

3. Mr. Chitnis, the learned counsel for the Applicant has submitted that the Applicant being the Chairman and Managing Director was not responsible for the day to day reporting of news in any of the editions of the Indian Express. Placing reliance on the provision of section 7 of Press and Registration of Books Act, 1867, the learned counsel submits that the person, whose name is printed as the Resident Editor / Editor is responsible for publication of news and presumption has to be drawn that the Editor or Resident editor, whose name is specifically printed is the person solely responsible. He therefore, claims that the Applicant herein, who is the Managing Director cannot be held responsible and cannot be tried for offence under section 500 of the IPC. In support of his contention he has

relied upon the decision of this Court in *Vivek Goenka V/s. State of Maharashtra 2007 Cri.L.J. 2194*.

4. Mr. Anuturkar, the learned senior counsel has submitted that the facts in *Vivek Goenka*, supra are distinguishable. He has further submitted that in the said case (accused Nos.2 to 4) the editor, whose name was printed had accepted their responsibility on oath and hence, the presumption under section 7 of the Press and Registration of Books Act, 1867 has to be drawn against them. Consequently, it was held that no case was made out against the Applicant Vivek Goenka to face trial for offence under section 500 of the IPC.

5. The learned senior counsel Shri Anturkar has further submitted that in the present case no such affidavit is filed and hence the principles laid down in the said case are not applicable. He has further submitted that the complaint contains specific allegations against the Applicant and hence this is not a fit case for quashing the process issued against the Applicant.

6. I have perused the records and considered the submissions advanced by the learned senior counsel for the Applicant and the learned senior counsel for the Respondent No.1 and the learned APP for the Respondent-State.

7. At the outset it may be mentioned that the present complaint relates to the news report published in the Indian Express dated 19.5.1997 under the heading “Tea Vendor takes on ST bosses”. Said news report was also published in “*Loksatta*” Marathi daily dated 28th August, 1997, Pune edition of the same company viz. Indian Express Newspapers (Mumbai) Ltd. The Applicant herein is the Managing Director of the said company. The complainant had filed two separate complaints against the Applicant and the Editor, Printer, Publisher, etc. of the respective dailies for offence under section 500 r/w. 34 of the IPC. The Applicant herein had challenged the order of issuance of process under section 500 of the IPC in respect of publication of news report in “*Loksatta*” daily, Pune edition. The Single Judge of this court in ***Vivek Goenka Vs. State of Maharashtra*** (supra) has quashed and set aside the order of issuance of process as against this Applicant mainly relying upon the provisions section 7 of Press and Registration of Books Act, 1867, as well as the principles laid down by the Apex Court in ***K.M. Mathew Vs. K.A.A. Abraham & Ors. (Mathew II) (2002) 6 SCC 670***. Hence, before adverting to the controversy in hand it would be advantageous to refer to the presumption under section 7 of the Press and Registration of Books Act, 1867 and the principles laid down by the Apex Court in *K.M. Mathew (II)* supra:-

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 declarations, 1[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, 1[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 2[newspaper] whereof the title shall correspond with the title of the 2[newspaper] mentioned in the declaration, 5[or the editor of every portion of that issue of the newspaper of which a copy is produced].

8. The Apex Court in the case of **K.M. Mathew (II)** while considering the scope and purport of section 7 has observed that:-

“Under Section 7 of the Act, there is a presumption that the Editor whose name is printed in the newspaper as Editor

shall be held to be the Editor in any civil or criminal proceedings in respect of that publication and the production of a copy of the newspaper containing his name printed thereon as Editor shall be deemed to be sufficient evidence to prove that fact, and as the 'Editor' has been defined as the person who controls the selection of the matter that is published in a newspaper, the presumption would go to the extent of holding that he was the person who controlled the selection of the matter that was published in the newspaper. But at the same time, this presumption contained in Section 7 is a rebuttable presumption and it will be deemed as sufficient evidence unless the contrary is proved. Therefore, it is clear that even if a person's name is printed as Editor in the newspaper, he can still show that he was not really the Editor and had no control over the selection of the matter that was published in the newspaper. Section 7 only enables the court to draw a presumption that the person whose name was printed as Editor was the Editor of such newspaper, if the publication produced in the court shows to that effect.”

9. The Apex Court while observing that there is no statutory immunity against Managing Editor, Resident Editor or Chief Editor against any prosecution for the alleged publication of any matter in the newspaper over which these persons exercise control has held that :-

“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.

10. In the instant case the Applicant was a Managing Director of Indian Express newspaper and the co-accused Prakash Kardale

(Respondent No.3) was the Editor of the Indian Express newspaper, Pune edition. In terms of section 7 of the Act there could be a presumption against the Editor, whose name was printed in the newspaper to the effect that he was the Editor of the said publication and when he was responsible for selecting the matter for publication. The persons other than the Editor could be held responsible provided there are specific averments that they were responsible for selecting the defamatory matter, which was published. A perusal of the complaint reveals that the Respondent No.1 complainant has made general allegations that all the accused have published the false information without verifying the veracity and knowing that the said publication would defame the complainant. Similarly, the verification statement of the complaint does not give any particulars but reads as under:-

“I have filed this Complaint against owner of Indian Express Vivek Goenka, George Verghese, Prakash Kardaley, Pandurang Bankar and Yogita Bankar. They have defamed me for no reason. Because of this my image in the general public is tarnished and I have suffered mental agony. They may kindly be punished as per law.”

11. The allegations against the Petitioner are vague and general in nature. There are no specific averments in the complaint and verification statement that the Applicant herein was responsible for selecting or for publishing the said news report. The averments made

in the complaint as well as the statement under section 200 of the Cr.P.C., on the face of it do not disclose the essential ingredients of the offence qua the Applicant.

12. In the Case of *Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate and Ors*, the Apex Court has observed as under :-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even

himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

13. In *Maharashtra State Electricity Distribution Company Ltd. & Anr. Vs. Datara Switchgear Ltd. & Ors. (2010) 10 SCC 479*, the Apex Court has held that :-

“18. It is well settled that though the inherent powers of the High Court Under Section 482 of the Code are very wide in amplitude, yet they are not unlimited. However, it is neither feasible nor desirable to lay down an absolute rule which would govern the exercise of inherent jurisdiction of the Court. Nevertheless, it is trite that powers under the said provision have to be exercised sparingly and with caution to secure the ends of justice and to prevent the abuse of the process of the court. Where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged, the High Court would be justified in invoking its powers under Section 482 of the Code to quash the criminal proceedings. ”

14. In the instant case, the learned Judge has issued the process mechanically without ascertaining whether the allegations made in the complaint, taken at its face value and accepted in its entirety disclose any offence as against the present Applicant. Under such

circumstances, continuation of proceedings as against the Applicant would be abuse of process of law.

15. Under the circumstances and in view of discussion supra the application is allowed in terms of prayer clause (a). The order of issuance of process under section 500 of the IPC in Criminal Case No.217 of 1997 is hereby quashed and set aside qua the Applicant.

(SMT. ANUJA PRABHUDESSAI, J.)