

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO. 393 OF 2022

1. Vijay

2. Rajendra

The applicants are having their office
at Lokmat Bhavan, Jawaharlal Nehru
Marg, Nagpur – 440 012

... **APPLICANTS**

VERSUS

Ravindra Ghisulal Gupta,

... **NON-APPLICANT**

Shri Firdos Mirza, Advocate for the applicants.
Shri Nitin Lambat, Advocate for the non-applicant.

CORAM : VINAY JOSHI, J.
DATED. : 20.06.2022.

JUDGMENT :

Heard. **ADMIT.** By consent, the matter is taken up for final disposal.

2. By invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, this application takes an exception to the order of the learned Judicial Magistrate First Class, Yavatmal directing to issue process under Section 500 of the Indian Penal Code in R.C.C. No. 614 of 2017. Applicant no.1 Vijay Darda is the Chairman of Lokmat Media Private Limited (Lokmat Newspaper (P) Ltd.) whilst applicant no. 2 Rajendra Darda is an Editor-in-chief of Lokmat Media. Lokmat group is publishing a daily newspaper having wide circulation in the State of Maharashtra. The non-applicant (complainant) was aggrieved by a news item published in the daily edition of 'Lokmat' dated 20.05.2016. It is the complainant's case that the applicants have published a false and frivolous news item in connivance with the co-accused with the sole intention of humiliating him, which has lowered his image in society.

3. Accordingly, the non-applicant lodged a private complaint in the Court of Judicial Magistrate First Class, Yavatmal against the applicants and others alleging that they have committed an offence punishable under Section 500 of the Indian Penal Code. The learned Magistrate by taking cognizance of the complaint has recorded verification of the complainant. On examination of available material, the learned Magistrate has issued a process against the applicant and others. Aggrieved by the order of issuance of process, the applicants have directly approached this Court in terms of Section 482 of the Code of Criminal Procedure by relying on the decision of the Supreme Court in case of *Prabhu Chawla vs. State of Rajasthan and anr. (2016) 16 SCC 30*.

4. The facts leading to the controversy can be set out in a narrow compass, that the applicant no.1 is a Chairmen of the Editorial Board whilst applicant no. 2 is an Editor-in-chief of Lokmat Group. Undisputedly, in the daily edition of "Lokmat" dated 20.05.2016, a news item was published concerning the complainant and his family. For the sake of convenience, the said news item is reproduced in vernacular as below :

“संपत्तीच्या वादातून दोन गटांत हाणामारी”

यवतमाळ – येथील मारवाडी चौकात संपत्तीच्या वादातून सोमवारी दोन गटात वाद होउन हाणामारी झाल्याची घटना घडली. या प्रकरणी दोन्ही गटांतर्फे मंगळवारी परस्परांविरुद्ध शहर पोलीस ठाण्यात तक्रारी देण्यात आल्या आहेत.

एका महिलेने दिलेल्या तक्रारीनुसार आरोपी अशोक गुप्ता, सुमीत गुप्ता, आकाश गुप्ता, अरुण गुप्ता व अमोल गुप्ता रा. सर्व मारवाडी चौक यांनी जागेच्या वादावरून तिच्या पतील लोखंडी पाईपने मारहाण केली. तसेच तिच्या गळ्यातील 60 हजार रुपये किंमतीचे मंगळसूत्र जबरीने तोडून नेले. तर याच प्रकरणात अशोक गुप्ता यांनी दिलेल्या तक्रारीनुसार आरोपी अरविंद गुप्ता, त्रिलोक गुप्ता, निखिल गुप्ता, रवींद्र गुप्ता व इतर दोन महिलांनी मिळून संपत्तीच्या वादातून फावडे व लोखंडी रॉडने मारहाण करून गंभीर दुखापत केली तसेच अशिलल शिविगाळ करून जीवे मारण्याची धमकी दिली. शहर पोलिसांनी दोन्ही गटांविरुद्ध गुन्हा दाखल केला आहे.”

5. Precisely, it was a publication regarding the registration of crime against the complainant and his family members. Feeling aggrieved by such publication, the non-applicant (complainant) has filed a complaint of defamation. It is the case of the complainant that though the applicants were shouldering the responsibility of the items published in the newspaper, they have published the concerned news without verifying its truthfulness. The complainant alleged that the police report lodged by the co-accused Ashok Gupta was totally false and frivolous. On the date of the alleged occurrence,

the complainant was not present at the scene of the crime. Later on, he was excluded from the charge sheet. It is alleged that the applicants, without ascertaining the genuineness of the police report, published the news item which has harmed his reputation and therefore, the offence.

6. Primarily, on the reading of the aforesaid vernacular news item of the impugned news, it is evident that the Journalist/News Reporter has only reported the filing of the police report and the registration of the First Information Report by the Police officials. It is not in dispute that the news report was in consonance with the police report.

7. Learned Counsel for the applicants made two-fold submissions. Firstly, the applicant nos.1 and 2 are not the Editors of the newspaper as per the declaration made under Section 7 of The Press and Registration of Books Act, 1867 (for short hereinafter referred to as 'the Act'). In support of said contention, my attention has been invited to the imprint line of the newspaper. The said imprint has a specific reference that one Dilip Tikhile is an Editor

and responsible person in terms of the Act. It is specifically argued that the imprint note not only specifies the name of the Editor, but also clarifies that the said person is responsible as per the Act. On that basis, it is argued that no liability could be fastened against the applicants in contradiction to the declaration made under the Act.

8. The scheme and scope of the Press and Registration of Books Act, 1867 are relevant for adjudication of the issue involved. Section 1 of the Act is the interpretation clause and the expression “Editor” has been defined as follows:

“1. Interpretation clause.—(1) In this Act, unless there shall be something repugnant in the subject or context —

....

‘editor’ means the person who controls the selection of the matter that is published in a newspaper;”

9. Section 7 of the Act makes the declaration to be *prima facie* evidence for fastening the liability in any civil or criminal proceeding on the Editor. Section 7 of the Act reads as follows:

“7. Office copy of declaration to be prima facie evidence.— In any legal proceeding whatever, civil as well 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 declaration shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, 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.”

10. Therefore, from the scheme of the Act, it is manifest that it is the Editor who controls the selection of the matter that is published in a newspaper. Additionally, every copy of the newspaper is required to contain the names of the owner and the Editor and once the name of the Editor is shown, he shall be held responsible in any civil and criminal proceeding. The interpretation clause contained in Section 1, clarifies that there is presumption that the Editor is the person who controls the selection of the matter that was published in the newspaper. This presumption under Section 7 of the Act is a rebuttable presumption and it would be deemed sufficient evidence unless the contrary is proved.

11. By placing reliance on the decision of the Supreme Court in case of *K.M. Mathew vs. State of Kerala and anr. (1992) 1 SCC 217* it is contended that the presumption under Section 7 of the Act is only against a person whose name is printed as an “Editor” and not against every person who is connected with the newspaper. In the said case the Supreme Court has specifically considered the said question in the matter of newspapers. After referring to the provisions contained in the Act, it was observed in paragraphs Nos.9 and 10 in the manner is as follows:

“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. See State of Maharashtra v. Dr. RB. Chowdhary & Ors., (1967) 3 SCR 708; U.P. Mishra v. Kamal Narain Sharma & Ors., (1971) 3 SCR 257, Narasingh Charan Mohanty v. Surendra Mohanty, (1974) 2 SCR 39 and Haji C.H. Mohammed Koya v. T.K.S.M.A. Muthukoya, (1979) 1 SCR 664.

10. It is important to state that for a Magistrate to take cognizance of the offence as against the Chief Editor, there must be positive averments in the complaint of knowledge of the objectionable character of the matter. The complaint in the instant case does not contain any such allegation. In the absence of such allegation, the Magistrate was justified in directing that the complaint so far as it relates to the Chief Editor could not be proceeded with. To ask the Chief Editor to undergo the trial of the case merely on the ground of the issue of process would be oppressive. No person should be tried without a prima facie case. The view taken by the High Court is untenable. The appeal is accordingly allowed. The order of the High Court is set aside.”

12. In the present case, it is blatantly obvious that there is no allegation against the present applicants that they were having knowledge of the publication of such imputation or that they were directly responsible for the publication of such imputation. The Chairman is supposed to have the overall control over the management of the establishment. He is not directly concerned with the publication of the news items and unless there are materials to

come to such a conclusion, he cannot be roped in for having committed the offence under section 499 of the IPC. The principle of vicarious liability is not applicable to Criminal offences and in the absence of any provision laid down in the statute, the Chairman cannot be held vicariously liable for the offence committed by the employees. Merely because the accused happened to be the Chairman of the Lokmat group, no criminal case can lie against him for an offence punishable under Section 500 of the IPC.

13. Contextually reference can be made to the decision of this Court in *Samir Jain s/o Ashok Kumar Jain v. Abhijit Chavan 1996 (2) ALL MR 93*, wherein this Court has observed that the law is well settled that an owner of a newspaper cannot be made accused of defamation only on the ground of his ownership unless there is specific material to show that he is in any way directly responsible for the publication of impugned news items.

14. Pertinent to note that the imprint line though conspicuously spells out that one Dilip Tikhile is Editor and responsible under the Act, still he is not made accused. By any

stretch of imagination, the liability of publication cannot be stretched to the applicants unless a case of conspicuous malice is made out. The complaint is totally silent to indicate either the applicants know the complainant or they had any reason to publish said particular news. The intention on the part of the accused to harm the reputation or the knowledge or reasonable belief that an imputation will harm the reputation of the person concerned is an essential ingredient of the offence of defamation. There is no material to show that the applicants were somehow concerned with the publication of the defamatory news item. Presumption regarding awareness of the contents of the newspaper can be raised only against the Editor whose name appears on the copy of the newspaper and not against the other Editors like Editor-in-chief, Sub-editor, Resident Editor, etc.

15. Learned Counsel for the non-applicant submitted that the applicants have deliberately suppressed the name of Editor though repeatedly asked. In this regard, I have been taken through the exchange of notices in between the parties. Initially, the complainant vide notice dated 25.07.2017, has asked the name of a person at whose instance the said news item was published. The said notice

was responded to by the Lokmat Group through their advocate vide reply dated 08.08.2017. In said reply, the complainant's attention was invited to the imprint line of newspaper about the responsibility of the particular named person. Learned Counsel for the Complainant would submit that since no specific name of Editor was furnished, the complainant issued a second notice dated 24.08.2017 once again enquiring the name of a responsible person /Editor for taking appropriate action.

16. It is argued that since the applicants have deliberately suppressed the name of the Editor, it amounts to *mala fides*. In a true sense, the said exercise was unwarranted. Already as a mandate of the Act, an imprint line was published in the newspaper displaying the name of the Editor with a specific note that he is responsible for the news items. In the circumstances, there was no obligation on the applicants to refurnish the said information and therefore, submission as regards *mala fides* is wholly untenable.

17. It takes me to another limb of submission. Learned Counsel for the applicants would submit that mere publication of

registration of crime would not fall within the ambit of Section 499 of the Indian Penal Code. It is submitted that whatever was registered in the First Information Report against the non-applicant (complainant), was published in the newspaper, which cannot be termed as defamation. In order to constitute the offence of defamation, the dual requirement is to be met, that the publication must be an imputation, and secondly, there must be an intention to harm the reputation of the person.

18. It is not in dispute that at the instance of the Police report lodged by co-accused Ashok Gupta, Police of Yavatmal City Police Station registered crime no. 313 of 2016 for the offence punishable under Sections 143, 148, 326, 294 and 506 of the Indian Penal Code against the non-applicant (complainant) and 5 others. As far as the news item is concerned, there is no allegation that the news was a distorted version or a colourable exaggeration of the First Information Report. In short, there is no dispute that the crime was registered against the complainant and the news item reflects the true gist of the allegations levelled in the report. Rather the said fact cannot be disputed since the copy of the First Information Report has

been produced on record. The core question is whether publication or reporting of registration of crime amounts to the intentional imputation of a named person. Undoubtedly, the Press has great power in impressing the minds of the people and thus it is essential that the person responsible for publishing anything in newspapers should take good care before its publication. No doubt, publication of news on rumour or on hear-say information having no iota of truth is fatal to a Journalist. Herein it is not the case that First Information Report was not at all registered or the distorted news item was published.

19. It was thus inquired from the Counsel for the non-applicant as to how the action of reporting a news item could be said to be defamatory. It is common knowledge that in daily newspapers at least some space is devoted to the news about the registration of crimes, filing of cases in Courts, the progress of the investigation, arrest of persons, etc. It constitutes news events which public has the right to know. Certainly, the Publishers are to report the true happenings in their newspapers. I may reiterate that there is no dispute that the fact of registration of crime was correctly reported.

Filing complaints about defamation on such news items are nothing but an attempt to shut up and stifle the Reporters /informants and to force them to withdraw the report filed against the persons who are allegedly defamed. No reply in this respect was forthcoming from the Counsel of the non-applicant nor has anything in this respect been stated as to how the said act of Editor/Publisher gives rise to the action for libel. If it was held so then no reporting of news could be made till the final outcome of the investigation or the final orders of the last Court. It would deprive the rights of the public to know the happenings.

20. It is the primary function of the Press to provide comprehensive and correct information, especially when it is brought into the public domain. Freedom of the Press is implied from the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution of India. In other words, the freedom of making a true report regarding the affairs which are in the public domain is a right, which flows from the freedom of speech. The action of defamation about true and faithful reporting is unhealthy for a democratic setup.

21. Registration of a crime is no longer a private affair. The Supreme Court in case of *Youth Bar Association of India vs. Union of India and anr. (2016) 9 SCC 473* has directed that the copies of the First Information Report (barring cases of sensitive nature) shall be uploaded on the website meaning thereby the registration of the First Information Report falls in the public domain.

22. The main question that arises is as to whether a case is made out for attracting the offences punishable under Sections 499 and 500 IPC from the averments contained in the complaint (R.C.C. No. 614 of 2017). I have carefully gone through the averments in the complaint. From the contents of the same, it is discernible that, apart from the averment to the effect that the applicants are Chairman and Editor-in-chief, the specific role played by them in selecting, editing and publishing the said news item has not been stated therein. All the allegations contained therein are general in nature. Conspicuously, the person who is directly responsible for publishing the news item has not been made an accused. Therefore, the question that emerges here is whether merely because of the fact that the applicants were holding high positions in the Newspaper Group can be implicated for the offence alleged. Before going into

further details, the requirements to attract offences under Sections 499 and 500 IPC are to be examined. Section 499 IPC reads as follows:

“499. defamation.- Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1.- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.- An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

23. From the perusal of the definition of the term “Defamation” as contained under Section 499 IPC, it can be seen that, in order to attract the said offence, there must be a positive act on the part of the accused by words either spoken or intended to be read, or by signs or by visible representations, which contain any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person. It is evident that the offence is person-centric and only if the particular accused has made any act with the specific intention or knowledge of its consequences, he can be prosecuted for the said offence. In such circumstances, it is absolutely necessary that the complaint should contain specific averments, pointing out the specific role played by each of the accused persons in expressing, making or publishing the objectionable imputations with the intention or knowledge of the consequences of such imputations.

24. The tenor of the entire private complaint is that the allegations levelled in the Police report *qua* complainant Ravindra are totally false. In the complaint of defamation, he pleaded that on

the date of the alleged occurrence, he was not present rather he was elsewhere on duty. It is alleged that the publisher of the newspaper without verifying the truthfulness of the news, had published the news item, amounting to defamation. The complaint also bears reference that complainant has been excluded while filing the charge sheet, perhaps under Section 169 of the Code of Criminal Procedure. As a matter of fact, the news item was published within three days from the registration of the crime, therefore, subsequent exclusion from the charge sheet has no bearing at all. Moreover, the news item was based on the true facts i.e. about the registration of crime at the Police Station. The responsibility of the Editor is to publish true facts and nothing else. The complaint of defamation alleges that the truthfulness of the contents of the First Information Report are not verified. The publisher is not expected to investigate the matter and ascertain the truthfulness of the First Information Report before publishing the news item. The liability and responsibility of the Editor are restricted to a limited extent therefore, the contention in that regard is not acceptable.

25. Moreover, in the light of the legal position set out by the

Supreme Court in the above-referred case of *K.M. Mathew* it is not possible to implicate the applicants in the absence of specific averments indicating their role in the commission of the offence. Further, there is also no provision under the Indian Penal Code providing for vicarious liability upon persons other than persons declared under the Act.

26. One cannot miss the fact regarding the conduct and manner in which the news item was published. The whole reading of the news item discloses that the reporting was not only as regards to registration of crime against the complainant and his family members, but in the same news another story i.e. registration of a counter case against another group has also been published. The said fact accentuates to infer that the sole intention behind publication was to make true and fair disclosure about the fact of registration of crimes.

27. To summarize the position as per the statutory imprint line, the responsibility of publication would not lie on persons other than the named responsible person. Moreover, the averments contained in the complaint do not disclose the applicant's role in

preparing, editing or publishing the news item, which is the subject matter of the complaint. All the allegations contained therein are of general nature. Conspicuously, the person who was directly responsible as per statutory declaration was not made an accused. The learned Counsel for the non-applicant has not disputed the said position of law. Inasmuch as, fair reporting of the information, which is brought in public domain i.e news item containing a statement of facts may not attract action for defamation. I may reiterate that fair reporting of a matter, without insinuations and innuendos i.e. a news item is not actionable. Continuation of such prosecution amounts to abuse of the process of the Court and would not sustain in the eyes of law.

28. In view of that, application deserves to be allowed, and allowed accordingly. The impugned order of issuance of process dated 16.01.2018 against the applicants in R.C.C. No.614 of 2017 is hereby quashed and set aside. The Criminal Complaint against applicant nos. 1 and 2 stand dismissed. The Criminal Application stands disposed of in the above terms.

(VINAY JOSHI, J.)

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