

IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

CORAM:

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

+ CRIMINAL PETITION No.10257 OF 2021

% Delivered on: 28-03-2022

Between:

Mr. Vemuri Radha Krishna .. Petitioner

Vs.

\$ The State of Telangana, rep.by its Public Prosecutor
High Court, Hyderabad & another .. Respondents

! For Petitioner : Mr. N. Venkateswara Rao,

^ For Respondent No.1 : Assistant Public Prosecutor

For Respondent No.2 : - - -

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> Head Note :

? Cases Referred :

1. AIR 1979 SC 154
2. 1992 Cr.L.J. 843
3. 1992 Cr.L.J. 3779
4. 1999 (2) ALD 110
5. 2003 Cr.L.J. 4058
6. 2010 Cr.L.J. 2558

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.10257 OF 2021

ORDER:

The present Criminal Petition is filed under Section - 482 of the Code of Civil Procedure, 1973, to quash the proceedings in C.C. No.1020 of 2012 (Old C.C. No.275 of 2010) on the file of the Principal Judicial Magistrate of First Class, Adilabad District at Nirmal.

2. The petitioner herein is accused No.6. The offence alleged against him is under Section - 500 read with 149 of the IPC.

3. The allegations against the petitioner herein are as under:

i) The petitioner herein is the Managing Director of Andhra Jyothi Telugu Daily Newspaper.

ii) He along with other accused got published a news items with regard to respondent No.2 herein - complainant as "*Nirmallo Naklilalu*" "*Arhatha Lekunna Vaidyuluga Chalamani, Bayata Padda Physiotherapistla Bhagotham, Parasparam Policelaku Firiyaadu*".

iii) The said news statement is defamatory, and thus, the petitioner herein along with other accused have got published the said news item in order to blackmail respondent No.2.

iv) Therefore, the petitioner has committed the above said offence.

4. Heard Mr. N. Venkateswara Rao, learned counsel for the petitioner and learned Assistant Public Prosecutor appearing on behalf of respondent No.1. Despite service of notice, none appeared on behalf of respondent No.2.

5. Mr. N. Venkateswara Rao, learned counsel for the petitioner would submit that the petitioner herein is the Chairman and Managing Director of M/s.Amoda Publications Private Limited, which is undertaking printing and publishing of Andhra Jyothi Telugu Daily Newspaper. Being the Chairman and Managing Director of the said Company, he is not responsible for publishing of the said news item and he is responsible for the corporate affairs of the said Company. Being Chairman and Managing Director, he had no knowledge of the same and the

Reporters and others will not take any consent from the petitioner in publishing the said news item.

i) Learned counsel would further submit that taking cognizance against the petitioner herein is contrary to Section - 5 (1) of the Press and Registration of Books Act, 1867 (hereinafter referred to as 'the Act, 1867'). The same is also in violation of the principle laid down by the Hon'ble Supreme Court and this Court in a catena of decisions relied upon by him.

ii) Learned counsel would also submit that the said Company to which the petitioner herein is the Managing Director, operates from 20 places from Andhra Pradesh and Telangana States at various places and also News Channel in the name and style 'ABN Andhra Jyothi' controlled by the respective Editors of the Press, Editors and Chief Editors of the News Channel. The petitioner herein has no control over the day-to-day publication of the news items in respective regions of News Papers or the News telecasted by the said company. Even then, respondent No.2 herein has implicated the petitioner in the present case falsely only to

harass him. The contents of the complaint lack the ingredients of the offence alleged against the petitioner herein.

iii) With the aforesaid submissions, learned counsel sought to quash the proceedings in the above C.C.

6. Learned Assistant Public Prosecutor, on instructions, would submit that the above defence taken by the petitioner herein may not be considered in a petition filed under Section - 482 of the Cr.P.C., and the petitioner herein has to take the said defence before the trial Court and that it is for the trial Court to consider the same. Instead of doing so, the petitioner has filed the present petition seeking to quash the proceedings in the above C.C.

i) Learned Assistant Public Prosecutor would further submit that the C.C. is of the year 2010 and it is now renumbered in the year 2012. With the said submissions, he sought to quash the proceedings in the above C.C.

7. In view of the above said submissions, as stated above, the allegation against the petitioner herein is that he is the Chairman and Managing Director of the above said company viz.,

M/s. Amoda Publications Private Limited, which publishes Andhra Jyothi Telugu News Daily. Accused No.1 is the Reporter of Nirmal, accused No.2 is the Desk In-charge, accused No.3 is the Staff Reporter, accused No.4 is the Edition In-charge and accused No.5 is the Editor of the said Telugu Daily Newspaper. All the accused including the petitioner herein had published the said News Item which is defamatory to the reputation of respondent No.2 and they had published the said news item to blackmail respondent No.2 - complainant and also to defame him and to damage his reputation. Therefore, according to respondent No.2, the petitioner herein and other accused have committed the above said offence under Section - 500 read with 149 of the IPC. In view of the same, it is relevant to refer to the definition of 'Editor'. Under Section - 1 (1) of the Act, 1867. The word 'Editor' is defined and it means the person who controls the selection of the matter that is published in a news paper. Where a person does not fulfill the conditions of 'Editor' as provided in Section - 1 and does not perform the functions of an Editor whatever may be his description or designation, the provisions of the Act would have no

application. The said principle was laid down by the Apex Court in **Haji C.H. Mohammad Koya v. T.K. S.M.A. Muthukoya**¹. In the entire complaint, there is no mention that the petitioner herein is the Chairman and the Managing Director of the said Company controls the selection of the matter that is published in a news paper which alone would make him as Editor as defined in Section - 1 (1) of the Act, 1867. Since there is no reference with regard to the 'Chairman and Managing Director of the said Company' under the Act, 1867, a presumption under Section -7 of the Act, 1867 can be drawn. Admittedly, the petitioner herein is not an Editor as defined under Section - 1 (1) of the Act, 1867 and he is the Chairman and the Managing Director of the above said Company which undertakes to publish the above said Telugu News Item.

8. In **A.K. Jain v. State of Sikkim**², the Sikkim High Court categorically held that presumption under Section -7 of the Act, 1867 does not operate against Chairman and Managing Director. It further held that there being no presumption arising under the Press Act against the applicants to make them personally responsible for

¹. AIR 1979 SC 154

². 1992 CrL.L.J. 843

the offending news item, and assuming for the purpose of the present proceeding the news item to be defamatory, it is beyond the pale of controversy, that the applicants could not be proceeded against, without the complainant having made a *prima facie* case that they had at least, personal knowledge about the contents of the item, before it was published. In the present case, in the entire complaint, there is no allegation that the petitioner herein had knowledge of the contents of the news item before it was published. Therefore, a presumption under Section – 7 of the Act, 1867 can be drawn against the petitioner herein.

9. In **K.M. Mathew v. State of Kerala**³, the Apex Court held in paragraph Nos.9 and 10 which are as under:

“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

³. 1992 CrL.L.J. 3779

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 rising 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. **See State of Maharashtra v. Dr. RB. Chowdhary & Ors., [1967] 3 SCR 708 U.P. Mishra v. Kamal Narain Sharma & Ors., [1971] 3 SCR 257, Narasingha Charan Mohanty v. Surendra Mohanty, [1974] 2 SCR 39 and Haji C.H. Mohamad Koya v. T.K.S.M.A. Muthukoya, [1979] 1 SCR 664.**

10. 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 far 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.”

10. In **T. Venkatram Reddy v. Sri M.Malla Reddy**⁴, referring to the principle laid down in several other judgments, it was held that the petitioner therein is a partner of the Newspaper which publishes the daily newspaper 'Deccan Chronicle'. There is no averment in the complaint that the complainant conspired with the Reporter, Publisher and Editor but only a general and vague allegation is made and, thus quashed the proceedings against the petitioner therein. In the present case also, there is no such allegation in the complaint filed by respondent No.2. A similar principle was held by the Bombay High Court in **Vivek Goenka, Managing Editor v. State of Maharashtra**⁵.

11. In **Ravi Prakash v. J.C. Diwakar Reddy**⁶, the combined High Court of Andhra Pradesh at Hyderabad held that simply because accused happened to be Chief Executive Officer or proprietor or partner of the T.V. News Channel, no criminal case can lie against him for offences punishable under Section 500 of Indian Penal Code, and accordingly proceedings were quashed.

⁴. 1999 (2) ALD 110

⁵. 2003 CrL.L.J. 4058

⁶. 2010 CrL.L.J. 2558

12. In view of the above said discussion and also the principle laid down in the above judgments, there is no allegation against the petitioner - accused No.6 that he has knowledge of the above said News Article published in Andhra Jyothi Daily Newspaper and that the other accused have taken the consent of the petitioner herein before publishing the said news item. Therefore, viewed from any angle, the proceedings in C.C. No.1020 of 2012 against the petitioner herein - accused No.6 cannot be continued and the same are liable to be quashed.

13. The present Criminal Petition is accordingly allowed and the proceedings in C.C. No.1020 of 2012 (Old C.C. No.275 of 2010) on the file of the Principal Judicial Magistrate of First Class, Adilabad District at Nirmal are hereby quashed against the petitioner herein - accused No.6 alone.

As a sequel, miscellaneous petitions, if any, pending in the criminal petition shall stand closed.

K. LAKSHMAN, J

28th March, 2022

Note: L.R. Copy to be marked. (B/O.) Mgr