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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 09th March, 2016

+ CRL.M.C. 1320/2013 & Crl.M.A.No.4118/2013

R SUNDER

..... Petitioner

Represented by: Mr.R.K.Handoo, Mr.Yoginder Handoo, Mr.Aditya Chaudhary, & Mr.Darpan Sachdeva, Advs.

versus

STATE NCT OF DELHI & ANR.

..... Respondents

Represented by: Mr.Amit Ahlawat, APP for the State/R1
Mr.Pramod Kumar Dubey,
Mr.Shiv Chopra, Ms.Megha,
& Mr.Siddharth Johar, Advs for R2.

AND

+ CRL.M.C. 5124/2013 & Crl.M.A.No.18469/2013

DILEEP PADGAONKAR

..... Petitioner

Represented by: Mr.R.K.Handoo, Mr.Yoginder Handoo, Mr.Aditya Chaudhary, & Mr.Darpan Sachdeva, Advs.

versus

STATE N.C.T. OF DELHI & ORS.

..... Respondents

Represented by: Mr.Satya Narain Vashisht, APP for the State/R1.
Mr.Pramod Kumar Dubey,
Mr.Shiv Chopra, Ms.Megha,
& Mr.Siddharth Johar, Advs for R2.

AND

+ CRL.M.C. 4183/2014 & Crl.M.A.No.14407/2014

ALOK MATHUR

..... Petitioner

Represented by: Mr.R.K.Handoo, Mr.Yoginder Handoo, Mr.Aditya

Chaudhary, & Mr.Darpan
Sachdeva, Advs.

versus

STATE OF NCT DELHI & ORS.

.... Respondents

Represented by: Mr.Arun Kumar Sharma, APP
for the State/R1.
Mr.Pramod Kumar Dubey,
Mr.Shiv Chopra, Ms.Megha,
& Mr.Siddharth Johar, Advs
for R2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide these petitions filed under Section 482 of the Cr P C, petitioners seek directions thereby quashing of the summoning order dated 26.06.2007 passed by learned Trial Court in Criminal Complaint Case No.343/1/2002. Consequently, the aforementioned complaint case be also quashed against them.
2. Vide the impugned order learned Trial Court had issued the summons to accused Nos.1 to 15 including the petitioners herein for the offences punishable under Sections 499/500/501/502/34 of the IPC. However, summons were not issued against 16th accused, i.e., Times News Network.
3. Since the facts of all these three petitions are common and the same are directed against summoning order dated 26.06.2007 arising out of a complaint filed by respondent No.2, therefore, this Court has decided to dispose of these petitions by a common judgment.
4. The allegations in narrow compass as contained in the complaint filed before learned Trial Court against petitioners are that the respondent

No.2 had a long business relationship with accused No.1, i.e., M/s Bennett Coleman & Company Limited and advertisements had been placed in accused persons' newspaper for the last nearly 8 years. Until recently, the complainant had been advertising heavily in the accused newspaper intimating the general public about the timing of tests, the success rates of its students etc. For the period 2000 to 2001, advertisements worth Rs.1,01,49,143/- and for the period 2001-2002 advertisements worth Rs.59,56,092/- had been placed in the accused newspaper. At the present rate of advertisement tariffs in the accused persons newspaper it works out to about Rs.2.15 Crores. The accused have, therefore, benefited economically and financially in their association with the complainant. For the calendar year commencing from 2002 the complainant had commenced negotiations with the accused No.1 towards seeking a discount in the advertisement rates, which is a normal practice in the trade of bulk booking of advertisements in newspapers. The negotiations were held particularly with Mr.R.Ricky, Mr.Daruman and Mr.Alok Mathur, the accused Nos.13 to 15 respectively from the marketing department. The complainant was represented by one of its senior officers Mr.Annu Kundlu in such negotiations. In this regard, the accused Nos.14 & 15 visited the office of the complainant in January 2002 for such negotiations. At all times during the negotiations it was impressed upon the complainant by the above referred persons that as the complainant was a big advertiser, any final decision relating to the tariffs for advertisement would only be taken by the Chairperson and the Managing Director, accused Nos.2 & 5 respectively and after consultations with accused Nos.3, 4 & 6 the top management of the accused No.1. However, the discounts offered were far below the normal industry standard and the complainant requested the accused

Nos.13 to 15 to reconsider their offer pertaining to the discounts in advertising tariffs. Accordingly, the above referred accused persons represented to the complainant that the top management of the accused No.1 will have the final word as far as the case of the complainant was concerned. Subsequently, the accused persons informed the complainant that the high officials including accused Nos.2 to 6 in the management of the accused No.1 had refused to relax the advertisement tariffs for the complainant. Hence, the negotiations failed and the complainant stopped advertising in the newspaper of the accused persons.

5. Mr.Handoo, learned counsel appearing for the petitioners submitted that respondent No.2 instituted the above noted complaint case against 16 accused and vide the impugned order dated 26.06.2007, learned Trial Court had issued summons against 15 accused out of total 16. Accused No.2 Ms.Indu Jain and accused No.5 Vineet Jain, the Chairperson and Managing Director respectively, challenged the summoning order in Crl.M.C.No.685/2008 and this Court vide decision dated 20.03.2012 quashed the summoning order and complaint against the duo.

6. While dismissing the complaint against afore noted two accused persons, this Court observed and passed the order as under:-

“3. The impugned summoning orders are challenged by the counsel for petitioners on the ground that in the complaint, there is no act or omission attributed to the petitioners and they are arrayed as parties merely because of their being Chairman and Managing Director of the Company and they have nothing to do with the impugned publications and are not involved with the making, printing or publishing the impugned news items. Reliance is placed on Section 5 and 7 of the Press and Registration of Books Act and the judgment of

K.M.Mathew Vs. State of Kerala, 1992 (1) SCC 217, Shobhna Bhartia and Ors. Vs. NCT of Delhi and Ors., 2008 (1) JCC 327 and K.Jagannatha Shetty and Yogeshwar Dayal, AIR 1992 SC 2206.

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6. Section 5 of the Press and Registration of Books Act stipulates that every Printer and publisher of a newspaper shall make a statutory declaration before a competent Magistrate in the prescribed form. Section 7 of the Press and Registration of Books Act provides that unless the contrary is proved, the persons declared as Printer, publisher and Editor of the newspaper are presumed to be responsible for the contents of the newspaper. There is no doubt regarding the fact that the article was defamatory in nature but the question before this Court is that whether any person other than the Printer, Publisher and Editor can be prosecuted for a defamatory article or not.

7. In the case of *Shobhana Bhartia (supra)*, while deliberating on this issue, after discussing the judgments in *K.M. Mathew (supra)*, ***State of Maharashtra v. R.B. Chowdhari and Sardar Nihal Singh v. Arjan Das***, 1983 CrLJ 777, it was laid down that:

“58...(i) Besides persons declared as Editor, Printer and publisher of a newspaper, only such person could be prosecuted for an action of defamation against whom specific and clear allegations has been made in the complaint that either he was responsible for selection of the defamatory matter or had personal knowledge about the contents of the defamatory matter. In addition, it must also be averred in the complaint that such person had the intention to harm or knowledge or reason to believe that the imputation will harm the reputation of the complainant.

(ii) The Chairman or the Managing Director of the company owning a newspaper is neither the Editor, nor the Printer nor the publisher and therefore no presumption could be drawn against holder of these

offices even though they are, by reason of the offices held by them, in charge of, and responsible to, the company for the conduct of its business”.

8. Hence, it is settled legal proposition that in the absence of specific averments in the complaint and evidence to support those averments, nobody except the Printer, publisher and Editor of the newspaper can be presumed to be responsible for the contents of the newspaper and cannot be prosecuted for the offence of defamation. From the perusal of the complaint, it is noticed that the complainant has relied on the fact of refusal of providing discounts by the management to support the allegation that the petitioners were involved in the day to day management of the publication and were responsible for taking the decisions in the said publications. In my view, this fact alone is not sufficient to support the allegations made by the complainant which are prima facie vague and based on presumptions. The averments in the complaint also do not make a case of abetment or conspiracy.

9. There is nothing in the complaint to substantiate the allegations of the complainant that the petitioners were responsible for the publication of the said article in the newspaper or had knowledge or consented to the publication of objectionable article in the newspaper. A Magistrate before whom a complaint is presented has to satisfy himself that it contains the necessary averments. The complaint would have to bring on record material to justify the Court taking cognizance of the offence and summoning the accused persons. Shedding light on the criticality of summoning a person in a criminal case, the Apex Court in **Pepsi Foods Limited v. Special Judicial Magistrate**, (1998) 5 SCC 749 has held that:-

"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. 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”.

7. This Court thereafter vide order dated 18.10.2012 modified/ clarified the judgment dated 20.03.2012 to the extent that instead of words ‘there is no doubt regarding the fact that the article was defamatory in nature’, it was to be read as ‘There is no need to go into the controversy as to whether the article is or not defamatory in nature, but the question before this Court is that whether any person other than the Printer, Publisher and Editor can be prosecuted for a defamatory article or not’.

8. Learned counsel for petitioner further submitted that the afore noted judgment was passed by this Court mainly on the ground that petitioners therein were neither Editor, nor Printer and publisher and the same ratio is applicable in the present case. All three petitioners also do not come in any of the categories mentioned above.

9. It is pertinent to mention here that in the complaint it is specifically mentioned that accused Nos.2 to 5 were Chairperson, President, Director and Managing Directors respectively of the company which owns, publish

and circulate the newspaper 'Times of India'. Thus, it is stated that petitioner R Sunder (Crl M C No.1320/2013) is a Director and accused Nos.7 to 9 are the Executive Editor, Editor and Printer respectively of the Times of India, New Delhi edition. Accused No.10 is the Editor of the Education Times, a weekly and carried out as supplement to the daily newspaper–Times of India. Accused Nos.13 to 15 are the General Manager – Marketing, Assistant Manager–Response, and Chief Manager–Response respectively. He submitted that in the complaint, complainant has stated that accused No.10 is the Editor, therefore, there was no question to implead the other accused persons including the petitioners herein.

10. It is further stated in the complaint that subsequently when the complainant stopped advertising in the newspaper of the accused persons, they had chosen to publish the impugned article out of sheer malice and in contradiction to their own stand in the article in question.

11. The article in question reads as under:-

“FIIT JEE uses questionable tactics to attract students Coaching institute makes false claims, IIT toppers ‘pose’ for FIIT JEE ads, Education Times Finds out

Times News Network.

It is believable that of the total 3,600 students, clearing the Indian Institute of Technology – Joint Entrance Exam (IIT JEE) 2001, over 50 per cent – a whopping 1,860 – took coaching classes from a single institution? That’s the claim of FIIT JEE for you. Year after year, the institute has claimed an increased share of its students cracking the IIT JEE – in 2000, it was 46.14 per cent or 1,493 of the total 3,236 successful candidates. One wonders how credible are these claims?

Interestingly, professors at IIT, Delhi are not ready to buy

this claim, saying that there is merely an eyewash. FIIT JEE ends up listing as qualifiers an extra 50 per cent students' who have already qualified in the examination directly without the help of a coaching institute. IIT students have some revealing details. IIT JEE 2000 topper, Nitin Gupta, whom FIIT JEE had included in its list, had told this newspaper in a previous interview that he was actually taking lessons from a coaching institute in Kota. "I also subscribed to a few course materials from FIIT JEE, Brilliant's and Apex and took FIIT JEE's mock test." He had said. Is that enough reason for FIIT JEE to lay full claim to this success?

A B Tech first year student at IIT-Delhi, Ankit Jain, said "FIIT JEE's claims are hard to believe. The trend suggests that students opt for modules and correspondence tutorials from various institutes. That doesn't give the right to any institute taking the credit for a candidate's success. If at all, it must be in the institute from where the student is enrolled for classroom contact programme."

An IIT JEE 2001 ranker, currently pursuing B Tech from IIT-Delhi said on condition of anonymity, "I was surprised to see my name mentioned in the FIIT JEE list as I'd done all my coaching from another institute. I had just taken FIIT JEE's rankers test paper files. Their claims are certainly misleading.

"Students referred to cases where coaching instituted and particularly FIIT JEE, have approached rankers and offered them money in the bargain of using their name and photographs in FIITJEE's list of successful candidates. An IIT professor on condition of anonymity said, "I was shocked to see a 1996 JEE ranker's photograph in a FIIT JEE advertisement. The student was very bright and was from Jaipur and no way, could he take classes from FIIT JEE. When asked, the student admitted to having been approached and enticed by the institute strictly told him that it was not a good practice.

"A B Tech final year student, Yogesh confirmed that such practice exists. "The allegations are true". Another student remarked, "The greed for publicity and the desire

to see one's photograph in the newspaper lure candidates more than the money offered. Mandeep Singh, a M Tech student, added, "Nobody refuses money in India".

"Another IIT-Delhi first year civil engineering student on the condition of anonymity also claimed that FIIT JEE paid high-ranking students who qualified in the IIT JEE exam without ever attending a coaching institute to pose for their advertisement by sending pictures or endorsing falsely that they cleared the exam by attending FIIT JEE coaching classes. This 'tactic' helped FIIT JEE to remain the top-coaching institute in the country.

During the past few years, FIIT JEE has emerged as the most sought-after coaching institute for students interested in pursuing a career in engineering, particularly to those who are interested in studying in any one of the Indian Institute of Technology (IITs). FIIT JEE has been able to claim year after year that it has been able to send a maximum students to the IITs.

This is basically being done through media blitzkrieg, which includes full-page advertisements in leading newspapers, which mentions the list of candidates who have cracked the IIT-JEE after undergoing a regular or postal programme in FIIT JEE. Students who aspire to study in IITs continue to get lured by these gimmicks to do a regular or postal programme course for which the FIIT JEE charges a hefty amount seen not anywhere in the country.

While most students believe that a coaching institute's claim should not be taken at face value, they however reiterate that coaching is essential when it comes to crack the IIT JEE. Ankit remarked, "Coaching is helpful as it gives you guidance. However, 90 per cent of the effort has to come from the students themselves." Agreed an IIT professor, "Coaching may help to a certain extent, but it alone cannot take you through, if you do not have the potential."

"A third-year bio-tech, IIT-Delhi who did a one-year, regular programme with FIIT JEE, Anjan Choudhury (name changed) said : "The course content was not so good. Actually, it is up to the individual student that how

he or she goes about preparing for the IIT-JEE". He added, "The entrance test to get admission in FIIT JEE is itself very tough to ensure the elimination of below par students. FIIT JEE only admits those students who are good enough to crack the IIT JEE. Moreover, the very good ones are put into a separate batch during the regular programme and given extra attention by the FIIT JEE faculty. This is basically done to ensure that students in the special batch are able to crack the IIT JEE.

"He said this was unfair to those students who paid the same amount to get the same kind of attention from the FIIT JEE faculty, but in actual fact were not getting it."

This point of view was endorsed by Shilpi Singh, a third-year student of Mechanical Engineering at IIT-Delhi who says, "I had undertaken one year coaching programme at FIIT JEE." She felt that the approach of FIIT JEE was commercialised. She says, "I feel that it is commercialised and needs to be more personalised. They should reduce the number of people they take in each class. Moreover, she says, "On the basis of the entrance test they conduct divide people in groups. The group containing the brightest of the lot got best of the teachers, whereas others got really bad professors. I think this is highly unfair because all the students are paying the same amount of fees and should be given the same kind of treatment, which was not there."

Ankur Garg, a final – year student of Electronics and Electrical Engineering, IIT-Delhi says, "I had enrolled for the intensive-contact programme of FIIT JEE, spanning one month. But I dropped out of it merely after 10 days because it was not upto mark. I felt that in the six hours of classes, I was attending everyday I was getting an output of only two hours. I felt that I could do better by preparing myself".

A student who is pursuing a Ph D in nuclear physics and had done a one-year regular programme with FIIT JEE Deepkumar Shaw (name changed), said: "FIIT JEE continues to claim that its success rate is far better than any other coaching institute in the country but the fact is

that students crack IIT-JEE because of their good academic background and sheer hard work.” He added, “How could the FIIT JEE claim that a particular student cracked IIT-JEE because of them? The truth is that only those students crack the IIT-JEE who have a good academic record throughout their career.”

12. In the summoning order dated 26.06.2007, learned Trial Court had specifically recorded that CW2 Col.K.C. Oberoi (Retd) AR of the complainant stated in his examination that accused Nos.1 to 16 had hatched a conspiracy to malign the complainant company as the company had stopped advertising in the newspaper of accused. Accused No.2 is the Chairperson of accused No.1 Company and accused Nos.3 to 4 are the President and Director respectively of the accused company. Accused Nos.5 & 6, Managing Director and Executive Managing Editor respectively are responsible for the routine business affairs of the accused company. Further, stated that accused Nos.14 and 15, the General Manager Marketing and Assistant Manager Response in the company were involved in the direct negotiations with the complainant for advertisement orders for the complainant company.

13. In view of above, learned counsel for respondent No.2/complainant argued before learned Trial Court that the article in question, that too of such a nature, cannot be published without the involvement of the top management of the company and all the accused persons were involved and defamed the complainant company and also tarnished the image and reputation of the company by publishing the articles Ex.CW2/1 & Ex.CW2/2 in their newspaper.

14. Learned counsel for petitioners submitted that complainant made allegations against all 16 accused persons, whereas learned Trial Court had not issued summons against last, i.e., 16th accused and against accused Nos.2 & 5, summoning order as well as complaint has already been quashed by this Court, as noted above.

15. He further submitted that respondent No.2/complainant has specifically averred that accused No.10 is the Editor, who is liable under Section 1 of the Press Registration of Books Act, 1867 (hereinafter referred as 'the Act'). Therefore, the petitioners cannot be held liable for the publication in question.

16. Learned counsel further submitted that petitioners have played no role for the publication of articles and on same ratio, this Court vide order dated 20.03.2012 specifically opined that complaint lacks any specific allegations against the petitioners for the publication in question, accordingly the complaint and the summoning orders qua the petitioners were quashed by this Court under Section 482 of the Cr P C.

17. Learned counsel also urged that complaint against accused Nos.6 & 15 was dismissed in default and thereafter, on filing of the Revision Petition by the respondent No.2, the dismissal order has been recalled without issuance of notice by learned Revisional Court and accused No.1 company was also not made a party in said revision proceedings. Therefore, said order is bad in law.

18. To support his arguments, learned counsel for petitioner has relied upon the decision of the Supreme Court *K M Mathew v. State of Kerala & Anr: (1992) 1 SCC 217*. The relevant portion reads 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.

10. It is important to state that for a Magistrate to take cognizance of the offence as against the Chief Editor, there must be positive averments in the complaint of knowledge of the objectionable character of the matter. The complaint in the instant case does not contain any such allegation. In the absence of such allegation, the Magistrate was justified in directing that the complaint so far as it relates to the Chief Editor could not be proceeded with. To ask the Chief Editor to undergo the trial of the case merely on the ground of the issue of process would be oppressive. No person should be tried without a prima facie case. The view taken by the High Court is untenable. The appeal is accordingly allowed. The order of the High Court is set aside.”

19. Also relied upon the decision of the Supreme Court in **Indrajit Lankesh v. K.T.Dhanu Kumar : 2015 (3) RCR (Crl) 141** wherein it was held by the Apex Court as under:-

“2. To state the facts in brief:

The Respondent has filed a criminal complaint Under Section 500 of the Indian Penal Code alleging that there is an offence of criminal defamation committed by certain persons inasmuch as in the publication titled "Lankesh Patrike" dated 25.12.2008, a defamatory article is published against the complainant. The complainant has arrayed the Editor etc. of the publication as accused persons. In addition, the Appellant has also been implicated the accused No. 2 on the ground that he is the proprietor of the said publication "Lankesh Patrike".

3. The submission of the Appellant in the High Court was that by virtue of Section 7 of the Press and Registration of Books Act, 1867 (for short 'the Act'), protection is afforded to the proprietor of the publication and, therefore, he could not have been implicated in the said complaint. Section 7 reads as under:

"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 to 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".

As is clear from a reading of the aforesaid provision, in order to avail the protection under the aforesaid provision, a declaration in the prescribed format has to be filed. The High Court dismissed the petition of the Appellant with the observation that the

declaration filed did not disclose the name of the owner.

4. *It is pointed out by Mr. Sharan Thakur, learned Counsel appearing for the Appellant that the High Court has committed an error in not reading the declaration properly. He argued that the declaration Under Section 5 of the said Act was made before the Sub-Divisional Magistrate, Bangalore by one Shri Siddappa Arakere as regards the change of the Printer, publisher and Editor the said magazine "Lankesh Patrike". In terms of the said declaration, Shri Siddappa Arakere was described as the publisher and Printer as well as Editor of the said magazine. To substantiate this submission, the said declaration by Mr. Siddappa Arakere, as filed, is produced as Annexure-P-1. From a reading of this declaration, we find merit in the contention raised by the Appellant.*

5. *Notice of these proceedings has been duly served upon the Respondent-complainant. However, nobody has put in appearance on his behalf. In the absence of any rebuttal, there is no reason to disbelieve the declaration which is produced by the Appellant. We thus find that the Appellant satisfies the conditions contained in Section 7 of the Act and, therefore, he cannot be made accused in the complaint Under Section 500 of the Indian Penal Code filed by the Respondent. We thus allow this appeal and quash the proceedings qua the Appellant in Complaint Case No. 3/09."*

20. On the other hand, learned counsel for respondent No.2/ complainant submitted that accused No.1 company had not published who was the Editor of the company and had not placed on record any document before learned Magistrate to this effect. Therefore, they cannot take the stand that accused No.10, being Editor was only responsible for the publication. Moreover, the petitioners have placed on record the document Annexure RP-1/certificate wherein Mr. R Sunder (petitioner in Crl. M. C. No.1320/2013) is certified to be Director being the employee of the

accused No.1 company. It shows that said petitioner was responsible for the article published in the newspaper.

21. Moreover, CW2 Col. K.C.Oberoi during evidence deposed as under:-

“... Accused No.3 is Mr.Pradeep Guha. Accused No.4 Mr.R.Sunder who are President and Director respectively of accused No.1 company. Accused No.5 is Mr.Nitin Jain who is Managing Director and Accused No.6 is Mr.Dileep Padgaonkar who is the Executive Managing Editor of the Accused Company. The accused No.2 to 6 are responsible for routine business affairs of the accused company. Mr.Annu Kundlu had apprised the Managing Director of the complainant company about the development and negotiations with accused company in my presence. Mr.Annu Kundlu had mentioned that accused Nos.13, 14, 15 had categorically told him that accused No.2 to 6 has given them a definite instruction not to offer rebate. Therefore, this defamatory articles were published by the accused persons.”

22. Further submitted that in the requisite declaration in the print line of concerned newspaper of accused No.1 it is specifically mentioned as under:-

“..... Editor (Delhi Market) Umesh Anand responsible for selection of News under PRB Act Executive Editor Shekher Bhatia, Executive Managing Editor Dileep Padgaonkar @ all rights reserved. Reproduction in whole or in part with written permission of the publisher is prohibited. Postal Registration No.TN/Chief PMG 399/2002.”

23. Learned counsel submitted that petitioner Dileep Padgaonkar (Crl.M.C. No.5124/2013) & accused No.6 was Executive Managing Editor,

thus he was responsible for the publication in newspaper. Accordingly, all the three petitioners are responsible for the publication.

24. He further submitted that only summons were issued and learned Trial Court has to frame the notice under Section 251 of the Cr P C. Therefore, petitioners are at liberty to raise all the pleas as urged in this petition, before learned Trial Court at the time of such notice. Thus, the petition is pre-mature.

25. To buttress his arguments, learned counsel for respondent No.2 has relied upon the decision rendered by Coordinate Bench of this Court in **Rajdeep Sardesai & Ors v. State GNCT of Delhi, Crl.M.C.No.1728/2012** on 12.12.2013. The relevant portion reads as under:-

“After hearing both the sides and on perusal of the complaints in question, impugned orders, the material on record and the decisions cited, I find that the question of sting operation being defamatory or not, is not subjudice in proceedings pending relating to Lokayukta’s report of 22nd March, 2012 (Annexure P-3) in Crl. M.C.2398/12. In aforesaid Lokayukta’s report, it has been clarified that if there is any grievance regarding complainants herein being defamed by the telecast, then they can avail of remedy available in law. The aspect of advisory being issued to respondent -Ajit Singh Tokas and complainant-respondent-Ravi Prakash Sharma being reprimanded by the Lokayukta, cannot be made the basis to quash the complaints in question because the recommendation of Lokayukta to the Lieutenant Governor of Delhi has not been accepted. In any case, this is an aspect ought to be dealt with at the appropriate stage of trial.

Veracity or truthfulness of the sting operation cannot be pre-judged in proceedings under Section 482 of Cr.P.C. and is required to be established at

trial as it is open to petitioners to show before trial court that they fall in any of the exceptions to Section 499 of IPC. Such a view is being prima facie taken because petitioners themselves have described themselves to be TV-18 (Broadcast Ltd.) formerly known as M/s.IBN-18 Broadcast Ltd and because petitioners have not disclosed as to who was the person, who had permitted the telecast of the sting operation, which is alleged to be defamatory. However, during the course of hearing, it had become abundantly clear and is beyond any dispute that petitioner No.3Kshipra Jatana, EVP and Head Legal of TV18 Broadcast Ltd., has nothing to do with the offence in question, therefore, continuance of proceedings against her is unwarranted and the proceedings arising out of criminal complaint No.7/1 qua her are quashed. Regarding remaining petitioners, proceedings arising out of complaint in question qua them do not deserve to be quashed as respondent – complainant ought to be provided an opportunity to get the averments made in these complaints tested at trial. It is so said in view of the dictum of Apex Court in Jeffrey J. Diermeier (supra), which is as under:-

“37. It is trite that where to the charge of defamation under Section 500 IPC the accused invokes the aid of Tenth Exception to Section 499 IPC, “good faith” and public good” have both to be established by him. The mere plea that the accused believed that what he had stated was in “good faith” is not sufficient to accept his defence and he must justify the same by adducing evidence. However, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt.

38. It is well settled that the degree and the character of proof which an accused is expected to furnish in support of his plea cannot be equated with the degree of proof expected from the prosecution in a criminal trial. The moment the

accused succeeds in proving a preponderance of probability, onus which lies on him in this behalf stands discharged. Therefore, it is neither feasible nor possible to lay down a rigid test for deciding whether an accused person acted in “good faith” and for “public good” under the said Exception.

39. The question has to be considered on the facts and circumstances of each case, having regard to the nature of imputation made; the circumstances on which it came to be made and the status of the person who makes the imputation as also the status of the person against whom the imputation is allegedly made. These and a host of other considerations would be relevant and required to be considered for deciding the appellants' plea of “good faith” and “public interest”. Unfortunately, all these are questions of fact and matters for evidence.

40. In the instant case, the stage for recording of evidence had not been reached and, therefore, in the absence of any evidence on record, we find it difficult to return a finding whether or not the appellants have satisfied the requirements of “good faith” and “public good” so as to fall within the ambit of the Tenth Exception to Section 499 IPC. Similarly, it will neither be possible nor appropriate for this Court to comment on the allegations levelled by Respondent 2 and record a final opinion whether these allegations do constitute defamation. Reading the complaint as a whole, we find it difficult to hold that a case for quashing of the complaint under Section 482 of the Code has been made out. At this juncture, we say no more lest it may cause prejudice to either of the parties.”

26. Also relied upon the decision of this Court in ***Rakesh Sharma & Ors v. Mahavir Singhvi:2008 (3) JCC 1656***. The relevant portion reads as under:-

“14. On a perusal of the two complaints, this Court is unable to come to the conclusion that not even a prima facie case is made out against the Petitioners for the offence under section 500 IPC. The question is really whether at this stage, without the case going to trial, the defence of the Petitioners with reference to the exceptions under section 499 IPC can be adjudicated upon. The learned ACMM has perused the pre-summoning evidence of the complainant and come to the conclusion that a prima facie case has indeed been made out. To this Court, there appears to be no perversity vitiating this conclusion. The veracity of the statements made by these witnesses can be at best be tested during the trial through their cross-examination.”

27. On the identical issue, learned counsel relied upon the decision of the Supreme Court in ***Shatrughna Prasad Sinha v Rajbhau Surajmal Rathi & Ors : 1996 SCC (Crl) 1310***. The relevant portion reads as under:-

“13. As regards the allegations made against the appellant in the complaint filed in the Court of Judicial Magistrate, Ist Class, at Nasik, on a reading of the complaint we do not think that we will be justified at this state to quash that complaint. It is not the province of this Court to appreciate at this stage the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation of the Marwari community as a business class and whether the appellant had intention to cite as an instance of general feeling among the community and whether the context in which the said statement came to be made, as is sought to be argued by the learned senior counsel for the appellant, are all matters to be considered by the learned Magistrate at a later stage. At this stage, we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under Section 500. It is the settled legal position that a Court has to read

the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of 'defamation' under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie we think that at this state it is not a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, Ist Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under Section 500 IPC."

28. On the issue of revision in without arraying of accused No.1 company therein and absence of any notice, learned counsel for respondent No.2/ complainant has further relied upon the decision rendered by this Court in ***Rajesh Dubey v. State & Ors : WP (Crl) No.533/2012 decided on 13.09.2013***. The relevant portion reads as under:-

"13. Whenever a revision is filed either before the Sessions Court or this Court, it is not necessary to give notice to accused for affording him an opportunity of being heard, irrespective of the fact whether the order is prejudicial to him or not. For example, when a complaint is dismissed in default and for non-prosecution due to non appearance of complainant and not taking any steps by filing process fee etc. u/s 204(4), in that eventuality, Section 401(2) would not be applicable and no notice is required to be issued as the order dismissing the complaint for default or non-prosecution does not touch upon the factual or legal merits of the complaint. The said order is a reflection on or about the conduct of the complainant in the proceeding before the Court and the opinion formed by the Court about the said conduct. Such order, if they do not reflect and take into consideration

*the merits of the case, when challenged in revision, does not require notice to opposite side as held in **J.K. International vs. State**, 96(2002) DLT 795 and reiterated in **Hindustan Domestic Oil & Gas Co.(Bombay) Ltd & Ors. vs. State & Anr.**, 2012(4) JCC 2310.”*

29. I have heard learned counsels for parties.

30. Learned counsel for petitioners has argued on two counts. First plea taken by him is that the petitioners are neither Printers, nor publisher nor Editor of the company. If all the three aspects are missing in the complaint, then the summons issued, is/are illegal. On the aforesaid issue, learned counsel for petitioners relied upon the case of **K M Mathew, Mrs. Shobhana Bhartia**, and **R.B. Chowdhari (supra)** etc. On the second issue, learned counsel for petitioners submitted that the complaint filed by the respondent No.2 was dismissed in default and thereafter on being filing Criminal Revision, the same was restored to its original number without issuing notice to the petitioners.

31. As far as first issue is concerned, it is true that as per the cases relied upon by petitioners for publication there must be a person involved with the making, printing or publishing as per the requirements of Sections 5 & 7 of the Act, but the fact remains that the petitioners have failed to produce any statutory declaration before learned Trial Court in the prescribed format. As per Section 7 of the Act, unless the contrary is proved, the persons declared as Printer, Publisher and Editor of the newspaper are presumed to be responsible for the contents of the newspaper or publication. Learned counsel for petitioners has not argued on the issue whether the article was defamatory or not. He tried to establish that there are no allegations against the petitioners and they do not come under

Sections 5 & 7 of the Act. As per Section 5 of the Act, the Printer and Publisher of newspaper shall make a statutory declaration before a competent Magistrate in the prescribed form and Section 7 of the Act provides that unless the contrary is proved, the persons declared as Printer, Publisher and Editor of the newspaper are presumed to be responsible for the contents of the newspaper. As argued by learned counsel for respondent No.2, the petitioners have not declared as to who were the Printer and Publisher, therefore, the complaint was filed against as many as 16 accused persons, however learned Trial Court had summoned only accused Nos.1 to 15 and not summoned the last 16th accused.

32. The law is well settled that 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 accused must reflect that the Court has applied its mind to the facts of the case and the law applicable. It has to examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses, elicit answers to find out truthfulness of the allegations.

33. The allegations against the petitioners in the case in hand are that respondent No.2 had a long business relationship with accused No.1, i.e., M/s Bennett Coleman & Company Limited and advertisements had been placed in accused persons' newspaper for the long time. However, discount offers were far below than the normal industry standards accordingly,

respondent No.2 requested the accused Nos.13 to 15 to reconsider their discount offers in advertisement tariffs. Accordingly, the above referred accused persons represented to the complainant that top management of accused No.1 will have the final word as far as case of respondent No.2 was concerned. Subsequently, the accused persons informed the respondent No.2 that high official including accused Nos.2 to 6 in the management of accused No.1 had refused to relax the advertisement tariffs for respondent No.2. Hence, the negotiations failed and the respondent No.2 stopped giving advertisements in the newspaper of the accused persons. Therefore, accused persons published the article in question, whereby has allegedly defamed respondent No.2. Thus, all the accused persons are responsible for the offence committed including the petitioners.

34. To strengthen the case before learned Trial Court, respondent No.2 examined CW2 Col. K.C. Oberoi (Retd), AR of complainant, who stated in examination that accused Nos.1 to 16 had hatched a conspiracy to malign the respondent No.2 as the company had stopped advertising in the newspaper of accused No.1. Accused No.2 is the Chairman of accused No.1 and accused Nos.3 and 4 are the President and Director respectively. Accused No.5 and accused No.6, Managing Director and Executive Managing Editor respectively were responsible for the routine business affairs of accused No.1 company.

35. As stated by learned counsel for respondent No.2, accused No.10 was Editor and was only responsible for the publication. But, the petitioners have failed to produce any document before learned Trial Court whereby Printer, Publisher and Editor have been declared in proper format. In such a situation, learned Trial Court had to see the complaint and

evidence relied upon and thereafter, issued the summons in the case. In the present case, since the declaration of the Printer, Publisher and Editor was not there, therefore, it was very difficult to ascertain as to who were the persons responsible.

36. It is not in dispute that the summoning order against the accused Nos.2 & 5, Chairperson and Managing Director respectively, has been quashed by this Court in Crl. M. C. No.685/2008 vide order dated 20.03.2012 by observing that Chairman and Managing Director, being overall in-charge of the media, cannot be held guilty for the defamation for the reason they were not involved with the making, printing or publishing. Whereas in the present case, as per the allegations, the petitioners were doing the business of accused No.1 company and respondent No.2 was giving lot of work for advertisement and when they stopped, accused persons got defamatory articles published against respondent No.2 in their newspaper.

37. It is categorically averred in the complaint that petitioner R Sunder is Director-Response and accused Nos.7 to 9 are the Executive Editor, Editor and Printer respectively of the Times of India, New Delhi Edition. Accused No.10 is the Editor– Education Times, published weekly and carried out as supplement to the daily newspaper–Times of India. Accused Nos.13 to 15 are the General Manager–Marketing, Assistant Manager–Response, and Chief Manager–Response respectively. Thus, they are all responsible for the offences committed by them.

38. Moreover, CW2 Col. K.C.Oberoi (Retd) deposed that accused No.2 R Sunder was the Director of accused No.1 company. Accused No.6

Mr.Dileep Padgaonkar was the Executive Managing Editor of accused company. Accused Nos.2 to 6 are responsible for the routine business and affairs of accused company. Moreover, in the declaration it is specifically stated that Editor (Delhi Market) Umesh Anand responsible for selection of News under PRB Act and Executive Editor Shekher Bhatia, the Executive managing Editor Dileep Padgaonkar (in Crl.M.C.No.5124/2013), are responsible for publishing. Therefore, I find no substance in the contentions of learned counsel for petitioners that the petitioners were not liable for the publication of article in question.

39. As per the settled law veracity or truthfulness of the complaint and evidence relied upon cannot be pre-judged in the proceedings under Section 482 Cr P C and is required to be established at trial as it is open to petitioners to show before learned Trial Court that they fall in any of the exceptions to Section 499 of the IPC. The veracity of the statements made by the witnesses can only be tested during trial through their cross-examination. On reading of the complaint and evidence led by the respondent No.2, there is no justification to quash the summoning order and proceedings arising therefrom against petitioners.

40. It is also settled legal proposition that the Court has to read the complaint as a whole and find out the allegations disclosed therein constitute the offence under Section 499 of the IPC. The Magistrate *prima facie* came to the conclusion that allegations might come within the ambit of defamation under Section 499 of the IPC and could be taken cognizance thereof, but these facts are to be established during trial only.

41. On the issue of revision being filed by respondent No.2 and same was allowed even without issuing notice to petitioners, it is held in ***Rajesh Dubey (supra)*** that whenever a revision is filed either before the Sessions Court or this Court, it is not necessary to give notice to accused for affording an opportunity of being heard irrespective of the fact that whether the order is prejudicial to him or not. When a complaint is dismissed in default for non-prosecution, as the case in hand, the issue of non-appearance of the complainant and not taking any steps by filing of process fee etc under Section 204(4) of the Cr P C, in that eventuality, provisions of Section 401(2) of the Cr P C would not be applicable and no notice is required to be issued, as order of dismissal of complaint either in default or for non-prosecution does not touch upon the factual or legal merits of the complaint. The said order is reflective on or about the conduct of the complainant in the proceedings before the Court and the opinion formed by the Court about the said conduct.

42. Moreover, the present petition is against the summoning order and notice under Section 251 Cr P C is yet to be framed against petitioners. Admittedly, there is no scope for discharge by learned Metropolitan Magistrate in a summons case. The Coordinate Bench of this Court in ***Arvind Kejriwal & Ors v Amit Sibal & Anr : 212 (2014) DLT 489***, while deliberating on identical issue sent the copy of said judgment to all District & Sessions Judge and observed as under:-

“19. the accused are entitled to hearing before the learned Metropolitan Magistrate at the stage of framing of notice under Section 251 Cr.P.C. in all summons cases arising out of complaints and the Magistrate has to frame the notice under Section 251 Cr.P.C. only upon satisfaction that a prima facie case

is made out against the accused. However, in the event of the learned Magistrate not finding a prima facie case against the accused, the Magistrate shall discharge/drop the proceedings against the accused. Since there is no express provision or prohibition in this regard in the Code of Criminal Procedure, these directions are being issued in exercise of power under Section 482 read with Section 483 Cr.P.C. and Article 227 of the Constitution to secure the ends of justice; to avoid needless multiplicity of procedures, unnecessary delay in trial/protraction of proceedings; to keep the path of justice clear of obstructions and to give effect to the principles.....

*20. Applying the aforesaid principles to this case, the petitioners are permitted to urge the pleas raised in this petition before the learned Metropolitan Magistrate at the stage of framing of notice under Section 251 Cr.P.C. whereupon the learned Metropolitan Magistrate shall consider them and pass a speaking order. The learned Magistrate shall frame the notice under Section 251 Cr.P.C. only upon satisfaction that a prima facie case is made out against the petitioners. **The learned Magistrate shall be empowered to discharge/drop the proceedings against the petitioners if no case is made out against them.** Needless to say, if the learned Magistrate chooses to frame notice under Section 251 Cr.P.C., the petitioners would be at liberty to avail the remedies as available in law.”*

43. In view of above settled position of law, learned Metropolitan Magistrate shall be empowered to proceed with in these matters in lines of above directions as mirrored in **Arvind Kejriwal’s** case (*supra*).

44. Accordingly, the petitions are disposed of with no order as to cost.

Crl.M.A.No.4118/2013 in CRL.M.C. 1320/2013;
Crl.M.A.No.18469/2013 in CRL.M.C. 5124/2013; and
Crl.M.A.No.14407/2014 in CRL.M.C. 4183/2014

Dismissed as infructuous.

SURESH KAIT
(JUDGE)

MARCH 09, 2016

M/jg

