
(2008) 02 P&H CK 0238
In the Punjab And Haryana At Chandigarh

H.K. Dua

APPELLANT

Vs

Chander Mohan, Deputy Chief Minister of Haryana

RESPONDENT

Date of Decision : 27-02-2008

Acts Referred:

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

Penal Code, 1860 (IPC) — Section 500, 501, 502

Press Council Act, 1978 — Section 1, 3, 5, 6, 7

Citation : (2008) CriLJ 2301 : (2008) 3 RCR(Criminal) 64

Hon'ble Judges : H.S. Bhalla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.S. Bhalla, J.—The petitioner, who is an Editor-in-chief of all publications of the Tribune Trust was knocked at the door of this Court by filing this petition u/s 482 of the Code of Criminal Procedure for quashing complaint dated 25-7-2007 (Annexure P-3) filed under Sections 500, 501 and 502 of the Indian Penal Code and order dated 4-8-2007 (Annexure P-5) passed by Chief Judicial Magistrate, Chandigarh, whereby petitioner was summoned for the aforementioned sections of the Indian Penal Code to face criminal trial.

2. The three newspapers are published by the Tribune Trust Daily English Newspaper--"The Tribune", "The Dainik Tribune in Hindi" and "the Punjabi Tribune in English". The petitioner, being the Editor-in-chief appointed by the Trust, is the Editor-in-Chief of each and every publication of the Trust. The Dainik Tribune, which is a Daily Hindi newspaper has a separate Editorial Department, which is distinct from the Editorial Department of the other two newspapers of the Trust, viz., the Punjabi Tribune and the Tribune. It is further pleaded that the printing and publication of the newspapers is inter alia governed by the provisions of the Press and Registration of Books Act, 1867 (hereinafter referred to as "the Press Act"). As per the said Act, certain particulars must be published and printed on each copy of each newspaper. The contents of such statutory and

mandatory insertion is collectively known in the trade as the Imprint Line of a newspaper. As per the statutory Imprint Line, the name of the petitioner has been stated to be that as the Chief Editor. The other name, which is mentioned in the Imprint Line as per the Mandatory requirements, is that of the Editor, the Printer and the Publisher of the newspaper Dainik Tribune, which is disclosed as Mr. Naresh Kaushal, who has been separately arrayed as accused No. 3 in the complaint sought to be quashed. The role of the petitioner qua the Dainik Tribune is only restricted to formulation of the Editorial Policy and nothing further. So far as controlling the selection of the matter, which is to be published in the newspaper is concerned, it is the responsibility of Mr. Naresh Kaushal, which has been defined clearly in the Statutory Imprint Line, inasmuch as against the name of Mr. Naresh Kaushal, an astrix has been placed with the explanation that it is that person, who is responsible for the selection of the matter as per the provisions contained in the Press Act. As per Section 1 of the Press Act, the Editor has been defined as the person who is responsible for controlling the selection of the matter to be published in a newspaper. The three statutorily recognised functionaries of a newspaper are the Editor, the Printer and the Publisher thereof. In the Dainik Tribune dated 23-7-2007, Chandigarh, Edition, a news item was published under the headline "There will be action against persons doing cross-voting including Chander Mohan".

3. Being aggrieved by the publication of the said news item, the respondent filed a criminal complaint under Sections 500/501 and 502 of the Indian Penal Code in the Court of Chief Judicial Magistrate, Chandigarh and complainant thereafter examined himself as CW 1 along with other witnesses and the learned Chief Judicial Magistrate, vide his order dated 4-8-2007, summoned the accused persons as arrayed in the complaint.

4. At the outset, it may be stated that in the complaint there is no averment at all that the petitioner controlled the selection of the matter that was published on 23-7-2000 in the "Dainik Tribune". He was impleaded as an accused No. 2 simply on the ground of his being an Editor-in-Chief of the "Dainik Tribune". Meaning thereby that the present petitioner was thus being prosecuted for publication of defamatory news item merely he being the Editor-in-chief of the paper mentioned above in which news item was published. I have heard learned Counsel for the parties and have also gone through the averments contained in the petition and the impugned order passed by the trial Court carefully.

5. Learned Counsel for the petitioner has vehemently argued that a perusal of the complaint shows that there was not even a whisper of allegation against the petitioner. The complaint when read in its entirety shows that the only allegation made against the petitioner is that he (petitioner herein) is the Editor-in-chief of the "Dainik Tribune" and merely by being an Editor-in-chief of the newspaper in which the impugned news item is published does not make the petitioner liable whatsoever. Learned Counsel further submitted that the learned Magistrate ought to have appreciated that in the absence of direct allegations against the

petitioner herein, the complaint against the petitioner is not maintainable, inasmuch as the petitioner is not an Editor within the meaning of the Act and as such, presumption available u/s 7 of the Press Act does not attach to him.

6. Learned Counsel further argued that in view of the statutory provisions of the Act, no proceedings can lie against a person who has not been named as the Editor of a newspaper as contained in the Imprint Line of the newspaper. While advancing his arguments further, learned Counsel submitted that a perusal of the imprint line itself shows that the name of accused No. 3 has been specifically stated to be the person who is responsible for controlling the selection of the matter which is published in the newspaper and as such, it is accused No. 3 who answers to the description of Editor within the meaning of the Act and in such like circumstances, the learned Magistrate fell in error by not appreciating that when the said person also an accused before the Hon"ble Court, no case lies against the petitioner.

7. On the other hand, learned Counsel appearing for the complainant seriously contended that Section 7 of the Press Act, raises ii presumption against the petitioner as an Editor in-Chief that he was responsible for publication of the news item and there was no need to allege or prove that he selected the material or that he was performing the functions of an Editor being the Editor-in-chief of the newspaper, he was liable for publication of defamatory news item and it was for him to establish that he was not responsible for selecting the material and publication thereof.

8. In view of the arguments put forward by both the parties, to my mind, crucial question which requires consideration in this petition is whether the petitioner as an Editor-in-chief could be presumed to be responsible for approving the news item that was published. In order to appreciate this controversy, it is necessary to look into the provisions of the Press Act.

9. The Press Act enacted to regulate printing presses and newspapers in order to preserve copies of newspapers and books. The statement, Objection and Reasons accompanying the Press Act may be extracted as under:

Whereas it is expedient to repeal the Indian Press Act, 1910 and the Newspapers (Incitements of Offences) Act, 1908 and to make further provision in the Press and Registration of Books Act, 1867 for the liability of editors of newspapers in civil and criminal proceedings and to make certain amendments in that Act in order to facilitate the registration of printers and publishers; and to provide in the Sea Customs Act, 1878 the Code of Criminal Procedure, 1898, and the Indian Post Office Act, 1898, for the seizure and disposal of certain documents; it is hereby enacted as follows:

Section 1(1) of the Press Act defines the "Editor":

Editor means the person who controls the selection of the matter that is published in the newspaper;

Section 3 of the Press Act requires disclosure of the name of the printer and the place of printing, and (if the book or paper be published) the name of the publisher and the place of publication.

10. Section 5 of the Act provides that no newspaper shall be published in India except in conformity with the rules, hereinafter laid down. Section 5(1) runs as under:

Without prejudice to the provisions of Section 3, every copy of every such newspaper shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication.

11. Sub-section (2) of Section 5 of the Act makes it incumbent on the printer and the publisher to appear before the authorities mentioned in that section and make a declaration. Then, Section 6 provides authentication of every such declaration. Section 7 provides that office copy of declaration to be prima facie evidence, it runs as under:

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 declaration, 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 to 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 to every portion of that issue of the newspaper of which a copy is produced.

12. Section 8 provides the procedure for new declaration by persons who have signed declaration and subsequently ceased to be printers or publishers of the newspaper. Then Section 8A provides that where any person's name has appeared as an Editor in a paper, although he was not an editor, he shall within two weeks of his becoming aware that his name has been so published, appear before a District, Presidency or Sub-Divisional Magistrate and make a declaration that his name has been incorrectly published and get a certificate from the Magistrate that the provisions of Section 7 shall not apply to him.

13. A perusal of the provisions of the Press Act would, thus, show that the Legislature took into account the inconvenience and hardship to which a person aggrieved from a publication would be put if he is required to make a fishing or roving enquiry about the persons who personally would be responsible for the making or publishing of an offending matter, particularly where the paper is owned by a big Company employing numerous persons. In order to avoid multiplicity of suits and uncertainties of liabilities, it was considered necessary to choose one of the persons from the staff and make him liable for all articles or

matter published in the paper so that any person aggrieved may sue only the person so named under the provisions of the Press Act and is relieved from the necessity of making a fishing or roving inquiry about the persons who may be individually responsible for the offending matters published in the paper. In the press Act, the person who is declared as editor is presumed to be responsible to control the selection of the matter published in a newspaper. The word "Chief Editor" is conspicuously absent from the Press Act and it appears for the obvious reasons as the Act has selected only one person who has a special status and he is the "editor" who can be sued or prosecuted, A presumption u/s 7 of the Press Act can be drawn against him alone and none else.

14. In the case of State of Maharashtra Vs. Dr. R.B. Chowdhary and Others, , the Apex Court of the country has observed as under:

The term "editor" is defined in the Act to mean a person who controls the selection of the matter that is published in a newspaper. Where there is mentioned an editor is to a person who is responsible for selection of the material. Section 7 raises presumption in respect of such a person. The name of that person has to be printed on the copy of the newspaper and in the present case the name of Madane admittedly was printed as the editor of the Maharashtra in the copy of the Maharashtra which contains the defamatory article. The declaration in Form-I which has been produced before us shows the name of Madane not only as the printer and publisher but also as the editor. In our opinion, the presumption will attach to Madane as having selected the material for publication in the newspaper.... In the circumstances not only the presumption can not be drawn against the other who had not declared themselves as editors of the news paper but it is also fair to leave them out because they had no concern with the publishing of the article in question.

15. Similar view was expressed by the Apex Court in the case of D.P. Mishra Vs. Kamal Narain Sharma and Others, .

11. It is significant to note that the presumption as to the person responsible for selection of the matter that is published in a newspaper is only against an editor and not against the Chief Editor. The reason being that the expression "Chief Editor" does not find place in the Press Act.

16. In Haji C.H. Mohammad Koya Vs. T.K.S.M.A. Muthukoya, , the Supreme Court has observed:

The word "Chief Editor" is clearly absent from the Press Act and in fact foreign to it because, the Press Act has selected only one person who has a special status, i.e., the editor who can be sued if necessary or can sue and against whom alone a presumption u/s 7 of the Press Act can be drawn.

Then at page 162 it was observed:

Secondly, the Press Act does not recognize any other legal entity except the editor insofar as the responsibilities of that offence are concerned. Therefore,

mere mention of the name of the Chief Editor is neither here nor there, nor does it in any way attract the provisions of the Press Act particularly Section 7. Thirdly, it is not even pleaded in the petition much less proved, that the appellant being the Chief Editor, it was part of his duty to edit the paper and control the selection of the matter that was published in the newspaper which in fact has been demonstrably disproved by the appellant. Thus, we are unable to accept the finding of the High Court that any presumption u/s 7 of the Press Act can be drawn against the appellant.

17. From the foregoing discussions the legal position boils out that petitioner as an Editor-in-Chief of the Dainik Tribune did not fall within the expression "editor" in the Press Act and no presumption u/s 7 of the Press Act could be raised that he was responsible to control selection of the matter that was published in the news item. If no such presumption could be raised, then there remains no evidence or basis for criminal prosecution of the petitioner as stated earlier. The petitioner was impleaded as an accused merely on the ground of his being "Editor-in-Chief of "Dainik Tribune" without any other averment in the complaint that he controlled selection of the matter that was published in the news item.

18. That being so, the order of the learned Chief Judicial Magistrate summoning the petitioner to face trial under Sections 500/501 and 502 of the Indian Penal Code and continuation of criminal proceedings against him would amount an abuse of process of the Court. The test to decide whether a complaint should be quashed has been indicated by the Supreme Court in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, . The test is that taking the allegations in the complaint as they are without adding or subtracting anything if no offence is made out then the High Court will be justified in quashing the complaint.

19. In *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others*, after referring to the earlier decisions, the Supreme Court has laid down that the scope of inquiry u/s 202 of the Code of Criminal Procedure is extremely limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint on the materials placed by the complainant before the Court for the limited purpose of finding out whether a prima facie case for issue of process has been made out. It was then pointed out that in the following cases an order of the Magistrate issuing process against the accused can be set aside:

- (1) Where the allegations made in the complaint or the statement of the 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 no 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 and the like.

20. In the instant case, if the petitioner is asked to face a trial when there is no basis, it would be highly distressing. It could even lead to loss of faith in institution as Courts of justice cannot be allowed to turn out to be instruments of harassment and vengeance.

21. In the light of what has been discussed above, I am of the considered view that the petition filed by the petitioner succeeds and the same is hereby allowed. Accordingly, complaint dated 25-7-2007 (Annexure P-3) filed under Sections 500, 501 and 502 of the Indian Penal Code and order dated 4-8-2007 (Annexure P-5) passed by Chief Judicial Magistrate, Chandigarh, whereby petitioner was summoned are hereby quashed and set aside qua the petitioner only. However, the trial Court would be at liberty to proceed with the complaint case against the remaining accused in accordance with law.