

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.204

CRM-M-20697-2013 (O&M)

Date of decision : 26.3.2019

Ashwini Kumar

..... Petitioner

VERSUS

A.C Chaudhry

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Samir Rathaur, Advocate for
Mr. Sumeet Goel, Advocate, for the petitioner.

Mr. Bhupinder Singh, Advocate, for the respondent.

SUDHIR MITTAL, J. (Oral)

A complaint titled as 'A.C. Chaudhry. Vs. Ashwini Chopra and another' was filed in the Court of JMIC, Faridabad on 24.12.2008, under Section 499 read with Sections 500/501/502 IPC. Vide summoning order dated 17.2.2009, the accused mentioned therein were summoned to stand trial. Hence, the present petition under Section 482 Cr.P.C. for quashing of the aforementioned complaint and the summoning order.

Learned counsel for the petitioner submits that the complaint and summoning order deserve to be quashed on account of two reasons; (a) the petitioner is not the Editor, Printer and Publisher of the concerned newspaper and (b) in view of Section 202 Cr.P.C., no summoning order could have been issued against the petitioner without an enquiry as he resides outside the territorial jurisdiction of the Court at Faridabad. In support of the first contention, reference is made to Para 3 (ii) of the petition, wherein, it has been specifically averred that the petitioner is not the Editor, Printer and Publisher of the newspaper in question and that information supplied in the newspaper in question in view of the provisions of the Press and Registration of Books Act, 1867 (hereinafter referred to as 'the Act')

shows that one Vijay Kumar is actually the Editor, Printer and Publisher. Regarding the second contention, reliance is placed upon judgment dated 14.12.2016 passed in Criminal Appeal No.1225 of 2016 titled as 'Abhijit Pawar Vs. Hemant Madhukar Nimbalkar and another.'

Learned counsel for the respondent submits that prior to filing of the complaint, a legal notice was served on the head office of the newspaper at Jalandhar, to which a reply dated 3.10.2008, was received. The said mentioned the name of the petitioner as the Editor, Printer and Publisher. Thus, since the information was supplied by the head office, the respondent placed reliance thereupon and filed the complaint in good faith. So far as, the argument based on Section 202 Cr.P.C. is not concerned, the reply of counsel for the respondent is that the petition for quashing has been filed on 28.6.2013, whereas, the summoning order was passed on 17.2.2009 and is accordingly, belated. Consequently, the petition deserves to be dismissed.

For an offence of defamation, a person making or publishing any imputation with intent to harm or knowing well that it is likely to harm the reputation of concerned person, is liable to be punished. With reference to a newspaper, such a person can either be the Author of the news item or the Editor, Printer and Publisher. Admittedly, the petitioner is not the Author of the concerned news item. According to the specific averment made in the petition, he is also not the Editor, Printer and Publisher. Thus, prosecution of such a person for an offence of defamation would be a patent abuse of criminal justice administration system. Reliance by the respondent on reply dated 3.10.2008, does not clothe the complainant with any right to

of news item and thus, the respondent could very easily have read the information mentioned in the newspaper itself to prosecute the correct person. Having not done so, he has to suffer the consequences.

In Abhijit Pawar's case (supra), the Hon'ble Supreme Court of India has held that conducting an enquiry under Section 202 Cr.P.C., where, accused resides outside the territorial jurisdiction of the Magistrate, is mandatory and is not an empty formality. It further states that an argument based on Section 202 Cr.P.C. can be raised before the High Court in the first instance as the same is a pure question of law and can be raised at any stage. Thus, argument of counsel for the respondent regarding delay and latches can also not be accepted.

For the aforementioned reasons, the petition is allowed and the aforementioned complaint and summoning order, are quashed.

(SUDHIR MITTAL)
JUDGE

26.3.2019

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No