

CASE NO.:

Appeal (crl.) 701 of 1990

Appeal (crl.) 847 of 2002

Appeal (crl.) 848 of 2002

PETITIONER:

K.M. MATHEW

Vs.

RESPONDENT:

K.A. ABRAHAM & ORS.

DATE OF JUDGMENT: 23/08/2002

BENCH:

U.C. Banerjee & K.G. Balakrishnan.

JUDGMENT:

Vivek Goenka

Hari Narain Nigam

Vs.

Padam Sambhav Jain & Anr.

State of Bihar & Ors.

K.G. BALAKRISHNAN, J.

Leave granted.

Common questions of law arise in these appeals; hence they are being disposed of by this common judgment. Appellants are either Managing Editor, Chief Editor or Resident Editor of their respective newspaper publications. Separate criminal complaints were filed against the appellants alleging that in their newspaper publications, libellous matter was published and that these appellants had knowledge and they were responsible for such publication and thus they committed the offence of defamation besides other allied offences. In all these cases, the Magistrate had taken cognizance of the offences and issued summons to these appellants. The appellants challenged their prosecution and contended that in view of Section 7 of the Press & Registration of Books Act, 1867 (hereinafter referred to as "the Act"), they are not liable to be prosecuted and that the Editor of the newspaper whose name is printed on it as the "Editor" of that publication alone is liable to be prosecuted for any of the offence for such libellous publication.

The appellant in Criminal Appeal No. 701 of 1998 is the Chief Editor of "Malayalam Manorma", a daily having wide circulation in Kerala and other places. According to the appellant in this case, he is the Chief Editor of the "Malayalam Manorma" and that there is also an Editor for this publication who alone can be charged for the offence under Section 500 of Indian Penal Code in view of the statutory presumption under Section 7 of the Act.

In Criminal Appeal arising out of S.L.P. (Crl.) No. 399 of 2001, the appellant is the Managing Editor of Indian Express, Jansatta and Financial Express and certain other publications. A criminal complaint was filed against the appellant and others alleging that on 21st January, 1992 a news item was published in "Jansatta" which, according to the complainant, was defamatory and thus the appellant had committed the offence under Section 500 IPC. The complaint was filed before the Judicial Magistrate, Kota in Rajasthan.

The appellant in the Criminal Appeal arising out of S.L.P. (Crl.) No. 520 of 2000 was the Resident Editor of a daily, namely, "Hindustan", and the complainant therein alleged that some articles published on 7.12.1986 and 8.12.1986 in that newspaper ("Hindustan") were defamatory and thereby the appellant committed offence under Section 500 IPC.

In all these cases, the respective Magistrate took cognizance of the offence alleged in the complaint and issued process to the appellants and the appellants filed petitions under Section 482 of the Code of Criminal Procedure for quashing the proceedings on the ground that they are not liable to be prosecuted for the offence of defamation for the alleged libellous publication as they are not the Editors of such publications. The plea raised by the appellants was not accepted by the High Courts and the impugned orders passed in those proceedings are challenged before us.

We have heard learned counsel for the appellants as well as counsel for the respondents. As noticed earlier, the contention of the appellants is that in view of Section 7 of the Act, there cannot be any prima facie case against the appellants and the Editor whose name is printed in such publications alone can be prosecuted.

Section 7 of the Press & Registration of Books Act, 1867 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 declarations, 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."

The expression "Editor" has also been defined in Section 1 of the Act as under :

" 'Editor' means the person who controls the selection of the matter that is published in a newspaper."

It is also relevant to quote Section 5(1) of the Act :

"5. Rules as to publication of newspapers. No newspaper shall be published in India, except in conformity with the rules hereinafter laid down:

(1) 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.

(2) .."

The preamble to the Act says that it is expedient to provide for the regulation of printing presses and of newspapers, for the preservation of copies of every book and newspaper printed in India and for the registration of such books and newspapers.

Section 5 of the Act prescribes certain rules regarding the publication of newspapers. It says that the newspaper shall contain the names of the owner and editor printed clearly on each copy and also the date of its publication. Sub-section (2) of Section 5 further says that the printer and the publisher of every such newspaper shall appear in person before the District, Presidency or Sub-divisional Magistrate and shall make a declaration that he was the printer or publisher or printer and publisher of that newspaper.

It is also pertinent to note that Section 8A of the Act provides that if any person, whose name has appeared as editor on a copy of a newspaper, may, within two weeks of his becoming aware that his name has been so published, appear before the District Magistrate and make a declaration that his name was incorrectly published in that issue as the editor thereof, and the Magistrate empowered in that behalf may conduct an inquiry and on such inquiry if it is found that the said person is not the editor of the newspaper, the Magistrate may issue a certificate to the effect that Section 7 will not apply to him.

A conjoint reading of these provisions will go to show that in the case of publication of any newspaper, each copy of the publication shall contain the names of the owner and the editor who have printed and published that newspaper. Under Section 7 of the Act, there is a presumption that the Editor whose name is printed in the newspaper as Editor shall be held to be the Editor in any civil or criminal proceedings in respect of that publication and the production of a copy of the newspaper containing his name printed thereon as Editor shall be deemed to be sufficient evidence to prove that fact, and as the 'Editor' has been defined as the person who controls the selection of the matter that is published in a newspaper, the presumption would go to the extent of holding that he was the person who controlled the selection of the matter that was published in the newspaper. But at the same time, this presumption contained in Section 7 is a rebuttable presumption and it will be deemed as sufficient evidence unless the contrary is proved. Therefore, it is clear that even if a person's name is printed as Editor in the newspaper, he can still show that he was not really the Editor and had no control over the selection of the matter that was published in the newspaper. Section 7 only enables the court to draw a presumption that the person whose name was printed as Editor was the Editor of such newspaper, if the publication produced in the court shows to that effect.

The contention of the appellants in these cases is that they had not been shown as Editors in these publications and that their names were printed either as Chief Editor, Managing Editor or Resident Editor and not as 'Editor' and there cannot be any criminal prosecution against them for the alleged libellous publication of any matter in that newspaper.

The contention of these appellants is not tenable. There is no statutory immunity against Managing Editor, Resident Editor or Chief Editor against any prosecution for the alleged publication of any matter in the newspaper over which these persons exercise control. In all these cases, the complainants have specifically alleged that these appellants had knowledge of the publication of the alleged defamatory matter and they were responsible for such publication; and the Magistrates who had taken cognizance of the offence held that there was prima facie case against these appellants. It was under such circumstances that the summonses were issued against these appellants.

Counsel for the appellants relied on certain decisions to contend for the position that under Section 7 of the Act, Editor alone shall be prosecuted for the publication of any defamatory matter in a newspaper. One of the earliest decisions relied upon is *State of Maharashtra vs. Dr. R.B. Chowdhary & Ors.* (1967) 3 SCR 708. This was a case where the complaint was filed under Section 500 IPC against four persons who were members of the Editorial Board of a Marathi daily. The Addl. Sessions Judge held that there was a prima facie case against Respondents 2, 3 and 4, who were members of the Editorial Board and that they were the makers of the alleged article published in the daily. These respondents contended that the Editor was one Madane and when he was questioned under Section 342 Cr.P.C., he unequivocally admitted that he had written the defamatory article and his name was shown as the Editor in the

declaration made under Section 5 of the Act. Under such circumstances, the court held that though the statement of Madane under Section 342 was no evidence against these respondents as Madane alone was shown as Editor, no presumption could be drawn against Respondents 2, 3 and 4. We do not think that this decision has any application to the facts of the present case as the decision turned mainly on the point that the Editor had admitted the fact that he was responsible for the publication.

The next case relied upon is Haji C.H. Mohammad Koya vs. T.K.S. M.A. Muthukoya (1979) 1 SCR 664. This case arose out of an election petition. The election of the appellant to the legislative assembly was set aside on the ground of corrupt practices. The allegation against the appellant was that he was the Chief Editor of a Malayalam daily newspaper, by name, "Chandrika" in which certain articles and cartoons were published which were intended to create hatred between two classes of citizens and thus committed corrupt practices. It was noted by the court that one Aboobaker was the printer, publisher and editor of "Chandrika" and in the election petition there was no averment to the effect that the appellant controlled the selection of the matter that was published in the newspaper. It was in this background that the court held that the appellant was not the Editor of the newspaper and the presumption under Section 7 of the Act could be drawn only against the person who was the Editor within the meaning of the Act and that there was no justification to draw the presumption against the appellant who was the Chief Editor. This decision also is of no help to the appellants to contend for the position that the appellants cannot be prosecuted for the alleged offence committed in respect of publication in these newspapers.

Another decision relied upon is K.M. Mathew vs. State of Kerala & Anr. (1992) 1 SCC 217. Here the accused was the Chief Editor and in the complaint against him there was no averment except the motive attributed to him. That too was of general nature. This Court held that the appellant who was the Chief Editor of the daily newspaper in question was responsible for the general policy of that daily and as the complaint did not contain any positive averments as to the knowledge of the Chief Editor about the objectionable character of the matter, the Chief Editor could not be proceeded against. Like the first two decisions relied upon by the appellants, this decision also is of no assistance to them.

The provisions contained in the Act clearly go to show that there could be a presumption against the Editor whose name is printed in the newspaper to the effect that he is the Editor of such publication and that he is responsible for selecting the matter for publication. Though, a similar presumption cannot be drawn against the Chief Editor, Resident Editor or Managing Editor, nevertheless, the complainant can still allege and prove that they had knowledge and they were responsible for the publication of the defamatory news item. Even the presumption under Section 7 is a rebuttable presumption and the same could be proved otherwise. That by itself indicates that somebody other than Editor can also be held responsible for selecting the matter for publication in a newspaper.

It is true that judicial process should not be an instrument of oppression or needless harassment and the Magistrate while taking cognizance should be satisfied that there is a prima facie case against the accused and at that he should be circumspect and judicious in exercising discretion and should take all relevant facts into consideration before issuing process and that vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice and it shall not be the means to wreak vengeance, but, at the same time, "the inherent power of the court under Section 482 Cr.P.C. should be very sparingly and cautiously used and only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. "So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage, it is not open either to sift the

evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out." [See : State of Bihar vs. Rajendra Agrawalla (1996) 8 SCC 164.

"Unless grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind the principle behind Section 465 Cr.P.C.. Any or every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Frequent interference by superior courts at the interlocutory stage tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system." [See: Santosh De & Anr. vs. Archana Gupta & Ors. (1994) 2 SCC 420.

In the instant appeals, the complainant in each case has alleged that these appellants who are either Managing Editor, Chief Editor or Resident Editor had knowledge and were responsible for publishing defamatory matter in their respective newspaper publications. Moreover, in none of these cases, the 'Editor' had come forward and pleaded guilty to the effect that he was the person responsible for selecting the alleged defamatory matter published. It is a matter of evidence in each case. If the complaint is allowed to proceed only against the 'Editor' whose name is printed in the newspaper against whom there is a statutory presumption under Section 7 of the Act, and in case such 'Editor' succeeds in proving that he was not the 'Editor' having control over the selection of the alleged libellous matter published in the newspaper, the complainant would be left without any remedy to redress his grievance against the real culprit. We are not unmindful of the powers of the Court under Section 319 of the Code of Criminal Procedure, but such powers are circumscribed by limitations.

We do not find any convincing reasons to quash the proceedings initiated against these appellants and the Criminal Appeals are devoid of merits. They are dismissed and the proceedings initiated against the appellants be continued in accordance with law.