

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.41128 of 2013**

Arising Out of PS. Case No.-2028 Year-2011 Thana- COMPLAINT CASE District- Patna

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The Indian Express Ltd Having its registered office at Indian Express Building, 9 And 10 Bahadur Shah Zafar Marg, New Delhi-110023 through Its Director, Vaidehi Thakur, D/O late Shri Chinta Mani Vinayak Thakur, R/O 8E, Giriraj at Mount Road, Mumbai -26

... .. Petitioner/s

Versus

1. The State Of Bihar
2. S. Siddhartha, I.A.S., Son of P. Subbiah Resident of 18/6 Bailey Road, Patna, Bihar

... .. Opposite Party/s

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with

**Criminal Miscellaneous No. 16924 of 2014**

Arising Out of PS. Case No.-2028 Year-2011 Thana- COMPLAINT CASE District- Patna

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Raj Kamal Jha, Son of Sri Munishwar Jha, Managing Editor of the English daily newspaper "The Indian Express" All editions having his office at Ground Floor, Express Building, 9 & 10 Bahadurshah Zafar Marg, New Delhi-110 002

... .. Petitioner/s

Versus

1. The State of Bihar
  2. S. Siddhartha, I.A.S. Son of P. Subbiah R/o 18/6 Bailey Road Patna, Bihar
- ... .. Opposite Party/s
- 

with

**Criminal Miscellaneous No. 38927 of 2012**

Arising Out of PS. Case No.-2028 Year-2011 Thana- COMPLAINT CASE District- Patna

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Vivech Goenka, son of Late Sri Ramnath Goenka, Chairman & Managing Director of the Board of Directors of The Indian Express Ltd. A company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 2<sup>nd</sup> Floor, Express Towers, Nariman Point, Mumbai-400021.

... .. Petitioner/s

Versus

1. The State of Bihar through Home Secretary
  2. S. Siddhartha, I.A.S. Son of P. Subbiah R/o 18/6 Bailey Road Patna, Bihar
- ... .. Opposite Party/s
- 

with

**Criminal Miscellaneous No. 40032 of 2012**

Arising Out of PS. Case No.-2028 Year-2011 Thana- COMPLAINT CASE District- Patna

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1. Shekhar Gupta, son of late Sri V.D.Gupta, Editor-in-Chief, of the English Daily "The Indian Express" All editions, having his Ground Floor, Express Building, 9 & 10 Bahadurshah Zafar Marg, New Delhi-110 002.
2. Unni Rajen Shanker, son of Late K.S.Rajan, Executive Editor, of the English Daily "The Indian Express" All editions, having his Ground Floor, Express Building, 9 & 10 Bahadurshah Zafar Marg, New Delhi-110 002.

... .. Petitioner/s

Versus

1. The State of Bihar
  2. S. Siddhartha, I.A.S. Son of P. Subbiah R/o 18/6 Bailey Road Patna, Bihar
- ... .. Opposite Party/s

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**Appearance :**

(In all cases)

For the Petitioner/s : Mr. Tuhin Shankar, Advocate.  
Mr. Gopal Kumar, Advocate.

For the Opposite Party/s : Mr. Ajay Kumar No. 1, APP

For the O.P. No. 2 : Mr. Shashi Shekhar Dvivedi, Sr. Advocate.  
Mr. Parth, Advocate.  
Ms. Shambhavi Shankar, Advocate.  
Mr. Anshu Raj Singh, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR**  
**ORAL JUDGMENT**

**Date : 14-08-2018**

All the four quashing applications have been filed by the petitioners, under Section 482 of the Cr.P.C., invoking inherent jurisdiction of the Court, for setting aside the cognizance order dated 16.06.2012 passed by Mr. Sunil Kumar-II, Judicial Magistrate, 1<sup>st</sup> Class, Patna in Complaint Case No. 2028 (C) of 2011 thereby taking cognizance of the offence under Sections 500 and 120B of the Indian Penal Code (in short 'I.P.C.').

2. Petitioners of Cr. Misc. No. 41128 of 2013, Cr. Misc. No. 38927 of 2012, Cr. Misc. No. 40032 of 2012 and Cr. Misc. No. 16924 of 2014 are the Indian Express Ltd., Mr. Vivech Goenka, Chairman & Managing Director of the Board of



Directors, Shekhar Gupta & another Unni Rajen Shanker, Editor-in-Chief and Executive Editor and Raj Kamal Jha, Managing Editor of The Indian Express respectively.

3. The brief fact giving rise to Complaint Case No. 2028(C) of 2011, filed by S.Siddhartha, I.A.S., is that a defamatory article was published in the first page of The Indian Express, English Newspaper, on July 21, 2011 of its New Delhi Edition giving heading “MP’s son to IAS’s daughter, VIP kin get industrial plots in Bihar” and in caption, it is also printed “WHO GOT WHAT” mentioning a large chunk of land allotted in Gidha to one of relatives of the Secretary to the Chief Minister. The complainant at the relevant period was the Secretary to the Chief Minister of State of Bihar. The author or reporter of the sensational news is Santosh Singh, presently not a petitioner before the Court. The imputation made in the news item against the complainant turned into insinuation by publishing factually incorrect matter, a false news in context of the complainant, which is defamatory and derogatory in nature and it also defamed and harmed the reputation of the complainant. On publication of the news item, complainant received a number of calls from his friends, relatives and acquaintances from various sections of the society making



enquiry from him regarding the news item published in The Indian Express causing him mental trauma and anguish. The Chief Minister, State of Bihar, after getting knowledge of the news, directed the Chief Secretary of Bihar to enquire into the matter and after thorough enquiry come to categorical finding that Bhimraja, the person having allotted the land in Gidha was not directly related to S.Siddharth.

4. It is also alleged that such publication, as made in The Indian Express and other newspapers and electronic media, was a part of sinister strategy and design to malign the reputation of the complainant, who has had reputation of maintaining honesty and integrity in his entire career. A legal notice was sent to the accused persons on 22.07.2011 but even after receipt of the notice, no unconditional apology was tendered, so all accused persons, each one playing specific role, conspired and published the concerned defamatory article, which harmed the reputation of the complainant in the eye of general public at large.

5. Learned counsel appearing on behalf of the petitioners submits that there was no intention of the petitioners to harm the reputation of anyone rather the article was published in good faith for protection of public interest and for the public good.



Any imputation made in good faith for the public good is not defamation in view of *ninth exception* of the definition of defamation as defined in Section 499 I.P.C. It is also submitted that during enquiry under Section 200 Cr.P.C. only one witness Mukesh Kumar was examined who deposed that S.Siddharth, the complainant, told him that the news regarding allotment of land by the Bihar Industrial Area Development Authority (in short the 'BIADA') in favour of Bhimraja was published to lower down his prestige, however, the witness has not stated that the publication of the news lowered the moral or intellectual character of S.Siddharth in his estimation. So unless a person reputation is lowered by publication of such news in estimation of others, the offence of defamation is not attracted in view of *explanation 4* of Section 499 I.P.C.

6. It is further contended that later on, on 26<sup>th</sup> July, 2011, enquiry report submitted by the Chief Secretary, Government of Bihar, the concerned reporter Santosh Singh published news item in The Indian Express Edition July 26, 2011 with heading that "Chief Secy clean chit to leaders, babus" making it explicit giving substance of the report that land was allotted by the BIADA on 'first come, first served' principle considering the merit of each applicant and categorically indicated that Nibhi



Industries Private Limited, owner, Bhimraja to whom land was allotted is not related to S.Siddharth.

7. The second leg of argument advanced by the learned counsel for the petitioners is that only conspiracy part is alleged against all the petitioners at present including its Proprietor, Chairman-cum-Managing Director, Editor-in-Chief, Executive Editor as they conspired and get published the news said to be defamatory reported by Santosh Singh. It is contended that under the Press and Registration of Books Act, 1867 (hereinafter referred to as the 'Act'), there is provision under Section 5 of the Act requires declaration to be made by each newspaper published in India containing rules for publication of newspaper, which includes declaration of publication of the name of Printer, Publisher as well as Editor. In view of Section 7 of the Act, there is presumption that in any legal proceeding, civil or criminal, it is the Editor who is *prima facie* responsible for committing any offence though the said presumption is rebuttable one, so in the present case, in view of Sections 5 and 7 of the Act, only the Editor of Delhi Edition, Rakesh Sinha, whose name was published in The Indian Express, Delhi Edition, dated July 21, 2011, copy of which is on the record with a declaration that he is the person responsible for selection



of news for publication under the Act, hence presumption of committing defamation, if any, is only against him but not against others inclusive these petitioners.

8. Further, learned counsel submits that cognizance against the petitioners of hatching conspiracy of defamation cannot be taken unless sanction for prosecution is obtained from the appropriate authority as per Section 196(2) Cr.P.C. The maximum punishment for committing offence of defamation, under Section 500 I.P.C., is up to two years or with fine or with both. So mandatory requirement for prosecuting any person having committed any offence of up to two years, sanction from appropriate authority is required in view of Section 196(2) Cr.P.C. and in the present case, against none of the petitioners, prior sanction has been obtained either from the State Government or from the concerned District Magistrate before taking cognizance in the matter.

9. Further to fortify the aforesaid submission, learned counsel has placed reliance on a decision passed by a co-ordinate Bench of the Court passed in Cr. Misc. No. 45228 of 2011 along with Cr. Misc. No. 34865 of 2012 and co-incidentally the complainant in that case is also related with the allotment of land by the BIADA. To substantiate his contention,



learned counsel placed reliance on a catena of judgments reported as Haji C.H.Mohammad Koya v. T. K. S. M. A. Muthukoya; AIR 1979 SC 154, K.M. Mathew v. State of Kerala & Anr.; AIR 1992 SC 2206, Narottamdas L.Shah vs. Patel Maganbhai Revabhai; 1984 Cri.L.J 1790, Harbhajan Singh vs. State of Punjab; 1966 SC 97, A.K.Alag vs. State of U.P.; (2008) 5 SCC 662, Keki Hormusji Gharda & Ors. vs. Meharban Rushtam Irani; (2009) 6 SCC 475.

10. Further, learned counsel for the petitioners also submits that there is no concept of vicarious liability in the context of criminal offence, so such liability can not be fastened to the petitioners and in support placed reliance to the case of *A.K.Alag* (supra).

11. Contrary to this, learned counsel appearing on behalf of the O.P. No. 2 submits that the article published in The Indian Express on July 21, 2011 with heading “MP’s son to IAS’s daughter, VIP kin get industrial plots in Bihar” does contain defamatory imputation against the complainant, a senior bureaucrat at the relevant point of time posted as Secretary to the Chief Minister of the State of Bihar. The specific accusation against the complainant in the said article is that one of his relatives Bhimraja has been favoured in allotment of large



chunk of land in his name by the BIADA, which was contrary to the fact, so without verifying the correctness and truthfulness of the matter, sensational news story was published in the newspaper with sole intention to harm well earned reputation of the complainant.

12. Further contention of the learned counsel for the O.P. No. 2 is that all petitioners are responsible for publication of the news item being the Chairman & Managing Director of the Board of Directors, Editor-in-Chief, Executive Editor and Managing Editor of The Indian Express. He places reliance in the case of K.M.Mathew vs. K.A.Abraham & Ors.; (2002) 6 SCC 670 in the latest judgment on this point contrary view has been taken to earlier decision reported in AIR 1992 SC 2206 (K.M. Mathew v. State of Kerala & Anr.) considering the legal position that presumption of committing civil or criminal wrong against the Editor whose name finds published in the newspaper in view of Section 5 of the Act is a rebuttable piece of evidence, if he succeeds in proving that concerned news was published at the behest of some others and if it is proved by the complainant, during the course of trial, such other persons can also be convicted hence, at this stage, no interference in the cognizance order is required.



13. The learned counsel also submits that The Indian Express did not tender even an unconditional apology within fortnight hours of receiving the legal notice in the same manner and prominence defamatory news was published and has violated all ethical norms of journalism.

14. Learned counsel for the O.P.No. 2 also placed reliance on another decision reported as Iridium India Telecom Limited vs. Motorola Incorporated and Ors.; (2011)1 SCC 74 and submits that under the inherent jurisdiction, the court should refrain from exercising the power of quashing under inherent power to be exercised under Section 482 Cr.P.C., unless accusation or imputation made against the accused persons *prima facie* do not constitute any offence or if there is any express legal bar for initiating prosecution, but in the present case, there is specific accusation against all the petitioners that in their knowledge entering into conspiracy, the concerned news items was published.

15. Having considered the rival contentions of both sides and on perusal of the record, the Court finds that news item published in The Indian Express, Delhi Edition on July 21, 2011 at the bottom of the front page with heading “MP’s son to IAS’s daughter, VIP kin get industrial plots in Bihar” and there is a



blog by the side of it, “WHO GOT WHAT”, mentioning 6,53,400 Sq.Ft. of large chunk of prime land at Gidha was allotted to a relative of S.Siddharth, the Secretary to the Chief Minister of the State of Bihar, by the BIADA. The Chief Minister of Bihar getting knowledge of this sensational news, constituted a One-man Inquiry Committee, appointing the Chief Secretary, State of Bihar to submit a report with regard to the correctness of the report published in The Indian Express, and the report indicated that Bhimraja is not his relative and none of relatives of S.Siddharth (complainant) was allotted any piece of land by the BIADA. The report also reveals absence of any favouritism in favour of allottees in the matter of allotment of land for setting up industrial units rather it was allotted on the basis of “first come,first served” following the procedure and considering the eligibility of each applicants. So *prima facie* incorrect report was published by The Indian Express that huge chunk of piece of land was allotted to the relative of S.Siddharth, the then Secretary to the Chief Minister of the State of Bihar.

16. Now, in the backdrop of the said fact, it is to be ascertained, whether a *prima facie* case of defamation against the petitioners is made out or not? Let us first look at the



definition of ‘Defamation’ as defined in Section 499 of I.P.C.,  
which is quoted hereinbelow:-

*“499. Defamation.- Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.”*

*Explanation 1.- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.*

*Explanation 2.- It may amount to defamation to make an imputation concerning a company or an association or collection of persons s such.*

*Explanation 3.- An imputation in the form of an alternative or expressed ironically, may amount to defamation.*

*Explanation 4.- No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.*

|                                |             |             |
|--------------------------------|-------------|-------------|
| <i>First Exception.- xxx</i>   | <i>xxxx</i> | <i>xxxx</i> |
| <i>Second Exception.- xxx</i>  | <i>xxxx</i> | <i>xxxx</i> |
| <i>Third Exception.- xxx</i>   | <i>xxxx</i> | <i>xxxx</i> |
| <i>Fourth Exception.- xxx</i>  | <i>xxxx</i> | <i>xxxx</i> |
| <i>Fifth Exception.- xxx</i>   | <i>xxxx</i> | <i>xxxx</i> |
| <i>Sixth Exception.- xxx</i>   | <i>xxxx</i> | <i>xxxx</i> |
| <i>Seventh Exception.- xxx</i> | <i>xxxx</i> | <i>xxxx</i> |
| <i>Eighth Exception.- xxx</i>  | <i>xxxx</i> | <i>xxxx</i> |



*Ninth Exception.- imputation made in good faith by person for protection of his or other's interests.- It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.*

*Tenth Exception.- xxx*

*xxxx*

*xxxx*

and punishment for defamation is incorporated under Section 500 of I.P.C., which reads as follows:

*“500. Punishment for defamation.- Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”*

17. The definition of defamation explicitly indicates that if anyone publishes insinuation or any imputation concerning a person with intention to harm his reputation or having knowledge and reason to believe that such imputation may harm the reputation of such person, except the case falling under any of ten exceptions, mentioned in the definition enumerated under Section 499 I.P.C. and if the case comes under *Explanation 4* of the said Section. The Court finds that publication of news item, in question, relating to S.Siddharth, the complainant/O.P. No. 2, that Bhimraja, his relative, was allotted by the BIADA a large chunk of land at Gidha for setting up an industrial unit, is totally incorrect news published by the Delhi Edition of The Indian Express without verifying and ascertaining the truthfulness or



correctness of the matter reported by Santosh Singh, the journalist/reporter. The defence taken by petitioners that the news item reported in good faith for public good so the alleged imputation does not constitute an offence of defamation, in view of *Ninth Exception* of Section 499 I.P.C., is not acceptable. The publication of news regarding allotment of large chunk of land by the BIADA in favour of one Bhimraja, relative of S.Siddharth, was factually incorrect as revealed by the enquiry report of the Chief Secretary, Government of Bihar, so without verifying the basic fact/truth with regard to relationship in casual way reporting was done, so *prima facie* the content of the news item alleged imputation against the complainant to harm his reputation and such publication cannot be said to be for public good. The reputation of any upright individual matters more than his life; a good human being always strives hard to make the reputation by following honesty, integrity and moral values, that reputation carries more weight than accumulation of wealth. One cannot built reputation in a day but can be demolished by such irresponsible reporting. In the present case, definitely imputation made in the report published by the newspaper was *prima facie* incorrect and defamatory in nature and content.



18. Now, the only question to be determined is as to whether all accused persons are liable to be prosecuted for defamation?

19. In this context, I find that ratio laid down by the Apex Court in later judgment of K.M.Mathew vs. K.A.Abraham & Ors. reported in (2002) 6 SCC 670 is applicable in the present case though there is contrary view taken by the Apex Court in the earlier decision also co-incidentally in the case of K.M. Mathew v. State of Kerala & Anr.; AIR 1992 SC 2206. In the earlier decision, the Apex Court held as follows:

*“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”.*

20. Whereas contrary view has been taken in latest decision on the issue passed in K.M.Mathew (supra) by the Apex Court reported in (2002) 6 SCC 670 and relevant



paragraph-20 of the judgment is quoted hereinbelow:

*“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”.*

21. In view of Section 7 of the Press and Registration of Books Act, 1967, there is presumption against the Editor, whose name is printed in the newspaper following declaration made under Section 5 of the Act holding him responsible for selecting the matter for publication, but similar presumption can not be withdrawn against the Chief Editor, Resident Editor or Managing Editor however the complainant can still allege and prove that they too had knowledge and were responsible for the publication of the defamatory news item. The concluding paragraph of the said judgment is incorporated in para-22 of the judgment is quoted hereinbelow:-



*“22. In the instant appeals, the complainant in each case has alleged that these appellants who are either Managing Editor, Chief Editor or Resident Editor had knowledge and were responsible for publishing defamatory matter in their respective newspaper publications. Moreover, in none of these cases, the “Editor” had come forward and pleaded guilty to the effect that he was the person responsible for selecting the alleged defamatory matter published. It is a matter of evidence in each case. If the complaint is allowed to proceed only against the “Editor” whose name is printed in the newspaper against whom there is statutory presumption under Section 7 of the Act, and in case such “Editor” succeeds in proving that he was not the “Editor” having control over the selection of the alleged libellous matter published in the newspaper, the complainant would be left without any remedy to redress his grievance against the real culprit. We are not unmindful of the powers of the court under Section 319 of the Code of Criminal Procedure, but such power are circumscribed by limitations.*

22. Thus, the Court, applying the ratio laid down by the Apex Court in K.M.Mathew case reported in (2002) 6 SCC 670 (supra), comes to finding that at this stage, the impugned order taking cognizance of the offence of defamation does not require interference with respect to petitioners, except The Indian Express Ltd. (petitioner in Cr. Misc. No. 41128 of 2013) and Vivech Goenka (petitioner in Cr. Misc. No. 38927 of 2012), for the reason that being Chairman & Managing Director of the Board of Directors of The Indian Express Ltd., they were not members of the Editorial Board having no concern or



involvement in selecting the news item for publication in the newspaper.

23. Whereas rest other petitioners closely related to Editorial Board being Managing Editor, Editor-in-Chief and Executive Editor, are concerned with selection and publication of news item, so in view of judgment of the Apex Court passed in K.M.Mathew vs. K.A.Abraham & Ors.; (2002) 6 SCC 670, and the allegation made against these petitioners related with the Editorial Board of The Indian Express that they were responsible for selecting the defamatory news against the complainant S.Siddharth, a *prima facie* case of defamation against them is made out.

24. The Court is also not in agreement with the decision passed by a co-ordinate Bench of this Court in Cr. Misc. No. 45228 of 2011 that it is mandatory to get sanction by the State Government or the District Magistrate for taking cognizance of the offence against the petitioner in view of Section 196(2) Cr.P.C. because maximum punishment provided for alleged offence of defamation is up to two years. In order to appreciate the conclusion, let us first look at the Section 196 Cr.P.C., which reads as follows:-

**“196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.-(1) No Court**



*shall take cognizance of-*

*(a) any offence punishable under Chapter VI or under Section 153A, Section 295A or sub-section(1) of section 505 of the Indian Penal Code (45 of 1860), or*

*(b) a criminal conspiracy to commit such offence, or*

*(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1980),*

*except with the previous sanction of the Central Government or of the State Government.*

*(1A) No court shall take cognizance of-*

*(a) any offence punishable under Section 153B or sub-section (2) or sub-section(3) of section 505 of the Indian Penal Code (45 of 1860), or*

*(b) a criminal conspiracy to commit such offence.*

*Except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.*

*(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:*

*Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.*

*(3) The Central Government or the State Government may, before according sanction under sub-section(1) or sub-section(1A) and the District Magistrate may, before according sanction under sub-section (1A) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector; in which case such police officer shall have the powers referred to in sub-*



*section(3) of section 155”.*

25. The heading of the Section is illustrative, which indicates application of the provision only in context to certain offences committed against the State and not in the case of other offences committed against individuals. The heading ‘Prosecution for offences against the State and for criminal conspiracy to commit such offence’, the expression ‘such offence’ qualifies offences against the State enumerated in Chapter VI of I.P.C. and under Section 153A, Section 295A and Section 505(1) of I.P.C. If such offences against the State is committed by anyone in conspiracy with others in such situation the sub-section (2) of Section 196 comes into play otherwise not. So, in the present case, there is no requirement for obtaining sanction from the State Government or from the District Magistrate for taking cognizance in the matter.

26. In view of the aforesaid discussion, the Court finds that *prima facie* case is not made out against ‘The Indian Express Limited’ (petitioner in Cr. Misc. No. 41128 of 2013) as well as against its Chairman-cum-Managing Director Vivech Goenka (petitioner in Cr. Misc. No. 38927 of 2012), hence the impugned order taking cognizance dated 16.06.2012 as well as subsequent criminal proceeding with respect to both of them



only is set aside.

27. Howsoever the impugned order dated 16.06.2012 taking cognizance of the offence and subsequent criminal proceeding against rest other petitioners are concerned, as observed earlier *prima facie* case is made out against them moreover they would not get protection under Section 7 of the ‘The Press and Registration of Books Act, 1867 in view of the ratio laid down in the judgment of the Apex Court passed in the case of K.M.Mathew vs. K.A.Abraham & Ors.; (2002) 6 SCC 670, hence trial will proceed against them in accordance with law.

28. In the result, Cr. Misc. No. 41128 of 2013 and Cr. Misc. No. 38927 of 2012 are allowed and Cr. Misc. No. 16924 of 2014 and Cr. Misc. No.40032 of 2012 stand dismissed.

**(Arun Kumar, J)**

sujit/-

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