
(2016) 04 MP CK 0049

In the Madhya Pradesh High Court

Case No : M.Cr.C. No. 10674 of 2014.

Dainik Bhaskar and Others - Applicants @HASH Kailash Soni and State of M.P. - Non-Applicants

Date of Decision : 25-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, Section 401, Section 482
Penal Code, 1860 (IPC) — Section 500, Section 502, Section 506

Citation : (2016) 2 JabLJ 342

Hon'ble Judges : Shri Jarat Kumar Jain, J.

Bench : Single Bench

Advocate : Shri Vivek Singh, Learned Counsel, for the Applicants; None, for the Non-Applicant No. 1 Though Served; Shri Bhuvan Deshmukh, Learned Govt. Advocate, for the Non-Applicant No. 2/State

Final Decision : Disposed Off

Judgement

Shri Jarat Kumar Jain, J. - This petition under Section 482 of the Code of Criminal Procedure [for short "the Code"] has been filed against the order dated 10.08.2010 passed by the First Additional Sessions Judge, Ujjain in Cr.R.No.136/2010; whereby affirmed the order of taking cognizance against the applicants.

2. Brief facts of this case are that non-applicant No. 1/complainant filed a private complaint against the applicants that on 25.04.1996 in the newspaper "Dainik Bhaskar" a defamatory news was published against the non-applicant No. 1. At the relevant time applicants Ramesh Chandra Agrawal and Vijayshankar Mehta were Chief Editor and Bureau Chief of Dainik Bhaskar respectively. After inquiry learned Magistrate has taken cognizance for the offence under Section 500, 501, 502 and 506 (Part-II) of the IPC and issued summons against the applicants. The applicants have preferred the Revision No. 164/1999, learned Ist ASJ, Ujjain has disposed of the revision vide order dated 05.07.2000 with the direction that the Magistrate can recall the order of issuance of process in view of Apex Court judgment in K.M. Methew's case. Thereafter, application has been filed before the Magistrate but the same was dismissed. Against that order applicants have

preferred Cr.R.No.136/2010, but that was also dismissed. Being aggrieved the applicants have preferred petition under Section 482 of Cr.P.C. bearing M.Cr.C. No. 8281/2010 before this Court. However, the petition has been dismissed as withdrawn vide order dated 09.09.2014. Thereafter this second petition has been filed.

3. Learned Counsel for the applicant submits at Bar that he does not want to press this petition in regard to Vijayshankar Mehta - applicant No. 5. Hence, the petition is dismissed as not pressed so far as it relates to applicant No. 5 is concerned.

4. Learned Counsel for the applicant submits that admittedly at relevant time applicant Ramesh Chandra Agrawal was Chief Editor of Daily Newspaper "Dainik Bhaskar". Hon"ble Apex Court in the case of K.M. Methew v. State of Kerla reported in (1992) 1 SCC 217 held that the presumption under Section 7 of the Press and Registration of Books Act, 1867 is available against the person whose name is printed as Editor as required under Section 5(1) of the Act. The Act does not recognise any other legal entity for raising such presumption, therefore, the Chief Editor cannot be held responsible for any news item which is said to be defamatory. It is further submits that the publication was bona fide and without any intention to defame the non-applicant No. 1. Therefore, the order of taking cognizance against the Chief Editor Ramesh Chandra Agrawal is erroneous and bad in law, hence it be set aside.

5. Nobody gave appearance on behalf of the non-applicant No. 1 though served.

6. Learned Counsel for the non-applicant No. 2/State submits that earlier petition under Section 482 of the Code has been dismissed as withdrawn. Therefore, this second petition on the same ground is not maintainable. It is further submits that without ascertaining the facts applicants have published the defamatory news against the non-applicant No. 1, therefore, they are liable for such publication. The courts below have not committed any error of law, hence no interference is called for by this Court.

7. After hearing learned Counsel for the parties, perused the record.

8. Before I deal with this aspect of the matter I find it necessary to take notice of the preliminary objection of the Counsel for the non-applicant/State that the petitioner is not maintainable as it is barred by the application of doctrine of res judicata. Admittedly earlier petition M.Cr.C.No.8281/10 filed by the applicants has been dismissed as withdrawn vide order dated 09.09.2014 and thereafter this second setition has been filed. Since the earlier petition has not been dismissed on merits, the doctrine of res judicata is not applicable. In this regard it is useful to refer judgment of Hon"ble Apex Court in the case of Daryao and others v. State of U.P. and others reported in (1962) 1 SCR 574. In this case Hon"ble Apex Court has opined that if the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32 of the Constitution. This is so held as in such a situation there will be no decision on merits by the

Court. The Apex Court has held that the doctrine of res judicata will only be applicable if the order on merits as in that event there will be a speaking order in existence. Hon'ble Apex Court in the case of Krishna Narainlal v. State of Bihar reported in AIR 2000 SC 3612 held that if earlier petition has been dismissed in default of appearance then second petition for the same relief cannot be dismissed on the ground that as the earlier petition has been dismissed, therefore, there is no scope of entertaining the second petition. Thus, I am of the view that the objection raised by learned Counsel for the non-applicant in regard to maintainability of the second petition has no force.

9. Now I proceeded to consider the petition on merits. In Para 2 of the complaint it is stated that at relevant point of time the applicant Ramesh Chandra Agrawal was Chief Editor of the newspaper, therefore, he is responsible along with other co-accused for all the news items published in the newspaper. Applicant No. 1 in the statement under Section 200 of the Code stated that the applicant along with Bureau Chief of Dainik Bhaskar is responsible for the news item published in the newspaper. Thus, it is clear that the complaint is filed against the applicant Ramesh Chandra Agrawal only on the basis that at the relevant point of time he was Chief Editor of the newspaper. There is no allegation that applicant Ramesh Chandra Agrawal had any role to play in the publication of the news item or he had any intention to publish the said newspaper item having any reason to believe that such amputation will harm the reputation of non-applicant No. 1.

10. Hon'ble Apex Court in the case of K.M. Mathew (Supra) while dealing the case of a Chief Editor for publication of certain news item which is said to be defamatory, held as under :-

"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 of the Press and Registration of Books Act, 1867 (hereinafter referred to as the Act) is available 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. R.B. Choudhary ? AIR 1968 SC 110; D.P. Mishra v. Kamal Narain Sharma ? AIR 1971 SC 856; Narasingh Charan Mohanty v. Surendra Mohanty ? AIR 1974 SC 47; and Haji C.H.

Mohammad Koya v. T.K.S. M.A. Mutukoya ? AIR 1979 SC 154). 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 persons 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."

11. In the light of the above decision of the Apex Court, I have examined the facts of this case. In the present case, the applicant Ramesh Chandra Agrawal is Chief Editor of the newspaper and from perusal of the complaint and the statements, it cannot be inferred that the said news item was published within the knowledge of the applicant and there is no specific allegation against him to show that he had shared the requisite intention in publishing the said objectionable matter. Therefore, the order of taking cognizance and issuance of process against the applicant by the Magistrate is liable to be quashed.

12. With the aforesaid, I am of the considered view that the petition deserves to be and is hereby allowed so far as applicant Ramesh Chandra Agrawal is concerned. Consequently the orders passed by the courts below are set aside and applicant Ramesh Chandra Agrawal is discharged from the offence under Section 500 dismissed for non-applicant No. 5 Vijayshankar Mehta as withdrawn. However, the petition is hereby allowed, so far as the Chief Editor Ramesh Chandra Agrawal is concerned.

13. Consequently the orders passed by the courts below are set aside and the applicant Ramesh Chandra Agrawal is discharged from the offence under Section 500, 501, 502 and 506 (Part-II) of the IPC. However, the petition for applicant Vijayshankar Mehta is dismissed as not pressed.

14. Let a copy of this order be sent to the concerned Magistrate for compliance. No orders as to cost.