

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2059 OF 2017

(Arising out of Special Leave to Appeal (Crl.) No.1741 of 2017)

Mohammed Abdulla Khan

... Appellant

Versus

Prakash K.

... Respondent

J U D G M E N T

Chelameswar, J.

1. Leave granted.
2. The sole respondent is admittedly the owner of a Kannada Daily Newspaper by name “*Jaya Kirana*” published from Mangalore, Karnataka. On 16.12.2013, the said newspaper carried a news item containing certain allegations against the appellant herein. According to the appellant, the allegations are highly defamatory in nature.

3. The appellant lodged a report with the Panambur Police, Mangalore, Dakshina Kannada District on 17.12.2013 against the respondent and another person who was editor of the abovementioned newspaper. Police did not take any action. Thereafter, the appellant filed a private complaint against the respondent and the editor of the abovementioned newspaper before the J.M.F.C.-II, Mangalore in PCR No.24/2014 which eventually came to be numbered as CC No.1252 of 2014. The learned Magistrate took cognizance of the matter on 15.04.2014 for the offences punishable under Section 500, 501 and 502 of the Indian Penal Code, 1860.

4. Aggrieved by the order dated 15.04.2014, the respondent carried the matter in Revision Petition No.219 of 2014 before the Sessions Judge, Dakshina Kannada, Mangalore. By the order dated 06.11.2015, the respondent's revision was dismissed. Respondent further carried the matter in Criminal Petition No.8679 of 2015 to the Karnataka High Court invoking Section 482 of the Code of Criminal Procedure, 1973. By an order dated 23.11.2016, the said petition was allowed and the proceedings in CC No.1252 of 2014, insofar as they pertained to the respondent, were quashed.

5. Both in his revision as well as the petition under Section 482 Cr.P.C., the respondent urged various grounds which according to him render the order dated 15.04.2014 illegal. The details of those various grounds are not necessary for our purpose.

6. The judgment under appeal is very cryptic. The first three paragraphs of the judgment under appeal (running into a short one and a half page) purport to take note of only one submission of the respondent.

“Para 2. The learned Counsel for the petitioner would point out that there can be no vicarious liability insofar as the criminal law is concerned. The complainant’s allegation of the defamatory material published in the newspaper against him, even if it is established, can only be sustained against the editor of the newspaper and not the owner of the newspaper. The petitioner admittedly was the owner. The newspaper carries a legend that the newspaper is edited and published on behalf of the petitioner and there is no dispute in this regard.”

7. It appears from the judgment under appeal that the appellant herein argued that in view of the law laid down in ***K.M. Mathew v. K.A. Abraham***, (2002) 6 SCC 670 the respondent’s objection could not be sustained. High Court rejected the submission of the appellant.

“Para 3. Though the learned Counsel for the respondent would seek to contend that the question is no longer *res integra* and is covered by a judgment of the Supreme Court in the case of *K.M. Mathew vs. K.A. Abraham*, AIR 2002 SC 2989, it is however noticed that the said decision was in respect of a managing

editor, resident editor or a chief editor of respective newspaper publications, who were parties therein.”

The learned Judge recorded that the judgment in ***K M Mathew’s case*** could be distinguished and, therefore, opined that the respondent’s petition is required to be allowed.

“Para 3. ... Therefore, at the outset, it can be said that the said case could be distinguished from the case on hand, as, the petitioner is not claiming as an editor, who had any role in the publication of the newspaper. Therefore, it is a fit case where the petition should be allowed.”

It is unfortunate that the High Court did not choose to give any reason whatsoever for quashing the complaint except a grand declaration that “it would lead to a miscarriage of justice”.

“Accordingly, though the criminal proceedings can go on against the editor of the newspaper, the petitioner cannot be proceeded with, as it would lead to a miscarriage of justice.”

Hence, the appeal.

8. Before us the appellant appeared in person. In spite of the service of notice, the respondent neither chose to appear in person nor through a counsel. In view of the fact that a substantial question of law is involved in the matter, we thought it appropriate to request Shri M.N. Rao, learned Senior Advocate to assist the Court in this matter.

9. Heard Shri M.N. Rao, learned Senior Advocate for the appellant.

10. Section 499 IPC defines the offence of defamation. It contains 10 exceptions and 4 explanations. The relevant portion reads;

“Section 499. Defamation.— Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.”

11. An analysis of the above reveals that to constitute an offence of defamation it requires a person to make some imputation concerning any other person;

- (i) Such imputation must be made either
 - (a) With intention, or
 - (b) Knowledge, or
 - (c) Having a reason to believe

that such an imputation will harm the reputation of the person against whom the imputation is made.

- (ii) Imputation could be, by
 - (a) Words, either spoken or written, or

- (b) By making signs, or
 - (c) Visible representations
- (iii) Imputation could be either made or published.

The difference between making of an imputation and publishing the same is:

If 'X' tells 'Y' that 'Y' is a criminal – 'X' makes an imputation.

If 'X' tells 'Z' that 'Y' is a criminal – 'X' publishes the imputation.

The essence of publication in the context of Section 499 is the communication of defamatory imputation to persons other than the persons against whom the imputation is made.¹

12. Committing any act which constitutes defamation under Section 499 IPC is punishable offence under Section 500 IPC. Printing or engraving any defamatory material is altogether a different offence under Section 501 IPC. Offering for sale or selling any such printed or engraved defamatory material is yet another distinct offence under Section 502 IPC.

¹ *Khima Nand v. Emperor*, (1937) 38 Cri LJ 806 (All); *Amar Singh v. K.S. Badalia*, (1965) 2 Cri LJ 693 (Pat)

13. If the content of any news item carried in a newspaper is defamatory as defined under Section 499 IPC, the mere printing of such material “knowing or having good reason to believe that such matter is defamatory” itself constitutes a distinct offence under Section 501 IPC. The sale or offering for sale of such printed “substance containing defamatory matter” “knowing that it contains such matter” is a distinct offence under Section 502 IPC.

14. Whether an accused (such as the respondent) against whom a complaint is registered under various Sections of the IPC (Sections 500, 501 & 502 IPC) could be convicted for any of those offences depends upon the evidence regarding the existence of the facts relevant to constitute those offences.

15. In the context of the facts of the present case, first of all, it must be established that the matter printed and offered for sale is defamatory within the meaning of the expression under Section 499 IPC. If so proved, the next step would be to examine the question whether the accused committed the acts which constitute the offence of which he is charged with the requisite intention or knowledge etc. to make his acts culpable.

16. Answer to the question depends upon the facts. If the respondent is the person who either made or published the defamatory imputation, he would be liable for punishment under Section 500 IPC. If he is the person who “printed” the matter within the meaning of the expression under Section 501 IPC. Similarly to constitute an offence under Section 502 IPC, it must be established that the respondent is not only the owner of the newspaper but also sold or offered the newspaper for sale.

17. We must make it clear that for the acts of printing or selling or offering to sell need not only be the physical acts but include the legal right to sell i.e. to transfer the title in the goods - the newspaper. Those activities if carried on by people, who are employed either directly or indirectly by the owner of the newspaper, perhaps render all of them i.e., the owner, the printer, or the person selling or offering for sale liable for the offences under Sections 501 or 502 IPC, (as the case may be) if the other elements indicated in those Sections are satisfied.

18. Whether the content of the appellant’s complaint constitutes an offence punishable under any one or all or some of the abovementioned sections was not examined by the High Court for quashing the complaint against the respondent. So we need not

trouble ourselves to deal with that question. We presume for the purpose of this appeal that the content of the appellant's complaint does disclose the facts necessary to establish the commission of one or all of the offences mentioned above. Whether there is sufficient evidence to establish the guilt of the respondent for any one of the abovementioned three offences is a matter that can be examined only after recording evidence at the time of trial. That can never be a subject matter of a proceeding under Section 482 Cr.P.C.

19. From the judgment under appeal, it appears that before the High Court it was argued on behalf of the respondent that there is no vicarious liability in criminal law and therefore the owner of a newspaper cannot be prosecuted for the offences of defamation.

“2. The learned counsel for the petitioner would point out that there can be no vicarious liability insofar as the criminal law is concerned. The complainant's allegation of the defamatory material published in the newspaper against him, even if it is established, can only be sustained against the editor of the newspaper and not the owner of the newspaper. The petitioner admittedly was the owner. The newspaper carries a legend that the newspaper is edited and published on behalf of the petitioner and there is no dispute in this regard.”

20. It appears from para 3 of the judgment that the appellant herein submitted in response to the above extracted contention of the respondent that the question is no longer *res integra* and is

covered by a judgment of this Court in ***K.M. Mathew v. K.A. Abraham & Others***.²

The High Court rejected the submission holding:

“.....it is however noticed that the said decision was in respect of a managing editor, resident editor or a chief editor of respective newspaper publications, who were parties therein. Therefore, at the outset, it can be said that the said case could be distinguished from the case on hand, as, the petitioner is not claiming as an editor, who had any role in the publication of the newspaper. Therefore, it is a fit case where the petition should be allowed.”

The High Court concluded that prosecution of the respondent would lead to miscarriage of justice. A conclusion without any discussion and without disclosing any principle which forms the basis of the conclusion.

FACTS, ISSUE & RATIO DECIDENDI OF K.M. MATHEW'S CASE:

21. K.M. Mathew was the “Chief Editor” of a daily called *Malayalam Manorama*. When he was sought to be prosecuted for the offence of defamation, he approached the High Court under Section 482 Cr.P.C. praying that the prosecution be quashed on the ground that Section 7 of the Press and Registration of Books Act, 1867 only permits the prosecution of the Editor but not the Chief Editor. The High Court rejected the submission.

² (2002) 6 SCC 670

22. Even before this Court, the same submission was made.³

This Court rejected the submission holding:

“16. The contention of these appellants is not tenable. There is no statutory immunity for the Chief Editor against any prosecution for the alleged publication of any matter in the newspaper over which these persons exercise control.”

It was further held that though the presumption under Section 7 of the Press and Registration of Books Act, 1867 is not applicable to somebody whose name is printed in the newspaper as the Chief Editor, the complainant can still allege and prove that persons other than the Editor, if they are responsible for the publication of the defamatory material.

“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, 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.”

23. ***K.M. Mathew’s case*** has nothing to do with the question of vicarious liability. The argument in ***K.M. Mathew’s case*** was that in view of Section 7 of the Press and Registration of Books

³ 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. [Para 15 of ***K.M. Mathew’s case***]

Act, 1867 only the Editor of a newspaper could be prosecuted for defamation. Such a submission was rejected holding that Section 7 does not create any immunity in favour of persons other than the Editor of a newspaper. It only creates a rebuttable presumption that the person whose name is shown as the editor of the newspaper is responsible for the choice and publication of the material in the newspaper. ***K.M. Mathew's case*** made it clear that if a complaint contains allegations (which if proved would constitute defamation), person other than the one who is declared to be the editor of the newspapers can be prosecuted if they are alleged to be responsible for the publication of such defamatory material.

The High Court, in our opinion, without examining the ratio of ***K.M. Mathew's case*** chose to conclude that the decision is distinguishable. The judgment of the High Court is absolutely unstructured leaving much to be desired.

24. Vicarious liability for a crime is altogether a different matter. In England, at one point of time, the owner of a newspaper was held to be vicariously liable for an offence of defamation (libel). The history of law in this regard is succinctly stated by Lord

Cockburn in ***The Queen v. Holbrook***.⁴ Though there appears to be some modification of the law subsequent to the enactment of Lord Campbell's Act i.e. the Libel Act 1843 (6&7 Vict C 96).

Lord Campbell's Act did not apply to India. The Press and Registration of Books Act (Act XXV of 1867) is made applicable to British India and continues to be in force by virtue of the declaration under Article 372 of the Constitution of India. There are material differences between the scheme and tenor of both the enactments. In ***Ramasami v. Lokanada***, (1886) ILR 9 Mad 692, it was held:

“... But we cannot hold that the provisions of that Statute (Ed. Lord Campbell's Act) are applicable to this country, and we must determine whether the accused is or is not guilty of defamation with reference to the provisions of the Indian Penal Code. We consider that it would be a sufficient answer to the charge in this country if the accused showed that he entrusted in good faith the temporary management of the newspaper to a competent person during his absence, and that the libel was published without his authority, knowledge or consent. As the Judge has, however, misapprehended the effect of Act XXV of 1867, we shall set aside the order of acquittal made by him and direct him to restore the appeal to his file, to consider the evidence produced by the accused and then to dispose of the appeal with reference to the foregoing observations.”

and reiterated in ***Emperor v. Bodi Narayana Rao and G. Harisarvothama Rao***, (1909) ILR 32 Mad 338:

“Lord Campbell's Act, of course, is not in force in India, and the Criminal Law of England is not necessarily the same as the Criminal Law of India as contained in the Indian Penal Code ...”

⁴ L.R. 3 QBD 60

25. The extent of the applicability of the principle of vicarious liability in criminal law particularly in the context of the offences relating to defamation are neither discussed by the High Court in the judgment under appeal nor argued before us because the respondent neither appeared in person nor through any advocate. Therefore, we desist from examining the question in detail. But we are of the opinion that the question requires a serious examination in an appropriate case because the owner of a newspaper employs people to print, publish and sell the newspaper to make a financial gain out of the said activity. Each of the abovementioned activities is carried on by persons employed by the owner.

26. Where defamatory matter is printed (in a newspaper or a book etc.) and sold or offered for sale, whether the owner thereof can be heard to say that he cannot be made vicariously liable for the defamatory material carried by his newspaper etc. requires a critical examination.

27. Each case requires a careful scrutiny of the various questions indicated above. Neither prosecutions nor the power

under Section 482 CrPC can be either conducted or exercised casually as was done in the case on hand.

28. The judgment under appeal cannot be sustained for the reasons indicated above. The same is, therefore, set-aside and the appeal is allowed. The trial court will now proceed with the case in accordance with law.

.....J.
(J. CHELAMESWAR)

.....J.
(S. ABDUL NAZEER)

New Delhi
December 4, 2017