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**(2001) 05 KL CK 0006**  
**In the High Court Of Kerala**  
**Case No : Criminal M.C. No. 5128 of 1999**

Jacob Mathew

APPELLANT

Vs

Adangam Purath Kallada Gangadharan Nair and Another

RESPONDENT

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**Date of Decision :** 21-05-2001

**Acts Referred:**

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

Press and Registration of Books Act, 1867 — Section 1(1), 5(1), 7

**Citation :** (2001) CriLJ 3793

**Hon'ble Judges :** A. Lekshmikutty, J

**Bench :** Single Bench

**Advocate :** K.P. Dandapani, for the Appellant; A.K. Madhavan Unni, (for No. 1) and N. Santha, Public Prosecutor (for No. 2), for the Respondent

**Final Decision :** Allowed

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## Judgement

A. Lekshmikutty, J.—This petition is filed to quash the proceedings in C.C. No. 108 of 1999 on the file of the Court of the Chief Judicial Magistrate, Manjeri by the third accused.

2. The first respondent had preferred a complaint before the Chief Judicial Magistrate, Manjeri against five accused persons including the petitioner herein alleging that the accused persons therein had committed offence punishable under Sections. 500 and 502 of the Indian Penal Code (for short "the I.P.C."). Annexure-A is the said private complaint. The complaint relates to the allegation that accused 1 and 2 therein had preferred complaints before the police alleging that the death of Srijith and his mother who is the sister of the complainant/first respondent and one Balakrishnan were not natural and that the complainant and his brother Balakrishnan were responsible for the death and they caused the third accused, the Executive Editor, Malayala Manorama daily, Kozhikode, 4th accused, Editor, Kerala Kaumudi, Kozhikode and 5th accused, Correspondent, Kerala Kaurnudi, Manjeri, to publish the news item containing the details of the petition in the newspapers and thereby all the accused committed the offences.

Annexure-B is the photostat copy of the news item with caption (Vernacular matter is omitted) published in the Malayala Manorama daily. The learned counsel for the petitioner raised two points : (1) The complaint is not maintainable against the petitioner because he was not directly involved in the selection and publication of the news item in the Malayala Manorama and, therefore, the Court below had acted without jurisdiction in taking cognizance of the complaint against him, and (2) even if the entire averments and allegation in Annexure-A complaint is accepted, the ingredients of Sections. 500 and 502, I.P.C. are not made out.

3. The learned counsel for the petitioner submitted that in this case, the petitioner, the Executive Editor is not. at all responsible for the selection of the materials for the publication in the Malayala Manorama daily and as such the petitioner cannot be held liable for offences punishable under Sections. 500 and 502, I.P.C. There are persons appointed for the purpose of selecting materials for publication. It is also submitted by the learned counsel for the petitioner that in the absence of specific allegation in Annexure-A complaint that the petitioner was responsible for the selection and publication of the news items in Malayala Manorama daily, the Annexure-A complaint is liable to be quashed as against the petitioner. In support of his contention, the learned counsel relied upon the decision in K.M. Mathew Vs. State of Kerala and another, .

4. A reading of Annexure-A complaint shows that nowhere in it the first respondent, the complainant in C.C. No. 108 of 1999 of the C.J.M., Manjeri has alleged that the petitioner herein was responsible for the selection of the news items published in the Malayala Manorama or that he was directly involved in the publication of the news item. In paragraph 7 of Annexure-A complaint It is stated that accused 1 and 2 preferred a complaint before the police alleging that the complainant/first respondent and his brother were responsible for the death of Srijlth and his mother and that after the death of Madhavikutty Amma, the first respondent and others had taken possession of her properties and ornaments and that the first and second accused had given the copies of the petition to the 3rd and 4th accused and they published the same in Malayala Manorama and Kerala Kaumudi, It is further averred in paragraph 8 of the complaint that the first and second accused had filed the petition before the police and gave copies of the same to the newspaper for publication just to defame him and to torture him mentally. In para 9 it is averred that as a result of the publication of the news item by A3 (petitioner) in the Malayala Manorama and A4 in Kerala Kaumudi, he was put to mental agony and he could not face public as before. Apart from the averments, nowhere in Annexure-A complaint, the first respondent has stated that the petitioner who is A3 in the complaint was responsible for the selection of the news item or for publication of the news.

5. In K.M. Mathew Vs. State of Kerala and another, stated supra, the Apex Court dealt with a similar contention. In that case, it was held (at p. 3781 of CriLJ) :

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.

In that case, according to the Supreme Court, there is no averment against the Chief Editor except the motive attributed to him and that even the motive alleged is, general and vague. The Apex Court further held that presumption u/s 7 of Press and Registration of Books Act, 1867 is not available as against the Chief Editor. It was held in that case that Section 7 of the said Act has no applicability for a person who is simply named as Chief Editor, The presumption u/s 7 Is only against the person whose name is printed as "Editor" as required u/s 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 u/s 7 of the Act.

6. In Haji C.H. Mohammad Koya Vs. T.K.S.M.A. Muthukoya, , the Supreme Court held that the Press Act does not recognise any other legal entity except the Editor in so far as the responsibility of that office is concerned. In that case the Supreme Court found that the term "Editor" means a person who controls the selection of the matter that is published in a newspaper. Where a person's name is printed in the newspaper as its Editor it raises a rebuttable presumption only against the Editor.

7. In K.M. Mathew and Others Vs. K.A. Abraham, the petitioner had raised a plea that the complaint was not maintainable against the Chief Editor. But that plea was rejected because in the complaint and in the legal notice, a specific imputation of responsibility was raised, but was not denied in the reply. From the decisions quoted, it is clear that presumption u/s 7 of the Press and Registration of Books Act is available only against the "Editor." In this cae, it is clear that there must be positive averments in the complaint of the knowledge by the Executive Editor of the objectionable character of the matter. As stated, Annexure-A complaint does not contain any such allegations.

8. Now the second point urged by the learned counsel for the petitioner can be considered. Annexure-B is the news item published which according to the complainant/first respondent is defamatory to him. The caption of the news item is that the death of Srijith and his mother are suspicious. Nowhere in the news

item, there is mention about the complainant/first respondent. Apart from mentioning that some of the relatives have made attempts to corner the properties of deceased and that those relatives had taken away the ornaments and felled and sold trees from the properties, no names are mentioned in the news items. There is nothing in the news items to show that the complainant/first respondent was one of the relatives who had done those acts or that he was in any way responsible for their death. There is not even an innuendo which points to the complainant as the person who had done the acts.

9. On hearing the counsel for both sides and on consideration of the entire aspect, it is quite clear that the learned Magistrate ought not have taken cognizance of the offences against the petitioner. The continuation of the complaint as against the petitioner will only result in abuse of the process of Court. The complaint as against the third accused-petitioner is liable to be quashed and I do so.

For the reasons stated above, the petition is allowed. The further proceedings in C.C. No. 108 of 1999 pending before the Court of the Chief Judicial Magistrate, Manjeri is quashed as against the petitioner who is the third accused in the case.