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(2000) 07 PAT CK 0001

In the Patna High Court

Case No : Criminal Miscellaneous No. 13214 of 1996

The Hindustan Times Ltd. and Others — APPELLANT

Vs

State of Bihar and Another — RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 500, 501, 502

Citation : (2000) 2 BLJR 1573

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Pathak, J.—This application has been filed seeking annulment of the order dated 4.6.1987 whereby Chief Judicial Magistrate, Bhagalpur took cognizance of the case in Complaint Case No. 54(C) of 1987.

2. Relevant facts are that opposite party No. 2 of this miscellaneous case, Hari Shankar Sahay, filed the aforesaid complaint case alleging therein that on 8.12.1986 and 9.12.1986 certain reports were filed by one Om Prakash Tripathy making certain defamatory allegations against the complainant which amounted to tarnishing his image in public estimation. The complainant came of a reputed political family and he had high connection and he was regarded as a respectable and gentle man in the society. By publishing the reports dated 8.12.1986 and 9.12.1986, the Printer, Publisher, Editor and the Executive Manager of daily ''Hindustan'' had committed offences under Sections 500, 501 and 502 of the Indian Penal Code. The reports concerned were published under the caption "Astin ke Sanpo ne dus liya George ko". There was another report under the Caption "Manhgai aur jatiye nafrat ka zahar nhir dusne laga avam ko". These reports referred to the defeat of political leader George Fernandis in the bye-election from Banka constituency and the complainant was held responsible for his defeat because he wanted to obtain licence for his cinema hall from District

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Officers. However, the complainant alleged that the cinema hall concerned was already having a valid licence and he became the sole proprietor of this cinema hall and, therefore, there was no necessity for obtaining any licence for this cinema hall and, as such, the allegations in this connection were false. So the report filed by Om Prakash Tripathy and published by Hindi Daily damaged the reputation of the complainant. He fell from grace in public estimation.

3. Before me, it was submitted that the petitioners before this Court are Resident Editor of Daily, the Company in the name and style of The Hindustan Times Ltd., the Editor Shri Binod Mishra and the Executive Manager of the company known as Searchlight Printing House, Patna. There are several Sub-Editors and Chief Editor and the function of the Resident Editor of Daily is to decide policy of the company so as to regulate the publishing and other affairs of the daily. Since there are Sub-Editors, it is not necessary that all reports must be edited by the Editor and, therefore, without having knowledge of the defamatory report concerned, the petitioners cannot be prosecuted. Moreover, in the complaint-petition, there was no averment that the petitioners had any knowledge of the defamatory, article published and hence also no cognizance should have been taken against the petitioners.

4. The reports concerned under the caption which I have mentioned above will of course amount to defaming the complainant of the case and bringing bad name to his reputation. It will also amount to creating bad blood between George Fernandis, a renowned political leader and the complainant who had stated in the complaint-petition that he was highly connected with political leaders of repute and he was worker of the concerned Janta Party at the relevant time. Any news report which states certain facts may or may not be defamatory. When however a reflective report is filed by a Reporter and published, that certainly is a matter to be concerned of and motive may be imputed to the Reporter and malice may be gathered from the circumstances and not necessarily from the report itself. Before this Court, Om Prakash Tripathy who is author of the concerned report published under the aforementioned caption is not a petitioner. However, it has been admitted in the application that petitioner No. 1 is the company having its headquarters at Delhi. Petitioner No. 2 is the Resident Editor at Delhi and petitioner No. 3 is the Editor of Hindi Daily ''Hindustan'' published from Delhi and from Patna. Petitioner No. 4 is publisher of "Hindustan." Petitioner No. 5 is top Executive of Searchlight Printing house Ltd. at Patna and he is also Secretary to the company who looks after the financial and legal affairs of the company. Since no specific statement has been made in the complaint-petition regarding knowledge of this petitioner about defamatory article, no cognizance should have been taken against them. The petitioners relied on a decision reported in K.M. Mathew Vs. State of Kerala and another, . Before I proceed to dilate further on the legal points raised in the quashing application, I would like to distinguish between the aforementioned decision of the Honlile Stipreme Court and the facts of this application. In the case reported (supra), there was an order by the Magistrate discharging one K.M. Mathew, Chief Editor of a Daily ''Malayala

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Manorama''. The Chief Editor was prosecuted for defamation and he was discharged by the Magistrate on the ground that in the complaint-petition there was no averment that he had knowledge of the alleged defamatory article, However, the High Court reversed the order of the Magistrate and the Supreme Court held that the Magistrate had full power to drop the proceeding against the Chief Editor on the ground that this accused had no knowledge of the defamatory article before its publication. In the aforesaid reported decision, it was the Magistrate''s power to dispense with the prosecution of any particular accused at any stage of the trial without there being any specific provision for the same in the Code of Criminal Procedure. The Supreme Court decided that the Magistrate had such a power. In the instant case, the order of cognizance has been sought to be quashed and the main question is whether this order was illegally passed or there is any jurisdictional error in the impugned order. So the two cases can be well distinguished. So far as the instant case before this Court is concerned, this Court, can exercise the power u/s 482 of the Code of Criminal Procedure only when no case at all is made out for the lower Court to exercise its jurisdiction for summoning the petitioners to face trial.

5. The complainant in his complaint-petition had alleged that one of his co-parceners, who had failed in securing allotment of the cinema hall in his favour, had perhaps conspired to get defamatory articles published. However, admittedly, defamatory articles were filed by Om Prakash Tripathy and published. Before me, it was not submitted that the reports concerned were not defamatory. The main question raised before me was that there was no averment in the complaint-petition that .the petitioners had any knowledge of the defamatory articles concerned. However, it appears that the Hindi Daily ''Hindustan'' is published from Delhi as also from Patna. So the concerned report which was perhaps meant to be read by George Fernandis must have been published in the Delhi edition because the reports referred to George Fernandis, who was not a regular resident of Bihar State and when a news item is published, impliedly Reporter, Publisher, Printer and Editor must be held liable for the reports concerned, even if there may not be any specific averment that the report concerned must have passed through them. It is the ultimate responsibility of the Editor to see that unnecessary defamatory articles are not published from his newspaper. In such circumstances, all the Editors, whether sitting at Delhi or Patna, may be held liable for the reports concerned including the top Executive or owner of the Press. The fact whether prosecuted persons had knowledge or not is to be decided by trial Court. If the complainant will fail to prove knowledge on the part of the prosecuted persons, the case may fail. That is entirely a different point which cannot be decided by this Court in a limited proceeding u/s 482 of the Code of Criminal Procedure. Section 482 of the Code of Criminal Procedure cannot be used as a means to be a parallel trial and to decide the case finally.

6. I am, therefore, of the opinion that perhaps there is no good case for interference by this Court with the impugned order, which had summoned the

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petitioners to face trial.

7. So far as the section applied by the Magistrate in taking cognizance is concerned, that is irrelevant and the offences to be tried are to I be decided by trial Court.

8. In the result, this quashing application is dismissed.

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