
(2010) 12 AHC CK 0151

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 3692 of 2010

Manjit Singh, Ceo, Multi Screen Media Pvt.Ltd., New Delhi	APPELLANT
Vs	
State of U.P.and another	RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 499, 500

Citation : (2010) 12 AHC CK 0151

Hon'ble Judges : Raj Mani Chauhan, J

Final Decision : Allowed

Judgement

Raj Mani Chauhan, J.—This petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the "Code") has been filed by the accused petitioner Manjit Singh, CEO, "Multi Screen Media Pvt. Ltd.", resident of 101A, Friends Colony East, New Delhi, before this Court to invoke its inherent power for quashing the proceedings of complaint case No. 628 of 2010; Pramod Bajaj Vs. Manjit Singh and others, under Sections 499/500 I.P.C. pending in the court of learned Additional Chief Judicial MagistrateV, Lucknow (hereinafter referred to as "Magistrate") as well as for quashing the summoning order dated 18.07.2010 passed by the learned Magistrate in the complaint case referred above.

2. The relevant facts giving rise to the present petition may be summarised as under:

One MSM Satellite (Singapore) Pvt. Ltd. (hereinafter referred to as " Company) is a Company incorporated under the laws of Singapore and has its office in city Singapore. The company operates channel known as "Sony Entertainment Television". The different companies, producers and directors used to telecast their programmes on this channel as allowed by the company under agreement. The petitioner Manjit Singh is Chief Executive Officer (CEO) of "Multi Screen Media Pvt. Ltd". which is a corporate company registered in India under the Indian Companies Act and is exclusive distributor in India of the Channel owned

by MSM Satellite (Singapore) Pvt. Ltd. One of the producers namely "Optimistic Entertainment India Ltd". is producer of a programme named "Crime Patrol" which was telecast on "Sony Entertainment Television". The petitioner being Chief Executive Officer of the Company "Multi Screen Media Pvt Ltd" use to manage over all affairs of the company subject to the superintendence and control of the Board of the Directors of the Company. The producer of the "Crime Patrol" programme telecast its programme on 8th February 2010 at 8.30 P.M and 11.00 P.M. which as per allegation of opposite party No.2, Pramod Bajaj the complainant was defamatory to him as well as his family members.

3. The opposite party No.2 filed a complaint against petitioner and six others in the court of learned Magistrate with the allegation that he after seeking divorce from his first wife Renu on 31.05.2008 entered into remarriage with one Rakhi Gupta of Delhi on 28.12.2008. On the next date of marriage Rakhi Gupta as well as her brother Sumit Gupta sworn affidavit stating therein that opposite party No.2 had neither made any demand of dowry at the time of marriage nor they had given any kind of dowry to him. He on the next date of marriage i.e. 29.12.2008 took Rakhi Gupta to Mumbai where Rakhi Gupta disclosed him that she was a homosexual lady. She was not interested in marriage. She under the pressure of her parents had entered into marriage with him. She was so ill tempered lady, she misbehaved with his mother. She had dashed his mother, who had fallen down and sustained fracture injury on her hip. She had to be admitted in hospital and had to be operated. The complainant has further alleged that Rakhi Gupta later on with false and fabricated story lodged an FIR against him and his family members in Delhi. Consequently, he was arrested by the Delhi police in Lucknow and was taken to Delhi. When he was present at the Police Station in Delhi on 20.12.2009, Chitransh, a reporter along with so many persons reached there with T.V. Camera. His both the wives i.e. his first wife Renu and second wife Rakhi Gupta were present there at the police station. He pressurised him to give interview. Consequently, he on his pressure gave answers to three or four questions put by him. He was later on produced by the police before the learned Magistrate and thereafter he was released on bail by the order of Sessions Judge. His mother on 21.01.2010 wrote a letter of request to the petitioner, Manjit Singh and Chitransh, Reporter not to telecast any programme relating to the episode that had taken place at Delhi police station but they turned down her request, vide letter dated 05.02.2010. She again made a request to the petitioner, Manjit Singh and Chitransh, Reporter not to telecast any programme relating to the episode but her request again was turned down by them and the programme was telecast by the petitioner and other on 08.02.2010 at 8.30 P.M. and at 11.00 P.M. under the heading of "Crime Patrol" on "Sony Entertainment Television" which contained defamatory dialogues and pictures causing harm to the reputation of complainant and his family members. Both of his wives Renu and Rakhi Gupta had levelled false allegations against him for demand of dowry and putting them to harassment and torture etc. The complainant has alleged that he as well as his family members got badly

defamed on account of telecast of above programme in which false allegations were levelled against him. His image had got lowered down in estimation of the people who had seen the programme on "Sony Entertainment Television Channel" on 08.02.2010 under the heading "Crime Patrol"

4. The learned Magistrate on the complaint of complainant recorded his statement under Section 200 of the Code and the statements of witnesses i.e. Dinesh Singh as PW1 and Mahesh Prasad as PW2 under Section 202 of the Code. He thereafter on the basis of statement of complainant and the statements of the witnesses found that there was, prima facie, evidence against the accused, namely, Manjit Singh, CEO, Chitransh (Reporter), and Mukund Lal Gaurav resident of Ajmer, Rajasthan in support of the commission of the offence under Section 500 I.P.C., consequently he by the impugned order dated 18.07.2010 summoned the accused which has given rise to the present petition.

5. The opposite party No.2complainant opposing the petition has filed counter affidavit denying the allegations made by the petitioner in his petition. He has supported the version given in the complaint.

6. Heard Sri I.B. Singh, the learned Senior counsel for the petitioner and Sri Mridul Rakesh, the learned Senior counsel for the opposite party No. 2 as well as learned A.G.A. for the State.

7. The first submission of learned counsel for the petitioner is that in this case, the learned Magistrate has summoned the accused without application of mind. Learned counsel for the petitioner submits that an order for issuance of process under Section 204 of the Code cannot be passed as a matter of routine. The Magistrate while summoning an accused under Section 204 of the Code on the basis of statements of complainant and witnesses will ascertain whether there is prima facie, evidence against the accused for commission of any offence or not ? In this case, the complainant neither in the complaint nor in his statement recorded by the learned Magistrate under Section 200 of the Code has levelled any specific allegation against the accused petitioner as to how he was liable for the telecast of the so called defamatory episode. The petitioner being Chief Executive Officer of "Multi Screen Media Pvt. Ltd." was looking after the general affairs of the Company only. He cannot be fastened with any criminal liability only being Chief Executive Officer of the Company. He can be summoned and prosecuted for the telecast of so called defamatory episode if it has been shown by the complainant that the petitioner was directly or indirectly associated with telecast of objectional episode on the channel. No witness examined by the learned Magistrate under Section 202 of the Code has stated as to how the accused petitioner was concerned with the telecast of so called defamatory episode. The petitioner has been summoned by the learned Magistrate being vicariously liable for displaying the so called defamatory episode on the "Sony Entertainment Television" but unless it is established by the complainant that the petitioner is vicariously liable under any statute or rule framed therein, he cannot be held vicariously liable for the telecast of the so called defamatory episode

which was done by the others. The learned Magistrate while passing the impugned summoning order did not consider this aspect and summoned the petitioner mainly on the ground that he being Chief Executive Officer of the Company is liable for the telecast of the programme while he was not in any way concerned for the telecast of the so called defamatory episode. The impugned summoning order appears to have been passed by the learned Magistrate without application of mind which is liable to be quashed on this very ground. The learned counsel for the petitioner in support of his argument has placed reliance on the law laid down by the Hon"ble Apex Court in the cases of Pepsi Food Ltd and another. Vs Special Judicial Magistrate and others, reported in (1998) 5 Supreme Court Cases 749, and Maksud Saiyed Vs State of Gujrat and others reported in (2008) 5 Supreme Court Cases 668.

8. The second submission of learned counsel for the petitioner is that in this case, the owner of Sony Entertainment Television is "MSM Satellite (Singapore) Pvt. Ltd". The so called defamatory episode was telecast at "Sony Entertainment Television Channel". Whatever the offence is alleged to have been committed that may be committed by the producers of programme "Crime Patrol" and not by the petitioner's Company which is simply a distributor. Assuming that "Multi Screen Media Pvt. Ltd". is responsible for the telecast of so called defamatory episode even then the petitioner cannot be held personally responsible for telecast of the episode. The petitioner cannot be prosecuted by the complainant only on the ground that he is Chief Executive Officer of the Company unless it has been shown by the complainant that petitioner is vicariously liable for criminal act of the Company. The petitioner is therefore, prima facie not in any way liable to be prosecuted for the telecast of so called defamatory episode. The learned counsel for the petitioner in support of his argument has placed reliance on the case of State of Madras Vs C.V. Parekh and another reported in 1970 (3) Supreme Court Cases 491 and K.M.Mathew Vs State of Kerala and another reported in (1992) 1 Supreme Court Cases 217 decided by Hon"ble Apex Court.

9. The third submission of learned counsel for the petitioner is that even if the allegation made by the complainant in his complaint, his statement recorded under Section 200 of the Code and statements of witnesses, namely, Dinesh Singh (PW1) and Mahesh Prasad (PW2) recorded under Section 202 of the Code are taken to be true in their entirety even then no, prima facie case is made out against the petitioner for committing so called offence under Section 500 I.P.C. The opposite party No.2complainant has not assigned any specific role to the petitioner for the telecast of so called defamatory episode. The witnesses too have not levelled any allegation against the petitioner. There is no, prima facie evidence on record to show the involvement of the petitioner in telecast of so called defamatory episode. The impugned summoning order passed by the learned Magistrate as against the accused petitioner is without any prima facie, evidence and as such is liable to be quashed.

10. The last submission of learned counsel for the petitioner is that the opposite

party No.2complainant has not specifically described about the episode which was telecast on T.V. to show how he was defamed by the episode. Learned counsel submits that although the defamatory publication or allegation made by any person is not required to be reproduced in the complaint in verbatim form as required in English Law for the prosecution of the accused but there must be substance of the defamatory allegation levelled by the accused against the complainant. The complainant has levelled only this much allegation against the accused that his second wife, namely, Rakhi Gupta had lodged false FIR against him for demand of dowry and harassment on account of dowry. He was arrested by the Delhi police in Lucknow and was taken to Delhi. When he was at the police station in Delhi his first wife Renu and second wife Rakhi Gupta both were present there. They levelled false charges against him for demand of dowry as well as for their harassment while his second wife Rakhi Gupta and her brother Sumit Gupta had already given in writing that the opposite party No.2complainant had never made any demand of dowry. The learned counsel submits that the allegation levelled by his two wives, prima facie, could not be said to be false which was subject matter of investigation by the police. It will be premature to say that the allegation levelled against the complainant were false unless final outcome of the investigation. In this way, the allegations made in the complaint do not prima facie constitute any offence under Section 500 I.P.C. Therefore, the proceeding of complaint case as against the petitioner is nothing but sheer abuse of criminal process which is liable to be quashed.

11. The first submission of learned counsel for the complainant is that the learned Magistrate has taken cognizance of the offence on the complaint filed by the complainant. He recorded the statement of complainant under Section 200 of the Code and the statements of two witnesses, namely, Dinesh Singh (PW1) and Mahesh Prasad (PW2) under Section 202 of the Code and on the basis of their statements learned Magistrate was satisfied that there was, prima facie, case against the accused in support of the commission of the offence under Section 500 I.P.C. He therefore, by the impugned order dated 18.07.2010 summoned the accused. The accusedpetitioner was Chief Executive Officer of the Company which was sole distributor in India of the channel "Sony Entertainment Television, owned by "MSM Satellite (Singapore). The petitioner being Chief Executive Officer of the Company is personally liable for any defamatory episode shown on the "Sony T.V. Channel" in addition to other accused who were also liable. If the accused petitioner feels that he is not in any way criminally liable to be prosecuted for the so called defamatory episode telecast on the television channel, he may appear before the learned Magistrate and raise his grievance before him to drop the proceedings against him but the impugned order cannot be quashed from this level in exercise of power under Section 482 of the Code. Learned counsel in support of his argument has also placed reliance on case K.M. Mathew Vs State of Kerala and another (supra) decided by Hon"ble Apex Court.

12. The second submission of the learned counsel for the opposite party no. 2complainant is that the learned Magistrate by the impugned order has

summoned as many as three accused while the petition under Section 482 of the Code has been filed by the petitioner for quashing the summoning order as well as the proceeding of complaint case as against him. The part of summoning order as well as the part of the proceeding of the complaint case cannot be quashed separating the case of other accused. The petition is, therefore, not maintainable on this ground alone and the same is liable to be dismissed as not maintainable.

13. I have given active consideration to the rival submissions of the learned counsel for the petitioner and learned counsel for the opposite party no. 2 complainant as well as the learned A.G.A.

14. So far as the question of quashing of the summoning order in part as well as quashing of the proceeding of complaint case in part is concerned, if the summoning order as against the petitioner is found to be illegal the same may be quashed as against the petitioner, likewise the proceeding of complaint case as against the petitioner may also be quashed. The learned counsel for the complainant could not show any legal hurdle in quashing the impugned summoning order and the proceeding of complaint case as against the petitioner.

15. As regards the submission of learned counsel for the complainant that the petitioner can very well raise his grievance before the learned Magistrate which has been raised by his counsel before this court, although in case of K.M. Mathew Vs State of Kerala and another (supra), the Hon''ble Apex Court has held that the accused petitioner who was Chief Editor of Daily Newspaper and had been summoned for the offence under Section 500/34 IPC, could appear before the learned Magistrate and move application for recalling the impugned summoning order passed by the learned Magistrate raising his grievance that he was not criminally liable for any publication of defamatory news as he was not directly concerned with the publication of the newspaper but in the subsequent case Adalat Prasad Vs. Rooplal Jindal and Others reported in (2004) 7 Supreme Court Cases 338., the Hon''ble Apex Court held that the view taken by the Court in case of K.M.Mathew Vs State of Kerala and another (supra) for recalling the summoning order was erroneous view. The Hon''ble Apex Court held that since the case under Section 500/34 IPC was summon case and there is no provision under the Code for recalling/review the impugned order, therefore, the accused cannot move any application for recalling the summoning order. In view of the law laid down by the Hon''ble Apex Court Adalat Prasad's case (Supra), the law laid down by the Hon''ble Apex Court in case of K.M.Mathew Vs State of Kerala and another (supra) is no longer good law, therefore, the petitioner cannot be asked to appear before the learned Magistrate and move application for recalling the impugned summoning order passed against him on the ground raised by his counsel before this Court.

16. Now following two questions remain to be considered by this Court:

(1) Whether the impugned order passed by the learned Magistrate suffers from

non application of mind?

(2) Whether the petitioner, prima facie, can be held vicariously liable for the telecast of the so called defamatory episode on "Sony Entertainment Television Channel"?

17. The Hon"ble Apex Court in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others (supra) has held that the summoning of an accused in criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. The accused cannot be summoned by the Magistrate in a routine manner after recording of the statement of the complainant under Section 200 of the Code and the statement of witnesses under Section 202 of the Code. The summoning order passed by the Magistrate must reflect that he has applied his mind to the facts of the case and evidence adduced by the complainant. He has to examine the nature of allegations made in the complaint and the evidence in support of the allegations adduced by the complainant. The learned Magistrate before summoning the accused will carefully scrutinize the evidence. He cannot sit as mere spectator; rather he may put questions to the complainant and the witnesses while recording the statement of complainant under Section 200 of the Code and making inquiry under Section 202 of the Code. The relevant observation of the Hon"ble Apex Court finds place in Para 28 of the judgment which is being extracted below:

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all of any of the accused."

18. The same view has been expressed by the Hon"ble Apex Court in the case of Maksud Saiyed Vs State of Gujrat and others (supra), considering the law laid down by the Hon"ble Apex Court in the above cited case. The relevant observation of the Hon"ble Apex Court finds place in Para 13 of the judgment which is being extracted below:

"Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156 (3) or Section 200 of the Code of Criminal Procedure the Magistrate is required to apply his mind. The Penal Code does not contain any provision for

attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

19. Now it has to be seen as to whether the impugned order suffers from non application of mind. From a perusal of the copy of the complaint, it appears that the complainant has not levelled any specific or general allegations against the petitioner as to how he was concerned with the telecast of the so called objectionable defamatory episode. From a perusal of the statement of the complainant recorded by the learned Magistrate under 200 of the Code, it appears that he has stated as follows:

"He had earlier married to Renu on 09.2.1999. Thereafter, the marriage between the two was dissolved. He entered into remarriage with Rakhi Gupta on 28.12.2008 who was resident of Delhi but there had been no relation of husband and wife between the two. Rakhi Gupta disclosed him that she was a homosexual lady and she under the pressure of her parents had entered into marriage with him. Rakhi Gupta on 16.12.2009 lodged an F.I.R. for demand of dowry against him (opposite party no. 2) . He was arrested by the Delhi Police and thereafter he was released on bail by the order of the learned Sessions Judge. The police had beaten him and put him to torture while he was under police custody. Sri Ranjeet Kumar Verma also put him to torture. The Chitrans, the Reporter came to the Police Station while he was in police custody along with TV Camera. He pressurised him and asked certain questions. Therefore he answered those questions under pressure. The interview taken by him was displayed on Sony Entertainment Television under the heading "Crime Patrol" on 08.02.2010 between 08:30 PM to 09:30 PM. He as well as his family members got badly defamed on account of telecast of above programme. He has stated that all the seven accused namely Manjit Singh, Sri Kalan, Sri Chitrans, Mukund Lal Gaurav others were the persons behind the episode."

20. From a perusal of the statement of the complainant, it appears that the complainant has not specifically stated as to how the petitioner was directly or indirectly concerned with the so called telecast of defamatory episode. The two witnesses namely Dinesh Singh (PW1) and Mahesh Prasad (PW2) have stated nothing as to how the petitioner was concerned for the telecast of the so called defamatory episode. They have only stated that the episode contained false allegation of dowry demand and torture made by the complainant to his wife

Rakhi Gupta. The statement of these witnesses only show that the complainant and his family members were defamed on account of telecast of the so called defamatory episode. From a perusal of the statement of complainant and the statement of the witnesses, it appears that the petitioner in this case has been summoned as an accused by the learned Magistrate being vicariously liable for the telecast of the so called defamatory episode. A person cannot be held vicariously liable for the criminal act done by other person unless he is vicariously liable under any law. The complainant or the witnesses have shown nothing as to how the petitioner was vicariously liable for telecast of the so called defamatory episode. He, therefore, could not be summoned on the ground of vicarious liability. In a case of Maksud Saiyed Vs State of Gujrat and others (supra), the Hon"ble Apex Court has held that while summoning an accused the learned Magistrate has to see the complaint petition even if given face value and taken to be correct in its entirety, would lead to the conclusion that the accused was personally liable for any offence. But in this case, from a perusal of the impugned order, it appears that the learned Magistrate has not specifically observed as to how the petitioner was liable for the telecast of so called defamatory episode. The learned Magistrate has summoned the accused only on the ground that the complainant has named Manjit Singh, Sri Chitransreporter and Mukund Lal Gaurav in his statement recorded under Section 200 of the Code, therefore, it will be proper to summon these accused. The learned Magistrate has not specifically accorded his satisfaction that on the basis of statement of the complainant and the witnesses, the involvement of the petitioner in commission of the so called offence is, prima facie, established while he was expected to accord his satisfaction. Unless the learned Magistrate records specific finding as to how the petitioner was concerned with the telecast of so called defamatory episode, he could not be made vicariously liable for the defamation. The impugned order, therefore, suffers from nonapplication of mind and is liable to be quashed.

21. So far as the question of vicarious liability of the petitioner for telecasting the so called defamatory episode is concerned, in this case admittedly the petitioner was not directly concerned with the telecast of the so called defamatory episode. He was the Chief Executive Officer of the Company "Multi Screen Media Pvt Ltd" at the time of so called incident, therefore, he is said to be vicariously liable for the telecast of the so called defamatory episode. In case of Maksud Saiyed Vs State of Gujrat and others (supra), the Hon"ble Apex Court held that a person cannot be vicariously liable for the act done by any other person unless law provides vicarious liability to him. In this case what was expected from the complainant to show prima facie case against the accused was that he was expected to show that on the date of telecast of the disputed episode under the heading "Crime Patrol", the petitioner had concern with the telecast of the so called defamatory episode. The Petitioner in his petition has specifically alleged that he was the Chief Executive Officer of the "Multi Screen Media Pvt. Ltd". He was looking after overall management of the company. The Producer of the

episode under the heading of Crime Patrol was "Optimistic Entertainment India Ltd". It was Optimistic Entertainment India Ltd. who had displayed the programme "Crime Patrol" on the "Sony Entertainment Television Channel". The petitioner's company was only exclusive distributor of "MSM Satellite (Singapore) Pvt. Ltd." who was owner of the Sony Entertainment Television. The petitioner was, therefore, not even distantly related with the display of disputed objectionable episode. Neither the complainant nor the witnesses in their statements have stated as to how the petitioner had got concern with the telecast of the disputed objectionable episode. The petitioner, therefore, cannot be made vicariously liable for the telecast of the disputed episode.

22. In view of the above discussions, the Court is of the opinion that the complaint filed by the complainant against the petitioner is nothing but sheer abuse of criminal process. The summoning order passed by the learned Magistrate against the petitioner is bad in the eyes of law and is liable to be quashed.

23. The petition is, therefore, allowed. The impugned summoning order dated 18.07.2010 as against the petitioner passed by the learned Additional Chief Judicial MagistrateV, Lucknow as well as the proceeding of Complaint Case No. 628 of 2010; Pramod Bajaj Vs. Manjit Singh and others, under Sections 499, 500 I.P.C. pending before him as against the petitioner is hereby quashed.