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

Reserved on: 4th September, 2018

Pronounced on: 24th September, 2018

+ CRL.M.C. 3700/2016 & CRL.M.A. 15476/2016 & 1068/2017

INDU JAIN & ANR. Petitioners

Through: Mr. R.K. Handoo with Mr.
Yoginder Handoo, Mr. Aditya
Chaudhary, Mr. Manish Shukla,
Mr. Prashant Bhatnagar and Mr.
Nishant Kumar, Advocates.

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Akshai Malik, APP for
State.
R2 in person.

+ CRL.M.C. 3801/2016 & CRL.M.A. 15911/2016, 1066/2017,
8442/2017

SAMIR JAIN Petitioner

Through: Mr. R.K. Handoo with Mr.
Yoginder Handoo, Mr. Aditya
Chaudhary, Mr. Manish Shukla,
Mr. Prashant Bhatnagar and Mr.
Nishant Kumar, Advocates.

versus

STATE OF NCT OF DELHI & ANR Respondents

Through: Mr. Akshai Malik, APP for
State.
R2 in person.

+ CRL.M.C. 817/2017 & CRL.M.A. 3452/2017

DHANANJAY MAHAPATRA & ANR. Petitioners

Through: Mr. R.K. Handoo with Mr.
Yoginder Handoo, Mr. Aditya
Chaudhary, Mr. Manish Shukla,
Mr. Prashant Bhatnagar and Mr.
Nishant Kumar, Advocates.

Versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Mukesh Kumar, APP for
State.
R2 in person.

+ CRL.M.C. 819/2017 & CRL.M.A. 3456/2017

SHRIJEET MISHRA Petitioner

Through: Mr. R.K. Handoo with Mr.
Yoginder Handoo, Mr. Aditya
Chaudhary, Mr. Manish Shukla,
Mr. Prashant Bhatnagar and Mr.
Nishant Kumar, Advocates.

versus

STATE & ANR. Respondents

Through: Mr. Ravi Nayak, APP for State.
R2 in person.

+ CRL.M.C. 821/2017 & CRL.M.A. 3460/2017

BALRAJ ARORA Petitioner

Through: Mr. R.K. Handoo with Mr.
Yoginder Handoo, Mr. Aditya
Chaudhary, Mr. Manish Shukla,
Mr. Prashant Bhatnagar and Mr.
Nishant Kumar, Advocates.

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Mukesh Kumar, APP for
State.
R2 in person.

+ CRL.M.C. 822/2017 & CRL.M.A. 3463/2017

ANURABH DAS SHARMA & ANR Petitioners

Through: Mr. R.K. Handoo with Mr.
Yoginder Handoo, Mr. Aditya
Chaudhary, Mr. Manish Shukla,
Mr. Prashant Bhatnagar and Mr.
Nishant Kumar, Advocates.

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Mukesh Kumar, APP for
State
R2 in person.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

J U D G M E N T

1. On the complaint (CC No. 463927/16 – also 65/1/16) of the second respondent (Mr. Deepak Khosla), the Additional Chief Metropolitan Magistrate (South), after preliminary inquiry, by order dated 08.07.2016, found a *prima facie* case of commission of offences punishable under Sections 500/501/502 of Indian Penal Code, 1860 (IPC) having been made out and sufficient grounds having been

shown to exist for proceeding against thirteen persons shown in the array of accused in the said complaint, they including the petitioners in these matters. By the said order dated 08.07.2016, the Additional Chief Metropolitan Magistrate (ACMM) issued process summoning, amongst others, the petitioners as accused.

2. Feeling aggrieved by the said order, these six petitions have been brought before this Court invoking the inherent power and jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) primarily on the contention that the approach of the ACMM was misdirected on facts and in law, there being no case made out for such process to be issued, the proceedings arising therefrom against the petitioners being an abuse of process of law.

3. The petitions have been resisted by the second respondent (the complainant), *inter alia*, by a counter affidavit (which he would describe as preliminary), as supplemented at the hearing by oral submissions.

4. The submissions of both sides were heard at length and record has been perused.

5. The complainant has been a practicing advocate. Proceedings under the Contempt of Courts Act, 1971 had been initiated against him *suo motu* by two different benches of this Court in the context of proceedings arising, *inter alia*, of LPA no. 583/2014 and LPA 16/2012, they having been registered as contempt case (criminal) no.

9/2014 and contempt case (criminal) no. 12/2014. It appears, the contempt cases came up before different benches and twenty six Honourable Judges of this Court had reasons to recuse themselves, one after the other, from hearing the said matters. The contempt cases, eventually, came up before a division bench of this Court and were finally adjudicated upon by two separate judgments both rendered on 22.02.2016. In each matter, the complainant was found, by the division bench of this Court, to be guilty of criminal contempt of this Court, he having been sentenced to imprisonment for one month with fine of Rs. 2,000/- in each case, with further direction of he required to undergo extended imprisonment for another month in the event of default in payment of fine within the stipulated period, the sentence in both cases ordered to run concurrently.

6. The result of the criminal contempt cases was subject matter of news report under the heading “*Angry HC sends lawyer to jail for misconduct*” in the newspaper “Times of India” published from New Delhi in its edition of Friday 26th February, 2016. A copy of the said news report would indicate Mr. Abhinav Garg, one of the persons summoned as accused by the impugned order, to be its author, his email address having been indicated as *Abhinav Garg @ timesgroup.com*.

7. The complainant felt aggrieved by the above-mentioned news coverage. He instituted the criminal complaint case in the court of Chief Metropolitan Magistrate with reference to the jurisdiction of police station Saket, New Delhi alleging offences punishable under

Section 500 IPC read with Sections 120B, 34 and 107 IPC having been committed by the thirteen persons shown in the array of accused they including Mr. Abhinav Garg, the author of the impugned report (as tenth accused), the others proceeded against including Messrs Bennett, Coleman & Co. Ltd. (first accused), Mrs. Indu Jain (second accused), Mr. Samir Jain (third accused), Mr. Vineet Jain (fourth accused), Ms. Trishla Jain (fifth accused), Mr. Satyan Gajwani (sixth accused), Mr. Anurabh Das Sharma (seventh accused), Mr. Shrijeet R. Mishra (eighth accused), Mr. Raj Kumar Jain (ninth accused), Mr. Dhananjay Mahapatra (eleventh accused), Mr. Anshul Chaturvedi (twelfth accused) and Mr. Balraj Arora (thirteenth accused).

8. This batch of six petitions assailing the summoning order have been presented by nine of the above-mentioned accused persons they including second accused (Bennett, Coleman & Co. Ltd.), third accused (Mr. Samir Jain), fourth accused (Mr. Vineet Jain), seventh accused (Mr. Anurabh Das Sharma), eighth accused (Mr. Shrijeet R. Mishra), ninth accused (Mr. Raj Kumar Jain), eleventh accused (Mr. Dhananjay Mahapatra), twelfth accused (Mr. Anshul Chaturvedi) and thirteenth accused (Mr. Balraj Arora).

9. The first accused (Bennett, Coleman & Co. Ltd.) is the company which owns and publishes the newspaper in which the impugned news story was carried. The second accused (Mrs. Indu Jain) is described in the complaint as Chairman and Wholetime Director of the said company, the third accused (Mr. Samir Jain) being the Vice Chairman and Managing Director and Shareholder.

The fourth accused (Mr. Vineet Jain) is also connected to the said company, he being the Managing Director, the seventh accused (Mr. Anurabh Das Sharma) and eighth accused (Mr. Shrijeet R. Mishra) being the Wholetime Directors. The ninth accused (Mr. Raj Kumar Jain) is associated with the said company in the capacity of Chief Executive Officer and Executive Director. As per the complainant, the eleventh accused (Mr. Dhananjay Mahapatra) and twelfth accused (Mr. Anshul Chaturvedi) have been working as legal editor and editor respectively of the Times of India newspaper. It may be mentioned here itself that the petitioners, through counsel, at the hearing, fairly conceded the above to be the position of each of the nine petitioners before this Court, *vis-à-vis* the company Bennett Coleman & Co. Ltd. and the newspaper Times of India published by it, save and except in the case of eleventh and twelfth accused. It is the submission of the learned counsel for the petitioners that eleventh and twelfth accused do not hold the position of “editor” of the impugned publication.

10. The petitioners have produced, for perusal, a copy of the newspaper “Times of India” published from New Delhi on 26.02.2016 which carried the news story at its 7th page to which exception has been taken by the complainant through the criminal complaint. It is pointed out and it was conceded fairly by the complainant at the hearing that at the footer of the sixth page of the said newspaper, the following declaration is published:-

“Published for the Proprietors, Bennett, Coleman & Co. Ltd., by Balraj Arora at Times House, 7, Bahadur Shah

Zafar Marg, New Delhi-110002 and printed by him at Times Of India Press, 13, Site IV, Industrial Area, Sahibabad (UP), Dainik Jagran Press, Plot NO. C2/2-1, Selaqui Industrial Area, Dehradun (UTTARAKHAND) and Dainik Jagran Press, Biharman Nagla, Pilibhit Bypass Road, Bareilly (UP). Regd. Office, : Dr. Dadabhai Naoroji Road, Mumbai-400001. Editor (Delhi Market) : Diwakar Asthana –responsible for selection of news under PRB Act, @ All rights reserved. Reproduction in whole or in part without written permission of Publisher is prohibited.

RNI No: 508/57

Air Charge : Ahmedabad, Hyderabad, Chennai, Nagpur & via Rs.5.00, Leh Rs.2.00,. Price in Nepal : NEP Rs.15.00”

11. It is the argument of the petitioners that, in terms of law, particular reference being made to the provisions of the Press and Registration of Books Act, 1867, the petitioners cannot be held accountable for the impugned news coverage of the court proceedings since they did not hold, at the relevant point of time, the positions of “Printer”, “Publisher” or “Editor” *vis-à-vis* the publication in question. Reliance is placed on the decisions of this Court reported as *Mrs. Shobhana Bhartia & Ors. vs. NCT of Delhi & Anr.* 2008 (1) JCC 327; *Indu Jain & Anr. vs. NCT of Delhi & Ors.* 2012 (2) JCC 1175; and *Vineet Jain vs. NCT of Delhi & Ors.* 2012 (3) JCC 2023.

12. In the criminal complaint, it has been, *inter alia*, alleged that the incriminating article had been published with factually incorrect facts and false innuendos with design and intent, in furtherance of criminal

conspiracy hatched by all the thirteen persons who have been summoned, to cause harm to and lower the reputation of the complainant in estimation of public at large, reference being made in this context to various other cases in which the accused persons have been involved in the past on one hand and the complainant on the other. In the pre-summoning inquiry, the complainant examined six witnesses including himself (as CW-1), the others being Mrs. Amrita Srivastav (CW-2), Mr. Rajinder Pal Khosla (CW-3), Ms. Limalemla Longkumer (CW-4), Mr. Rajesh Dhingra (CW-5) and Mr. Rajesh Tomar (CW-6). It is his submission that the evidence of the said witnesses is sufficient to make out a case against all the thirteen persons including the petitioners herein.

13. The counter affidavit submitted by the complainant raises, *inter alia*, certain procedural issues such as deliberate delay in effecting service, certain crucial material including statements of witnesses, written submissions etc. not having been filed or being suppressed, there being defect in the affidavits, submitted in support etc. In the considered view of this Court, such procedural deficiencies – assuming there are such deficiencies – are at the most irregularities which cannot distract the court from consideration of questions of law which have been raised by the petitions.

14. The petitioners have argued, *inter alia*, that the impugned news story was *per se* not defamatory, it being primarily a report of the proceedings in and decision of the court, the case also attracting the fourth exception (publication of reports of proceedings of courts) to

Section 499 IPC which defines the penal offence “*defamation*”. It has also been the argument of the petitioners that the impugned order of summoning is “*cryptic*” and not one reflecting due application of mind since it neither notes the background facts nor indicates as to why the statements of the complainant or that of his witnesses were to be accepted at their face value. This court, in the present petitions, refrains from expressing any opinion on these submissions since the ground to the extent of accountability of the petitioners vis-à-vis the publication itself is found to be clinching.

15. The Press and Registration of Books Act, 1867 was enacted, *inter alia*, for regulation of printing presses and newspapers. The provisions of this law make it abundantly clear that unless the contrary is proved, the persons declared as the printer, the publisher and the editor of the newspaper are “*presumed to be responsible*” for the contents of the newspaper. Section 1(1) defines the expression “*editor*” to mean “*the person who controls the selection of the matter that is published in a newspaper*”. Section 5 stipulates that every printer and publisher of a newspaper shall make a statutory declaration before a competent Magistrate in the prescribed form, Section 6 dealing with the authentication of such declaration. Section 7 reads thus:-

“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 declaration, 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.”

16. The contents of the declaration vis-à-vis the newspaper in which the impugned article was carried and published have been taken note of, in extenso, earlier. The petitioners before this court are clearly not mentioned in the said declaration as either the printer or the publisher or the editor.

17. The question as to whether the persons other than the printer, publisher or the editor can be prosecuted for a defamatory article has been the subject of deliberation and discourse in number of cases in the past they including, *State of Maharashtra vs. R.B. Chowdhari*, AIR 1968 SC 110; *Sardar Bhagat Singh Akali vs. Lachman Singh*, AIR 1968 SC 269; *D.P. Mishra vs. Kamal Narain Sharma & Ors.*, AIR 1970 SC 856; *Narasingh Charan Mohanty vs. Surendra Mohanty*, AIR 1974 SC 47; *Haji C.H. Mohammad Koya vs. T.K.S.M.A. Muthukoya*, AIR 1979 SC 154; *T.K.S. Muthukoya vs. Haji C.H Mohammad Koya*, 1979 (2) SCC 8; *Sardar Nihal Singh vs. Arjan Das*, 1983 CrLJ 111 and *K.M. Mathew vs. State of Kerala & Anr.*, 1992 CrLJ 3779.

18. Taking note of such earlier decisions, the learned Single Judge of this Court dealing with similar issues in the case of *Shobhana Bhartia* (supra) summarized the guiding principles in above context as under:-

“58. From the afore-noted judicial pronouncements, legal position which emerges is as follows:-

(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, incharge of, and responsible to, the company for the conduct of its business.”

19. The decision in *Shobhana Bhartia* (supra) was followed in later similar decisions reported as *Indu Jain* (supra) and *Vineet Jain* (supra), on which reliance is placed by the petitioners.

20. The complainant counters the arguments of the petitioners on the above noted issue by the following submissions (quoted verbatim from his written submissions):-

“a) In law, it is well-settled that there is a distinction between a person holding a formal title/designation de jure, and him performing the actions associated with such formal title/designation de facto. In this regard, the Hon’ble Supreme Court has held in the case of Haji C.H. Mohammad Koya vs. T.K.S.M.A Muthukoya (AIR 1979 SC 154) as follows (emphasis supplied):

Where a person does not fulfil the conditions of “Editor” as provided in section I and does not perform the functions of an editor whatever may be his description or designation, the provisions of the Act would have no application;

b) Therefore, in a given case, even a person not at all “formally” associated with the company that is responsible for publishing the defamatory article may be liable to be summoned to stand trial for defamation, on grounds of his having conspired in its publication.

c) The persons who have been summoned to stand trial other than the author of the defamatory article and the editor of the news report are persons who have been summoned not merely in context of their ex-officio capacity in Bennett Coleman & Co Ltd (i.e. their de jure standing in the aforesaid company), but in context of their de facto standing (in terms of the acts attributed to them in the complaint), and for their positive and active role in the criminal conspiracy to defame the complainant/Respondent, as well as in their capacity as “abettors” of the criminally-prosecutable act in terms of Sections 107-109 IPC.

d) This being so, whether the trial was warranted are not is a “contested fact” which warrants trial, and which, therefore, ousts the jurisdiction of the Hon’ble High Court under Section 482 of the Cr.PC.”

21. Whilst it is true that, in his complaint, the complainant had alleged, *inter alia*, the offence under Section 120-B IPC (criminal conspiracy) to have also been committed it statedly leading to the commission of offence of defamation punishable under Section 500 IPC and, in this context, he had also referred to Section 107 IPC to attribute abetment. But, upon perusal of the complaint, this court finds the allegations about abetment or criminal conspiracy to be founded on assumptions instead of some concrete evidence. Noticeably, the complainant was not able to persuade the ACMM to take cognizance of the offence of abetment, or of criminal conspiracy, the summoning order being restricted primarily to the offence of defamation punishable under Section 500 IPC to which cognate offences punishable under Section 501 and 502 have been added.

22. The case of the complainant about criminal conspiracy not having been accepted by the jurisdictional court of cognizance, and in absence of substantive supportive proof, arguments to above effect cannot be given any credence. There is no evidence adduced to show that any of the petitioners before this court had taken part in the authorship, preparation, selection or publication of the material which is alleged by the complainant to be defamatory. Since no presumption can be drawn against any of the petitioners, the not holding the positions of printer, publisher or editor of the publication in question,

the order summoning them for offences punishable under Sections 500/501/502 IPC is found to be unjust and improper, as indeed in the nature of abuse of process of law.

23. In the result, the petitions are allowed. The impugned order dated 08.07.2016 of the Additional Chief Metropolitan Magistrate (South), on the file of compliant case (CC No.65/1/16), to the extent thereby the petitioners were summoned as accused for offence punishable under Sections 500/501/502 IPC is set aside and the proceedings taken out consequent to such order against the petitioners are hereby quashed.

24. The petitions and the applications filed therewith stand disposed of in above terms.

SEPTEMBER 24, 2018
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(R.K. GAUBA)
JUDGE