
(2015) 02 JH CK 0053
In the Jharkhand High Court
Case No : Cr.M.P. No. 4887 of 2001

Anjana Agarwal and Others	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Penal Code, 1860 (IPC) — Section 419, 499, 500, 501, 502
Press and Registration of Books Act, 1867 — Section 1(1), 5, 5(1), 7

Citation : (2015) 4 Crimes 203

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Parmeshar Prasad, for the Appellant

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.—Heard learned counsel for the parties.

2. In this application, the petitioners have prayed for quashing the entire criminal proceeding in connection with C.P. Case No. 1404 of 2000 including the order dated 27.4.2001, passed by Shri P.N. Upadhyay, learned Judicial Magistrate, Dhanbad, whereby and whereunder, cognizance has been taken for the offence punishable under sections 419, 500, 501 and 502 of the Indian Penal Code.

3. A complaint was lodged by the opposite party No. 2, in which it was stated that the complainant is the Editor cum Director of Chhotanagpur Times Production and is in the business of Journalism for the last six years. The complainant also claimed to be the publisher of Chhotanagpur Times and its weekly T.V. News. It has been alleged that on 4.12.2000 and 5.12.2000, the complainant could come to know about the publication of a news item in local newspaper "Bihar Observer", in which certain defamatory language and words were used, which lowered down the reputation of the complainant. It has been further alleged that the complainant along with his office staffs informed the accused persons with respect to the said news item published in the news paper

by a letter dated 4.12.2000 but the same was not printed and published by the accused persons.

4. After conducting an inquiry under section 202 Cr.P.C., cognizance was taken for the offence punishable under sections 419, 500, 501 and 502 of the Indian Penal Code by the learned Judicial Magistrate, Dhanbad vide order dated 27.04.2001.

5. Learned counsel for the petitioners has submitted that the petitioner No. 1 is the Managing Editor of newspaper "Bihar Observer", petitioner No. 2 is the owner of D.B. Publications Pvt Ltd. and petitioner No. 3 is the editor of the said news paper. He has further submitted that the article, which was published by the newspaper, cannot be by any stretch of imagination said to be defamatory and moreover the said news item was basically a memorandum submitted to the Superintendent of Police, Dhanbad by local news editor of "Eye View" and as such the same was not an independent news item, for which the petitioners could be held liable. He has also submitted that the publication of the said news, which was in the form of a memorandum comes within 9th and 10th exception of section 499 of the Indian Penal Code. Alternatively, it has been argued by learned counsel for the petitioners that even if the allegations are taken to be true in its entirety in view of section 7 of Press and Registration of Books Act, 1897, the petitioner No. 1 being the Managing Editor and petitioner No. 2 being the owner of D.B. Publications (Pvt) Ltd. cannot be held responsible as filtration of the news items, which are to be published in the newspaper, are the responsibility of the editor.

6. Learned counsel for opposite party No. 2, on the other hand, has submitted that the news item, which was published in the daily newspaper "Bihar Observer" although was in the form of a memorandum submitted to the Superintendent of Police, Dhanbad but it was the responsibility of the petitioners to ensure that such news items which are apparently defamatory in nature, are not published. The publication of the said news had lowered the prestige and reputation of the complainant-opposite party No. 2 in the society and all the petitioners being in some way or the other responsible for overall control and supervision of the news items published in the news paper are directly responsible for the same and merely because the petitioner No. 1 is the Managing Editor and petitioner No. 2 is the owner of D.B. Publications Pvt Ltd., the same cannot absolve those petitioners from their criminal liability.

7. After hearing the learned counsel for the parties and after going through the records, I find that in the complaint petition, the petitioner No. 1 has been arrayed as the Managing Editor, the petitioner No. 2 as printer and petitioner No. 3 as Editor of the newspaper " Bihar Observer". In the complaint petition, it has not been expressed as to how the petitioner Nos. 1 and 2 in their capacity of Managing Editor and Printer/owner is responsible for the publication of the news item, which contains alleged defamatory words and which had lowered the prestige of the complainant in the society.

8. Press and Registration of Books Act, 1867 (hereinafter referred to as the Act) starts with an interpretation clause and the expression editor has been defined as the person, who controls the selection of the matter i.e. published in a newspaper. Section 5 of the Act provides for the rules with respect to publication of newspaper and from a plain reading of the said provision, it is evident that every copy of every news paper published in India is mandated to contain the names of the owner and editor thereof. 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 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." 9. Therefore, from the scheme of the Act, it is evident that it is the editor who controls the selection of the matter i.e. published in a news paper. Further, every copy of the newspaper is required to contain the names of the owners and editors and once the name of the editor is shown, he shall be held responsible in any civil and criminal proceeding. Further, in view of the interpretation clause, the presumption would be that he was the person who controls the selection of the matter that was published in the newspaper.

10. In the case of K.M. Mathew Vs. State of Kerala and another, with respect to the same presumption under section 7 of the Act, it was held 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 Regulation 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 Vs. Dr. R.B. Chowdhary; D.P. Mishra V. Kamal Narain Sharma; Narsingh Charan Mohanty V. Surendra Mohanty and Haji C.H. Mohammad Koya V. T.K.S.M.A. Muthukoya.] 11. In the judgment referred to above, the distinction was made between "Editor and Chief Editor". In no uncertain terms the court observed that the Act recognises Editor and presumption is only against him. The Act does not recognise any other legal entity i.e. Chief Editor, Managing Editor etc. for raising such presumption. They can be proceeded against only when there is a specific allegation. The complaint petition, as has been indicated above, does not specify the role of petitioner Nos. 1 and 2 being the Managing Editor and the owner/printer in publication of the said defamatory article in the newspaper.

12. As has been discussed above, it was the responsibility of the editor of the newspaper to select the news items, which are to be published and the petitioner No. 1 or the petitioner No. 2 in absence of any allegation that they were responsible for selection and publication of the news item or that they had perused the material or edited before its publication or that it was published with their consent or knowledge cannot be said to be directly responsible for the publication of the alleged defamatory item.

13. In view of what has been discussed above with respect to petitioner No. 1 and 2, the criminal proceedings against them cannot be allowed to continue. In such circumstances, the entire criminal proceedings in connection with C.P. Case No. 1404 of 2000 including the order dated 27.4.2001, passed by Shri P.N. Upadhyay, learned Judicial Magistrate, Dhanbad, whereby and whereunder, cognizance has been taken for the offence punishable under sections 419, 500, 501 and 502 of the Indian Penal Code, are hereby quashed, so far as it relates to petitioner Nos. 1 and 2.

14. As regards the petitioner No. 3, he being the Editor of the newspaper and being directly responsible for selection and publication of news item and there being a prima facie offence made out against him and in absence of any illegality in the order dated 27.04.2001, by which cognizance was taken for the offence under sections 419, 500, 501 and 502 of the Indian Penal Code, the present application as against him stands dismissed.

15. This application is allowed in part.