

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS..... OF 2022
(arising out of SLP (Crl.) Nos.5115-5118 OF 2021)

AROON PURIE**APPELLANT(S)**

versus

STATE OF NCT OF DELHI & ORS.**RESPONDENT(S)**

WITH

CRIMINAL APPEAL NOS..... OF 2022
(arising out of SLP (Crl.) No.5258-5261/2021)

CRIMINAL APPEAL NOS..... OF 2022
(arising out of SLP (Crl.) Nos.6392-6394/2021)

J U D G M E N T

Uday Umesh Lalit, CJI

1. Leave granted.
2. These appeals challenge the common judgment and order dated 07.04.2021 passed by the High Court of Delhi at New Delhi in Criminal M.C. Nos. 3492 of 2013, 4636 of 2013 and 1762 of

2014 filed by Mr. Aroon Purie; Mr. Parampreet Singh Randhawa & Ors.; and Mr. Saurabh Shukla, respectively.

3. A news item¹ titled 'Mission Misconduct' was published in the news magazine INDIA TODAY (for the period of 23.04.2007 to 30.04.2007) stating that in a string of embarrassments for the foreign office, three Indian Officials posted in the Indian High Commission at UK had to be recalled in quick succession following serious allegations of sexual misconduct, corruption in issuance of visas and sale of Indian passports to illegal immigrants. The Article also mentioned that the allegations were levelled against an officer of the Indian Foreign Service posted in UK for soliciting sexual favours from a local employee. The Article further stated that said officer, now back in India, was facing disciplinary action and when contacted said official denied the charges.

4. It appears that original accused No.12 whose identity is not being disclosed, was working as a 'Clerk Typist' in the Consulate General of India, Edinburgh and she had filed a complaint before the Consel General alleging sexual harassment at the hands of said officer. The complaint was made on 10.07.2006 (wrongly mentioned as 10.07.2005 in certain documents placed on record).

¹ "the Article" for short.

This was followed by another communication dated 05.03.2007 to the Deputy High Commissioner, High Commission of India, London alleging continued sexual harassment at work place at the instance of said officer. The record shows that the Ministry of External Affairs by the order dated 08.03.2007 directed that said officer be recalled and that said officer be placed under suspension. On 15.03.2007 the complaint filed by accused No.12 was forwarded to the Joint Secretary, Ministry of External Affairs, which issued an order on 21.03.2007 stating that disciplinary proceedings were contemplated against said officer and that said officer was placed under suspension. These developments were prior to the publication of the Article.

5. Some of the developments which have occurred after the publication of the Article included issuance of a memorandum dated 21.05.2007 by the Ministry of External Affairs on the basis of the complaint of accused No.12 by which explanation was sought as to why disciplinary action should not be initiated against said officer “for sexual harassment of a woman at work place”. Response was filed by said officer on 31.05.2007 and finally by order dated 19.02.2009, disciplinary authority passed an order

imposing cut of 20% in pension allowable to said officer on permanent basis. The order of the disciplinary authority was upheld by the Central Administrative Tribunal on 02.03.2010 and also by the High Court vide order dated 26.07.2011.

6. In the meantime, on 24.03.2010, Complaint No. 584/1/2010 was filed by said officer against various persons including Mr. Aroon Purie (A-1), Mr. Saurabh Shukla (A-2), Mr. Parampreet Singh Randhawa (A-3), Mr. Sharat Sabharwal (A-4), Mr. Ashok Kumar Mukherji (A-8) and other accused. It was submitted *inter alia* that the Article was defamatory and as such the accused be proceeded against for having committed offences punishable under various sections including Sections 34, 120 B, 405, 468, 470, 471, 499, 501 and 502 of the Indian Penal Code, 1860². Some of the averments made in the complaint were as under:

“... Accused No. 01 herein, Mr. Aroon Purie, Editor-in-Chief of the newsmagazine titled INDIA TODAY published by the corporate entity titled “LIVING MEDIA INDIA LTD” with its registered office at “1-A HAMILTON HOUSE, CONNUGHT PLACE, NEW DELHI 110001” for printing and publishing, in its printed issue dated 30/04/2007, a false story of sexual harassment against the Complainant, a senior-level officer of the Ministry of External Affairs (now retired), based on unsubstantiated, unverified, fabricated and malicious information, having been written and filed by the said Newsmagazine’s Correspondent Mr. Saurabh Shukla, Accused No. 02 herein, in complicity with and at the behest of Accused

² “IPC”, for short.

Nos. 03 to 12, named hereunder, as well as splashing the false and defamatory story all over the world through the misuse of the internet, and the World electronic network, as defined in the law of information technology, with the permanent availability, till date, of the scandalous/defamatory material on the Internet vide its website www.indiatoday.com causing complainant's defamation, grave loss and injury of his personal and social reputation, mental torture, agony, pain and a steep deterioration of his health.

03. That this complaint is limited to the totally false, fabricated, unsubstantiated unverified, malicious and defamatory story written and filed by Mr. Saurabh Shukla, Accused No. 2, the correspondent of the weekly newsmagazine titled INDIA TODAY, whose reports, writings and activities are under the control and supervision of Mr. Aroon Purie, Accused No. 1, the Editor-in-Chief of the news magazine INDIA TODAY, who exercised full control on the selection of the said defamatory story in the newsmagazine INDIA TODAY'S issue dated 30th April, 2007, contents of which were read world wide and were also splashed on the internet vide website www.indiatoday.com. The defamatory story is still continuing as part of the archives of the said website www.indiatoday.com and, thus, the defamation of the complainant and the damage and loss caused to his reputation is continuing till the date of lodging this report for action against the offenders and the guilty.

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06. That it is clear from the facts narrated in the 20-page enclosure to this complaint that the defamatory publication was the handiwork of Accused nos. 03 to 12, acting with common intention, to brief the correspondent. Accused No. 02, Mr. Saurabh Shukla, of the newsmagazine INDIA TODAY about the false complaint of sexual harassment by Accused No. 12, a local employee of the Consulate General of India at Edinburgh to defame the applicant through the media and the criminal role played by each of them, at the relevant time, warrants a thorough investigation by the law enforcement agency for appropriate action as may be deemed fit and proper within the parameters of law as laid down in the Code of Criminal Procedure, and, once the charges against them are framed, in terms of the appropriate sections of the Indian Penal Code.

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15. That for their criminal acts of omission and commission, the high-ranking officers and middle-level officials allowed themselves to be misused and through the common intention of harming and defaming the applicant through leaking the false, fabricated and cooked up information in the media – vide the published article in the weekly newsmagazine INDIA TODAY

dated 30/04/2007 and its splashing through internet through their website www.indiatoday.com the false and unsubstantiated allegation of sexual harassment against the complainant even before any show cause notice was issued to the complainant by the Ministry of External Affairs and thus caused the Complainant grave loss of reputation and defamation.

The complainant then prayed for reliefs as follows:

“(1) To take cognizance of the offences committed and admit this complaint against accused persons arrayed as Accused Nos. 01 to 12 in this complaint, record the statements of the witnesses whose names and statuses are listed in the enclosures and summon the accused persons, who may be put on trial and punished in accordance with law;

(2) To invoke its powers under Section 156(3) of the Code of Criminal Procedure and order investigation by police authorities, who has the necessary infrastructure for this purpose, under Sections 34, 120B, 405, 468, 470, 471, 499, SOU S 502 of the Indian Penal Code, 1860 and under Sections 65, 66 and 67 of the Information Technology Act, 2000 against the accused for initiation [sic] of criminal proceedings and trial before this Hon’ble Court;”

7. The role ascribed to each of the accused was summed up by Metropolitan Magistrate, New Delhi District, Patiala House Court, New Delhi vide order dated 20.04.2013 as under:

“9. Ld. Counsel for the complainant has further submitted that while accused No.1 and 2 are the Editor in Chief and Correspondent of India Today who are directly responsible for the publication of the defamatory story against the complainant. The remaining accused persons i.e. accused No.3, 4, 8, 12 were in conspiracy with accused No.1 and 2 and were instrumental in the publication of the impugned story which was based on a false complaint filed by accused No.12 in the office of Indian High Commission at London. Ld. Counsel for the complainant has argued that involvement of accused No.3,4,8,12 is established from the fact that although the complainant had been simply recalled from his then place of posting at Edinburgh vide order dated 08.3.2007 and it had not been mentioned in the

said order that any complaint filed by accused No.12 against the complainant was pending investigation or that said complaint was the reason behind premature recall of complainant Om Prakash Bhola. However, the news article dated 30.04.2007 had mentioned that the complainant had been recalled from his place of posting in Edinburgh due to pendency of a complaint of sexual misconduct made against him by a local employee. It has been argued on behalf of the complainant that although the complainant was served with the show cause notice. That is memorandum on 21.05.2007 by the Ministry of External Affairs whereby he had been asked to explain the allegations made against him by accused No.12. However, the news report was published prior to even the service of the said show cause notice upon him. Therefore, the staff of India Today News Magazine could not have had the knowledge about the pendency of the complaint of A12 against the complainant even before the service of show cause notice upon the complainant that is on 30.04.2007, the date of publication of alleged news report although the complainant had been served with the show cause notice to explain allegations of sexual misconduct made against him by accused No.12 after a lapse of about 21 days from the date of publication of the said news report i.e. on 21.5.2007.

8. The Metropolitan Magistrate found sufficient material to proceed against Accused 1, 2, 3, 4, 8 and 12 for the commission of offences punishable under Sections 500, 502 read with Section 120 B of the IPC. The operative part of the order was:

“After considering the materials placed on record by the complainant and the arguments advanced by learned counsel for complainant in the light of the aforesaid observations made by Hon’ble Supreme Court of India in the decided case of Balraj Khanna & Ors. vs. Moti Ram 1971 SCC (Cri) 647, Smt. Nagawwa vs. Veraana Shivalingappa Konjaligi & Ors. 1976 SCC (Cri) 507 and M.N. Damani, vs. S.K. Sinha and other 2001 Cr. L.J. 2571 SC, I am of the considered opinion that the material on record is prime facie sufficient to proceed against the accused number 1, 2, 3, 4, 8 and 12 be accordingly summoned on filing of PF on 05.07.2013.

9. Being aggrieved by the aforestated summoning order, A-1, Editor in Chief of INDIA TODAY news magazine, preferred Criminal M.C. No. 3492 of 2019 while A-2, the author of the Article preferred Criminal M.C. No.1762 of 2014 and public servants from the Ministry of External Affairs preferred Criminal M.C. No.4636 of 2013; all under Section 482 of the Code of Criminal Procedure, 1973³ seeking quashing of the summoning order dated 20.04.2013 as well as Complaint No.584/1/2010 filed by the officer in question.

10. These three petitions were taken up together by the High Court. After hearing learned counsel for the parties, the High Court did not find any ground to interfere. It, therefore, dismissed all the petitions. During the course of its judgment, the High Court observed:

“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. ...

³ “the Code”, for short.

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.”

11. We have heard Mr. K.V. Viswanathan, learned senior counsel for A-1, Ms. Aishwarya Bhati, learned Additional Solicitor General of India appearing for public servants, namely; A-3, A-4 and A-8 and Mr. Hrishikesh Baruah, learned counsel for A-2; while the submissions on behalf said officer *i.e.*, the original complainant were advanced by Mr. R. Sathish, learned counsel.

12. It is submitted by Mr. K.V. Viswanathan, learned senior counsel that A-1 has been Editor-in-Chief of the news magazine INDIA TODAY; that the presumption under Section 7 of the Press and Registration of Books Act, 1867⁴ would get attracted in case of an Editor and not with respect to an Editor-in-Chief. It is further submitted that in order to make A-1 liable for the Article, the involvement of A-1 beyond the mere allegation about the capacity held by him as Editor-in-Chief, had to be made with clarity. There being no such allegation or averment, A-1 was entitled to the relief as prayed for.

⁴ “1867 Act”, for short.

13. Ms. Bhati, learned Additional Solicitor General has submitted that the public servants were not involved with the publication of the Article at any stage. Whatever actions the public servants had taken, were in the nature of due and prompt reporting of events to the higher authorities, so that appropriate action could be taken by such authorities. The acts committed by the public servants would thus be fully protected and cannot amount to commission of any offence.

14. Mr. Hrishikesh Baruah, learned counsel for A-2 has sought to adopt the submissions of Mr. K.V. Viswanathan, learned senior counsel appearing for A-1 and submitted that due care was taken before writing the Article including asking said officer for his response.

15. Mr. R. Sathish, learned counsel for said officer has submitted that at best, the case pleaded by the appellants would be one claiming benefit of any of the exceptions to Section 499, IPC and as observed by the High Court, the proper stage to go into such issues would be at the stage of trial and not through petition under Section 482 of the Code.

16. In ***K.M. Mathew vs. K.A. Abraham & Ors.***⁵, the appellant in the lead matter was the Chief Editor of *Malayalam Manorama*. Relying on Section 7 of the 1867 Act, it was contended on his behalf that there being another person, who was an Editor of said publication, said Editor alone could be charged for the offence under Section 500 of the IPC in view of the statutory presumption under Section 7 of the 1867 Act. The submission that because of non-mentioning of “Chief Editor” in Section 7, said appellant would be entitled to the relief, was rejected by this Court, observing, *inter alia*, that the complainant had specifically alleged that said appellant had knowledge of the publication and that he was responsible for such publication. Paragraphs 8, 9, 10, 14, 15 and 16 of the decision are as under: -

“8. Section 7 of the Press and Registration of Books Act, 1867 reads as follows:

“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 as is aforesaid, attested by the seal of some court empowered by this Act to have the custody of such declaration, 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 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

⁵ (2002) 6 SCC 670.

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.”

9. The expression “editor” has also been defined in Section 1 of the Act as under:

“1. (1) * * *
‘Editor’ means the person who controls the selection of the matter that is published in a newspaper.”

10. It is also relevant to quote Section 5(1) of the Act:

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

(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:

(2) * * *”

xxx xxx xxx

14. A conjoint reading of these provisions will go to show that in the case of publication of any newspaper, each copy of the publication shall contain the names of the owner and the editor who have printed and published that newspaper. Under Section 7 of the Act, there is a presumption that the editor whose name is printed in the newspaper as editor shall be held to be the editor in any civil or criminal proceedings in respect of that publication and the production of a copy of the newspaper containing his name printed thereon as editor shall be deemed to be sufficient evidence to prove that fact, and as “editor” has been defined as the person who controls the selection of the matter that is published in a newspaper, the presumption would go to the extent of holding that he was the person who controlled the selection of the matter that was published in the newspaper. But at the same time, this presumption contained in Section 7 is a rebuttable presumption and it will be deemed as sufficient evidence unless the contrary is proved. Therefore, it is clear that even if a person’s name is printed as editor in the newspaper, he can still show that he was not really the editor and had no control over the selection of the matter that was published in the newspaper. Section 7 only enables the court to draw a presumption that the person whose name was printed as editor was the editor

of such newspaper, if the publication produced in the court shows to that effect.

15. 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.

16. The contention of these appellants is not tenable. There is no statutory immunity for the Managing Editor, Resident Editor or Chief Editor against any prosecution for the alleged publication of any matter in the newspaper over which these persons exercise control. In all these cases, the complainants have specifically alleged that these appellants had knowledge of the publication of the alleged defamatory matter and they were responsible for such publication; and the Magistrates who had taken cognizance of the offence held that there was *prima facie* case against these appellants. It was under such circumstances that the summonses were issued against these appellants.”

17. It is thus clear from this decision that though the presumption under Section 7 is available with regard to the Editor, even a Chief Editor can be proceeded against if the facts so justify. In the concerned cases, there were specific and sufficient allegations about the roles played by said Chief Editor and other similarly situated persons from the connected matters.

18. We now turn to the question: whether the benefit of any of the exceptions to Section 499 of the IPC can be availed of and on the strength of such exceptions, the proceedings can be quashed

at the stage when an application moved under Section 482 of the Code is considered?

19. In *Jawaharlal Darda & Ors. Vs. Manoharrao Ganpatrao Kapsikar & Anr.*⁶, the reporting made by a newspaper about the proceedings in the Legislative Assembly touching upon the issues of misappropriation of Government funds meant for certain projects, was the subject matter of complaint alleging defamation. The decision shows that the article being accurate and true reporting of the proceedings of the House, which was reported in good faith in respect of conduct of public servants entrusted with public funds intended to be used for public good, the protection was extended and the power under Section 482 of the Code was utilised. Paragraph 5 of the decision is as under: -

“5. It is quite apparent that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary enquiry made by the Government. If the accused bona fide believing the version of the Minister to be true published the report in good faith it cannot be said that they intended to harm the reputation of the complainant. It was a report in respect of public conduct of public servants who were entrusted with public funds intended to be used for public good. Thus the facts and circumstances of the case disclose that the news items were published for public good. All these aspects have been overlooked by the High Court.”

⁶ (1998) 4 SCC 112.

20. Similarly, in ***Rajendra Kumar Sitaram Pande vs. Uttam***⁷, a reporting made to a superior officer alleging misconduct on the part of complainant was taken to be completely protected by exception 8 to Section 499 of the IPC and the proceedings were quashed. The relevant portion from paragraph 7 of the reported decision is as under: -

“7. ... Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by Exception 8 to Section 499 of the Penal Code, 1860. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for quashing the order of issuance of process and the proceedings itself. ...”

21. It is thus clear that in a given case, if the facts so justify, the benefit of an exception to Section 499 of the IPC has been extended and it is not taken to be a rigid principle that the benefit of exception can only be afforded at the stage of trial.

22. Similarly, the law laid down in ***K.M. Mathew***⁸, which has subsequently been followed, is to the effect that though the benefit

⁷ (1999) 3 SCC 134.

⁸ *supra* at footnote No.5.

of presumption under Section 7 of the 1867 Act is not applicable so far as Chief Editors or Editors-in-Chief are concerned, the matter would be required 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 such Chief Editor or Editor-in-Chief. Conversely, it would logically follow that if there are no specific and sufficient allegations, the matter would stand reinforced by reason of the fact that no presumption can be invoked against such Chief Editor or Editor-in-Chief.

23. In light of these principles, if we consider the assertions and allegations made in the complaint, we find that nothing specific has been attributed to A-1, Editor-in-Chief. He cannot, therefore, be held liable for the acts committed by the author of the Article, namely, A-2. The allegations made in the complaint completely fall short of making out any case against A-1.

24. With regard to the role ascribed to A-2, it must be stated at this stage that as an author of the Article his case stands on a different footing. Whether what he did was an act which was justified or not would be a question of fact to be gone into only at the stage of trial.

25. Insofar as the public servants are concerned, they are not primarily responsible for the Article and their responsibility, if at all, is only to the extent that they either reported something touching upon the complaint made by A-12 or in their capacity as public servants, reported something to their seniors. Going by the law laid down by this Court in ***Rajendra Kumar Sitaram Pande***⁹, their actions are completely protected.

26. In the circumstances, we accept the appeals insofar as A-1 and the public servants (A-3, A-4 and A-8) are concerned and set aside the summoning order, as well as, quash Complaint No.584/1/2010 lodged against them. We, however, reject the appeal preferred by A-2.

Ordered accordingly.

.....CJI.
[Uday Umesh Lalit]

.....J.
[Bela M. Trivedi]

**New Delhi;
October 31, 2022.**

⁹ *Supra* at footnote No.7.