

(2005) 02 BOM CK 0009

In the Bombay High Court

Case No : Criminal Application No. 639 of 2000

Vijay Jawaharlalji Darda and Others

APPELLANT

Vs

Laxmikanth C. Gupta and Another

RESPONDENT

Date of Decision : 16-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203, 204, 482, 499

Penal Code, 1860 (IPC) — Section 34, 499, 500

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

Citation : (2005) CriLJ 1886

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : M.R. and R.M. Daga, for the Appellant; H.S. Bhalchandra, for No. 1 and Deepak Thakre, Assistant Public Prosecutor for No. 2, for the Respondent

Judgement

S.T. Kharche, J.—By invoking the jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, this application takes an exception to the order of the learned J.M.F.C., Nagpur (2nd Court), directing to issue process u/s 500 read with Section 34 of Indian Penal Code against all the applicants/accused in Cri. Complaint Case No. 93 of 1999 and the applicants herein sought the relief that the criminal prosecution against them at the instance of respondent No. 1 be quashed.

2. Brief facts are required to be stated as under :

The applicant No. 1 is the Chairman-cum-Managing Director, applicant No. 2 is the Executive Editor and applicant No. 3 happens to be Printer and Publisher of Daily Lokmat Groups of Newspaper. A news item was published on 6-3-1999 in daily Lokmat Samachar newspaper in which certain imputations were made against respondent No. 1 and, therefore, the latter had instituted a criminal complaint for the offence punishable u/s 500 of Indian Penal Code. The learned Magistrate directed to issue process against all the accused u/s 500 read with Section 34 of Indian Penal Code.

3. Mr. Daga, learned counsel, for the applicants contended that the owner and the publisher of the newspaper are not liable for the news item published in the newspaper. He contended that perusal of the news item would reveal that the case is covered by Exception 4th to Section 499 of Indian Penal Code. He contended that the Lokmat Newspaper Ltd. is not a firm and it is a public limited company and is not liable for any manner. The contents of the news item that the other partners of the firm "M/s. Somras Distillers" (of which the applicant No. 1 is also a partner) started campaign of vilification against respondent No. 1 and their intention was mala fide, per se are not defamatory. He contended that the contents in the news item that the petitioners are dancing to the tune of the partners is not substantiated by the news item, also is not defamatory unless it is shown as to who are those persons and how they managed all the petitioners for publication of defamatory article, has not been explained in the complaint. All those persons who are responsible for printing and publication of news item have not been made an accused. It is contended that respondent No. 1 has admitted in the complaint about the fact of pending criminal case against Mr. Walia in the Court at Madhya Pradesh. He has further admitted that Mr. Walia was released on bail after his arrest and after getting bail from the Court he remained absent in the Court proceedings and that a warrant was also issued by the Court against him. It is, therefore, submitted by the learned counsel for the applicants that the contents of the news item published by the applicants is not per se defamatory at all because the news in question is based on the records of the police as well as of the Court and the same is true and correct.

4. He further contended that the learned Magistrate has committed an error in directing to issue process against the applicants in absence of any allegation that the accused had any role to play in the publication of the news item and in absence of any particulars of conspiracy of common intention, the private criminal complaint filed for the offence punishable u/s 500 read with Section 34 of Indian Penal Code is liable to be quashed. He, therefore, contended that no prima facie case has been made out against the applicants for the offence punishable u/s 500 read with Section 34 of Indian Penal Code and the criminal prosecution launched at the instance of respondent No. 1 may kindly be quashed.

5. In support of these submissions, the learned counsel for the applicants relied on a decision of this Court in Samir Jain s/o Ashok Kumar Jain v. Abhijit Chavan 1996 (3) All MR 93, wherein this Court has observed that the law is well settled that an owner of a newspaper cannot be made accused for defamation only on ground of his ownership, unless there is specific material to show that he is in any way directly responsible for publication of impugned article.

6. The learned counsel for the applicants also relied on the decision of the Apex Court in the case of Adalat Prasad v. Rooplal Jindal 2004 (4) Mah LJ 274 : 2004 Cri LJ 4874 wherein the Apex Court has held that "a condition precedent for issuing process u/s 204 of the Code of Criminal Procedure is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by

the inquiry contemplated u/s 202 of the Code of Criminal Procedure that there is sufficient ground for proceeding with the complaint hence process is issued u/s 204 of the Code. In none of these stages the Code has provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provisions of the Code. Therefore, the question of the accused on receipt of summons approaching the Court and making an application for dismissal of the complaint u/s 203 of the Code for a reconsideration of the material available on record and recalling of order is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage." Mr. Daga, therefore, contended that this petition is well maintainable and the applicants have invoked the jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashing the criminal prosecution launched at the behest of respondent No. 1.

7. The learned counsel for respondent No. 1 contended that the news item published on 6-3-1999 in Lokmat Samachar to the effect that Amarjit Walia has cheated the public by lacs of rupees in the name of selling gold coins and there are allegations in the news item published that nearabout seven years back the accused published the said news on the front page by giving prominence and photograph of Shri Walia in the manner as if the said news is national or international news. Further if the news item is read as a whole it would reveal that the accused had intentionally made publication of the said news for defaming the respondent No. 1 and the complainant who is the owner of Somras Distillers. The news item gave an impression to the public at large that the respondent No. 1 is also an associate of such alleged criminal activities of Shri Walla it has also given an impression that the owner of Somras Distillers was an associate of Shri Walia and the Madhya Pradesh police has said that if respondent No. 1 is not co-operating for the said Shri Walia, the respondent No. 1 can be arrested.

8. He contended that respondent No. 1 has filed the criminal prosecution for the offence punishable u/s 500 read with Section 34 of Indian Penal Code and the Magistrate has directed to issue process against all the applicants/accused. He contended that whether the publication was bona fide without any intention to defame the respondent No. 1, can be considered only during the course of trial and that the Magistrate is required to ascertain as to the existing of sufficient grounds for proceeding, He is not expected to go deep into the matter and consider at that stage whether the offending publication is bona fide or not. In support of these submissions he relied on the decision of this Court dated 24-10-2002 in Criminal Application Nos. 677/98, 1339/ 98 and 1830/99, Vivek Ramnath Geonka v. State.

9. This Court has given thoughtful consideration to the contentions canvassed by the learned counsel for the parties. It is not in dispute that applicant No. 1 is the Chairman-cum-Managing Director, applicant No. 2 is Executive Editor and

applicant No. 3 is Printer and Publisher of the news item in Lokmat Samachar on 6-3-1999 and the relevant Imputations so far as it relates to respondent No. 1 which are reflected in para 10 of the complaint are that "Despite this being the position of law, the accused published a news in the issue dated 6th March 1999 in the newspaper "Lokmat Samachar" to the effect that Shri Amarjeet Singh Walia has cheated the public by lacs of rupees in the name of selling gold coins. What was surprising in publication of the said news relating to the allegations of nearabout 7 years back, that the accused published the said news on the front page of your newspaper by giving prominence and a photograph of Shri Walia, in the manner as if the said news is a national or international news. Further, from the manner in which the said news was published it was clear that the real intention behind the publication of the said news was to give an impression to the public at large that the complainant is also an associate of such alleged criminal activities of Shri Walia. To add further to such impression at the end of the said news without there being any basis, reason or truth, the accused persons mentioned that the complainant is the owner of Somras Distillers and Madhya Pradesh police has said that if he is not co-operating for the said Shri Walia, the complainant can be arrested. The complainant was shocked to read the said news. The accused were further aware that no such things were ever told by Madhya Pradesh police that the complainant can be arrested despite that got published the news intentionally in such a fashion for the obvious purposes of creating prejudice against complainant."

10. This Court while deciding the above-referred Criminal Application Nos. 677/98, 1339/98 and 1830/99, Vivek Ramnath Goenka v. State, observed as under :

Shri Parchure referred to the ninth exception to Section 499 of the Indian Penal Code which states that it is not defamation to make an imputation on the character of another provided that the imputation is made in good faith for the protection of the interests of the person making it or of any person, or for the public good. I think that at the initial stage of issue of process, the Magistrate is not expected to consider the probable defence of the accused. He can consider the same only after the accused appears before him and after the trial proceeds. The question whether the offending publications made by the applicants were made in good faith for the protection of the interests of the person making it or of any other person, or for the public good is a question of fact which can be decided only after the evidence is adduced. It is not permissible for this Court within the limit of Section 482 of the Criminal Procedure Code to consider the merits and demerits of the defence of the accused. This is not a trial Court and when the applicants invoked exercise of inherent powers of this Court, all that this Court has to see is whether there is any abuse of the process of any Court or whether the exercise of inherent powers are necessary to secure the ends of justice. I do not think that the present case is of such a nature as to warrant exercise of inherent powers by this Court. Prima facie the learned Magistrate appears to have issued process on the basis of existence of sufficient grounds.

Therefore, the trial against the applicants-accused will take its own course according to law, and they will have full opportunity to point out that the publication of the offending news items made by them were bona fide and without any intention to defame respondent No. 2. It is only in the course of trial that the applicants-accused can plead and prove that their acts are covered by ninth exception to Section 499 of the Criminal Procedure Code. Therefore, I am of the opinion that this is not a fit case warranting, exercise of inherent powers by this Court. I am, therefore, not inclined to allow all these applications. The criminal applications are dismissed."

11. The aforesaid observations are squarely applicable in this case so far as applicant-accused No. 2 is concerned, who is the Executive Editor and, therefore, at this stage, this Court cannot go into exception 4 of Section 499 to find out as to whether the news item published in the newspaper against respondent No. 1 was per se defamatory.

12. It is not in dispute that applicant-accused No. 1 is the Chief Editor and applicant-accused No. 3 is the Publisher of the newspaper Lokmat Samachar and as such would not be criminally liable unless it is shown that they had published news item and objectionable material with full knowledge and intention to defame respondent No. 1. In this context, reference may be made to the decision of Apex Court in K.M. Mathew Vs. State of Kerala and another, wherein it has been observed in paras 7, 8, 9 and 10 as under :

The High Court seems to be too technical in this regard, if one reads carefully the provisions relating to trial of summons cases, the power to drop proceedings against the accused cannot be denied to the Magistrate. Section 204 of the Code indicates that the proceedings before the Magistrate commences upon taking cognizance of the offence and the issue of summons to the accused. When the accused enters appearance in response to the summons, the Magistrate has to take proceedings under Chapter XX of the Code. But the need to try the accused arises when there is allegation in the complaint that the accused has committed the crime. If there is no allegation in the complaint involving the accused in the commission of the crime, it is implied that the Magistrate has no jurisdiction to proceed against the accused.

It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment, it can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused.

In the instant case there is no averment against the Chief Editor except the

motive attributed to him. Even the motive alleged is general and vague. The complainant seems to rely upon the presumption u/s 7 of the Press and Registration of Books Act, 1867 ("the Act"). But Section 7 of the Act has no applicability for a person who is simply named as "Chief Editor". The Presumption u/s 7 of the Press and Registration of Books Act, 1867 (hereinafter referred to as the Act) is available against the person whose name is printed as "Editor" as required u/s 5(1). There is a mandatory (though rebuttable) presumption that the person whose name is printed as "Editor" is the Editor of every portion of that issue of the newspaper of which a copy is produced. Section 1(1) of the Act defines "Editor" to mean the person who controls the selection of the matter that is published in a newspaper". Section 7 raises the presumption in respect of a person who is named as the Editor and printed as such on every copy of the newspaper. The Act does not recognize any other legal entity for raising the presumption. Even if the name of the Chief Editor is printed in the newspaper, there is no presumption against him u/s 7 of the Act. (See *State of Maharashtra Vs. Dr. R.B. Chowdhary and Others*, , *D.P. Mishra Vs. Kamal Narain Sharma and Others*, ; *Shri Harasingh Charan Mohanty Vs. Sh. Surendra Mohanty*, and *Haji C.H. Mohammad Koya Vs. T.K.S.M.A. Muthukoya*, .

It is important to state that for a Magistrate 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. The complaint in the instant case does not contain any such allegation. In the absence of such allegation, the Magistrate was justified in directing that the complaint so as it relates to the Chief Editor could not be proceeded with. To ask the Chief Editor to undergo the trial of the case merely on the ground of the issue of process would be oppressive. No person should be tried without a prima facie case. The view taken by the High Court is untenable. The appeal is accordingly allowed. The order of the High Court is set aside."

13. The observations of the Apex Court in the aforesaid decision are clearly applicable in this proceeding. So far as applicant No. 1 who is the Chief-Editor and applicant No. 3 who is the publisher of the news item are concerned, perusal of the complaint do not indicate that both of them had the knowledge of the objectionable character of the matter nor there is any specific allegation against them to show that they had shared the requisite intention in publishing the said objectionable matter. Therefore, it is quite obvious that the order of issue of process against them passed by the Magistrate is liable to be quashed. However, since applicant No. 2 was the Executive Editor, he is supposed to have the requisite knowledge in publication of the objectionable matter and, therefore, the learned Magistrate was perfectly justified in directing issue of process against him. In such circumstances, this application deserves to be partly allowed.

14. In the result, the impugned order by which the process has been issued against applicants No. 1 and 3 is hereby set aside and they are discharged from the case. The learned Magistrate shall decide the criminal case against applicant

No. 2 on merits in accordance with law without being influenced by any of the observations mentioned above in this judgment. The application is accordingly disposed of.