

(2007) 05 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition No. 2166-M of 2005

Aroon Purie and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 08-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 204, 482

Penal Code, 1860 (IPC) — Section 499, 500

Press and Registration of Books Act, 1867 — Section 1, 7

Citation : (2007) 4 RCR(Criminal) 6

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : R.S. Cheema, assisted by, S.D. Salwan, J.S. Mehndiratta and Rohit Kapoor, for the Appellant; S.K. Hooda, D.A.G., Haryana and Shri S.P. Jain , assisted by, Shri Vishal Gupta and Shri Deeraj Jain, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Mahesh Grover, J.—The Petitioners have invoked the jurisdiction of this Court under the provisions of Section 482 of the Code of Criminal Procedure and have prayed that the criminal complaint bearing No. 192-1 of 15.12.2003 titled "Mukesh Garg v. Aroon Purie and others", as also the summoning order dated 13.10.2004 passed in pursuance thereto be quashed.

2. An article which appeared in the weekly magazine, namely, "India Today" published by Living Media India Ltd., New Delhi of which Petitioner No. 1 is the Editor-in-Chief, whereas Petitioner No. 2 is the Publishing Director and Petitioner No. 3 is the Editor, Printer and Publisher, irked the Respondent No. 2-complainant which led to the filing of the aforesaid complaint against the Petitioners with the allegations that they have committed an offence punishable under Sections 499 and 500 of the I.P.C. as the contents thereof were defamatory and derogatory to the Rashtriya Swayam Sewak Sangh (hereinafter referred to as 'the R.S.S.') of which organisation he is a member.

3. The India today in its issue of August 18, 2003 carried a series of articles under the heading "56 Events that changed India". The article in question, which appeared with S. No. 3 at pages 12-13 of this issue with the title "Gandhi's Assassination Killing a Dream", is reproduced below:

1948 One of the greatest ideas of the 20th century was killed at 5.03 p.m. on January 30, 1948. Mohandas Karamchand Gandhi, the man who led India to freedom by redefining the very concept of protest, stepped out of the Birla House in Delhi and walked towards the garden to hold a prayer meeting. Among the 300 people who greeted him that evening was Nathuram Godse, an RSS worker, who fired three shots at close range from his automatic 9 mm Beretta into the fragile chest of the Mahatma. That was his way of saluting the "author of Partition". And that was the end of a saint among politicians, the highest apostle of non-violence falling to the violence of the extreme, self-righteous Hindu nationalism. Gandhi, Father of the Nation, would be assassinated again and again by the legatees of Gandhism. The values he stood for, the values he gave his life for have already been made redundant by a country that has come a long way since 1948, politically and culturally. And Gandhi has taken refuge in textbooks, not certainly the passion that assassinated him. Godse's grandchildren continue to invent enemies, within and without, reaffirming the terrible reality; the idea that killed Gandhi is alive - and thriving.

(Emphasis supplied)

4. Finding his sensibility offended by the above reproduced article and especially the words emphasized, the complainant, who claimed himself to be Seh Zila Karayvahak of the R.S.S. and also associated with Hindu Siksha Samiti, Bharat Vikas Parishad and Adhivakta Parishad, served a legal notice dated 10.9.2003 upon the Petitioners and asked them to publish an unconditional apology in the next issue of the magazine and to withdraw the false and frivolous allegations qua the R.S.S.

5. The Petitioners responded to the notice and clarified that they had no intentions of maligning or causing any dis-repute to the R.S.S. and denied the allegations against them. That apart, in the issue of 6th October, 2003, a clarification was inserted in the magazine, which is as follows:

In the Independence Day Special issue, it was written that Nathuram Godse was an RSS worker ("56 Things that Changed India", August 18). Godse was not associated with the RSS at the time of Mahatma Gandhi's assassination. The error is regretted.

(Emphasis supplied)

6. Not satisfied with the response, denial and correction, the complainant filed the instant complaint before the Court of Judicial Magistrate Ist Class, Jagadhari (hereinafter referred to as 'the trial Magistrate') on 15.12.2003.

7. Pursuant to the aforesaid complaint, the complainant got himself and two

other activists of the R.S.S. examined in the preliminary evidence and on the strength thereof, the Petitioners were summoned vide order dated 13.10.2004 to stand trial for having committed an offence punishable u/s 500 of the I.P.C.

8. The Petitioners have prayed for quashing of this complaint as well as the summoning order passed pursuant thereto.

9. It was contended by Shri R.S. Cheema, learned Senior Advocate appearing for the Petitioners that the article when read in the context of which it has been written cannot be termed to be defamatory. There is no imputation made to the R.S.S. as an organisation which could give it a cause to complain. Besides, the complainant in his complaint has referred extensively to the report of Justice J.L. Kapoor Commission of Enquiry appointed to go into the conspiracy to murder Mahatma Gandhi to say that Nathu Ram Godse was not a member of the R.S.S. and he had nothing to do with the organisation, but a perusal of the conclusions recorded in the report do not exonerate him of his association with the R.S.S. and in the report itself, the organisation is referred to a militant Hindu organisation. In this view, it was sought to be contended that there was no malice in the article and that reading of the complaint does not disclose the commission of an offence u/s 500 of the I.P.C.

10. It was next contended by Shri Cheema that even for denial of the fact that Nathu Ram Godse was not a member of the R.S.S., no evidence was adduced before the trial Magistrate and in any eventuality, an organisation which has millions of members would certainly require documentary proof to establish the membership of a person and thus, it was not possible to conclude whether Nathu Ram Godse was a member of that organisation or not.

11. Lastly, learned Counsel for the Petitioners contended that the Petitioners could not have been summoned in view of the general allegations against them without there being any specific attribution of knowledge regarding publication of article. Moreover, in view of the definition of 'editor' appearing in Section 1 and the provisions of Section 7 of the Press and Registration of Books Act, 1867, the role of a person responsible for publishing an article has to be specifically delineated to establish the commission of an offence by him.

12. On the other hand, Shri S.P. Jain, learned Senior Advocate appearing for Respondent No. 2-complainant vehemently argued that this Court u/s 482 of the Code of Criminal Procedure is precluded from quashing a complaint as the power under this provision can be exercised only if the same does not disclose the commission of any offence. Where the complaint discloses the commission of an offence and raises the question which can be answered only on the basis of evidence to be adduced before the trial Court, the power u/s 482 of the Code of Criminal Procedure cannot be exercised. In support of his contention, he relied on the judgments of the Supreme Court reported as Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, K.M. Mathew Vs. K.A. Abraham and Others, and Smt. Chand Dhawan Vs. Jawahar Lal and others,

13. It was further contended that the Petitioners had an alternative remedy of revision and accordingly, the summoning order cannot be quashed as it is perfectly justified. Learned Counsel for the Respondent No. 2-complainant also argued with vehemence that even reference to a person as belonging to the R.S.S. is defamatory.

14. I have heard the learned Counsel for the parties and have carefully gone through the whole record.

15. It is a settled proposition of law that if a complaint discloses the commission of an offence, the Magistrate is well within his powers to issue criminal process into motion and in such an eventuality, the High Court would exercise the power u/s 482 of the Code of Criminal Procedure with great caution and circumspection.

In *Smt. Nagawwa v. Veeranna Shivalaingappa Konjalgi and Ors.* (supra), the Supreme Court observed as under:

It is well settled by a long catena of decisions of this Court that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceedings against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or de-merits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one.

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It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability or conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court or even the Supreme Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry u/s 202 which culminates into an order u/s 204. Thus in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) Where the allegations made in the complaint or the statement of witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and

inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority or the like.

The above mentioned principles have been propounded by their Lordships of the Apex Court in the subsequent judgments as well, some of which are mentioned below:

1. State of Haryana and others Vs. Ch. Bhajan Lal and others,

2. Janata Dal Vs. H.S. Chowdhary and Others,

3. Union of India and others Vs. B.R. Bajaj and others,

4. Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another,

5. State of Himachal Pradesh Vs. Shri Pirthi Chand and another,

6 State of West Bengal Vs. Narayan K. Patodia, The import of the law laid down by the Supreme Court is that the High Court is under a duty while exercising its power u/s 482 of the Code of Criminal Procedure to examine whether the allegations made in the complaint or the statements of witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or not or whether the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.

17. In view of the above, this Court has to put the allegations as set out in the complaint under its microscopic glare to conclude whether an offence is made out or not.

18. Coming to the instant case, a perusal of the article in question reproduced above reveals that Nathuram Godse was described as a R.S.S. worker and the R.S.S. was separately described as organisation which subscribed to "self-righteous Hindu nationalism". These are the words which apparently seem to have offended the complainant.

19. The argument of the learned Counsel for the Respondent No. 2-complainant that even reference to a person as belonging to the R.S.S. is defamatory in itself is unpalatable to say the least. The complainant, in his complaint, has proudly claimed himself to be the member of the R.S.S. and has sung paeans to the organisation as such. If the words "member of the R.S.S." are defamatory, then why did the complainant thrust upon himself the laudatory role of Seh Zila Karayvahak of the R.S.S. And proclaimed in equally laudatory words to eulogize the R.S.S. as a social, non-political, nationalistic and patriotic organisation in the service of the nation and mankind for the last 78 years which has thirty five

thousands Shakhas, ten lac Sewaks learning physical and moral teachings in its Sakhas, besides having thousands of sympathizers and well wishers even though they are not members, but identify themselves with its ideology. In the context of the aforesaid, the contention of the learned Counsel for the Respondent No. 2-complainant carries no weight.

20. A reading of the complaint shows that it is based solely on the article reproduced above in which the author referred to Nathuram Godse as a R.S.S. worker.

21. History and its historical figures, who once strode this earth and stood as colossus on it have always been an enigma for the subsequent generations. The heroes and villains of history, their personalities, passions, actions, omissions, compulsions for such acts and omissions, which made them stand out, have always been the subject-matter of intelligent speculations among the academicians, historians and theorists, who paint them in various colours including the grays and blacks and give their characters a real and a fictional touch.

22. Nathuram Godse was no different and accordingly, he has been the subject-matter of intense studies which tried to unravel his past and also tried to understand the motives of actions and killing of the Father of the Nation. In the midst of such speculations based on historical and archival records, he and his association with the R.S.S. have been commented upon variously.

23. During the course of arguments, learned Counsel for the Petitioners placed before the Court extracts of some books in which Nathuram Godse has been described as having association with the R.S.S. The same have also been referred to in the petition. The relevant portions thereof are reproduced below:

1. Book = Exiled at Home

Author = Ashis Nandy

Publisher = Oxford University Press.

Page = 81

..... It is from this kind of background that the cadres of violent, extremist and revivalist political groups often come. Not surprisingly, after a brief period in Gandhi's civil disobedience movement in 1929-30, Nathuram became at about the age of twenty an active and ardent member of the Hindu Mahasabha, a small political party, and of the Rashtriya Swayam Sevak Sangh, at that time virtually a paramilitary wing of the Mahasabha with all its key posts occupied by Maharshtrian Brahmans.. Overtly both groups supported the cause of Hindu revivalism and tried to articulate the Hindu search for self- esteem.....

2. Book = Gandhi and Godse - review and A critique.

Author = Koenraad Elst.

Publisher: Voice of India, New Delhi.

Chapter = 2

Para = 2.4

Pages =17, 18 and 19

2.4 The Godse brothers' testimony on the RSS

Here is Nathuram Godse's own version on his involvement with the RSS:

29. I have worked for several years in RSS and subsequently joined the HMS and volunteered myself as a soldier under its pan-Hindu flag."N. Godse: Why I assassinated Gandhi, p.27.

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It is true that their guru, V.D. Savakar, had spoken with mild contempt of the RSS, a well known fact which gave credibility to Godse's court statement that he had left the RSS at about the time of Savarkar's accession to the presidency of the HMS. But then, Savarkar had no personal connection with the RSS, while the Godse brothers had spent time in RSS meetings in their young days and developed a close link with it, not so easy to disown. Therefore, Nathuram contrived to create the impression that the RSS had little to do with him, simply to avoid creating more trouble for the RSS in the difficult post- assassination months. Gopal explains: "He has said in his statement that he left the RSS. He said it because Golwalkar and the RSS were in a lot of trouble after the murder of Gandhi. But he did not leave the RSS.

There is really no controversy here. Nathuram Godse never rejected the RSS, but he was not functioning within the RSS structure in the years before the murder. Ideologically, he still was an RSS man. That is why he sang the nationalist RSS song *Namaste sada vatsale matribhume* ("I bow to thee, loving Motherland, always"), a fixed part of every RSS shakha meeting, when he walked to the gallows.

3. Book = Saffron Fascism

Author = Shyam Chand

Publisher = Hemkunt Publishers

Page = 64

Gopal says: "All the brothers were in RSS. Nathuram, Dattatreya, Govind and myself. You can say we grew up in the RSS rather than in our home. It was like a family to us. Nathuram had become a 'Budhi Karyavak' (intellectual worker) in the RSS. He has said in his statement that he left the RSS. He said it because Golwalkar and the RSS were in a lot of trouble after the murder of Gandhi. He did not leave the RSS.

Even the complainant, in his complaint, has referred to the report of Justice J.L. Kapoor Commission of Inquiry to plead that Nathuram Godse had nothing to do with the R.S.S.

24. The relevant portions of the report have been collectively placed on record as Annexure P10 which refer to the report of the Home Secretary advising the government to keep watch on the operations of the R.S.S. and Hindu Maha Sabha. It also goes to say that Nathuram Godse being a staunch Savarkarite was potentially dangerous, but the report goes on to give a reluctant benefit of doubt to the R.S.S. by observing as under:

19.44. In the order, Ex.113, dated 8.8.1947 which had been issued by the Bombay Home Secretary a direction was given that a strict watch be kept on the operations of the R.S.S. and of the Hindu Maha Sabha organisations.

19.45. It does not appear that any separate list was prepared of the R.S.S. by the D.I.G., C.I.D., nor does this list show that the various persons whose names are given in this list were members of the R.S.S. but there is evidence to show that many R.S.S. members were members of the Hindu Maha Sabha. This list contains the names of Nathuram Godse who is shown as a staunch Savarkarite, of N.D. Apte who is shown as potentially dangerous, of G.V. Ketkar shown as a staunch Savarkarite and the brain behind Hindu Sabha activities and influential, N.R. Athawale also shown as potentially dangerous and staunch Savarkarite, and D.R. Badge is also shown as potentially dangerous and dealer in unlicensed arms.

From the above, it cannot be said that the ghosts of Nathuram Godse's association with the R.S.S. had been exorcised completely by the report of the Commission.

25. To conclude about the role of Nathuram Godse as being a member of the R.S.S. or not is not within the domain of this Court and such an answer is beyond the pale of controversy herein, but the fact remains that there was always an active debate on his association with the organisations, i.e., the R.S.S. and the Hindu Maha Sabha, based on historical and archival records. So, ipso facto by referring to him as a member of the R.S.S. cannot be termed to be derogatory or defamatory. In any case, this fact has been denied by inserting a clarification in the subsequent issue.

26. In any eventuality, any organisation including the R.S.S. is always born with relevance to the circumstances of the period, which are prevailing at that point of time. The political and societal mores relevant at that point of time which could be considered a taboo to tarnish the colour of the organisation at that particular time may not be true as on today. Hence, to say that a person belonging to a particular organisation is defamatory without ascertaining and determining the role of such organisation would be an extreme fallacy. There is nothing in the complaint also to allege that the article is suggestive of a pre-existing conspiracy propelling Nathuram Godse to take such a step.

27. Reverting back to the article, it nowhere delineates the role of the R.S.S. and does not attribute any overt, covert or conspiratorial role to it while describing the act of Nathuram Godse. In the absence of any such allegations and consequent evidence led by the complainant before issuance of summoning order, it cannot be termed to be derogatory and defamatory to the R.S.S.

28. Besides, an article has to be read in its entirety and an isolated passage cannot be read out of context. The Court is cast with a duty to decide what impression the article would produce on the mind of an unprejudiced reader and the offending article, if read in this context, also refers to the present legatees of Mahatma Gandhi, which probably includes all and sundry of the society and the political class of today, who have carried on with the sectarian and factional tendencies—a telling and a cynical comment on the prevailing situation by the author. Such an article can hardly be termed to be scandalous unless a hypocritical society wants to turn a Nelson's eye to the realities.

Section 499 of the I.P.C. defines the 'Defamation', whereas Section 500 thereof provides the punishment for the offence. The same read as under:

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 case hereinafter excepted, 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.

500. Punishment for defamation. - Whoever defames another shall be punished with simple imprisonment for a terms which may extend to two years, or with fine, or with both.

29. The word "defamation" has not been defined in the I.P.C. This has derived its form from word "defame". As per the Chambers Dictionary (Delux Edition), the word "defame" has the following meanings:

to take away or destroy the good fame or reputation of; to say malicious things about; to speak evil of; to charge falsely."

While enumerating the meanings of "defame", the word "defamation" has been defined as "the act of defaming; calumny; slander or libel."

According to Lord Atkin, to ascertain whether a defamation has been made, the test for that is to see "whether the words tend to lower the complainant in estimation of the right thinking members of the society generally."

30. The essence of the offence of defamation as given in Section 499 of the I.P.C. is that the imputation must have been made either with the intention of causing harm or knowing or having reason to believe that such imputation would cause harm to a person.

31. The first explanation to the offence of defamation as given in the I.P.C. is "it is not defamation to impute anything which is true concerning any person if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact."

32. In the back-drop of the above, if the publication is seen and especially in the context that there is a raging debate attributed to the historians, who have tried to trace the pug-marks of such historical characters, any imputation which is made presumably on the basis of the material which if not even entirely true is near to the truth and inference as truthful as the truth itself; cannot be termed to be defamatory. The doctrine of "fair comment" encompasses that if a publication which broadly speaking true in fact and not made to satisfy any personal agenda or vendetta would seemingly be protected.

33. In my opinion, there is nothing on record either in the complaint or in the evidence which could establish that the ingredients of Section 499 of the I.P.C. have been fulfilled to attract criminal proceedings against the Petitioners or that the imputation so made in the article is either scandalous, libelous or defamatory.

34. The Magistrate before issuing the process has to satisfy himself after reading the complaint and the preliminary evidence adduced before it that the commission of an offence has indeed been made out. He cannot shut his eyes because setting into motion the criminal process is a serious business and is not to be treated lightly. The reading of the complaint in the instant case does not reveal the commission of any offence and the evidence is woefully short. CW3-Pawan Chaudhary, Senior Counsel, District Courts, Jagadhari, testified as follows:

Mukesh informed me that Nathu Ram Godse was never closely associated with the RSS. There is no justification in saying Nathu Ram Godse was a worker of RSS. Mukesh informed me that India Today's Chief Editor, Editor and Printer have intentionally published this Article regarding Nathu Ram Godse to malign the image of R.S.S.

Similarly, except for the general allegations that the R.S.S. is a social, non-

political and patriotic organization and that the association of Nathuram Godse with it has defamed the organization, there is no substance to establish the criminality of the Petitioners and the complaint does not satisfy the ingredients of Section 500 of the I.P.C.

35. Besides, a perusal of the order of summoning reveals that the trial Magistrate has exceeded his jurisdiction when he gave categoric finding that the R.S.S. is a reputed, patriotic and nationalistic organisation which was clearly beyond the scope of his powers. The Court cannot afford to lose its neutrality and subjectiveness while dealing with any controversy. A tilt or bias or even a finding which is unwarranted tends to shatter the confidence of the litigants. In paragraph 18, the trial Magistrate has observed as follows:

It is obvious that RSS is reputed as a patriotic and nationalistic organization to help countrymen in time of crises both in peace and war. Its character as an intensely patriotic organisation has never been seriously challenged. It is engaged in the task of character moulding which is the work of national resurrection through the technique of Shakha. It rouses the innate spirit of heroic devotion for the motherland and her freedom.

The trial Magistrate has further observed in paragraph 21 of his order as under:

From the bare perusal of the article, it seems that the writer is believing the RSS for the murder of Mahatma Gandhiji even after the 50 years of his assassination. As regards blaming RSS for the murder of the Mahatma even after fifty years of his assassination after the trial of its main assassin, Nathu Ram Godse, with eight others, its judgment by Special Judge on Feb. 10, 1949 and of three Judges Bench judgment of Punjab High Court on Feb. 10, 1949, belonging to Nathuram Godse and Narain D. Apte on 15th Nov., 1949 and sentence of transportation for life of other five accused, acquittal of Veer Saverkar by the Special Judge and other two accused by the High Court without in any way holding RSS responsible for the same, seems motivated.

36. The aforesaid observations were made by the learned trial Magistrate of his own without there being any averment in the complaint or there being any evidence to that effect before it till the passing of the summoning order. He has, thus, clearly over-stepped his jurisdiction.

37. To conclude, I have no hesitation to hold that a reading of the complaint and the perusal of the evidence on the basis of which the summoning order has been passed does not make out a case against the Petitioners and the trial Magistrate was clearly in error in not examining the averments in the complaint and the evidence on record to conclude that summoning of the Petitioners was justifiable.

38. For the fore-going reasons, this Court is of the definite opinion that the complaint does not reveal the commission of any offence because the fact whether Nathuram Godse was a member of the R.S.S. is the subject-matter of debate and speculations on which various authors and historians have

opinionated and also because such active and healthy debate on such issues only helps in critical evaluation which further helps to create enlightened minds, which is to be encouraged and not discouraged and also because a specific denial has been made in the subsequent issue of the magazine.

39. This petition is, therefore, accepted and the complaint as well as the summoning order are hereby quashed.