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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 18th March, 2021
Decided on : 07th April, 2021

\+ **CRL.M.C. 3492/2013 CRL.M.As. 12820/2013 & 18912/2014,**

AROON PURIE ..... Petitioner

Through: Mr.Siddharth Luthra, Senior Advocate with Mr.Hrishikesh Baruah, Mr.Pranav Jain, Advocates.

versus

STATE & ORS. ..... Respondents

Through: Mr.Amit Ahlawat, APP for State. Mr.SS.Ahluwalia, Advocate for R2/ *Amicus Curie.*

\+ **CRL.M.C. 4636/2013, CRL.M.A.Nos.16659/2013, 17386/2020**

PARAMPREET SINGH RANDHAWA & ORS ..... Petitioners

Through: Mr.Ajay Digpaul, CGSC with Mr.Kamal R.Digpaul, Advocate.

versus

OM PRAKASH BHOLA ..... Respondent

Through: Mr.S.S.Ahluwalia, Advocate/ amicus curie and Mr.Mohit Bansal, Advocate.

\+ **CRL.M.C. 1762/2014, CRL.M.A.Nos.5882/2014, 17297/2020, 17299/2020**

SAURABH SHUKLA ..... Petitioner

Through: Mr.Hrishikesh Baruah, Mr.Ajay P.Tushir, Mr.Shailendra Singh, Mr.Pranav Jain, Mr.Shahrukh, Advocates.

versus

STATE & ORS ..... Respondents

Through: Mr.Amit Ahlawat, APP for State.

Mr.S.S.Ahluwalia, Advocate/ amicus curie and Mr.Mohit Bansal, Advocate for Mr.O.P.Bhola.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

CRL.M.A. 12577/2020 & 12579/2020 in Crl.M.C.No.3492/2013

1. This petition is filed challenging the summoning order dated 20.04.2013 as well as quashing of the complaint bearing No.*584/1/10*. The petitioner has also filed an application for amendment dated 08.09.2020 challenging the order dated 26.02.2020 whereby the Court directed to issue notice against the petitioner for the offences under Section 500/501/502 read with Section 120B IPC.

2. The brief facts of the case are India Today magazine in its edition dated 30.04.2007 had published a news item under the title *Mission Misconduct*.

3. The news item asserts *allegations of soliciting sexual favour leading to a probe which revealed financial irregularities and fudging of bills. Consequently, the official is back in India and is facing disciplinary action*.

4. It is argued in relation to the financial irregularities and fudging of bills, disciplinary action had taken place and vide order dated 19.02.2009, the respondent No.2/complainant was found guilty and 20% cut in his pension was ordered. This was challenged by complainant by an OA before the Central Administrative Tribunal which had upheld the disciplinary authority's order vide order dated 02.03.2010. The order of

CAT was unsuccessfully challenged by the respondent in a Writ Petition before a Division Bench of this Court and the same was rejected vide order dated 26.07.2011.

5. It is also argued in relation to his return to India, the complainant admits in para *2* and *19* of his complaint on 08.03.2007 he was directed to come back to India. The CAT order dated 02.03.2010 records he had come back to India on 20.03.2007. The subsequent order dated 21.03.2007 notes the complainant is now the Director, Ministry of External Affairs, New Delhi and is placed under suspension. His suspension continued till the date of his retirement on 31.01.2008.

6. In relation to the allegation of solicitation of sexual favours, the complainant admits on 10.07.2005 and 05.03.2007. *A-12* (Ms. Panchali Bari) had made two complaints against the complainant alleging sexual harassment. These two complaints were admittedly made prior to the date of publication of the news item and have been placed on record by the complainant.

7. On the basis of the complaints, a Memorandum of Charge was also admittedly issued to the complainant. The memorandum of charge dated 21.05.2007 specifically, asserts sexual harassment at workplace. However, by letter dated 04.04.2008 and 20.06.2008 and finally by the note dated 20.08.2010 the complaint of sexual harassment was closed. It is argued at the time of the news item the allegation of sexual harassment was made and steps were taken for disciplinary proceedings and the news item dated 30.04.2007 only reported a fact which was in public record.

8. It is argued the Learned Trial Court vide order dated 20.04.2013 had summoned only *A1* to *A4*, *A8* and *A12* without adhering to Section

196(2)/197 Cr.P.C. as *A3, A4, A8 and A12* were public servants. Even section *202* Cr.P.C. was ignored on 03.09.2015. *A12* was dropped from the present proceedings on the prayer of the complainant. Therefore, once the maker of the allegation of sexual harassment is not been proceeded with, the persons in alleged conspiracy cannot also be proceeded with.

9. Thus, arguments of the petitioner is threefold ***a)*** as per Section 7 of Press and Registration of Books Act, 1867, normally an editor, printer can only be prosecuted. The petitioner herein is the editor-in-chief and therefore could never be prosecuted. The news item itself shows the petitioner herein is editor-in-chief and not an editor. In support of this submission, the learned senior counsel for the petitioner has referred to various judgments viz. *State of Maharashtra vs. RB Chowdhari* (AIR 1968 SC 110); *Haji C. H. Mohammad Koya vs. T.K.S. M.A. Muthukoya* 1979 (2) SCC 8; *K.M. Mathew vs. State of Kerala* 1992 (1) SCC 217; *S Nihal Singh vs Arjan Das* 1983 Crl. Law Journal 777; *Vineet Jain vs. State NCT of Delhi 184* (2011) DLT 596.

10. Secondly, the issue raised by the learned senior counsel for the petitioner is the news item merely reported the facts and hence it cannot be said to be defamatory. It is argued the facts are accurate and reflect the public record and hence no defamation case can be made out. Reference is made to *R.Rajagopal vs.State of Tamil Nadu* 1994 (6) SCC 632 wherein the Supreme Court while summarizing the principles in para *26(3)* held that in the case of member of press/media, it shall be enough to prove *that* he has acted after reasonable verification of the facts.

11. In *Vineet Jain vs. State NCT of Delhi 184* (2011) DLT 596 wherein in case of a news item relating to raid conducted in a hotel where

dance bar girls were apprehended, the reporting was fair and hence the Court held the publication of the fact cannot be actionable for the offence of defamation.

12. Thirdly, the argument raised by the learned senior counsel for the petitioner is of violation of Section *196(2)* Cr.P.C. It is argued it prohibits any Court from taking cognizance of an offence of conspiracy, other than criminal conspiracy to commit an offence punishable with death or imprisonment for life or rigorous imprisonment for two years or above. Such cognizance can be taken only in a case where the State Government or the District Magistrate has consented in writing and since there is no consent of the State Government or by the District Magistrate, the cognizance in the present case is barred under Section *196(2)* Cr.P.C.

13. Yet another argument raised by the petitioner is Section *197* Cr.P.C. prohibits cognizance of an offence except with the prior sanction of the concerned Government in relation to the offence committed by Government officials while acting or purporting to act in discharge of their official duties. It is argued in the present case *A3, A4 and A8* were the highly placed public servants and hence they are protected by Section *197* CrP.C.

14. It is argued the allegation made in complaint relates to discharge of their official duties therefore no cognizance could have been taken without prior sanction. It is argued the impugned order dated 20.04.2013 whereby the summons are issued is in violation of Section *197* Cr.P.C. Reference is made to *Director of Inspection and Audit vs. C.L. Subramaniam* 1994 Supp (3) SCC 615.

15. Further it is argued there is violation of Section *202* Cr.P.C. which makes it mandatory to conduct an enquiry where the accused is residing and a place beyond the area wherein the Magistrate exercises its jurisdiction. The purpose of the said amendment is to avoid false complaints and unnecessary harassment. It is stated that *A3, A4, A8 and A12* all reside outside the jurisdiction of learned Trial Court hence mandatory procedure contemplated under Section *202* Cr.P.C. was never followed. It is argued the requirement of conducting an enquiry or directing investigation is not an empty formality and the impugned order thus is liable to be set aside.

16. Lastly, regarding maintainability of the petition under Section *482* Cr.P.C. it was argued the petition is maintainable despite there being an alternate remedy under Section *397* Cr.P.C. It is argued herein petitioner is seeking quashing of complaint as well as the order issuing summons dated 20.04.2013 and such prayer for quashing of the complaint cannot be made in revision it can only be done in the petition under Section *482* Cr.P.C. In the present case which is a summoned case the only remedy available is to file a petition under Section *482* Cr.P.C, per *Adalat Prasad vs. Roop Lal Jindal* (2004) 7 SCC 338.

17. Further it is argued the petition raises issues of abuse of process and Section *482* Cr.P.C. is a remedy for giving effect to any order. Thus, the substantial challenge to the summoning order and the complaint is to give effect to non-compliance of mandatory requirements of Section *196(2),* Section *197* and Section *202* Cr.P.C.

18. Lastly, the purported existence of an alternate remedy by way of a Revision Petition cannot be a ground for dismissal of a petition under

Section *482* Cr.P.C. Only because a revision petition is maintainable, the same by itself, would not constitute a bar for entertaining a petition under Section *482* Cr.P.C. Reference was made to *Prabhu Chawla vs State of Rajasthan* (2016) 16 SCC.

19. The respondent however argued the passing of an order dated 26.02.2020 does not make the petition infructuous. The power to quash the proceedings as well as the complaint and the summoning order continues to exist in spite of an order framing charge. It is argued rather a liberty was granted in the presence of the respondent vide order dated 01.09.2020 in Crl.M.C No.*1736/2020* to amend the present petition and such order has not been challenged by respondent.

20. Heard.

21. As per respondent no. 2, an information about allegation of "*sexual harassment at work place*" was conveyed to respondent no.2/complainant only in the form of a show cause notice dated 21.05.2007 without a copy of complaint and it was only after the news item dated 30.04.2007 was published. Such show cause notice was replied by respondent no.2 on 31.05.2007. On the basis of his reply, vide letter dated 04.04.2008, the Ministry conveyed to the respondent no.2 it has decided not to pursue the matter further at that stage. Thus without any basis, India Today went ahead with the publication of an *unsubstantiated* and *unverified* defamatory story and splashed it all over the world through the medium of internet. The act of defamation was done on 30.04.2007 on which date even there were *no charges of any financial irregularities or of fudging of bills etc.* Such charges were created and disciplinary action initiated and pursued by the Department under the shadow of a democle's sword

in the form of the publication of the defamatory news story which ignited the flame and the resultant fire engulfed the whole unblemished service career, jeopardized his chances of promotion and, above all, assassinated his precious reputation.

22. As per record though there were disciplinary action initiated by the Department on the basis of certain audit observations/recoveries, which included 20% cut in pension on permanent basis but admittedly the Department had waived the recoveries on the basis the charges were illegally framed and his gratuity was illegally withheld for over eight and half years and have since been paid with penal interest for delayed payment, as ordered by the Central Administrative Tribunal. The complainant/respondent no.2 is further pursuing his statutory right for review of *20%* cut in his pension.

23. As per the complainant the so called complaint dated 10.07.2005 (2006) never existed and was subsequently planted. Reference was made to MEAs internal note dated 20.07.2007, which categorically mentioned the complainant Ms.Panchali Bari did not bring forth the allegations earlier, though she alleged the incidents to have taken place some time ago.

24. It was alleged on the date of publication of story in India Today dated 30.04.2007 no show cause notice *much less* the memorandum of charges were issued to the complainant/respondent no.2. Whatever information with regard to any allegations *was available to the accused/officers of the MEA, who were privy to such classified/confidential information; they rather provided such classified information to India Today in an unauthorized manner and in violation*

of the GOI Conduct Rules applicable to them, which specifically prohibits sharing any information about service matters of its officer with the media. Thus the assertion the news story on 30.04.2007 was only reporting of a fact which was in public record, is completely misleading.

25. The argument *per* Section *7* of Press and Registration of Books Act, 1867 normally an editor can only be prosecuted cannot be adhered to. In *K.M.Mathew vs. K.A.Abrahem and Ors.* AIR 2002 SC 2989, wherein the complainant has alleged either Managing Editor, Chief Editor or Resident Editor had knowledge and were responsible for publishing defamatory matters in respect of newspaper publication and in none of these cases the Editor had come forward and pleaded guilty to the effect he was the person responsible for selecting the alleged defamatory matter published, the Supreme Court held it was a *matter of evidence* in each case and 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 alleged libelous matter published in the newspaper, the complainant would be left without any remedy left to redress the arguments against the real culprits.

26. In *Mohommad Abdulla Khan vs. Prakash K.* (2017) AIR (SC) 5608 the Supreme Court held as under:

> *"….that the question requires a serious examination in an appropriate case because the owner of the newspaper employs people to print, publish and sell the newspaper to make a financial gain out of the said activity. Each of the above-mentioned activities is carried on by the persons employed by the owner. Where defamatory matter is printed and sold or offered for sale, whether the owner thereof can be heard to say that he cannot be made vicariously liable for defamatory material carried by his newspaper etc.* ***requires critical examination****"*

27. Thus, the assertions the news item merely reported facts which were accurate and reflected public records and cannot be held to be defamatory, cannot be accepted. Rather such assertion and who was responsible for its publication and has it came to the fore of editors require *critical* examination and hence evidence of these issues is required.

28. The ingredients of section *499* IPC clearly point out towards the imputation published in *any* form which also include newspaper. In case the petitioner is seeking the protection of an *exception* under Section *499* IPC that *stage is yet to come*, meaning thereby the submissions made by the petitioners are *not applicable at this stage*. The conduct of the petitioner, since was allegedly responsible for selection of the articles for publication and had knowledge of the fact the publication of an unsubstantiated story will irreparably harm and damage the reputation of the complainant/respondent No.2, still went ahead and got the article published as a chief editor on 30.04.2007. As per record, the story published by the petitioner was defamatory against the respondent/complainant, was allegedly published *much prior* to the issue of show cause notice, on 21.05.2007. Subsequent to this, the complainant/respondent was allegedly *exonerated* from all allegations vide order dated 04.04.2008, but with the publication of the article in question the complainant/respondent was allegedly defamed in the eyes of his wife, his family, his friends and colleagues and society, in India and all over the world, as alleged. Till date, even during his retired life, the contents of the defamatory article published by the petitioner allegedly haunt him and he is vigorously pursuing litigation.

29. In *Rakesh Sharma & Ors. vs Mahavir Singhvi* 2008(7) AD DELHI 461, this Court relied on a judgment passed by the Supreme Court in *Dr. N.B. Khare vs M.R. Masani* wherein it was observed:

> *"The high court appears to be labouring under an impression that journalists enjoy some kind of special privilege, and have greater freedom than others to make any imputations and allegations, sufficient to ruin the reputation of the citizens. We hasten to add that the journalists are not in a better position than any other person. Even the truth of an allegation does not permit a justification under 1st exception unless it is proved to be in the public good. The question whether or not it was for public good is a question of fact like any other relevant fact and issue……"*

30. Regarding the contention there seen a violation of Section *196(2)* Cr.P.C, I doubt this Section is applicable in the present case since Section *196(2)* deals with prosecution for offences against the State and for criminal conspiracy to commit such offence. However, sub-section *196(2)* stipulates no Court shall take cognizance of the offence of any criminal conspiracy punishable under Section *120* IPC unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings. In this case the learned MM after due process of law and after applying her mind to the facts and circumstances of the complaint, has taken *cognizance* and thus has consented in writing to the initiation of the proceedings against the applicant vide a summoning order dated 20.04.2013, hence this objection is not relevant at this stage.

31. Thirdly, is the objection qua violation of Section *197* of the Code. It is a matter of record the petitioner herein is neither a judge nor a public servant, therefore, no sanction is required to initiate criminal action by the Magistrate against the petitioner. The issue raised is qua accused No.3 and accused No.4 and accused No.8.

32. However, in *Inspector of Police and Anr. vs Battenapatla Venata Ratnam and Another* 2015 AIR (SC) 2403 the Supreme Court had held:

> *"the question relating to the need of sanction u/s 197 of the code is not necessarily to be considered as soon as the complaint is lodged and on the allegation contained therein. This question may arise* ***at any stage of the proceeding****. The question whether sanction is necessary or not* ***may have to be determined from stage to stage****."*

33. As the allegations against the government official are of leaking of the confidential information of complainant to block his career, ence were allegedly for their own pleasure hence, prima facie, at this stage, *per* allegations, sanction is not required; see *Inspector of Police and Anr. vs Battenapatla Venata Ratnam and Another 2016 (1) SCC (CRI.) 164;* per *Parkash Singh Badal Vs. State of Punjab, 2007 (1).*

34. Coming to the alleged violation of Section *202* Cr.P.C I am of the view in the present case after due enquiry, the summons were issued to the petitioner and other accused person. It is a matter of record pre summoning evidence of the complainant along with his witness (Mrs.Kamal Bhola) was recorded, subsequent to which on 20.04.2013 the learned Trial Court was pleased to issue summons to the accused persons for the offences punishable under Section *499/500/501/502* IPC read with Section *120B* IPC. The enquiry contemplated by this Section does not necessarily mean an enquiry by examining witnesses or by holding an investigation into the case or in any particular form. The Magistrate can do it in any way he thinks proper. Moreover, the accused persons against whom the summons' were issued were all *within the jurisdiction* of the learned Trial Court, New Delhi District. The Petitioner in this case is the Editor-in-Chief of India Today, with registered address as Living Media India Limited situated at K-9, Connaught Circus, New Delhi, under the

jurisdiction of the Metropolitan Magistrate, New Delhi District, Patiala House Courts, New Delhi. As the petitioner in this case has made reference to the accused 3, accused-4 and accused-8 also, they all belong to Ministry of External Affairs, Government of India whose headquarters is situated at New Delhi, and for communications purposes their address was considered to be the official address in India, c/o Ministry of External Affairs, New Delhi.

35. Thus, the allegations and counter allegations made by the parties raise disputed question of facts and cannot be dwelled into by this Court under Section *482* Cr.P.C.

36. At this stage we need to see only the contents of the complaint. The evidence of the accused cannot be considered at this stage.

37. Now I come to the application filed for amendment. This application is filed to challenge the order on charge as also to prove on record the facts of the case which emerged during the pendency of the present complaint. In law the order dated 26.02.2020 is not an interlocutory order and is challengeable under Section *397* Cr.P.C. Admittedly there is no provision to permit amendment of pleadings unlike Order *VI* Rule *17* CPC, though the learned senior counsel for the petitioner has referred to law saying in certain circumstances, it can be done. However, the amendment herein sought only relate to the facts of the case which emerged on the basis of ongoing trial of the case or orders passed therein, hence if the petitioner wish to challenge the order on charge it can be done only by way of statutory provision specified under the Code. To invoke inherent power under Section *482* Cr.P.C. would not be trite under Section *482* Cr.P.C. This Court has to be cautious while

exercising power and that too only where there is an abuse of process of law.

38. In *Amit Sibal vs. Arvind Kejriwal & Ors,* 2018 (12)SCC165 it was held the petition under Section *482* Cr.P.C. is not maintainable at the stage where a notice has been framed and the complainant has also been examined, and this Court should not interfere with the trial.

39. Considering the fact the challenge to summoning order dated 20.04.2013 is already pending before this Court and there was no interim order for the stay of trial, it was only after due deliberation and examination by the learned Trial Court, the order dated 26.02.2020 was passed. Any amendment in the petition sought by the petitioner subsequent to the order dated 26.02.2020 would be rather an abuse of process of law by invoking inherent power of this Hon'ble Court knowing fully well the petition has already become infructuous. Even though powers under Section *482* Cr.P.C are very wide and the petitioner always has the liberty to invoke either of the jurisdictions whether it is under Section *397* Cr.P.C or Section *482* Cr.P.C being concurrent one, but the propriety demands that elder superior court in hierarchy must be approached first. Admittedly, in an order passed by learned Sessions Judge, the remedy left with the aggrieved party is to approach the High Court under Section *482* Cr.P.C to question correctness, legality and proprietary of his/her order whereas when the same is passed by the Magistrate the power lies to both the Session's and this Court and hence, as a matter of prudence and proprietary, it would be appropriate to first approach the Session's Court. The High Court can be approached first in circumstances where the lower court has directly or indirectly interfered

in the investigation or trial through its order or action, which justice demands High Court alone should interfere in an order of the Magistrate. It is not so in the present case.

40. In *Jai Prakash Sharma vs. State*, 2015(2) Crimes 508 this Court held "if the Magistrate is satisfied that there is sufficient ground to proceed against accused, the Magistrate is empowered to issue process".

41. In the present case, the learned Trial Court has already taken cognizance of the complaint and proceeded with the trial. The amendment sought is illegal and against the provisions of law. All the defenses, raised before this Court can very well be taken up by the petitioner during the course of trial.

42. There is no provision in Cr.P.C. to amend criminal complaint, but amendment can be allowed if amendment is sought before taking cognizance per *S.R. Sukumar vs S. Sunaad Raghuram* 2015(9)SCC 609. Here the petitioner is seeking amendment when the Magistrate has already taken cognizance of the complaint and had proceeded with trial.

43. In view of above, there is no ground to interfere under Section *482* Cr.P.C, hence the petition is dismissed. Crl.M.A.No.*12577/2020* is also dismissed. Pending application/s is also disposed of. No order as to costs.

44. CRL.M.C.*1762/2014* is filed by Saurabh Shukla – petitioner who was working as *correspondent* of the Magazine in question and CRL.M.C.*4636/2013* is filed by such Government Officials, who have since retired. For reasoning given in the Crl.M.C.No.*3492/2013* both petitions are also dismissed. Pending applications, if any, also stands disposed of. No order as to costs.

YOGESH KHANNA, J.

APRIL 07, 2021/*M/DU*