
(2014) 02 GAU CK 0023
In the Gauhati High Court
Case No : Criminal Petition No. 810 of 2012

Sri Jayanta Baruah and Sadhin Printers	APPELLANT
Vs	
Sri Dilip Baruah	RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34 499 500
Press and Registration of Books Act, 1867 — Section 1 20 3 5 5(1)

Citation : (2014) CriLJ 3349 : (2015) 1 Crimes 689 : (2014) 3 GLD 409 :
(2014) 2 GLT 93 : (2014) 4 RCR(Criminal) 910

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : P. Kataki and Mr. D.K. Bagchi, for the Appellant; R. Sarma, for the Respondent

Final Decision : Allowed

Judgement

Arup Kumar Goswami, J.—By this application u/s 482 of the Code of Criminal Procedure, 1973, for short, the Code, the petitioners pray for setting aside of the order dated 30.11.2010, passed by the learned Judicial Magistrate, 1st Class, Barpeta in C.R. Case No. 4632/2010 taking cognizance of offence under sections 500/34 I.P.C. against the petitioners and the proceeding in C.R. Case No. 4632/2010. Heard Mr. P. Kataki, learned counsel for the petitioners and Mr. R. Sarma, learned counsel for the complainant/opposite party.

2. On the request of the learned counsel for the parties, the matter was taken up for disposal at the admission stage.

3. The opposite party had filed the complaint case, amongst other, against the petitioner No. 1 as accused No. 1 being the proprietor of an Assamese daily newspaper, "Asomiya Pratidin" and the petitioner No. 2, represented by the petitioner No. 1, as accused No. 5, being the press, from which the issue dated 01.10.2010 of the said newspaper "Asomiya Pratidin" containing a defamatory

article under the heading "Pub Bajali Zilla Parishodor unnayon dhowa-changot--Pratibadot Xorob Raij - NREGA durnity : Jobcardprapto shramikor hahakar" was published. The Chief Editor, Executive Editor, Printer and Publisher and the Local Correspondent of Asomiya Pratidin were the accused Nos. 2, 3, 4 and 6, respectively.

4. In the complaint petition, the complainant states that he belongs to a prominent and highly reputed family in Assam. During his School days, he was a student leader and later on, was associated with Asom Gana Parishad, a regional political party. He was associated with various reputed socio-cultural organizations and at the time of filing of the complaint was the Vice President of Barpeta Zilla Parishad. He has enjoyed good reputation and good-will because of his integrity, honesty and uprightness.

5. The complaint petition was filed as the publication as referred to hereinbefore imputed that he had misappropriated several lakhs of rupees from NREGA without doing any work. According to the complainant, the article, in its entirety, and every allegation and imputation made therein and the aspersions cast are false, malicious, extremely scurrilous and highly defamatory and such allegations have been made with reckless disregard to the truth and without making any, let alone reasonable, verification of the correct facts.

6. For the purpose of this case, having regard to the issues raised, it is not considered necessary to reproduce the alleged defamatory statements made in the article in question.

7. Mr. Kataki, learned counsel for the petitioners has submitted that there are no allegations against the petitioners in the complaint petition and they have been named as accused only because the petitioner No. 1 happens to be the proprietor of the newspaper and because the petitioner No. 2, represented by the petitioner No. 1, had printed the issue dated 02.10.2010 of the newspaper in question. Learned counsel submits that no presumption against the proprietor or the press can be drawn when there is defamatory imputation in newspaper or journal and in this connection, he has relied on section 7 of the Press and Registration of Books Act, 1867, for short, the Act. It is submitted that when the Chief Editor, Executive Editor and the Printer and Publisher, against whom presumption can be drawn, are named as accused persons, taking of cognizance against the present petitioners in absence of any averments in the complaint petition about their knowledge or any role in the publication of the said news item, is not sustainable in law and the impugned proceedings cannot stand against the petitioners. He has placed reliance on three judgments of the Apex Court reported in (i) Maksud Saiyed Vs. State of Gujarat and Others, (ii) Maharashtra State Electricity Distribution Co. Ltd. and Another Vs. Datar Switchgear Ltd. and Others, and (iii) Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others,

8. Mr. Sarma, learned counsel for the complainant/opposite party, on the other hand, submits that learned Magistrate committed no illegality in taking

cognizance of the offence under sections 500/34 I.P.C. against the petitioners as they are liable to be prosecuted in view of the fact that the petitioner No. 1 is the proprietor of the newspaper and petitioner No. 2 is the press, even in absence of any specific allegation and/or statement with regard to their role in the publication of the defamatory article.

9. The Act was enacted for regulation of printing-presses and newspapers, for the preservation the copies of books and newspapers printed in India and for the registration of such books and newspapers. The term "editor" as defined in section 1 of the Act means the person who controls the selection of the matter that is published in a newspaper.

10. Section 3 of the Act provides that every book or paper printed within India shall have printed legibly on it the name of the printer and the place of printing, and if the book or paper be published, the name of publisher, and the place of publication.

11. Section 5 provides for rules as to publication of newspapers. It lays down, amongst others, that no newspaper shall be published in India, except in conformity with the rules laid down in sub-sections 1 to 8. Section 5(1) provides that 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.

12. Section 5(2) provides that the printer and the publisher of every such newspaper shall appear in person or by agent authorized in this behalf in accordance with rules made u/s 20, before a District, Presidency or Sub-divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published and shall make and subscribe, in duplicate, a declaration that he is the printer (or publisher, or printer and publisher) of the newspaper entitled (name of the newspaper) and to be printed or published or to be printed and published, as the case may be at (premises where the printing or publication is conducted). Section 5(2A) provides that every declaration under rule (2) shall specify the title of the newspaper, the language in which it is to be published and the periodicity of its publication and shall contain such other particulars as may be prescribed.

13. Section 5(2B) lays down that where the printer or publisher of a newspaper making a declaration under rule (2) is not the owner thereof, the declaration shall specify the name of the owner and shall also be accompanied by an authority in writing from the owner authorizing such person to make and subscribe such declaration. Section 5(2C) provides that a declaration in respect of a newspaper made under rule (2) and authenticated u/s 6 shall be necessary before the newspaper can be published.

14. Section 7 of the Act, which is very relevant, reads as follows:

7. Office copy of declaration to be prima facie evidence.--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 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 of every portion of that issue of the newspaper of which a copy is produced.

15. A perusal of section 7 would go to show that u/s 7 of the Act, in any legal proceeding, civil as well as criminal, unless the contrary is proved, production of a declaration or in the case of the editor, a copy of the newspaper containing the name of the editor, shall be held to be sufficient evidence that the persons whose name appear in the declaration as the printer or publisher, or printer and publisher are the printer or publisher, or the printer and publisher and the name of the editor as printed in the newspaper is the editor of every portion of that issue of the newspaper. Thus, presumption can be drawn against the editor, publisher and printer with regard to publication of a news item. In view of the aforesaid, the persons declared as editor, publisher and printer are liable for any defamatory imputation in any news item in a newspaper as presumption as to awareness of contents of news item can be raised against them. It is to be noted selection of news item cannot amount to making of news. Editor selects the news and the printer and publisher publish the news item. Publication of imputation alone constitutes an offence u/s 499 IPC.

16. There is no presumption that an owner of a newspaper is responsible for the publication of any defamatory matter published in his newspaper. A liability for publication can be fastened on him if there some materials to show that he had prior knowledge or that he was somehow connected with the publication of the defamatory news item. Same is the position with regard to the proprietor of a press where an alleged defamatory article or news item is printed.

17. In Maharashtra State Electricity Distribution Company Ltd. (Supra), it has been laid down by the Apex Court that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of offence is made liable for the same, it has to be specifically provided in the statute concerned.

18. In Maksud Saiyed (Supra), the Apex Court observed that the Indian 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 and that vicarious liability of the Managing Director and the Director would arise provided any provision exists in that behalf in the statute.

19. A perusal of the complaint would go to show that there are no allegations whatsoever against the present petitioners. There are no positive averments in the complaint about the petitioners having prior knowledge of the publication or the petitioners being directly responsible for publication of the said imputation. Under the Act, no presumption can be drawn against the petitioners, the petitioners being not editor, printer or publisher.

20. In *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, the Apex Court had observed:

28. 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 or any of the accused.

21. In view of the above discussion, I am of the considered opinion that the learned Magistrate committed illegality in taking cognizance of the offence against the petitioners under sections 500/34 I.P.C., and therefore, the impugned order dated 30.11.2010 passed by the learned Judicial Magistrate, 1st Class, Barpeta in C.R. Case No. 4632/2010 taking cognizance of offences under sections 500/34 I.P.C. against the petitioners and proceeding in C.R. Case No. 4632/2010, so far as it relates to the petitioners are quashed. In the result, the petition is allowed to the extent indicated above. No cost.