

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

**CRM No.M-23075 of 2011 (O&M)
Date of Decision: April 17, 2017**

Ashu Phakey

...Petitioner

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Thakur, Advocate,
for the petitioner.

Mr.Himmat Singh, Deputy Advocate General, Haryana
for the respondent-State.

Mr.N.S.Shekhawat, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. against respondents State of Haryana and Ajay Singh Chautala for quashing the complaint No.67-1 of 2010 dated 17/26.04.2010 and summoning order dated 04.09.2010 along with all subsequent proceedings arising therefrom.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that complainant Ajay Singh Chautala, General Secretary of Indian National Lok Dal filed the complaint against

Ramesh Chander Aggarwal, Publisher, Ashu Phakey, CEO, Kamlesh Singh, State Editor and Parbhat Singh, Local Editor, Dainik Bhaskar under Section 500 IPC. It is mainly stated in the complaint that complainant is grandson of late Ch.Devi Lal, who remained Deputy Prime Minister of the country and also remained Chief Minister of State of Haryana and was a outstanding politician. On 13.10.2009 i.e. polling day of 12-Haryana Assembly Elections, with an intention to harm the reputation, a news item was published by the accused in their newspaper at page No.2 with the heading 'VO JAMANA KYON AB LANA'. In this news item, number of defamatory remarks and false things have been published against Ch.Devi Lal, who is now in the heaven and also against the political party. These defamatory remarks have been published intentionally only with a view to harm the reputation of grandfather of the complainant who is not even alive and happened to be an ideal for the public and his descendants including the complainant in the estimation of the society. The news item referred above has been published by the accused persons in concert with each other and all the accused shared common intention.

It is also stated in the complaint that accused in concert with each other have engaged in composing, dictating, writing and hence contributed to the making of the libel, as such they all are markers of libel. All the accused have concurred and assented to the doing of an unlawful act. As such, they are guilty of offence under Section 500 IPC.

At the time of arguments, learned counsel for the petitioner argued that petitioner Ashu Phakey is the Chief Operating Officer, Dainik Bhaskar, though, he has been stated as CEO in the complaint. He further

argued that the present petitioner has only administrative powers and has

nothing to do with the publication of the news nor he has any control over the publication of the articles.

The perusal of the complaint shows that no specific allegations have been levelled against Ashu Phakey, Chief Operating Officer. Nothing has been specifically alleged against the present petitioner that he was knowing regarding the publication of the news item in question and has any control over the same and in any way, has any connection with the publication of the defamatory news item. Only general allegations, as stated above, have been levelled in the complaint that news item has been published by accused persons in concert with each other and all the accused shared common intention. There is nothing on the record to show the common intention of the present petitioner with other accused. There is also nothing on the record to show that whether the petitioner, in any way, concerned with the publication of the news item or has control over the publication of this news item.

Section 7 of the Press and Registration of Books Act, 1867, provides as under:-

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, [or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor] shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, [or printed on such newspaper, as the case may be] that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every [newspaper] whereof the title shall correspond with the title of the [newspaper] mentioned in the declaration, [or the editor of every portion of that issue of the newspaper of which a copy is produced].

The present petitioner, in no way, comes under the definition of Editor nor any presumption arises against the present petitioner under Section 7 of the above-said Act. Section 1 of the Act defines Editor as a person who controls the selection of the matter that is published in a newspaper. There is nothing on the record to show that present petitioner, in any way, has any control qua selection of the matter which is published in the newspaper.

From the above, I find that as no role of any type has been attributed in selection of the news to the present petitioner and he is not Editor of the newspaper and as argued by learned counsel for the petitioner, he is only Chief Operating Officer having administrative powers and further nothing specifically has been alleged against him in the complaint to show his intention to defame the complaint or the political party, therefore, filing of the present complaint against the petitioner is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merit in the present petition, the same is allowed. The complaint No.67-1 of 2010 dated 17/26.04.2010, summoning order dated 04.09.2010 and all subsequent proceedings arising therefrom are hereby quashed qua petitioner only.

April 17, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No