

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.01.2020
CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.10348 of 2013 and
M.P.No.1 of 2013

1. Kashish Gupta
Anchor, NDTV Ltd.,
No.207, Okhla Industrial Estate,
Phase 3, New Delhi - 110020,
India.
 2. Prannoy Roy,
Chairman, NDTV Ltd.,
No.207, Okhla Industrial Estate,
Phase 3, New Delhi - 110020,
India.
 3. Vikram Chandra
Chief Executive Officer, NDTV Ltd.,
No.207, Okhla Industrial Estate,
Phase 3, New Delhi - 110020,
India.
 4. K.V.L.Narayan Rao
Executive Vice Chairman, NDTV Ltd.,
No.207, Okhla Industrial Estate,
Phase 3, New Delhi - 110020,
India.
- Petitioners

City Public Prosecutor
High Court Campus,
Chennai - 600 104.

सत्यमेव जयते

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.15 of 2013 pending on the of the learned Principal Sessions Judge, Chennai, and quash the same.

For Petitioners : Mr.N.L.Rajah, Senior Counsel for
Mr.P.V.Balasubramanian

For Respondent :Mr.Vijayanarayanan,
Advocate General Assisted by
Mr.R.Ravichandran,
Government Advocate (Crl.Side)

ORDER

The petitioners herein are accused and the respondent is complainant. The respondent filed a private complaint under Section 199 (2) of Cr.P.C. after obtaining necessary sanction to prosecute the petitioners/A1 to A4 for the offence punishable under Sections 500 and 501 of IPC. The learned Principal Sessions Judge, Chennai, has taken cognizance on the complaint in C.C.No.15 of 2013 and issued summons on the petitioners. The accused 1 to 4, on receipt of the summons, approached this Court, seeking to quash the case in C.C.No.15 of 2013 against them.

2 The learned Senior Counsel appearing for the petitioners would submit that first accused was a anchor of the show, which was telecast by New Delhi Television Limited (herein after referred to as "NDTV Ltd."), in which, according to the complainant, defamatory was made, second accused was Chairman of NDTV Ltd., third accused was Chief Executive Officer and fourth accused was Executive Vice Chairman of the NDTV Ltd. It is admitted by the respondent in his complaint that show was telecasted by NDTV, but, however, NDTV was not named as accused in his complaint. Further The entire complaint is silent on the role played by the petitioners in the alleged defamation. There is no specific averment as to how each of the petitioners involved in the commission of alleged offence. Merely because the petitioners hold some position in the NDTV Ltd., they cannot be prosecuted, that too in the absence of adding the Company, in which the petitioners are employees, as accused. Further the learned Principal Sessions Judge, Chennai, failed to conduct enquiry under Section 202 of Cr.P.C., through which, the learned Judge firstly satisfy himself whether prima facie there is any case to proceed and thereafter only, he can issue summons on the petitioners.

3 The learned Senior Counsel relied on the following decisions of the Hon'ble Supreme Court and this Court and also the Delhi High Court.

1. (2013) 2 Supreme Court Cases 435 (Udai Shankar Awasthi vs. State of Uttar Pradesh and another)
2. (2009) 1 Supreme Court Cases 516 (R.Kalyani vs. Janak C.Metha and others)
3. (2008) 5 Supreme Court Cases 668 (Maksud Saiyed vs. State of Gujarat and others)
4. (2009) 6 Supreme Court Cases 475 (Keki Hormusji Gharda and others vs. Mehervan Rustom Irani and another)
5. (2010) 10 Supreme Court Cases 479 (Maharashtra State Electricity Distrubution Company Limited and another vs. Datar Switchgear Limited and others)

6. (2012) 5 Supreme Court Cases 661 (Aneetahada vs. Godfather Travels and Tours Private Limited., etc., batch)
7. (1992)1 Supreme Court Cases 217 (K.M.Mathew vs. State of Kerala and another)
8. 2006 2 L.W. 377 (R.Rajagopal @ R.R.Gopall @ Nakkheeran Gopal and another vs. J.Jayalalitha and another)
9. 2018 SCC OnLine Mad 3300 (R.Mani and others vs. Rajeev Punnoil Irupattil and others)
10. Judge of Delhi High Court in the case of Maqbool Fida Husain vs. Raj Kumar Pandey.
11. (2015) 12 SCC 781 (Sharad Kumar Sanghi vs. Sangita Rane)

4 From the above cases, in the case of Sharad Kumar Sanghi vs. Sangita Rane reported in (2015) 12 SCC 781, it is held that when there is allegations against the company alone but not personally against the Directors of the company, without impleading the Company as accused, its Directors alone cannot be prosecuted. In this case also, the alleged show was telecast in the NDTV ltd., but, the respondent has not named the NDTV Ltd., as accused. The petitioners are named as accused only under the capacity of employees of the NDTV ltd., and hence to prosecute the petitioners, NDTV should have been arrayed as accused. The Hon'ble 'Supreme Court time and again held that "If a person, thus, has to be proceed with as being vicariously liable for the acts of the Company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the company as well as the person responsible for the acts of the company". From the above decision, it is clear that the employees of the company cannot be held to be vicariously liable for any offence committed by the Company itself. Therefore, the complaint against the petitioners has to be quashed.

5 The learned Advocate General appearing for the respondent, in reply to the argument advanced by the learned Senior Counsel appearing for the petitioners, contended that all the petitioners herein are jointly liable to be prosecuted for the show telecasted in the NDTV Ltd., The complaint itself clearly speaks about the role played by the petitioners and the news and comic script on the subject "Kamal Hassan Ban-Inside Story" which was telecasted in the NDTV Ltd., on 31.03.2013 is grossly defamatory against the Hon'ble Chief Minister, Government of Tamilnadu. The persons who are all responsible for the telecast of defamatory have been arrayed as accused. The company is not a natural person mens rea lacking an essential ingredients of the offence under Section 500 and 501 of IPC. Further the learned Advocate General would submit that if the statute itself fix a liability like cases under Negotiable Instruments Act, Food Adulteration Act and the Companies Act, the company has to be arrayed as one of the accused and without

impleading the company as accused, its Directors alone cannot be prosecuted, but, offence under Sections 499 and 500 of IPC, the Company is a juristic person and it may not have any mens rea and it is not necessary to add the Company as accused. To support his contentions, he relied on the decisions reported in 2013 SCC OnLine Del 1328 (Raymond Ltd., and Others vs. Rameshwar Das Dwarkadas P. Ltd.,) (1977) 8 Supreme Court Cases 732 (Kalpnath Rai vs. State (through CBI) etc., batch), 1967 SCC OnLine Cal 83 (Sunilakhya Chowdhury vs. H.M.Jadwet and another) and 2009 (108) DRJ 709 (Standard Chartered Bank vs. Vinay Kumar Sood and others). Further, he would state that even assuming that the company should have been added as party, as per Section 319 of Cr.P.C. during trial, at any stage, if the Court finds apart from the accused already been arrayed, any other person also involved in the crime, he may also be added as an accused or otherwise, the prosecutor himself can file a petition to implead such person as an accused. After receipt of summons, these petitioners rushed to this Court to quash the case against them on the technical ground. The learned Advocate General further submitted that enquiry under Section 202 is not necessary, when the complaint was preferred directly before the Court of Sessions after obtaining sanction of prosecution under Section 199 of Cr.P.C. The learned Advocate General placed reliance on the decision of the Hon'ble Supreme Court reported in (2015) 5 Supreme Court Cases 239 (Rajdeep Sardesai vs. State of Andhra Pradesh and others). The grounds raised by the learned Senior Counsel would not at all suffice to quash the case against the petitioners.

6 In reply to the contention of the learned Advocate General, the learned Senior Counsel appearing for the petitioners submitted that even for IPC offence also, if the accused is arrayed under the capacity of employee of a company, then the company must be added as party. The learned Senior Counsel placed reliance on the decisions of the Hon'ble Supreme Court reported in (2015) 12 SCC 781 (Sharad Kumar Sanghi vs. Sangita Rane) and the High Court of Madhya Pradesh in MCRC No.12658 of 2015 in the case of S.K.Shukla vs. State of Madhya Pradesh.

7 Heard the learned Senior Counsel appearing for the petitioners and the learned Advocate General assisted by the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record.

8 It is not in dispute that NDTV telecasted the show, which leads to file the present complaint. It is contended by the learned Senior Counsel, unless the company is arrayed as accused, its employees cannot be prosecuted, for which, the learned Advocate General contended that the persons, who are all

responsible for the defamation, are named as accused in the complaint. On reading of the entire complaint, nowhere the allegations which found place against the petitioners in their personal capacities responsible for the defamation and it is only stated that NDTV has telecasted the show amounting to defamation. Even in paragraph No.2 of the complaint, it is stated that the petitioners are under the capacity of employees of NDTV Ltd., are responsible for the defamation. Therefore, in the absence of arraying the Company as accused, the petitioners under the capacities of its employees cannot be prosecuted. The citation referred to by the learned Senior Counsel appearing for the petitioners in the case of Sharad Kumar Sanghi vs. Sangita Rane reported in (2015) 12 SCC 781 is helpful to the present case on hand. There is no quarrel with the settled proposition of law laid down by the Hon'ble Supreme Court in the cases referred to by the learned Advocate General and the learned Senior Counsel appearing for the petitioners. All other citations referred to by the learned Advocate General and the learned Senior Counsel for the petitioner are not applicable to the present case on hand. Whether the show telecasted by NDTV will constitute offence punishable under Sections 500 and 501 or it is only comic in nature as stated by the learned counsel appearing for the petitioners is a matter for trial. However, the allegations in the complaint would reflect, principally the allegations are against NDTV Ltd. only, but, NDTV has not been made as party.

9 The contention raised by the learned Advocate General that for the offence under IPC, the company need not be added as party is acceptable, provided the employees of the company are personally held liable. The other contention of the learned Advocate General regarding Section 319 of Cr.P.C, this Court is of the view that this petition filed in the year 2013 raising the main ground that the Company has not been added as party, but, so far, the complainant has not taken any effective steps to get sanction from the competent authority for prosecuting the Company and further it is true, during trial, at any stage, if the Court finds that any of the person other than the accused already arrayed in the complaint also committed an offence in the case, such person can also be impleaded, but, the complainant in his complaint itself arrayed the petitioners as accused under the capacities of employees of NDTV and it was clearly stated in the complaint that the show telecasted in the NDTV amounting to defamation. Therefore, the contention of the learned Advocate General is not acceptable.

10 A thorough reading of the complaint filed by the respondent, it reveals that the petitioners are shown as accused only under the capacities of employees of NDTV Ltd., and not

their personal capacities. It is relevant to extract paragraph no.2 of the complaint.

"2. It is respectfully stated that the first accused Miss.Kashish Gupta, Anchor, the second accused Thiru Prannoy Ry, Chairman, the third accused Thiru Vikram Chandra, chief Executive Officer and the fourth accused Thiru K.V.L.Narayan Rao, Executive Vice Chairman. The accused are jointly responsible for the functioning of NDTV where the defamatory news item was published."

11 As far as enquiry under Section 202 of Cr.P.C. is concerned, in this case the allegation is that defamatory statement was telecasted in NDTV and copy of the CD has also been produced and therefore order of enquiry by the Magistrate to find out prima facie case is unnecessary and hence the contention raised by the learned Senior Counsel for the petitioners in this regard is not acceptable.

12 Without going into the merits of the case, on the score that there is no specific allegation personally alleged against the petitioners and they have been arrayed as accused only as employees of the company even without impleading NDTV as an accused, the case in C.C.No.15 of 2013 is hereby quashed. This criminal original petition is allowed accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge, Chennai.
2. The City Public Prosecutor, High Court Campus, Chennai - 600 104.

+1cc to Mr.B.F.S.Legal, Advocate, SR.No.3849.

CrI.O.P.No.10348 of 2013 and
M.P.No.1 of 2013

RR(CO)
CSR:24.02.2020