

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 18th January, 2017
Decided on: 7th July, 2017

+ **CRL.M.C. 3107/2011 and Crl. M.A. No. 11015/2011 (Stay)**

DEEPIKA MURTY & ANR. Petitioners
Represented by: Mr. Shantananu Singh and Mr.
Sapan Biswajit Meitei,
Advocates.

versus

STATE OF NCT OF DELHI & ORS. Respondents
Represented by: Mr. Ashok K. Garg, APP for
the State.
Mr. Ajay Saroya, Advocate for
respondent No.2.

+ **CRL.M.C. 1680/2011 and Crl. M.A. No. 6113/2011 (Stay)**

ARGHYA GANGULY Petitioner
Represented by: Mr. R.K. Handoo, Mr.
Yoginder Handoo and Mr.
Sangam Kumar, Advocates.

versus

STATE NCT OF DELHI & ANR. Respondents
Represented by: Ms. Rajni Gupta, APP for the
State.
Mr. Ajay Saroya, Advocate for
respondent No.2.

+ **CRL.M.C. 2073/2011 and Crl. M.A. No. 7519/2011 (Stay)**

VIKAS SINGH Petitioner
Represented by: Mr. R.K. Handoo, Mr.
Yoginder Handoo and Mr.
Sangam Kumar, Advocates.

versus

STATE OF NCT & ORS

..... Respondents

Represented by: Mr. Ashok K. Garg, APP for
the State.

Mr. Ajay Saroya, Advocate for
respondent No.2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. A complaint case was filed by the respondent No.2 seeking summoning of 7 accused for offences punishable under Sections 499/500 IPC. In the complaint respondent No.2 stated that she was a member of the National Hockey Team and at the time of filing of the complaint was working as a Sports Supervisor and Coach. Accused Nos.1, 2 and 3 in the complaint were former players of National Women Hockey Team, accused No.4 the then member of the Women National Hockey Team, accused No.5 & 6 employees of Bennett Coleman & Company Limited, owner and publisher of 'Times of India' and accused No.7 Editor-in-Chief of TV Channel 'Times Now'.

2. Respondent No.2 examined herself as CW-1 in the pre-summoning evidence and exhibited an article dated 22nd July, 2010 published in the 'Times of India' as Ex.CW-1/1 alleging libelous allegations made by accused No.1 against respondent No.2 and one M.K. Kaushik and another article dated 23rd July, 2010 published by 'Times of India' through accused No.5 and 6 Ex. CW-1/2. She further deposed about an interview of accused No.3 to NDTV and other channels on 22nd July, 2010 wherein it was stated that M.K. Kaushik did exactly as directed by respondent No.2 and that both i.e. M.K. Kaushik and respondent No.2 used to stay together always.

Respondent No.2 also deposed that accused No.4 was present in an interview of one Ms. T.H. Ranjita and instigated her to make libelous allegations against respondent No.2 in the interview broadcast on NDTV on 22nd or 23rd July, 2010. As against accused No.7 it was stated that he invited accused No.1 to the TV show wherein the libelous allegations were made.

3. Vide order dated 3rd December, 2010 learned Metropolitan Magistrate summoned all the 7 accused. Hence, the three petitions i.e. Crl.M.C. 3107/2011 filed by accused No.4 and 3 respectively, Crl.M.C. 1680/2011 by accused No.5 and Crl.M.C. 2073/2011 by accused No.6 who though not named but was referred as Resident Editor, Times of India.

4. Learned counsel for the petitioners i.e. accused No.3 and 4 in Crl.M.C. 3107/2011 submits that neither in the complaint nor in the statement of the respondent No.2 there is any allegation whatsoever against the petitioners. Even in the news clippings exhibited by the respondent No.2 there is no reference to the petitioners. Further though deposed regarding the telecast on 'NDTV', no CD of the interview was exhibited and produced on record to show that there was any defamatory allegation made by the petitioners or that they were in conspiracy with other accused.

5. Learned counsel for the petitioners in Crl.M.C.1680/2011 and 2073/2011 submits that in the entire complaint there is no allegation whatsoever against the petitioners except stating that they being Press/Media had great power to impress the mind of people and choose to publish/broadcast unsubstantiated defamatory statements made by the accused players without verifying the correct position from the complainant. It was alleged that the sole motivation of the petitioners was to attract more readers and more viewers so that they attract more revenues. Thus the publication

and broadcasting of allegations leveled by the accused persons were with malafide intentions ignoring the pain that it may and have caused to the complainant. Learned counsel for the petitioners relies upon the decisions reported as (1998) 4 SCC 112 Jawaharlal Darda and Ors. Vs. Manoharrao Ganpatrao Kapsikar and Anr., 2007 (1) JCC 48 V.K. Bagga Vs. O.P. Arora and 2008 (1) JCC 327 Mrs. Shobhana Bhartia & Ors. Vs. NCT of Delhi & Anr.

6. Learned counsel for respondent No.2 on the other hand contends that from the deposition of the respondent No.2 coupled with the documents exhibited, respondent No.2 has made out a prima facie case for issuance of summons to the accused. At this stage, this Court will not go into the defence of the petitioners and decide whether the publications were bonafide or not. There being no infirmity in the impugned order summoning the petitioners, the petitions be dismissed.

7. Respondent No.2 in her examination before the Court exhibited two news clippings published in the 'Times of India' on 22nd July, 2010 and 23rd July, 2010 as Ex.CW-1/1 and CW-1/2 respectively. In respect of Arghya Ganguly and Vikas Singh, accused No.5 and 6 respectively, the allegations are that they published the articles in the 'Times of India' without verifying the allegations from respondent No.2. The two articles Ex.CW-1/1 and CW-1/2 quote accused No.1 and accused No.2 respectively.

8. As noted in the impugned order and from the records it is evident that the transcript or CD of the interview telecast on NDTV on 22nd July, 2010 by accused No.3 and of the interview of Ms. T.H. Ranjita telecast on 23rd July, 2010 by NDTV wherein accused No.4 has been alleged to have instigated Ms. T.H. Ranjita have not been exhibited and placed on record. In the

absence of the material showing libelous allegations by accused No.3 or instigation by accused No.4 there was no material before the learned Metropolitan Magistrate except the statement of respondent No.2 to have summoned the petitioners in CrI.M.C.3107/2011. The only oral assertion of the respondent No.2 in her deposition is that accused No.3 gave an interview to NDTV and other channels on 22nd July, 2010 stating that M.K. Kaushik did exactly what respondent No.2 directed and both of them used to stay together always. It is further alleged that accused No.4 was present during the interview of Ms. T.H. Ranjita broadcast on NDTV on either 22nd July, 2010 or 23rd July, 2010 where she could distinctly hear the voice of accused No.4 in the background instigating T.H. Ranjita to also say that M.K. Kaushik had an affair with respondent No.2; however the clippings have not been exhibited.

9. This Court in Shobhana Bhartiya (supra) considering the conflict between the right to protection of an individual's reputation and the freedom of speech and expression held:

“16. Every individual has a right to protect his reputation. Disparaging and defamatory statements made about a person to a third person or persons without lawful justification or excuse are actionable in law. As observed by the Supreme Court in the decision reported as State of Bihar v. Lal Krishna Advani : AIR 2003 SC 3357 reputation is an integral and important aspect of dignity of every individual. The right to preservation of one's reputation is acknowledged as a right in rem, a right good against all the world.

17. But freedom of speech and expression are the foundation of all democratic organisations. Freedom of expression stems from the requirement that members of a democratic should be sufficiently informed. In the decision reported as Attorney General v. Times Newspaper Ltd. (1973) 3 All ER 54, it was

observed that freedom of expression has following four broad social purposes to serve:

- (i) It helps an individual to attain self fulfillment.*
- (ii) It assists in the discovery of truth.*
- (iii) It strengthens the capacity of an individual in participating in decision making.*
- (iv) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.*

18. The right of the print media to publish news pertaining to matters of public concern is recognized as an integral part of freedom of expression. (See decisions of the Supreme Court in Virender v. State of Punjab AIR 1958 SC 986 and Sakal Papers v. Union of India : [1962]3 SCR 842 .

19. The fundamental objective of journalism is to serve the people with news, views, comments and information on matter of public interest in a fair, accurate, unbiased, sober and decent manner. It is the legitimate function of a newspaper in a democratic set up to act as the champion of a clean administration and sentinel of public interest, and as such a newspaper is within its right to expose and bring to the notice of the general public any lapse or malpractice in the working of a public authority including acts of nepotism and favoritism.

20. The law of defamation is a culmination of a conflict between society and the individual. On one hand lies the fundamental right to freedom of speech and expression enshrined under Article 19(1)(a) of the Constitution of India, on the other is the right of individual to have his reputation intact. How far does the liberty of free speech and expression extend? And when does it become necessary for the law to step in to safeguard the right of the individual to preserve his honour. The law of defamation seeks to attain a balance between these two competing freedoms.

21. *The classical definition of 'defamation' has been given by Justice Cave in the case of Scott v. Sampson (1882) Q.B.D. 491, as a 'false statement about a man to his discredit'.*

22. *In the book The Law of Defamation, by Richard O'Sullivan, QC and Ronald Brown, 'defamation' is defined as a false statement of which the tendency is to disparage the good name or reputation of another person.*

23. *As per Section 499, Indian Penal Code, offence of defamation consists of three essential ingredients namely:*

(i) Making or publishing any imputation concerning any person.

(ii) Such imputation must have been made by words either written or spoken or by visible representation.

(iii) Such imputation must be made with the intention to cause harm or with the knowledge or having reasons to believe that it will harm the reputation of the person concerned.

24. *In the light of above discussion, it has to been seen whether news items in question are defamatory or a fair report pertaining to the affairs of DDA, a statutory body charged with the planned development of Delhi.*

25. *Before proceeding to analyze the news items in question, I quote the well-known passage of Lord Shaw in the decision reported as Arnold v. King Emperor LR (1913-14) 41 Ind. App. 149.*

“The freedom of the journalist is an ordinary part of the freedom of subject, and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his privilege is no other and no higher. The responsibilities which attach to this power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticisms, or his comments, is as wide as, and no wider than, that of any other subject. No privilege attaches to his position.”

10. In Shobhana Bhartiya (supra) this Court dealt with various articles published and following the decision of the Supreme Court reported as AIR 1981 SC 1514 Sewakram Sobhani Vs. R.K. Karanjia, Chief Editor, Weekly Blitz. & Ors, held that there is no ground made out to quash the complaint, where the articles are per se defamatory. It was held-

“38. In the decision reported as Sewakram Sobhani v. R.K. Karanjia, Chief Editor, Weekly Blitz and Ors. MANU/SC/0219/1981 : 1981CriLJ894 , Supreme Court considered a complaint filed by the appellant against respondents for an offence under Section 500, IPC for publication of a news item which allegedly contained imputations which were per se defamatory. Holding that news item in question was based upon an enquiry report, the High Court had quashed the complaint. The High Court had observed that respondent's case 'clearly falls within the ambit exception 9 of Section 499 of IPC' and that 'it would be abuse of the process of the court if the trial is allowed to proceed which ultimately would turn out to be a vexatious proceeding.' The reasoning advanced by the High Court was as follows:

“The real question to ask is, did the applicants publish the report for public good, in public interest and in good faith' My answer is in the affirmative. It was a publication of a report for the welfare of the society. A public institution like prison had to be maintained in rigid discipline; the rules did not permit mixing of male prisoners with female prisoners and yet the report said the prison authorities connived at such a thing, a matter which was bound to arouse resentment and condemnation. The balance of public benefit lay in its publicity rather than in hushing up the whole episode. Further, there was good faith in the publication. The source on which the publishers acted was the proper source on which they were entitled to act and they did so with care and circumspection. The report further shows that the publication had been honestly made in the belief of its truth and also

upon reasonable ground for such a belief, after the exercise of such means to verify its truth as would be taken by a man of ordinary prudence under like circumstances.”

39. *Reversing the decision of the High Court, the Supreme Court observed as follows:*

“8. We have considerable doubt about the propriety of the High Court making use of the Enquiry Report which has no evidentiary value and in respect of which the Government claimed privilege. The application made by the Government claiming privilege still awaited consideration. While the Government claimed privilege at one stage, it appears to have waived the claim and produced the Enquiry Report and made the contents public. There was no factual basis for the observations made by the High Court underlined by me, except the Enquiry Report. The contents of the Enquiry Report cannot be made use of unless the facts are proved by evidence aliunde. There is also nothing on record to show that the accused persons made any enquiry of their own into the truth or other wise of the allegations or exercised due care and caution for bringing the case under the Ninth Exception. The Enquiry Report cannot by itself fill in the lacunae.

9. A bare perusal of the offending article in Blitz shows that it is per se defamatory. There can be no doubt that the imputation made would lower the appellant in the estimation of others. It suggested that he was a man devoid of character and gave vent to his unbridled passion. It is equally defamatory of Smt. Shukla in that she was alleged to be a lady of easy virtue. We need not dilate on the matter any further. It is for the accused to plead Ninth Exception in defense and discharge the burden to prove good faith which implies the exercise of due care and caution and to show that the attack on the character of the appellant was for the public good.”

40. Petitioners have not filed any document to show that the alleged status report in question emanated from CBI. It's authenticity has to be proved by leading evidence.

41. In view of decision of the Supreme Court in Sewakram Sobhani's case (supra), no ground is made out for quashing the complaint pertaining to the news item published in 'Hindustan Times' on the basis that the news item is a true and faithful report of a fact."

11. While dealing with the issue of bonafide of the action of accused when he merely reproduced/translated the offending news item published by others, believing, it to be true and correct, Supreme Court in the decision reported as (2015) 8 SCC 239 Rajdeep Sardesai v. State of A.P., held that this issue has to be decided at the stage of trial by adducing relevant evidence and proving facts.

12. The Apex Court, while dealing with the vicarious responsibility of an Editor in defamatory news item, in the decision reported as (2013) 3 SCC 697 Gambhirsinh R. Dekare v. Falgunbhai Chimanbhai Patel observed as under:

"14. A news item has the potentiality of bringing doomsday for an individual. The Editor controls the selection of the matter that is published. Therefore, he has to keep a careful eye on the selection. Blue-pencilling of news articles by anyone other than the Editor is not welcome in a democratic polity. Editors have to take responsibility of everything they publish and to maintain the integrity of published record. It is apt to remind ourselves the answer of the Editor of The Scotsman, a Scottish newspaper. When asked what it was like to run a national newspaper, the Editor answered "Run a newspaper! I run a country". It may be an exaggeration but it does reflect the well-known fact that it can cause far-reaching consequences in an individual and country's life.

18. *Therefore, from the scheme of the Act it is evident that it is the Editor who controls the selection of the matter that is published in a newspaper. Further, every copy of the newspaper is required to contain the names of the owner and the Editor and once the name of the Editor is shown, he shall be held responsible in any civil and criminal proceeding. Further, in view of the interpretation clause, the presumption would be that he was the person who controlled the selection of the matter that was published in the newspaper. However, we hasten to add that this presumption under Section 7 of the Act is a rebuttable presumption and it would be deemed a sufficient evidence unless the contrary is proved. The view which we have taken finds support from the judgment of this Court in K.M. Mathew v. K.A. Abraham [(2002) 6 SCC 670 : 2002 SCC (Cri) 1480] , in which it has been held as follows: (SCC p. 676, para 20)*

“20. 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.”

13. Considering the nature of allegations and the law laid down by the Supreme Court i.e. if the contents of the article are per se defamatory, then whether the same are bonafide or not have to be determined during the

course of trial after the parties have led their respective evidence, this Court finds no error in the impugned order dated 3rd December, 2010 summoning the petitioners as accused or quashing of the complaint case No.48/1 of 2010. The petitions and applications are accordingly dismissed

(MUKTA GUPTA)
JUDGE

JULY 07, 2017
‘ga’

