

HIGH COURT OF CHHATTISGARH AT BILASPUR**Cr.M.P. No. 2659 of 2019**

Ramvilas Agrawal S/o Late Shri Sumerchand Ji Agrawal, Aged about 63 years, Office in front of Masihi Hospital, Tahsil and District Dhamtari, Chhattisgarh.

--Petitioner

Versus

1. Yogesh Kumar S/o Bulhuraam Sahu, Aged about 56 years, Assistant Teacher, R/o 10 Linepara Nagri, District Dhamtari, Chhattisgarh.
2. Himanshu Dwivedi Chief Editor, Daily Newspaper Haribhoomi, Haribhoomi Complex, Dhamtari Road, Raipur, District Raipur, Chhattisgarh.
3. Anil Kumar through Haribhoomi Publication Printer and Publisher, Tikrapara, Raipur, District Raipur, Chhattisgarh.
4. Vinod Gupta, Regional Correspondent, Daily Newspaper Haribhoomi, Ward No. 5, Junglepara, Nagri, District Dhamtari, Chhattisgarh.

---Respondents

For Petitioner : Mr. Tridib Bhattacharya, Advocate
 For Respondent No. 1: Mr. Malay Jain, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

28/02/2020

1. Invoking jurisdiction of this Court under Section 482 of the Cr.P.C., the present petition has been filed seeking quashment/setting aside of the

impugned order dated 11/09/2019 (Annexure P/1) passed by the revisional Court affirming the order dated 26/12/2017 (Annexure P/2) passed by the Judicial Magistrate First Class, Nagri, District Dhamtari taking cognizance of offence under Section 500 of the Indian Penal Code ('IPC' for short) against the petitioner.

2. The aforesaid challenge has been laid on the following factual backdrop :-

(i). Respondent No. 1 herein namely Yogesh Kumar is a teacher at Government Dongadula Higher Secondary School, Dhamtari and is engaged in teaching science subject to the students of that school.

(ii). A news article titled as "विज्ञान शिक्षक ने की तीन छात्राओं से छेड़खानी" was published in the local newspaper 'Dainik Haribhoomi' on 09/02/2017 in which it was stated that respondent No. 1 has misbehaved with/harassed three girl students of the school which was complained by those students to the Principal of the school.

(iii). Thereafter, respondent No. 1 is said to have served legal notice to the Chief Editor, Publisher, Bureau Chief i.e. petitioner herein and the local correspondent of 'Dainik

Haribhoomi' for publication of defamatory statement against him, but since no action was taken, a complaint under Section 199 of the Cr.P.C. read with Section 500 of the IPC (Annexure P/3) was filed by respondent No. 1 wherein the statements of respondent No. 1/complainant and his witness Brijlal Sahu were recorded and ultimately, by order dated 26/12/2017 (Annexure P/2), learned trial Magistrate, finding sufficient ground only against the petitioner and the local correspondent i.e. respondent No. 4 herein, registered offence punishable under Section 500 of the IPC against them. However, it was held that no case is made out against the Editor and Publisher of 'Dainik Haribhoomi'.

(iv). Against the order of the judicial Magistrate, petitioner preferred a revision but remained unsuccessful as the same was dismissed by order dated 11/09/2019 (Annexure P/1) which has been assailed in the present petition principally on the ground that Bureau Chief of the newspaper is not at all responsible for selection and publication of newspaper, as such, both the Courts below are absolutely unjustified

in taking cognizance and issuing process against the petitioner which deserves to be set aside.

3. Reply has been filed on behalf of respondent No. 1/complainant stating *inter alia* that it is well established law that not only the person who publishes a libel of it, but a person who in any way contributes to making a libel is also responsible for it. It has further been stated that petitioner, being the Bureau Chief of the newspaper 'Dainik Haribhoomi' which published the defamatory article, is liable for defamation caused against the respondent No. 1/complainant. In addition, it has also been stated that petitioner is seeking quashment of proceeding on hyper technical ground under Section 7 of the Press and Registration of Books Act, 1867 (the 'Act of 1867' for short) read with Rule 8 of Registration of Newspapers (Central) Rules, 1956 where it is apparent that the petitioner, being the Bureau Chief, is responsible for the defamatory article published against respondent No. 1/complainant, as such, the present petition deserves to be dismissed.

4. Mr. Tridib Bhattacharya, learned counsel for the petitioner would submit that summoning of accused

is a serious matter and the petitioner being Bureau Chief of 'Dainik Haribhoomi' is not responsible for selection as well as publication of articles in the newspaper. Only an Editor can be prosecuted for making defamatory statements against him, if any, under the provisions of The Press and Registration of Books Act, 1867, as such, learned trial Magistrate has erred in issuing process to the petitioner for offence punishable under Section 500 of the IPC, therefore, the impugned order passed by the trial Magistrate affirmed by the revisional Court taking cognizance of offence under Section 500 of the IPC against the petitioner deserves to be quashed/set aside.

5. Mr. Malay Jain, learned counsel for respondent No. 1 would support the impugned order and submit that petitioner is the person who is responsible for publication of said defamatory article against respondent No. 1 and learned trial Magistrate has rightly proceeded by registering offence under Section 500 of the IPC against the petitioner which has then rightly been affirmed by the revisional Court. Even otherwise, all the issues raised are the matter of trial and no case

warranting interference by this Court by exercising its jurisdiction under Section 482 of the Cr.P.C. is made out, therefore, the present petition deserves to be dismissed.

6. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

7. Before proceeding further, it is correct to say that respondent No. 1 has filed a complaint against the Chief Editor, Publisher, Bureau Chief i.e. petitioner herein and the local correspondent alleging that they are responsible for publication of defamatory article against him in the newspaper 'Dainik Haribhoomi' and while considering the question of taking cognizance of offence, learned trial Magistrate has held that the Chief Editor and the Publisher are not responsible for publication of the said defamatory article against respondent No. 1/complainant but the petitioner, being the Bureau Chief and respondent No. 4, being the local correspondent of the newspaper 'Dainik Haribhoomi', are responsible for the same and thereafter, proceeded to take cognizance of

offence under Section 500 of the IPC against the petitioner and respondent No. 4 herein.

8. At this stage, it would be appropriate to notice the provisions contained in the Press and Registration of Books Act, 1967. A preamble to the Act of 1867 provides as under :-

"Preamble. - Whereas it is expedient to provide for the regulation of printing-presses and of [newspapers], for the preservation of copies of [every book and newspaper printed in India and for the registration of such books and newspapers];"

9. In the matter of Ahaji C. H. Mohammad Koya v. T. K. S. M. A. Muthukoya¹ their Lordships of the Supreme Court have held that the object of the press Act was to regulate printing presses and newspapers in order to preserve copies of newspapers and books. Moreover, in order to avoid multiplicity of suit and uncertainties of liabilities, it was considered necessary to choose one of the persons from the staff and make him liable for all the articles or matters published in paper so that any person aggrieved may sue only the person so named under the provisions of the Press Act and is relieved from the necessity of making a fishing or roving

¹ AIR 1979 SC 154

enquiry about the persons who may have been individually responsible for offending matters published in the paper.

10. Section 1(1) of the Act of 1867 defines "editor" as under :-

"'editor' means the person who controls the selection of the matter that is published in a newspaper."

11. Section 5(1) of the Act of 1867 states as under :-

"5. Rules as to publication of newspapers.

- No [newspaper] shall be published in [India], except in conformity with the rules hereinafter laid down:

[(1) Without prejudice to the provisions of Section 3, every copy of every such newspaper shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication.]"

12. In exercise of the powers conferred by Section 20A of the Press and Registration of Books Act, 1867, the Central Government has framed the Registration of Newspapers (Central) Rules, 1956. Rule 6 states as under :-

"6. Annual Statement. - (1) Every publisher shall, in respect of his newspaper or each of his newspaper, furnish to the Press Registrar an annual statement relating to each [financial year] in Form II containing the particulars specified therein, so as to reach the Press Registrar on or before [the last day of May] of the following year."

[(2) Every copy of every newspaper shall have printed legibly on it the names of the printer, publisher, owner and editor and the place its printing and publication in the following form:

NOTE. - This Form may be modified to suit the circumstances of each paper, for example, where the printer, publisher and owner are the same the imprint line can be: Printed, published and owned by..... The editor's name, however, should be given separately in every case.]”

14. As quoted above, Section 5(1) of the Act of 1867 and Rule 8(2) of the Rules of 1956 clearly provides for Editor's name to be printed separately in every copy of every newspaper. Rule 6(1) requires every publisher to submit annual statement to the Press Registrar.

15. Section 8A of the Act of 1867 provides that if any person, whose name has appeared as editor on a copy of a newspaper, claims that he was not the editor of the issue on which his has so appeared, he may, within two weeks of his becoming aware that his name has been so published, appear

before a District, Presidency or Sub-Divisional Magistrate and make a declaration that his name was incorrectly published in that issue as that of the editor thereof, and if the Magistrate after making such inquiry or causing such inquiry to be made as he may consider necessary is satisfied that such declaration is true, he shall certify accordingly, and on that certificate being given the provisions of section 7 shall not apply to that person in respect of that issue of the newspaper.

16. Section 7 of the Act of 1867 provides as under :-

"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 declarations, [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, [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]."

17. In the matter of K.M. Mathew v. K.A. Abraham and

Ors.² the Supreme Court has held that Sections 7, 1(1), 5, 8A and the preamble of the Act of 1867 clearly 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. Paragraphs 14 and 20 of the report, being relevant, are reproduced below :-

"14. A conjoint reading of these provisions will go to show that in the case of publication of any newspaper, each copy of the publication shall contain the names of the owner and the editor who have printed and published that newspaper. Under [Section 7](#) of the Act, there is a presumption that the Editor whose name is printed in the newspaper as Editor shall be held to be the Editor in any civil or criminal proceedings in respect of that publication and the production of a copy of the newspaper containing his name printed thereon as Editor shall be deemed to be sufficient evidence to prove that fact, and as the 'Editor' has been defined as the person who controls the selection of the matter that is published in a newspaper, the presumption would go to the extent of holding that he was the person who controlled the selection of the matter that was published in the newspaper. But at the same time, this presumption contained in Section 7 is a rebuttable presumption and it will be deemed as sufficient evidence unless the contrary is proved. Therefore, it is clear that even if a person's name is printed as Editor in the newspaper, he can

still show that he was not really the Editor and had no control over the selection of the matter that was published in the newspaper. Section 7 only enables the court to draw a presumption that the person whose name was printed as Editor was the Editor of such newspaper, if the publication produced in the court shows to that effect.

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. "

18. Reverting to the facts of the present case in light of the aforesaid statutory provisions and the principle of law laid down by the Supreme Court in the matter of K.M. Mathew (supra), it is quite vivid that admittedly petitioner is not the editor of the newspaper 'Dainik Haribhoomi' within the meaning of Section 1(1) of the Act of 1967 who controls the selection of matter which has to be published in the newspaper and upon whom liability is imposed for publication of

offending article by Section 7 of the Act of 1967, rather he was the Bureau Chief of the said newspaper on the relevant date and respondent No. 1/complainant has not stated in his complaint that petitioner is otherwise responsible for the selection and publication of the offending news article, therefore, he is not responsible for the defamatory article (if any) published in the newspaper against respondent No. 1/complainant and no offence under Section 500 of the IPC could be registered against him.

19. In the matter of **V. Radhakrishna and Ors. v. Alla Rama Krishna Reddy and Anr.**³, it has been held by the High Court of Andhra Pradesh and Telangana at Hyderabad that Bureau Chief is not a person concerned for selection of news item and publication in newspaper, only Editor will select and publish the news item and at best the liability can be attached against the Editor of the newspaper. Paragraph 115 of the report states as under :-

"115. For this allegation, no *prima facie* material is produced to substantiate this contention. The duty of the reporter is to collect news item and give it to the Editor for publication and the Bureau-in-charge is not the person concerned with

selection of news item and publication in newspaper, only Editor will select and publish news item and at best the liability can be attached against the Editor of the Newspaper, whose name is printed in the declaration as required under Section 5 of the Act. Therefore, the Editor of the paper i.e. petitioner No.3 alone to be proceeded for the offence punishable under Section 500 or 501 of I.P.C. subject to maintainability of complaint, making out requirements to constitute such offence. Therefore, I hold that except petitioner No. 3, no others are responsible for publication of news item in Andhra Jyothi dated 15.05.2017 and 16.05.2017. Accordingly, the point Nos.3 and 4 are answered."

20. Similarly, in paragraph 80, it has also been held that in order to take cognizance, there must be some material which reads as under :-

"Even to take cognizance, there must be some material to establish that the person other than Editor selected news items and published. Mere clever drafting of complaint by using legal skills of an advocate to entrap any other person other than Editor so as to enable the Court to take cognizance, is illegal."

21. Thus, in the instant case, it is quite vivid that the Editor, Chief Editor and the Publisher have been discharged by the trial Magistrate while considering the question of taking cognizance of offence but petitioner, being the Bureau Chief and not the Editor, has been charged with the offence punishable under Section 500 of the IPC and cognizance has been taken against him.

Nowhere in the complaint, it has been stated that petitioner is the person who selected the alleged defamatory news article against respondent No. 1/complainant to be printed in the newspaper or that he got it published, as such, there is absolutely no material against the petitioner in this regard. Therefore, cognizance of offence under Section 500 of the IPC against the petitioner could not have been taken by the trial Magistrate. The fact remains that the selection of news item and publication of newspaper is the job of the Editor and the Publisher and the person who is Bureau Chief, cannot be made responsible for selection and publication of the offending news article stating that he is the person who selected the news article and got it published in the newspaper. Even otherwise, respondent No. 1/complainant does not seem to have questioned the order by which the trial Magistrate has declined to take cognizance against the Editor who the person responsible for selection of news articles and its publication in the news paper and thereby, responsible for publishing defamatory article against respondent No. 1/complainant, as such, I

am of the considered opinion that cognizance of offence under Section 500 of the IPC could not have been taken against the petitioner by the trial Magistrate. The revisional Court has also failed to perform its duty and has simply affirmed the order of the trial Magistrate without considering the matter in its proper perspective. Consequently, the order passed by the trial Magistrate against the petitioner only as well as the revisional Court are hereby quashed/set aside.

22. The present petition under Section 482 of the Cr.P.C. stands allowed.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet