
(1990) 07 CAL CK 0035
In the Calcutta High Court
Case No : Criminal Rev. No. 1442 of 1987

Pratap Kumar Roy and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-07-1990

Acts Referred:

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

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

Citation : (1990) 2 CALLT 322

Hon'ble Judges : Sunil Kumar Guin, J

Bench : Single Bench

Advocate : Anjan Kumar Mukherjee, for the Appellant; S.R. Majumdar, for the Respondent

Judgement

Sunil Kumar Guin, J.—This revision is directed against the order passed by the learned Chief Judicial Magistrate, Nadia on 7.5.87 in Case No. 226-C of 1987 whereby he took cognizance and issued processes against the petitioners and also against the opposite party No. 2 under Sections 500 and 501 of the Indian Penal Code.

2. The petitioner No. 1 is the Editor, Printer and Publisher of the daily newspaper "Aajkal" having its office at 96, Raja Ram Mohan Sarani, Calcutta-9. The petitioner No. 2 is the Joint Editor of the said newspaper and the petitioner No. 3 is a Private Limited Company having a printing press wherein the said newspaper is alleged to have been printed. On 7.5.87 the opposite party No. 3 as complainant filed a petition of complaint against the petitioners and the opposite party No. 2 alleging that by a publication published on 25.2.87 in the said newspaper under the heading "Dhul Pariman" and under the heading "Daftar Bhangchur Korbo" defamed the reputation and the image of the complainant. The learned Chief Judicial Magistrate, Nadia on perusal of the said petition of complaint and on examination of the complainant and his witness present took cognizance by his order dated 7.5.87 which is being impugned here and directed

issuance of process under Sections 500 and 501 of the Indian Penal Code against the petitioners and the opposite party No. 2. In pursuance thereof the petitioners appeared before the learned Chief "Judicial Magistrate and thereafter filed the instant revision for setting aside the impugned order and for quashing the proceeding in which the said order was made.

3. Mr. Anjan Kumar Mukherjee, learned advocate appearing for the petitioners has argued that the petitioner No. 2 being the Joint Editor of the said newspaper cannot be held responsible for any publication made therein and that as such the learned Chief Judicial Magistrate was wrong in taking cognizance against him as he did in this case. He has also argued that the petitioner No.- 3 being a juristic person, having no mind and incapable of having any "mens ria cannot be held liable for defamation as alleged to have been caused in this case. He has also argued that the learned Chief Judicial Magistrate had no jurisdiction to take cognizance in this case inasmuch as there is no averment in the petition of complaint that impugned publication was either circulated or published in Nadia within the local limits of which he exercised his jurisdiction. He has further argued that the impugned publication is covered by the third and the ninth exception of Section 499 of the Indian Penal Code.

4. Mr. Majumdar, learned advocate appearing for the opposite party No. 3-complainant has argued that there is a clear averment in the petition of complaint to the effect that the newspaper "Aajkal" has wide circulation at Chapra which is within the District of Nadia and that as such the learned Chief Judicial Magistrate, Nadia had jurisdiction to take cognizance for the impugned publication and issue processes against the accused persons.

5. Mr. S.R. Majumdar, learned advocate appearing for the State has argued that the learned Chief Judicial Magistrate has rightly taken cognizance in this case.

6. Undisputedly, the accused-petitioner No. 1 is the Editor, Printer and Publisher of the daily newspaper "Aajkal" having its office at 96, Raja Ram Mohan Sarani, Calcutta-9, the accused-petitioner No. 2 is the Joint Editor of the said newspaper and the accused-petitioner No. 3 is the Private Limited Company having a printing press in which the said newspaper was printed. The impugned publication has been made Annexure-B to the instant revisional petition and the petition of complaint has been made Annexure-A. The complainant i.e. the opposite party No. 3 appears to have Idoged a petition of complaint with the learned Chief Judicial Magistrate, Nadia under Sections 500 and 501 of the Indian Penal Code against the present petitioners and also against the opposite party No. 2. Though it is very difficult to decipher the writings on the first page of the Annexure A, but the facts as stated above have not been disputed. On such petition of complaint the learned Chief Judicial Magistrate by his order dated 7.5.87, a certified copy of which has been filed took cognizance and issued processes against the accused persons i.e. the present petitioners and the opposite party No. 2. First let me consider whether the petitioner No. 2 the Joint Editor of the said newspaper is also responsible for the impugned publication and

whether the learned Chief Judicial Magistrate was justified in taking cognizance and issuing process against him. u/s 1(1) of the Press and Registration of Books Act, 1867, "Editor" means the person who controls the selection of the matter that is published in a newspaper. As per provision of Section 7 of the said Act, in any legal proceeding, Civil or Criminal, the Editor, unless the contrary is proved, is liable for every portion of the publication made in the newspaper of which he is the Editor. There is no mention of Joint Editor or the like in the said Act. Thus it is clear from the aforesaid provision of the Act that it is the Editor who is alone responsible for publication made in the newspaper. A question whether the Chief Editor was the Editor of the newspaper within the meaning of Section 1(1) of the said Act came up for consideration before the Supreme Court in the case of Haji C.H. Mohammad Koya Vs. T.K.S.M.A. Muthukoya, which was referred to by the learned advocate for the petitioners in support of his argument. While dealing with the object of the said Act, the Supreme Court has observed that it was considered necessary to choose one of the persons from the staff and make him liable for all the articles or matters published in the paper so that any person aggrieved may sue only the person so named under the provision of the Press Act and is relieved from the necessity of making a fishing or roving enquiry about the person who may have been individually responsible for the offending matters published in the paper. The Supreme Court has also observed as follows :

"Further the Press Act does not recognize any other legal entity except the Editor in so far as the responsibilities of that office 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 provision of the Press Act particularly Section 7". So in view of the provision of Section 1(1) and Section 7 of the Press and Registration of Books Act, 1867 and in view of the aforesaid observation of the Supreme Court, I hold that it is the Editor who is liable for every publication made in the newspaper and that the "Joint Editor like petitioner No. 2 is not liable for the impugned publication appearing in the newspaper of which the petitioner No. 1 is the Editor, Printer and Publisher. That being the position, the learned Chief Judicial Magistrate was not at all justified in taking cognizance against the petitioner No. 2, the Joint Editor or in issuing processes against him by the impugned order. So the impugned order, so far as it relates to the petitioner No. 2, shall be set aside and the proceeding so far as it relates to him shall be quashed.

7. Next let me consider whether the learned Chief Judicial Magistrate was justified in taking cognizance against the petitioner No. 3 a Private Limited Company having a printing press in which the impugned publication was printed. Mr. Mukherjee, learned advocate for the petitioner has argued that the petitioner No. 3 is a juristic person having no mind and as such is incapable of having any mens rea and as such cannot be liable u/s 500 or u/s 501 of the Indian Penal Code. In support of his view he has referred to a decision of the learned Single Judge of this Court in the case of Sunilakhya Chowdhury Vs. H.M. Jadwet and Another, . Undisputedly, the petitioner No. 3 is a Private Limited Company and it

owns a press in which the impugned publication was printed. It was complained against presumably because the impugned publication was printed in its press. But it may be mentioned here that in the instant case the petitioner No. 1, the Editor is also the Printer and Publisher of the said newspaper. Though mechanically the impugned publication was printed in the said printing press but the petitioner No. 1 is legally the printer of the impugned publication and is liable for the same. In the case as referred to above, the learned Single Judge of this Court relying upon the earlier decisions has held that a company cannot be prosecuted for offence u/s 500 of the Indian Penal Code. Since the petitioner No. 3 is a juristic person incapable of having any intention to defame and printed the impugned publication mechanically and since petitioner No. 1 is legally the printer of the impugned publication, the petitioner No. 3 cannot be prosecuted for offence also u/s 501 of the Indian Penal Code. In above view of the matter and also in view of the aforesaid decision I hold that learned Chief Judicial Magistrate was not justified in taking cognizance against the petitioner No. 3 under Sections 500 and 501 and issuing process against it. So the impugned order by which the cognizance was taken and issuance of process was directed against the petitioner No. 3" shall be set aside and quashed.

8. Next let me consider whether the learned Chief Judicial Magistrate had jurisdiction to take cognizance and issue processes as he did in the case. It has been argued by Mr. Mukherjee that petition of complaint does not contain any averment that the impugned publication was circulated and published in Nadia and that as such the learned Chief Judicial Magistrate had no jurisdiction to take cognizance in the instant case. This argument is of no substance. It is clear from the copy of the petition of complaint annexed to the revisional petition that there is a clear averment therein that the said newspaper "Aajkal" has wide circulation at Chapra which is within the District of Nadia. As the said newspaper was alleged to have wide circulation at Chapra in the District of Nadia within the local limits of jurisdiction of the learned Chief Judicial Magistrate, it must be held that he had ample jurisdiction to take cognizance on such petition of complaint. So, this argument fails.

9. Mr. Mukherjee has argued that the complainant had no prima facie case inasmuch as the impugned publication is covered by the third and ninth exception u/s 499 of the Indian Penal Code. It is for the accused person to establish the facts for coming under the third exception or the ninth exception as claimed by them. Whether the accused persons come under the said exception can only be considered after the evidence is adduced and gone into. It is now too early to say that the instant publication comes the said exception. So this argument also fails.

10. However, in view of my findings above, the impugned order so far as it relates to the present petitioners No. 2 and 3 shall be set aside and the proceeding against them, in which the impugned order was passed shall be quashed. But the proceeding will contain against the rest of the accused i.e. the

present petitioner No. 1 Pratap Kumar Roy, the Editor, Printer and Publisher of the said newspaper and against accused opposite party No. 2 Abani Mohan Dey.

11. Revision is allowed in part. The impugned order so far as it relates to the petitioners Nos. 2 and 3 is set aside and the proceeding in which the impugned order was made, so far as it relates to the petitioner Nos. 2 and 3 is quashed. The proceeding, however, will continue against the rest of the accused persons.

Let a copy of this order be sent in the Court concerned as expeditiously as possible.