

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.2045 OF 2016

Between:

Mr. Unnikrishnan Anchery & 2 Others	... Petitioners/Accused 3 to 5
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And

1. The State of Telangana,
Rep by its Public Prosecutor,
High Court of Judicature at Hyderabad
For the State of Telangana and for the
State of Andhra Pradesh.
2. The Special Public Prosecutor,
Appointed under G.O.Rt.No.1031, dt.08.12.2015
of Home (Courts.A1) Department,
Government of Telangana,
Hyderabad.

Criminal Petition No. 2314 OF 2016

Between:

Outlook Publishing (India) Pvt.Ltd & 4 Ors ... Petitioners/Accused-1,2,6 to 8

And

1. The State of Telangana,
Rep by its Public Prosecutor,
High Court of Judicature at Hyderabad
For the State of Telangana and for the
State of A.P. at Hyderabad.
2. The Special Public Prosecutor,
Appointed under G.O.Rt.No.1031, dt.08.12.2015
of Home (Courts.A1) Department,
Government of Telangana,
Hyderabad.

DATE OF JUDGMENT PRONOUNCED: 29.08.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

***THE HON'BLE SRI JUSTICE K. SURENDER**

+CRLP No. 2045 of 2016

% Dated 29.08.2023

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Hyderabad. Respondents/Defacto Complainant

! Counsel for the Petitioners: A to Z Associates

^ Counsel for the Respondents: Public Prosecutor

>HEAD NOTE :

? Cases referred

- 1.(1992) 1 Supreme Court Cases 217
2. 2022 Live Law (SC) 894
- 3.2021 SCC Online SC 1184
- 4.(1961) 2 SCR 63: AIR 1961 SC 387
- 5.2022 SCC Online SC 1080
6. (2012) 1 Supreme Court Cases 520
7. 2022 SCC Online SC 1434

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION Nos.2045 & 2314 OF 2016****COMMON ORDER:**

1. Criminal Petition No.2045 of 2016 is filed by A3 to A5 and Criminal Petition No.2314 of 2016 is filed by A1, A2, A6 to A8 seeking to quash proceedings in C.C.No.2 of 2016 on the file of Metropolitan Sessions Judge, Hyderabad filed against the petitioners for the offences under Sections 500, 501 & 120-B of IPC.

2. The Special Public Prosecutor appointed by the Government, filed a private complaint against A1/Outlook Publishing (India) Private Limited and the other accused 2 to 8 for defaming the public servant namely Smt. Smita Sabharwal, I.A.S, who was working as Additional Secretary to Chief Minister, Government of Telangana. The defamatory publication was dated 6th July, 2015 issue in Outlook English weekly magazine under the column 'DEEP THROAT' along with a multi-coloured Caricature as a Box item. The publication reads as follows:

“DEEP

THROAT

TELANGANA

NO BORING BABU

The portfolio of junior bureaucrat, who is posted in the Telangana, CM's office, is a mystery. She used to be posted in a district earlier. But things changed all of a sudden after the elections. The lady is present at every meeting and seen in almost every official photograph sent out by the CMO. But what she does exactly is a puzzle. She makes a fashion statement with her lovely saris and serves as “eye candy” at meetings, admit leading party politicians. In fact, it's this bureaucrat who class up other officials in the CMO and asks them to come for meetings. She knows exactly what time the CM will arrive and leave the office. The lovely lady, known for her ethnic style, recently stunned all by appearing in trendy trouser and frilly top at a fashion show. And for one, she wasn't sitting in an official meeting. But this appearance too made for a great photo op.”

3. According to the complaint, A2 was printer and publisher of the magazine of the Outlook. A3 to A5 are directors of A1 company, who are responsible for the conduct of day to day management of A1 company. A6 is the Editor, A7 is the person who has drawn the caricature and A8 is the Assistant Editor of Outlook at Hyderabad, who contributed the defamatory publication.

4. It is alleged in the complaint that all the accused 2 to 8 have entered into criminal conspiracy to defame Smt. Smita Sabharwal, IAS and bring disrepute to her. The publication has

negatively impacted Smt. Smita Sabharwal's personal and professional life including her reputation as an Officer.

5. The complaint was filed by the Special Public Prosecutor appointed by the State on 23.12.2015. Learned Sessions Judge issued summons to the petitioners to face trial.

6. Sri T.Pradyumnakumar Reddy, learned Senior Counsel appearing for the petitioners would submit that article does not make a mention about Smt.Smita Sabharwal at all. On the basis of an assumption that the article was referring to Smita Sabharwal, IAS, the complaint was filed. There is nothing in the article to substantiate that the article was referring to her.

7. Learned Senior Counsel further submits that no specific allegations are leveled against A3 to A5, who are the Directors. They cannot be made vicariously liable only for the reason of being the Directors of A1 company by stating in the complaint that they were responsible for day to day affairs. Further, A2 is the Whole-time Director and he cannot be made liable for the acts of author of the article. There are no reasons given for taking cognizance by the learned Sessions Judge. Taking cognizance in

a criminal case is a serious matter and persons cannot be summons mechanically without application of mind. He relied on the judgment of Hon'ble Supreme Court in the case of **K.M.Mathew v. State of Kerala and another**¹, wherein the Hon'ble Supreme Court held that for a Magistrate to take cognizance as against Chief Editor, there must be positive averments in the complaint of knowledge of defamatory character of the matter. Finding that there was no such allegation, the Hon'ble Supreme Court quashed the proceedings against the Chief Editor.

8. In **Aroon Purie v. State of NCT of Delhi**², the Hon'ble Supreme Court held that the benefit or presumption under Section 7 of Press and Registration of Books Act, 1867 would not be applicable to Chief Editors or Editors in Chief and the matter has to be considered purely from the perspective of the allegations made in the complaint. If the allegations are sufficient and specific no benefit can be extended to the Chief Editor.

¹ (1992) 1 Supreme Court Cases 217

² 2022 LiveLaw (SC) 894

However, if there are no specific allegations, no presumption can be invoked against such Chief Editor. The Hon'ble Supreme Court quashed the proceedings against Chief Editor and other public servants whom the Court found that they were not responsible for the article.

9. Learned Senior Counsel also relied on the judgment of Hon'ble Supreme Court in the case of **Parveen @ Sonu v. State of Haryana**³, wherein it is held:

"12. It is fairly well settled, to prove the charge of conspiracy, within the ambit of, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy.

10. In **P.C.Joshi and another v. State of Uttar Pradesh**⁴, the Hon'ble Supreme Court held :

"6. This section provides for a special procedure for the trial of the offence of defamation of certain specified classes of persons. The conditions necessary for the applicability of sub-s. (1) of Section 198-B are:

(1) that the defamation is not by spoken words;

³ 2021 SCC OnLine SC 1184

⁴ (1961) 2 SCR 63: AIR 1961 SC 387

(2) that the offence is alleged to have been committed against the President, or the Vice-President, or the Governor or Rajpramukh of a State, or a Minister or any other public servant employed in connection with the affairs of the Union or of a State;

(3) that the defamation is in respect of the person defamed in the discharge of his public functions;

(4) that a complaint is made in writing by the Public Prosecutor;

(5) that the complaint is made by the Public Prosecutor with the previous sanction of the authorities specified in sub-s. (3); and (6) that the complaint is made within six months from the date on which the offence is committed.

11. In **Ram Sharan Chaturvedi v. State of Madhya Pradesh**⁵, the Hon'ble Supreme Court held:

"25. It is not necessary that there must be a clear, categorical and express agreement between the accused. However, an implied agreement must manifest upon relying on principles established in the cases of circumstantial evidence. Accordingly, in the majority opinion of Ram Narayan Popli v. CBI (2003) 3 SCC 641, this Court had held:

"354. ... For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient..."

26. In view of the clear enunciation of law on the criminal conspiracy by this Court, we find that the prosecution has failed to produce any evidence whatsoever to satisfy the Court that there was a prior meeting of minds between the Appellant and A-1 and A-2. There is no physical manifestation of such a concurrence extractable from surrounding circumstances, declarations, or the conduct of the Appellant. The evidence is shorn of even a passive acknowledgment of conspiracy of the Appellant with the accused, let alone heralding a clear and conscientious participation of the Appellant in the conspiracy. As noted above, this Court has cautioned against replacing mere suspicion with the legal requirement of proof of agreement.

12. In **Anita Malhotra v. Apparel Export Promotion Council and another**⁶, the Hon'ble Supreme Court held that the complaint

⁵ 2022 SCC OnLine SC 1080

should specifically spell out as to in what manner, the Director was in-charge or was responsible for the conduct of its business and mere bald statement that he was in charge will not suffice.

13. Learned counsel relied on the judgment of this Court in Criminal Petition Nos.11280 of 2022 & batch, dated 07.02.2023 to substantiate that the Whole-Time Director cannot be made liable.

14. On the other hand, Sri E.Uma Maheshwar Rao, Special Public Prosecutor would submit that the office copy of the declaration would be prima facie evidence and in any legal proceeding, civil or criminal, the copy of such declaration would be sufficient evidence against the person, who is sought to be prosecuted unless contrary is proved. Learned counsel submits that the burden is on the accused to prove to the contrary that they are not responsible for the defamatory publication. When the burden is on the accused, the question of quashing the proceedings at this juncture does not arise. He relied on the

⁶ (2012) 1 Supreme Court Cases 520

judgment of the Hon'ble Supreme Court in P.C.Joshi and another v. State of Uttar Pradesh's case (supra).

15. He also relied on the judgment in the case of **Manoj Kumar Tiwari v. Manish Sisodia and others**⁷, wherein the Hon'ble Supreme Court while dealing with a case of defamation and when specific averments were made against the accused, the Hon'ble Supreme Court refused to quash the proceedings against them. The Hon'ble Supreme Court held that the essential ingredients of Section 499-A is the imputation made by the accused which should harm the reputation of the person against whom imputation is made.

16. The undisputed facts are as follows;

i) private complaint was filed by Mrs.Smita Sabhawal on 30.07.2015 against A2, A6, A7 and A8 for the offences punishable under Sections 120-A, 120-B, 292, 499, 500, 501 and 502 r/w 34 of IPC and Section 4 and 6 of Indecent

⁷ 2022 SCC OnLine SC 1434

Representation of Women (Prohibition) Act, 1986. The said complaint was dismissed for non-prosecution;

ii) On 04.07.2015, the husband of Smt.Smita Sabharwal has filed a complaint before the CCS, which was registered as Crime No.163 of 2015. The case was quashed by this Court vide Criminal Petition No.6794 of 2015 on 31.12.2015. The said criminal case was filed against A2, A6, A7 and A8;

iii) On 30.06.2015, legal notice was issued to A6 and A8 and immediately, A1 company on 01.07.2015 published a regret article on its website. Again on 28.07.2015, A1 has expressed regret vide article at page 10 of their edition.

17. The impugned article was published in the magazine issue dated 06.07.2015. Insofar as A3 to A5 are concerned, in the complaint, it is mentioned that they are also responsible for the conduct of day to day management of A1 Company. Except that bald and vague statement, there is nothing in the complaint to attribute knowledge to the petitioners/A3 to A5 regarding the publication. Though it is argued by the learned counsel appearing for the respondents that a mention is made in the

complaint that all the accused have entered into criminal conspiracy with an intention to defame Smt.Smita Sabharwal, such statement would not suffice to mulct A3 to A5 with criminal liability. Allegation against A3 to A5 is assumptive without any factual basis.

18. The publication is prima facie defamatory. The defence of the accused can be agitated during trial. Though reasons are not given by the Learned Sessions Judge for taking cognizance, in the present facts when the defamatory article is only 10 lines and summons were issued on the basis of the complaint being filed after taking consent of the Government, I do not find any infirmity.

19. There are specific allegations leveled against the other accused A1, 2 6 to 8 and they are shown as the persons responsible for the publication in question.

20. In the result, the proceedings against A3 to A5 in C.C.No.2 of 2016 on the file of Metropolitan Sessions Judge, Hyderabad are hereby quashed. However, the proceedings shall go on against A1, A2, A6 to A8.

21. Accordingly, Criminal Petition No.2045 of 2016 is allowed and Criminal Petition No.2314 of 2016 is dismissed. Consequently, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 29.08.2023

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.2045 & 2314 OF 2016

Dt. 29.08.2023

kvs