

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 97 OF 2019**

1. Muncherji Nusserwanji Cama,
Managing Director of Company
“Bombay Samachar Pvt. Ltd.”
Aged about 62 years, Indian Inhabitant,
residing at 198, Walkeshwar Road,
Mumbai – 400 006

2. Bombay Samachar Pvt. Ltd.
A Company having its office at
Red House, S. A. Brelvi Road,
Horniman Circle, Fort,
Mumbai – 400 001
Owner of the Newspaper,
“Bombay Samachar”

...Applicants

Versus

1. The State of Maharashtra
Through Public Prosecutor,
High Court, Bombay

2. *Deleted as per order dated 2.8.19*

3. Yazdi Hosi Desai
Aged about 59 years, Indian
Chairman & Trustee of
Bombay Parsi Panchayat,
residing at 7/4, Rustom Baug,
Byculla, Mumbai – 400 027

4. *Deleted as per order dated 2.8.19*

...Respondents

Mr. Ashok Mundargi, Sr. Counsel a/w Mr. Amol Doijode, Mr. Levi Rubens,
Mr. Sushant Arora, Ms. Sheetal Mote, Mr. Anshul Rathi and Ms. Ruchi
Magoo i/b Vigil Juris for the Applicants

Mr. P. H. Gaikwad-Patil, A.P.P for the Respondent No. 1

Mr. Samsher Garud a/w Mr. Harsh Noorjani and Mr. Vignesh Iyer
i/b Jayakar & Partners for the Respondent No. 3

CORAM : REVATI MOHITE DERE, J.
MONDAY, 18th NOVEMBER 2019

ORAL JUDGMENT :

1 Heard learned counsel for the parties.

2 By this application preferred under Section 482 of the Code of Criminal Procedure ('Cr.P.C'), the applicants have impugned the order of issue process dated 19th October 2018 passed by the learned Metropolitan Magistrate, 25th Court at Mazgaon, Sewree, Mumbai, as against the applicants for the alleged offences punishable under Sections 500, 501, 502 and 34 of the Indian Penal Code.

3 Mr. Mundargi, learned senior counsel for the applicants submits that no offence as alleged is disclosed *qua* the applicants. He submits that the applicant No. 1, as the Manager Director of Bombay Samachar Pvt. Ltd., cannot be held liable for the article published in the newspaper "Bombay Samachar". Learned senior counsel relied on the judgments in ***Sardar Nihal Singh vs. Arjan Das*¹; K. M. Mathew vs. K. A.**

1 1983 Cri. L.J. 777 = 1982 SCC Online Del. 270

*Abraham & Ors.*²; *Haji C. H. Mohammad Koya vs. T.K.S.M.A. Muthukoya*³; *K. M. Mathew vs. State of Kerala*⁴ and *Indu Jain & Anr. vs. NCT of Delhi*⁵, in support of his submission. He submits that the applicant No. 1 being the Managing Director, his name is not mentioned in the declaration under the Press and Registration of Books Act and as such he is not the Editor of the newspaper and as such cannot be held liable, especially when there are no averments about his specific involvement in the said case. Learned senior counsel for the applicants submits that the applicant No.1 has not attended the office of the applicant No. 2-Company since 2016 because of his ill-health. He submits that in view of his health, the applicant No.1 was not involved in the day-to-day affairs/activities of the applicant No.2 Company and as such cannot be attributed either with knowledge/mens rea/malice/culpability as regards the alleged offence of defamation.

4 Learned counsel for the respondent No.3 (original complainant) opposes the application and submits that no interference is warranted in the impugned order issuing process. According to the learned counsel for the respondent No.3, the complaint clearly shows the

2 (2002) 6 SCC 670 = AIR 2002 SC 2989

3 AIR 1979 SC 154

4 AIR 1992 Sc 2206

5 2012 (129) DRJ 256

complicity of the applicant No.1 in the alleged offence. Learned counsel relied on paragraphs 2 and 6 of the complaint in support of his submission to show that allegations have been made against the applicant Nos.1 and 2. He submits that some of the articles mentioned in paras 4.6 to 4.13 of the complaint were written on behalf of the applicant No.1, whereas, some articles were printed and published without the name of the Author being mentioned. He submits that the submission advanced by the learned senior counsel for the applicants that the Managing Director was only involved in the overall policy and finance related decisions and that the applicant No.1, the Managing Director of applicant No. 2 was not involved in the day-to-day affairs with respect to publications or printing, is contrary to the facts and averments made in the complaint. Learned counsel for the respondent No.3 submits that it is the specific case of the complainant i.e. respondent No. 3 that all the accused had the requisite knowledge of the falsity of the information and had intentionally printed, published and circulated the defamatory article, without verifying the genuineness and veracity of the same, with a malafide attempt of defaming and tarnishing the image and reputation of the complainant i.e. respondent No. 3. He submits that it is not permissible, at this stage, to go into the truthfulness or otherwise of the allegations, which can only be gone into at the time of trial. According to the learned counsel, the applicant No. 1 is not arrayed as an accused only

in his capacity as a Managing Director or on the basis of vicarious liability, but on the basis of the role played by him. Learned counsel also relied on the judgments in the case of ***Gambhirsingh R. Dekare vs. Falgunbhai Chimanbhai Patil & Anr.***⁶; ***Mohd. Abdul Khan vs. Prakash K***⁷; ***K. M. Mathew vs. K. A. Abraham & Ors***; in support of his submission.

5 Perused the papers. The applicant No.1 belongs to the Parsi Zoroastrian Community and is associated with the Bombay Parsi Panchayat as its Trustee from July 2011 till 2018, i.e. till the expiry of his term in July 2018. The applicant No.1 is also the Managing Director of the applicant No. 2 i.e Bombay Samachar Pvt. Ltd. The applicant No.2 i.e. Bombay Samachar Pvt. Ltd. owns a newspaper by the name "Bombay Samachar". Apart from the Managing Director, the applicant No.1 is also a shareholder of the applicant No.2-Company. It appears that the respondent No. 3 (complainant) was also a Trustee of the Bombay Parsi Panchayat for about 21 years and its Chairman from 2008 to 2015. It appears that due to some election related rivalry, there was animosity between the parties i.e between the old and new Chairman of the Bombay Parsi Panchayat. As the Bombay Samachar carried a defamatory article in the newspaper-`Bombay Samachar`, the respondent No. 3 filed a criminal complaint alleging

6 (2013) 3 SCC 697

7 (2002) 6 SCC 670

defamation as against Yazdi Desai, as Yazdi Desai had sent various emails making therein unparliamentary references about respondent No.3. Yazdi Desai also filed a criminal complaint as against the respondent No.3. It appears that the respondent No.3 also filed a criminal complaint as against the applicants and others for having published 8 articles in a newspaper called 'Bombay Samachar'. The said complaint was filed by the respondent No.3 in the Court of the learned Magistrate, 25th Court, Mazgaon, Sewree, Mumbai. The learned Metropolitan Magistrate was pleased to issue process as against the applicants and others on 19th October 2018. Being aggrieved by the order issuing process, the petitioners have filed this application.

6 Before advertng to the facts in the present case, it is necessary to consider the legal position, in the light of the submissions advanced by the parties.

In ***K. M. Mathew vs. K. A. Abraham & Ors. (supra)***, the Apex Court was dealing with the maintainability of complaints filed as against the Managing Editor/Chief Editor/Resident Editor of newspapers. Dismissing the appeals of the Managing Editor/Chief Editor/Resident Editor, the Apex Court held in paras 16, 17, 20 and 22 as under :

“16. The contention of these appellants is not tenable. There is no statutory immunity for the Managing Editor, Resident Editor or Chief Editor against any prosecution for the alleged publication of any matter in the newspaper over which these persons exercise control. In all these cases, the complainants have specifically alleged that these appellants had knowledge of the publication of the alleged defamatory matter and they were responsible for such publication; and the Magistrates who had taken cognizance of the offence held that there was prima facie case against these appellants. It was under such circumstances that the summonses were issued against these appellants.”

“17. Counsel for the appellants relied on certain decisions to contend for the position that under Section 7 of the Act, Editor alone shall be prosecuted for the publication of any defamatory matter in a newspaper. One of the earliest decisions relied upon is State of Maharashtra v. Dr. R.B. Chowdhary (AIR 1968 SC 110 : (1967) 3 SCR 708 : 1968 Cri.LJ 95). This was a case where the complaint was filed under Section 500 IPC against four persons who were members of the Editorial Board of a Marathi daily. The Additional Sessions Judge held that there was a prima facie case against Respondents 2, 3 and 4, who were members of the Editorial Board and that they were the makers of the alleged article published in the daily. These respondents contended that the Editor was one Madane and when he was questioned under Section 342 Cr.P.C., he unequivocally admitted that he had written the defamatory article and his name was shown as the Editor in the declaration made under Section 5 of the Act. Under such circumstances, the Court held that though the statement of Madane under Section 342 was no evidence against these respondents as Madane alone was shown as Editor, no presumption could be drawn against Respondents 2, 3 and 4. We do not think that this decision has any application to the facts of the present case as the decision turned mainly on the point that the Editor had admitted the fact that he was responsible for the publication.”

“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.”

“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 a 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 newspapers, 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 powers are circumscribed by limitations.”

7 As regards liability, primarily it is the reporter who is responsible for his act of defamation and vicarious liability can be fastened only on the printer, publisher and editor of the newspaper. Thus, unless the contrary is proved, the persons who are declared as printer, publisher and editor of the newspaper, would be presumed to be responsible for the contents of the newspaper. The question that therefore arises is: whether

any persons, other than a printer, publisher and editor can be prosecuted for a defamatory article, apart from the reporter.

In ***State of Maharashtra vs. R. B. Chowdhary***⁸, the question that arose before the Apex Court was whether the members of the Editorial Board could be prosecuted for the defamatory article. The Apex Court, whilst advertng to Section 7, held in para 7 as under :

“7. The term 'editor' is defined in the Act to mean a person who controls the selection of the matter that is published in a newspaper. Where there is mentioned an editor as a person who is responsible for selection of the material. Section 7 raises the presumption in respect of such a person. The name of that person has to be printed on the copy of the newspaper and in the present case the name of Madane admittedly was printed as the Editor of the Maharashtra in the copy of the Maharashtra which contained the defamatory article. The declaration in Form I which has been produced before us shows the name of Madane not only as the printer and publisher but also as the editor. In our opinion the presumption will attach to Madane as having selected the material for publication in the newspaper. It may not be out of place to note that Madane admitted that he had written this article. In the circumstance not only the presumption cannot be drawn against the others who had not declared themselves as editors of the newspaper but it is also fair to leave them out because they had no concern with the publishing of the article in question. On the whole therefore, the order of discharge made by the learned Single Judge appears to be proper in the circumstances of the case and we see no reason to interfere.”

8 AIR 1968 SC 110

In **K. M. Mathew vs. State of Kerala**⁹, the Apex Court whilst dealing with the prosecution of Chief Editor of a newspaper for publication of a defamatory news article observed in para 9 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.”

8 Thus, what can be culled out from the aforesaid judgments is that there must be positive averments in the complaint, of knowledge of the objectionable material. It would, therefore, be necessary to set out the averments made by the respondent No. 3 in the complaint filed by him against the applicants. The said complaint is on page 75 of the application. The applicant No. 1 is original accused No. 3 in the said complaint and

9 1992 Cri.L.J. 3779

applicant No. 2 is original accused No. 2. The relevant paragraphs read as under :

*“2.The Accused No.2 is a Private Limited Company which owns a Newspaper called Mumbai Samachar of which the **Accused No.3 is the owner/shareholder and Managing Director**, Accused No. 4 and 5 are the whole time directors, shareholders, co-owners of Accused no.2. Accused no.6 is the Editor of Mumbai Samachar newspaper which is owned by the Accused no.2. The said newspaper prints and publishes various articles regarding the Parsi Community.....**Accused no.1 was aided and assisted by Accused No.3 in opposing and targeting me at all meetings of the BPP. Accused no.3 being the Managing Director** and Accused No.4 and Accused No.5 being the Whole Time Directors/shareholders/co-owners of the said Company (Accused No.2) **are the persons incharge and responsible for the entire affairs of The Bombay Samachar Pvt. Ltd and its newspaper Mumbai Samachar.** The Accused no.4 & 5 are the brothers of Accused no.3 and have aided and abetted the Accused no.1 & 3 in defaming and maligning me. The Accused No.6 is the Editor of a Newspaper called Mumbai Samachar. **All accused nos. 3-6 are responsible for publishing, sale, editing and circulation of the Newspaper called Mumbai Samachar.** It has wide circulation amongst the Parsi and Gujarati Community. **The said newspaper is owned by the Company The Bombay Samachar Pvt. Ltd. and prints and publishes various articles regarding the Parsi Community. Thus the Accused Nos. 3, 4, 5 and 6, as per law are the people in charge and responsible for publishing, sale, circulating and/or editing the contents of various articles that are printed in the newspaper Mumbai Samachar. The present complaint is against all the Accused, who with the intent to settle personal vendetta, grudge, vengeance, have with a hostile attitude published defamatory, false, untrue, misleading and baseless articles against me thereby destroying, tarnishing and blemishing my reputation.** Furthermore, the Accused have acted in concert and connivance, with each other with the common intent to publish various defamatory articles in the newspaper Mumbai Samachar from time to time with a sole intention of defaming me, maligning me and destroying my reputation in the eyes of all my well wishers, family, colleagues, corporate associates, members of the Parsi Community and public at large. **The Articles written/published at the behest of Accused Nos. 1, published and sold by the Accused***

Nos. 2 to 6 were deliberately, intentionally and willfully published in order to defame and target me with a motive and intent to lower my repute in the Parsi community and to oust me as a Chairman and Trustee of BPP. The accused nos. 2-6 have also on their own published various defamatory articles without even verifying their content with a sole motive of defaming me. These, I believe were done in concert with the Accused No.1 for “oblique motives”. “At the outset, I say that Accused Nos. 1 to 6 in concert and in furtherance of their mala-fide intent have willfully, intentionally, deliberately and knowingly edited, published and circulated false information about me in various articles published by the Newspaper viz. Mumbai Samachar under the column ‘Parsi Darshan’ and subsequently in its supplement “Metro Junction” usually are published in Sunday Edition of the Mumbai Samachar and free copies with the stamp “Complimentary” are distributed in all Parsi Baugs and Housing Colonies. I further say that the Directors/Owners and Editor of the said newspaper viz. Accused Nos.3 to 6, respectively having full knowledge of the falsity of the information intentionally printed published and circulated the defamatory articles without verifying the genuineness and veracity of the same thereby aiding the malicious and mala-fide attempt of Accused No.1 of defaming me and tarnishing my image and reputation in Society, especially in the Parsi Community, amongst whom the said newspaper is popularly and widely circulated and read. Hence, the accused are guilty and punishable under Section 500, 501 and 502 and 34 of the Indian Penal Code, 1860”.

“6.....I further say that the Accused No.6 has acted negligently and in bad faith by not verifying the genuineness of the information published and certainly does not reflect well on the image of a newspaper of Mumbai Samachar’s vintage and standing which has daily circulation of 1,31,000 readers in Mumbai. It appears that the Accused no.6 who under law is obliged to verify the contents of articles before publishing, has on the instructions of Accused no.3-5 become a mere puppet in the hands of Accused no.3-5 who in turn and in concert with Accused no.1 have unleashed various articles with a sole intent to malign/tarnish and destroy my hard earned reputation for their oblique and personal benefits”.

9 As far as liability is concerned, primarily a reporter is responsible for his act of defamation and vicarious responsibility is fastened

only on the printer, publisher and editor of the newspaper, unless the contrary is proved. Having regard to the judicial pronouncements in this regard, it can safely be said that besides persons declared as editor, printer and publisher of a newspaper, only such persons could be prosecuted for an action of defamation against whom specific and clear allegations have 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 had knowledge or reason to believe that the imputation will harm the reputation of the complainant. A perusal of the complaint filed by the respondent No.3 contains specific allegations against the applicants.

10 Considering the aforesaid, this is not a fit case to quash the proceedings *qua* the applicants. The application is accordingly dismissed. However, needless to state that it is always open for the applicant No.1 to file an application seeking his exemption from attending the proceedings on health grounds. If such an application is filed, learned Judge to consider the same sympathetically, on its own merits in accordance with law

11 Application is disposed of accordingly.

12 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.