

GAMBHIRSINH R. DEKARE

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v.

FALGUNBHAI CHIMANBHAI PATEL AND ANR.

(Criminal Appeal No. 433 of 2013)

MARCH 11, 2013

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**[CHANDRAMAULI KR. PRASAD AND
V. GOPALA GOWDA, JJ.]**

Code of Criminal Procedure, 1973 - s.482 - Defamatory news item - In local edition of a newspaper - Complaint against Editor and Resident Editor alleging defamation - Magistrate took cognizance of the offence and issued process against both the accused - Editor sought quashing of the complaint on the ground that he was not aware of offending news item as he was stationed at different place - High Court quashed the complaint against the Editor - Held: High Court quashed the prosecution on erroneous assumption of fact - In view of the scheme of Press and Registration of Books Act and in view of presumption provided u/s. 7 thereof, Editor is responsible for publication of a news item - Press and Registration of Books Act, 1867 - s.7.

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A news item was published in a newspaper alleging illicit relation of the appellant with a lady. Appellant filed a complaint against Accused Nos.1 and 2 who were Resident Editor and Editor of the Newspaper respectively. Chief Judicial Magistrate took cognizance of the offence u/ss. 500, 501, 502, 506, 507 and 114 IPC and issued process against both the accused.

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Accused-respondent No.1 (the Editor) filed application seeking quashing of the complaint on the ground that he was the Editor of the Newspaper and stationed at Ahmedabad and the offending news item was published in the Vadodara Edition of the newspaper

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A of which accused No.1 was the resident Editor. Thus he was not aware of the publication of the offending news item. High Court quashed the complaint and process against the accused-respondent No.1. Hence the instant appeal by the complainant.

B Allowing the appeal, the Court

HELD: 1. Complainant had specifically averred in the complaint that the news item was printed in the newspaper as per the instructions and directions of the accused persons. The complainant had specifically alleged that accused nos. 1 and 2 deliberately published the offending news and it was within their knowledge. At this stage, it is impermissible to go into the truthfulness or otherwise of the allegation and one has to proceed on a footing that the allegation made is true. Hence, the conclusion reached by the High Court that "there is nothing in the complaint to suggest that the petitioner herein was aware of the offending news item being published or that he had any role to play in the selection of such item for publication" is palpably wrong. Hence, the High Court has quashed the prosecution on an erroneous assumption of fact which renders its order illegal. [Para 12] [725-F-H; 726-A-B]

F 2. A news item has the potentiality of bringing doom's day for an individual. The Editor controls the selection of the matter that is published. Therefore, he has to keep a careful eye on the selection. Blue-penciling of news articles by any one other than the Editor is not welcome in a democratic polity. Editors have to take responsibility of everything they publish and to maintain the integrity of published record. The scheme and scope of Press and Registration of Books Act, 1867 also brings forward the same conclusion. From the scheme of the Act, it is evident that it is the Editor who controls the selection of the matter that is published in a newspaper.

Further, every copy of the newspaper is required to contain the names of the owner and the Editor and once the name of the Editor is shown, he shall be held responsible in any civil and criminal proceeding. Further, in view of the interpretation clause, the presumption would be that he was the person who controlled the selection of the matter that was published in the newspaper. However, this presumption u/s.7 of the Act is a rebuttable presumption and it would be deemed a sufficient evidence unless the contrary is proved. [Paras 14, 15 and 18] [726-E-F, H; 728-D-F]

K.M. Mathew v. K.A. Abraham (2002) 6 SCC 670: 2002 (1) Suppl. SCR 662 - relied on.

K.M. Mathew v. State of Kerala (1992) 1 SCC 217: 1991 (2) Suppl. SCR 364; *Adalat Prasad v. Rooplal Jindal* (2004) 7 SCC 338 - referred to.

Case Law Reference:

2002 (1) Suppl. SCR 662 relied on Para 18

1991 (2) Suppl. SCR 364 referred to Para 19

(2004) 7 SCC 338 referred to Para 22

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 433 of 2013.

From the Judgment & Order dated 12.10.2007 of the High Court of Gujarat at Ahmedabad in Criminal Misc. Application No. 5605 of 2001.

Huzefa Ahmadi, Ejaz Maqbool, Tanima Kishore for the Appellant.

Dushyant A. Dave, Suk Sagar, Bina Madhavan, Sanjiv Dave, Anindita Pujari (For Lawyer's Knit & Co.), Hemantika

A Wahi, Kamal Deep, Shubhada Deshpande, Nandini Gupta for the Respondents.

The Judgment of the Court was delivered by

B **CHANDRAMAULI KR. PRASAD, J.** 1. The petitioner Gambhirsinh R. Dekare, at the relevant point of time was serving as Taluka Mamlatdar and an Executive Magistrate in Vadodara Taluka in the State of Gujarat. A Gujarati daily newspaper "Sandesh" is published from different places i.e., Surat, Valsad, Bharuch, Vadodara and other cities of India. C Navinbhai Chauhan is the Resident Editor of Vadodara edition of "Sandesh" whereas Falgunbhai Chimanbhai Patel is the Editor of "Sandesh". The newspaper published a news item in its Vadodara issue dated 28.09.1999 that the petitioner "is in love and keeping illicit relations with the wife of a doctor at D Ajwa Road with the following headlines:

E "Mamlatdar Shri Gambhirsinh Dhakre is caught red handed by the youngsters- Mamlatdar is indulged in illicit relations with the wife of Doctor who is residing at Ajwa Road- attempts to conceal the matter- why the Government is not taking any action against the Mamlatdar?"

F 2. According to the petitioner (hereinafter referred to as "the complainant"), the allegation published in the newspaper is false and defamatory. Accordingly, he filed complaint in the Court of Chief Judicial Magistrate, Vadodara. The complainant alleged that the news items are printed in the newspaper "as per the instructions and directions of the accused persons". In paragraph 3 of the complaint the complainant alleged as under:

G "3. The Accused No. 1 and 2 of this case have deliberately published the news in the Page No. 12 of their daily newspaper 'Sandesh' dated 28/9/99 which is quite defaming and offending to us. The accused persons were in the knowledge that we the complainant shall be defamed H in the Society due to publishing of such news and with a

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view to vilify us as the person having bad character, the
accused persons, in collusion with each other, have
published the following news in the newspaper
deliberately." A

3. The complainant termed those allegations to be false
and stated that the Editor and the Resident Editor have tried
to prove him a characterless person in the society and because
of that he had faced shameful and disgraceful situation amongst
the family members and friends. The news item further brought
him in disrepute in the Department and the public. It has been
alleged that the accused persons have published the news
item without any evidence or proof. The complainant denied to
have any illicit relation with the doctor's wife. The complainant
was examined on solemn affirmation in which he reiterated the
allegation. B
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4. The Chief Judicial Magistrate, taking into account the
allegation made in the petition of complaint and the statement
of the complainant on solemn affirmation, took cognizance of
the offence under Section 500, 501, 502, 506, 507 and 114 of
the Indian Penal Code and issued process against both the
accused. E

5. Accused no. 2, Falgunbhai Chimanbhai Patel, the Editor
of "Sandesh", aggrieved by the order taking cognizance and
issuing process, filed an application before the High Court
seeking quashing of the complaint filed before the Chief Judicial
Magistrate, Vadodara on 08.10.1999. He sought quashing of
the complaint on the ground that he is the Editor of the
newspaper, stationed at Ahmedabad and the offending news
item was published in the Vadodara Edition of the newspaper,
of which Navinbhai Chauhan, accused no. 1, is the Resident
Editor. It was further contended that he was not aware of the
offending news item being published in the newspaper or for
that matter he had any role to play in selection of such item for
publication. The High Court by the impugned order allowed the
application and while doing so observed as follows: F
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A "6. In the complaint itself, the petitioner is described as
editor of the newspaper and his address is shown at
Ahmedabad. Original accused No. 1 is described as a
resident editor of Baroda of the same newspaper. It is not
B in dispute that the newspaper in question has its
registered office at Ahmedabad and Baroda edition of the
newspaper is being separately published from Baroda. It
is also not in dispute that offending news item was carried
in Baroda edition of the newspaper only."

C 6. The High Court further went on to observe as under:

"10. In the present case also, I find that there is nothing in
the complaint to suggest that the petitioner herein was
aware about the offending news item being published or
that he had any role to play in selection of such item for
D publication. In absence of any material disclosed in the
complaint and in view of the admitted fact that the
petitioner is an editor of the newspaper stationed at
Ahmedabad and the news item was carried in its Baroda
E edition alone where the newspaper has a separate
resident editor, the petitioner cannot be proceeded against
for the offence of defamation of the complaint."

F 7. The High Court came to the conclusion that prosecution
of accused no. 2 would amount to miscarriage of justice and,
accordingly, quashed the complaint and the process issued
against him.

8. It is against this order that the complainant has preferred
this special leave petition.

G 9. Leave granted.

10. Mr. Huzefa Ahmadi, Senior Advocate appears on
behalf of the complainant (appellant herein) whereas accused
no. 2 (Respondent no. 1 herein) is represented by Mr. Dushyant
H Dave, Senior Advocate.

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11. Mr. Ahmadi, submits that according to the complainant, accused no. 2 was the Editor stationed at Ahmedabad and there is specific allegation against him that the news items are published in the newspaper "as per the instructions and directions of the accused persons". The complainant has further alleged in the complaint that both the accused i.e. the Editor (accused no. 2) and the Resident Editor (accused no. 1) had deliberately published the news in their Gujarati daily newspaper "Sandesh" which is defamatory. The complainant went on to say that the "accused persons were in the knowledge that the complainant shall be defamed in the society due to publication of such news". In the face of the aforesaid allegation, Mr. Ahmadi points out that the High Court committed a serious error by observing that "there is nothing in the complaint to suggest that" accused no. 2 "was aware about the offending news item being published or that he had any role to play in selection of such item for publication". Mr. Dave, however, submits that, according to the complainant's own showing, accused no. 2 was the Editor of the newspaper stationed at Ahmedabad and the offending news item having been published at Vadodara for which there is admittedly a separate Resident Editor, it has to be assumed that the accused no. 2 was not aware of the same and had no role to play in the selection of such item for publication.

12. We have bestowed our consideration to the rival submission and we do not find any substance in the submission of Mr. Dave. Complainant has specifically averred in the complaint that the news item was printed in the newspaper as per the instructions and directions of the accused persons. The complainant had specifically alleged that accused nos. 1 and 2 have deliberately published the offending news and it was within their knowledge. At this stage, it is impermissible to go into the truthfulness or otherwise of the allegation and one has to proceed on a footing that the allegation made is true. Hence, the conclusion reached by the High Court that "there is nothing in the complaint to suggest that the petitioner herein was aware

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A of the offending news item being published or that he had any role to play in the selection of such item for publication" is palpably wrong. Hence, in our opinion, the High Court has quashed the prosecution on an erroneous assumption of fact which renders its order illegal.

B 13. Mr. Ahmadi, further submits that the impugned order is vulnerable on another count. He points out that according to the complainant, the present accused was the Editor and his name has been printed as such in the publication and, therefore, he is responsible for the publication of the news item. Mr. Dave, however, submits that there being Resident Editor for the C Vadodara Edition of the newspaper, the present accused, who is the Editor and stationed at Ahmedabad, cannot be held D responsible for the publication. He emphasizes that it would be the Resident Editor who shall be responsible for the contents of the Vadodara Edition. In support of the submission he has placed reliance on a decision of this Court in the case of *K.M. Mathew v. State of Kerala*, (1992) 1 SCC 217.

E 14. A news item has the potentiality of bringing doom's day for an individual. The Editor controls the selection of the matter that is published. Therefore, he has to keep a careful eye on the selection. Blue-penciling of news articles by any one other than the Editor is not welcome in a democratic polity. Editors have to take responsibility of everything they publish and to F maintain the integrity of published record. It is apt to remind ourselves the answer of the Editor of the Scotsman, a Scottish newspaper. When asked what it was like to run a national newspaper, the Editor answered "run a newspaper! I run a country". It may be an exaggeration but it does reflect the well G known fact that it can cause far reaching consequences in an individual and country's life.

H 15. The scheme and scope of Press and Registration of Books Act, 1867 (hereinafter referred to as "the Act") also brings forward the same conclusion. Section 1 of the Act is the

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interpretation clause and the expression "Editor" has been defined as follows: A

"1. Interpretation-clause.-(1)In this Act, unless there shall be something repugnant in the subject or context,-

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"editor" means the person who controls the selection of the matter that is published in a newspaper;"

16. Section 5 of the Act provides for rules as to publication of newspapers and prohibits its publication in India except in conformity with the rules laid down. Section 5 (1) of the Act which is relevant for the purpose reads as follows: C

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

(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. E

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17. From a plain reading of the aforesaid provision, it is evident that every copy of every newspaper published in India is mandated to contain the names of the owner and Editor thereof. It is in the light of the aforesaid obligation that the name of the accused no. 2 has been printed as Editor. Section 7 of the Act makes the declaration to be prima facie evidence for fastening the liability in any civil or criminal proceeding on the Editor. Section 7 of the Act reads as follows: F
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"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 H

A as is aforesaid, attested by the seal of some Court
empowered by this Act to have the custody of such
B 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
C 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."

D 18. Therefore, from the scheme of the Act it is evident that
it is the Editor who controls the selection of the matter that is
published in a newspaper. Further, every copy of the
newspaper is required to contain the names of the owner and
the Editor and once the name of the Editor is shown, he shall
be held responsible in any civil and criminal proceeding.
E Further, in view of the interpretation clause, the presumption
would be that he was the person who controlled the selection
of the matter that was published in the newspaper. However,
we hasten to add that this presumption under Section 7 of the
Act is a rebuttable presumption and it would be deemed a
F sufficient evidence unless the contrary is proved. The view
which we have taken finds support from the judgment of this
Court in the case of *K.M. Mathew v. K.A. Abraham*, (2002) 6
SCC 670, in which it has been held as follows:

G "20. 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,
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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."

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19. Now reverting to the authority of this Court in the case of *K.M. Mathew v. State of Kerala*, (1992) 1 SCC 217, relied on by Mr. Dave, in our opinion, same instead of supporting his contention, goes against him. In the said case it has been observed as follows:

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"9. 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 under Section 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 under Section 7 is only against the person whose name is printed as 'Editor' as required under Section 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 recognise 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 under Section 7 of the Act."

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20. In this case the accused was the Chief Editor of Malyalam Manorama and there was no allegation against him

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A in the complaint regarding knowledge of the objectionable character of the matter published. In the absence of such allegation, the Magistrate decided to proceed against the Chief Editor. On an application by the Chief Editor, the process issued against him was recalled. The High Court, however, set
 B aside the order of the Magistrate and when the matter travelled to this Court, it set aside the order of the High Court. This Court made distinction between 'Editor' and 'Chief Editor'. In no uncertain terms the Court observed that the Press and
 C Registration of Books Act recognizes 'Editor' and presumption is only against him. The Act does not recognize any other legal entity viz., Chief Editor, Managing Editor etc. for raising the presumption. They can be proceeded against only when there is specific allegation.

D 21. We may here observe that in this case, this Court has held that the Magistrate has the power to drop proceeding against an accused against whom he had issued process in the following words:

E "8. 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
 F 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."

G 22. However, this Court in *Adalat Prasad v. Rooplal Jindal* (2004) 7 SCC 338, has specifically overruled *K.M. Mathew* (Supra) in regard to the power of the Magistrate to recall its order issuing process. It has been observed as follows:

H "15. It is true that if a Magistrate takes cognizance of an

offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code.

16. Therefore, in our opinion the observation of this court in the case of *K.M. Mathew v. State of Kerala*, 1992 (1) SCC 217, that for recalling an erroneous order of issuance of process, no specific provision of law is required, would run counter to the scheme of the Code which has not provided for review and prohibits interference at interlocutory stages. Therefore, we are of the opinion, that the view of this Court in *Mathew's* case (supra) that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law."

23. Thus our reference to *K.M. Mathew* (supra) may not be construed to mean that we are in any way endorsing the opinion, which has already been overruled in *Adalat Prasad* (supra).

24. Thus the impugned judgment of the High Court is indefensible both on facts and law. Any observation made by us in this judgment is for the decision in this case. It does not reflect on the merit of the allegation, which obviously is a matter of trial.

25. In the result, the appeal is allowed, the impugned judgment of the High Court is set aside and the court in seisin of the case shall now proceed with the trial in accordance with law.

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Appeal allowed.

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