
(2003) 02 BOM CK 0139

In the Bombay High Court

Case No : Criminal Application No. 322 of 1998

Shri Vivek Goenka, Managing Editor, "LOKSATTA"

APPELLANT

Vs

State of Maharashtra and Sanjay Devdas Sonawani

RESPONDENT

Date of Decision : 20-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 499, 500
Press and Registration of Books Act, 1867 — Section 5(1), 7

Citation : (2003) BomCR(Cri) 1653 : (2003) CriLJ 4058 : (2003) 4 MhLj 880 : (2004) 3 RCR(Criminal) 585

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : S.R. Chitnis, Poorvi Kamani and Vinayak Shetye, for the Appellant;
K.V. Saste, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.—The petitioner, the Managing Editor - Director of daily Loksatta is hereby assailing the propriety, correctness and legality of the order passed by the Judicial Magistrate (First Class) AC Court at Pune at Criminal Case No. 3729/96 whereby process has been issued against him in respect of the offences punishable under the provisions of Section 500 read with 34 of IPC.

2. In the issue of 13.10.1996 an news item was published under the heading "PUNYATIL SAHA SANCHALKAVIRUDHA GADCHIROLIT GHUNHA DAKHAL, BANAVAT MAHATICHYA ADHARE KOTYAVADHICHI FASAVNUK". Respondent No. 2 by filing the complaint in the said court alleged that by publishing such news item the present petitioner and some other persons defamed him and thereby committed offences punishable under the provisions of Section 500 read with Section 34 of IPC.

2. Shri R.S. Chitnis pointed out paragraph No 2 from the complaint which

revolves around the acts alleged to have been committed by the present petitioner. It is necessary to mention it ad adverbatim.

"2. The Complainant submits that the accused No. 1 is former director of the Company and accused No. 2 is Publisher of Indian Express Newspapers (Bombay) Ltd., who publishes several publications alongwith Daily Loksatta, accused No. 3 is Managing Director, Accused No. 4 is Editor, accused No.5 is assistant editor, accused No. 6 is residing editor and accused No. 7 and 9 are reporter of Dail y Loksatta Pune respectively."

Shri Chitnis submitted that the present petitioner happens to be a Managing Director and is generally not concerned with the news items which are published daily in the newspapers published through the said establishment. he submitted that there is absolutely no averment in the complaint to show that the present petitioner was having knowledge of publication of such news item. He placed reliance on the judgment of the Supreme Court in the matter of K.M. Mathew v. State of Kerala and Anr., reported in AIR 1992 SC 2006 wherein the Supreme Court held that presumption u/s 7 of the Press and Registration of Books Act cannot be raised against an accused named in the complaint if the complaint is not indicating that such an accused was having the knowledge of publication of such item. In the said case there was no averment against the Chief Editor of Malayala Manorama except the motive attributed to him and even the motive alleged was general and vague. The complainant seemed to have relied upon the presumption u/s 7 of the Press and Registration of Books Act, 1867. The Supreme Court held in that case that Section 7 of the said Act had no applicability for a person who was 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) of the said Act. It held that for a Magistrate to take cognizance of the offence as against the Chief Editor, there must be positive averments in the compliant of knowledge of the objectionable character of the mater. In the absence of any such positive averments, the Chief Editor of such newspaper cannot be proceeded with in a criminal prosecution. He submitted that the said order of issuing process be quashed.

3. Shri Saste opposed the prayer vehemently.

4. Section 499 of IPC provides that "whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the case hereinafter excepted, to defame that person." Therefore, it is obligatory on the part of the complainant to make the averments, at least, in the complaint which would sow that the person speaking or printing the matter intended to be read or making the signs, making the visible representation in respect of any imputation, was having the intention to harm that person or was having knowledge or having the reason to believe that such imputation will harm the reputation of such person. In the absence of that, the

magistrate should not take cognizance of such complaint made to him because as declared by the Supreme Court in the judgment of *K.M. Mathew v. State of Kerala* (supra), no presumption can be drawn in view of Section 7 of the Press and Registration of Books Act, 1867 unless there is a specific averment in the complaint that such an accused was having knowledge of publication of such imputations or having reason to believe that such imputation is or would be likely to be published in the newspaper under his direct control. The magistrate should not take the cognizance of such complaint if there is no positive averments in the complaint which would bring in the ingredients as indicated by Section 499 of the Indian Penal Code.

5. The Magistrate has to keep in mind the regular course of business of printing and publishing news in newspapers. News are collected by the reporters and sent to the office of a newspaper. The News Editor or his assistants deal with such news items and they take the decision to publish it in the newspaper. Alternatively, the members of the public send news captions to the newspapers. They are assembled, collected, canned by the News Editor and his assistants. The News Editor generally takes the decision to allow its publication. Therefore, there has to be a specific allegation in the complaint that the Chief Editor or the Managing Editor was having the knowledge of such publication of the imputation in the newspaper. If there is no such positive averment in the complaint, the Magistrate should not take the cognizance of such complaint because every prosecution indicates annoyance, loss of money in fighting out the litigation, loss of money by spending the time in the litigation and abstaining from the ordinary occupation of livelihood. While issuing the process the Magistrate is bound to apply his judicial to the averments made in the complaint and has to take a judicial decision whether he should issue the process or not. He is not supposed to act mechanically.

6. In the present case, there is no positive allegation against the present petitioner that he was having knowledge of the publication of such imputation or he was directly responsible for publication of such imputation. The Managing Editor or the Managing Director is supposed to have the control over the management of the office of the newspaper and its financial aspects. He is not directly concerned with the publication of news items unless there is material on record to come to such a conclusion.

7. Thus, in the present case, the petition stands allowed and the process issued against the petitioner stands quashed by issuing the writ in view of jurisdiction and authority in view of Section 482 of the Criminal Procedure Code and Article 226 of the Constitution of India. No order as to costs. Rule stands made absolute.