
(2010) 02 AP CK 0057

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 4994 of 2006

Tankasala Ashok and Another

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 500

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

Citation : (2010) 1 ALD(Cri) 706 : (2010) 1 ALT(Cri) 383 : (2010) CriLJ 2074

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : Nandigam Krishna Rao, for the Appellant; Public Prosecutor, for No. 1 and M. Subba Reddy, for No. 2, for the Respondent

Final Decision : Allowed

Judgement

Samudrala Govindarajulu, J.—This petition is filed by the accused Nos. 3 and 4 (A-3 and A-4) u/s 482 Cr. P. C, for quashing proceedings in C. C. No. 258 of 2006 on the file of II Additional Judicial Magistrate of the First Class, Nellore relating to offence punishable u/s 500 I.P.C.

2. Subject matter of this petition is news item in Nellore Town Tabloid of Vaartha daily news paper dated 8-10-2002, which relates to committing of rape by a father on his daughter. In the news item, name of the culprit is given as suspended police constable Venkata Mastanayya with Roll No. 1219. It is contended that the 2nd respondent is the Police Constable with Roll No. 1219 and not the culprit and that even though the culprit was police constable with Roll No. 1299, the accused gave Number as 1219 in order to defame the de facto complainant. On those allegations, the 2nd respondent filed private complaint in the lower Court against the reporter Nagendra Singh as A-1, Desk In charge Nazeer as A-2, the Editor Tankasala Ashok as A-3 and the Managing Editor & Chief Managing Director Girish Sangvi as A-4. A-3 and A-4 alone filed this

petition. Prior to filing of the private complaint, the 2nd respondent got issued notice dated 16-10-2002 to A-1 to A-4. After receiving notices, it is stated by the petitioners' counsel that errata was published on 29-10-2002 in Nellore Town Tabloid of Vaartha daily news paper to the effect that number of the constable in the news item dated 8-10-2002 may be read as 1299 instead of 1219. Without satisfying about the said errata, the 2nd respondent filed the private complaint in the lower Court.

3. In my opinion, publishing errata is not proper by the accused without expressing any regrets for the original publication. In case, the accused realised their mistake in original publication, the editor should have published a notice expressing regrets or sorry or pleading excuses for the mistake in original publication; and the said notice should have been signed by the editor. Without following such known and desirable practice, the accused showed their indifference for their earlier mistake and published only errata instead of notice of regrets.

4. It is contended by the petitioners counsel that when name of the person who committed rape on his own daughter was given as Venkata Mastanayya and he was described as suspended police constable with a wrong Roll No. 1219 instead of 1299, there is no possibility of the public mistaking the 2nd respondent who is a police constable with Roll No. 1219 as the culprit. There is every force in that contention of the petitioners' counsel. If name of the culprit is not given and he was described only by his roll number, then there is every possibility of the public identifying the 2nd respondent as the culprit. But, when name of the culprit was published with further description as suspended police constable, no one would mistake the accused as the culprit even though the news item gave roll number of the 2nd respondent instead of correct roll number of the suspended constable who is the culprit. It is not the complainant's case that he was also in suspension at the relevant point of time. When the mistake in giving roll number was made known to the accused, they gave errata in the news paper giving out correct roll number of the culprit who is said to have committed rape on his own daughter. Thus, on facts, this Court is of the opinion that having regard to giving name of the culprit and describing the culprit as suspended constable, there is no imputation against the 2nd respondent/ complainant in the news item in question even though roll number of the suspended constable was wrongly given. Further, there is absolutely no averment in the complaint that mentioning of wrong roll number by the accused in the news item was intentional.

5. It is further contended by the petitioners' counsel that A-3 and A-4 are not liable to be prosecuted for offence punishable u/s 500 I.P.C. in view of Sections 5 and 7 of the Press & Registration of Books Act, 1867 (in short, the Act). u/s 5 of the Act, the Printer and Publisher shall give self declaration to that effect; and u/s 7 of the Act, authenticated copy of the said declaration produced in any local proceeding, whether civil or criminal, shall be prima facie evidence thereof. Similarly, u/s 7 of the Act, name of the editor of the news paper shall be printed

on news paper and it is sufficient proof of the said person being the editor of that news paper unless contrary is proved. In *Haji C.H. Mohammad Koya v. T.K.S.M.A. Muthukoya* AIR 1979 SC 1554, it was held that the term editor as defined in Section 1(1) of the Act means a person who controls selection of the matter that is published in the news paper and that where a person's name is printed on the news paper as its editor as required by Section 5(1) of the Act, Section 7 of the Act raises a rebuttal presumption only against such an editor. It is contended by the petitioners' counsel that editor of Vaartha news paper located at Hyderabad will not be able to make selection of the matter to be published in a district or town tabloid of the same news paper. But, it is a defence which has to be raised and proved by A-3 as editor of Vaartha news paper during trial of the case in the lower Court. This Court cannot presume that editor of Vaartha news paper who is A-3 had no control over selection of matter to be published in a district or town tabloid of that news paper. But, at the same time, since there is no definition of Managing Editor or Chief Editor in the Act and since such designations are not included in Section 1(1) of the Act, the Supreme Court in the above reported decision came to the conclusion that presumption u/s 7 of the Act cannot be applied as against such persons who are described as Chief Editor or Managing Editor.

6. In *K.M. Mathew Vs. State of Kerala and another*, the Supreme Court dealt with a case of Chief Editor of a daily news paper and observed that Chief Editor is responsible for general policy of the daily and that separate editions of the news paper are published from different centres and at each of these centres, there is separate editor who is responsible for selection and publication of news items. It was further held in that decision that even if name of Chief Editor is also printed in the news paper, no presumption arises against him u/s 7 of the Act, since he does not fit in the definition of editor given in Section 1(1) of the Act. The Supreme Court further laid down that in the absence of any averment against the Chief Editor about motive, in order 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 to him.

7. In *Dasari Narayana Rao v. R.D. Bhagavandas* 1986 CriLJ 888, this Court came to the conclusion that chairman of the company publishing news paper is neither printer nor editor nor publisher of that news paper as per the declaration and that he could not be imputed with knowledge of contents in the imputed news item.

8. In *Prabhu Chawla and others Vs. A.U. Sheriff*, the Karnataka High Court also came to the conclusion that Executive Editor, Managing Editor and Resident Editor cannot be made liable in the absence of any allegation against them in the complaint that they have any hand in selection of matter that is published in the news paper and that presumption u/s 7 of the Act is available as against Editor only and no such presumption arises as against Executive Editor, Managing Editor and Resident Editor.

9. Thus, both on facts as well as in law, the private complaint filed by the 2nd respondent does not lie as against the 2nd petitioner/ A-4. Further, on facts, since there is no imputation much less intentional imputation in the news item in question, the private complaint filed by the 2nd respondent against A-3 also does not stand to scrutiny; and this Court finds that the complaint is abuse of process of Court as against A-3 and A-4.

10. In the result, the petition is allowed quashing proceedings in C. C. No. 258 of 2006 on the file of II Additional Judicial Magistrate of the First Class, Nellore in so far as the petitioners Nos. 1 and 2/A-3 and A-4 are concerned.