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CrI.O.P.No.25389 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.08.2023

PRONOUNCED ON: 11.09.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CrI.O.P.No.25389 of 2021
and
CrI.M.P.Nos.14063 & 14066 of 2021

1.The New Indian Express
Rep. By its owner
Mr.Manoj Kumar Sonthalia,

2.Mr.PrabhuChawla
Editorial Director
The New Indian Express

...

Petitioners

/vs/

Dr.S.Diraviam Dinesh

...

Respondent

Prayer : Criminal Original Petition has been filed under Section 482 Cr.P.C. to call for records in C.C.No.144 of 2021 on the file of the learned Judicial Magistrate No.I, Tambaram and quash the same.

For Petitioners

...

Mr.V.Gopinath
Senior Counsel for
Mr.Swami Subramanian

Respondent

...

Party – in - person



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ORDER

Challenging the criminal proceedings in C.C.No.144 of 2021 on the file of the learned Judicial Magistrate No.I, Tambaram, the present criminal original petition has been filed.

2.The case of the complainant is that The news item published in The New Indian Express dated 23.08.2018 with the caption “HC Raps Estranged Couple, School over fake documents and in the online news edition EDEX Live a news material was posted on 22.08.2018 with the caption “Madras High Courts rebukes couple, who got hold of fake transfer certificate for children”.

3.The learned counsel appearing for the petitioners submitted that totally five accused in C.C.No.144 of 2021, in which, the 1st accused is the New Indian Express, the 2nd accused is described as Editorial Director, the 3rd accused is Editor in chief, the 4th Accused in chief reporter and the 5th accused is the reporter of the New Indian Express. The petitioners are the



first and second accused. As per the declaration made in the paper, A1/The New Indian Express Mr.Manoj Kumar Chontalia is shown as Chairman of the Board and the A3 is shown as Editor in Chief and another person is shown as Residential Editor, whom is made responsible for the selection of news under the PRB Act. As per the online paper is concerned in the declaration, A3 is shown as Editor and A4 as Edex Editor. As far as the 1st accused is concerned, it is the name of the Newspaper, publication and it is not a legal entity or a juristic person and hence, it cannot be made liable under section 500 of I.P.C since the imputations must have been made with the intention to harm or with the knowledge or having reason to believe that it will harm the reputation of the person concerned. Thus, it is clear that intention to cause harm is the most essential sine qua non for an offence under section 499 I.P.C. The offence punishable under section 500 of I.P.C requires a blame worthy mind and is not a statutory offence requiring no men rea. The 1st accused is a private limited company and not a individual, hence mensrea cannot be attributed against A1, mensrea is the essential ingredient in the said offence. It is submitted that mensrea would be missing as a company it is a juristic entity or an artificial person. It is



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submitted unless the section of a particular statute will permit the application of the said section to a limited company, the limited company cannot be prosecuted.

4.The learned counsel further submitted that the 2nd accused is shown as Editorial Director in the complaint but in none of the declarations made by the paper, there is no reference to any Editorial Director, but the name of the Editor and Residential Editor is mentioned. It is further submitted that as per the Act Editor means, the person, who controls the selection of the matter that is published in the newspaper. Further, the presumption under section 7 of the Act will apply to only persons mentioned in the declaration as made under section 5 of the Act, so, the 2nd accused will not be made liable for the offence under section 500 of I.P.C. In the complaint, except the complainant no other witnesses has been cited and it is not the case of the complainant that he was known to the accused persons or that he is acquainted with the accused persons. The complainant has made bald allegations in the complaint saying that A4 and A5 are functioning under the supervision of A2 and A3 and there is no material to



show that how the complainant becomes aware of it. The whole allegations are based on his presumption and summaries and there is not even having prima facie material to support his allegations against the 2nd petitioner herein. Further, contended that in response to the email send by the complainant that on 01.09.2018 the clarification was published in the newspaper stating that the “High Court has criticized only the school and the mother over the fake certificate and also regretted for the error” similarly on the online edition in EDEX live also on 19.09.2018 itself the head line published on 22.08.2018 has been deleted and new headlined has been updated as “ Madras High Court rebukes School and Mother over fake transfer certificates fiasco” which shows that they have acted bonafide with no intention to defame the complainant to harm his reputation in the public.

5.To support his argument, the learned counsel appearing for the petitioners relied upon the judgment of the Hon'ble Supreme Court in ***The State of Maharashtra Vs. R.B.Chowdhari and others*** reported in **1968 Crl.L.J. 95.**



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6.The learned counsel appearing for the respondent submitted that the complainant can prove the others had knowledge and they were responsible for the publication of the defamatory news item. Further, contended that Section 7 of the Press & Registration of Books Act, 1867 does not create any immunity in favour of the persons, other than the Editor of the Newspaper. It only creates a rebuttal presumption that the person, whose name shown as the Editor of the newspaper, is responsible for the charge and the publication of the material in the newspaper. Therefore, the petitioners being the owner of the newspaper, employes, various persons to print, publish and sell newspaper to make a financial gain out of said activity, which is carried on by the owner. Under these circumstances, where defamatory matter is printed and sold and offered for sale, the owner thereof can be made liable vicariously for the defamatory material carried by his newspaper.

7.To support of his argument, the learned counsel appearing for the respondent relied upon the judgment of the Hon'ble Supreme Court in ***Mathew Vs. Abraham*** reported in ***CDJ 2002 SC 490 and Mohammed***



Abdulla Khan Vs. K.Prakash reported in ***CDJ 2017 SC 1346***.

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8.I have considered the matter in the light of the submissions made by the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondent and perused the materials available on record.

9.On perusal of the materials, it is noticed that there are totally five accused in C.C.No.144 of 2021 on the file of the Judicial Magistrate No.I, Tambaram, in which, the petitioners are the first and second accused. The first accused is the New Indian Express and the second accused is Editorial Director. The undisputed fact is that The news item published in The New Indian Express dated 23.08.2018 with the caption “HC Raps Estranged Couple, School over fake documents and in the online news edition EDEX Live a news material was posted on 22.08.2018 with the caption “Madras High Courts rebukes couple who got hold of fake transfer certificate for children”.

10.Further, it is also not disputed that as per the declaration made in



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the paper The New Indian Express Mr.ManojkumarChontalia is shown as Chairman of the board and the A3 is shown as Editor in Chief and another person is shown as Residential Editor whom is made responsible for the selection of news under the PRB Act. As per the online paper is concerned in the declaration A3 is shown as Editor and A4 as Edex Editor.

11.The preamble of the Press Act indicates the object of this Act which is to regulate printing presses and newspapers in order to preserve copies of the newspapers and books. To avoid multiplicity of suits and uncertainties of the liabilities, Legislature considered it to be appropriate and necessary to chose one of the persons and make him liable for all articles and matters published in the newspaper so that any aggrieved person may sue only the so-named person under the provisions of the Press Act. Editor, as per the Press Act, has been named as the person responsible for selecting the articles or matters published in the newspaper. This would obviate the necessity of making a fishing or roving enquiry about persons who may have been individually responsible for the offending matters published in the newspaper. The expression "Editor" has also been defined



in Section 1 of the Act as under:

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“Editor' means the person who controls the selection of the matter that is published in a newspaper.”

12. Section 7 of the Press & Registration of Books Act, 1867 reads as follows:

"7. Office copy of the 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, 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."

13.A conjoint reading of these provisions will go to show that there is no statutory immunity against the owner of the Newspaper, Editorial Director, Editor in Chief and Chief Reporter or Reporter.

14.Now, this Court has to see whether the complainant in the complaint has specifically alleged that the petitioners had knowledge of the publication of the alleged defamatory matter in The New Indian Express dated 23.08.2018 and they are responsible for such publication.

15.Immediately, I had gone through para – 5 of the the impugned complaint, the complainant raised all the allegations of the defamatory matter. It runs as follows:

“5.The complainant submits that the 1st accused newspaper agency through the 5th accused Reporter Siva Sekaran published a



report on the order passed by the Hon'ble High Court of Madras in W.P.No.28352 of 2017 in the issue dated 23.08.2018 on page 4. To the utter shock and disbelief of the complainant the title of the said report read as

“HC raps estranged couple, school over fake documents”

directly accusing both the complainant and his estranged wife together, as though both had jointly obtained the above said fake TC from the above mentioned school. In addition to the above, in the 1st accused's online newsfeed EDEXlive headed by the 4th accused another news material was posted on 22.08.2018 with the caption which reads as follows:

“Madras High Court rebukes couple who got hold of fake transfer certificates for children.”

The complainant states that it would be pertinent to note that he was the one, who



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brought the illegal act of his estranged wife and the above mentioned school to light fighting against all odds. But, surprisingly, the 5th accused herein, the reporter namely Siva Sekaran grossly distorted the above said order of the Hon'ble High Court of Madras which is available in the printed form unnecessarily dragging the complainant into the ring of the illegality committed by Lakshmy and the Chennai school. It is important to note that the above said maligned report published in the 1st accused newspaper was not based on some hearsay information from some 3rd person or narration of any event but it was based on the written order passed by the Hon'ble High Court of Madras on the Writ Petition filed by the complainant herein. The complainant states that after publishing of the above misleading news the complainant started getting both personal as well as telephonic enquiries from friends and well-wishers not only from local place of stay but also from his native place Madurai and abroad. Both friends and relatives started enquiring as to how the complainant could get caught in such



an illegal activity. The complainant states that unable to comprehend as to what was happening when he saw the said news clipping he was shocked beyond belief. It is beyond comprehension of any prudent human being that how possibly the Hon'ble HC order could be misinterpreted to such a Himalayan extent that the petitioner in the said Writ petition himself is portrayed as an accused, party to the illegal acts against which legal action was sought by him.

16. Apart from this, there is no specific allegation against these petitioners to show that they had knowledge of the publication of the alleged defamatory matter and how they are responsible for such publication. For a Magistrate to take cognizance of an offence against a person other than the Editor of the newspaper, there must be positive averment in the complaint of the knowledge of defamatory matter and obviously the consent to publish the same. There is nothing in the complaint to suggest that the petitioners were performing the functions, duties or shouldering the responsibilities of the Editor making them liable for prosecution.



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17.Further, it is to be taken into consideration that the extent of applicability of principle of vicarious liability in criminal law, particularly, in the context of offences relating to defamation, an authoritative pronouncement is not available. In the instant case, the petitioners had no consent with the publication to the article in question. Therefore, it would not be fair to hold them responsible for the publication and it meets the parameter laid down by the decisions of the Hon'ble Supreme Court in *State of Haryana and others Vs. Bhajanlal* reported in *AIR 1992 (604)*, *R.P.Kapoor Vs. State of Punjab* reported in *AIR 1960 SC 866* and *Neeharica Infrastructure Pvt. Limited Vs. State of Maharashtra and others* reported in *AIR 2021 SC 1918*, therefore, the criminal proceedings against the petitioners in C.C.No.144 of 2021 is unsustainable and it is liable to be quashed.

In the result, the criminal proceedings in C.C.No.144 of 2021 is hereby quashed and the criminal original petition is allowed. Consequently,



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connected miscellaneous petitions are closed.

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Internet : Yes/No
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To
The learned Judicial Magistrate No.I, Tambaram.

V.SIVAGNANAM,J.

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Pre-delivery order made in
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