

Before Arvind Singh Sangwan, J.
CHANDER KAMAL SEKHRI—Petitioner

versus

ASHOK SETH—Respondent

CRM-M No.28676 of 2015

March 07, 2018

The Code of Criminal Procedure, 1973—S. 482 and 202—The Press and Registration of Books Act, 1867—S. 7—The Indian Penal Code, 1860—S. 499, 500 & 120-B—Respondent filed criminal complaint against 7 accused alleging that news item published to defame him and malign his image— News item mentioned that the respondent/complainant convicted for dishonour of 2 cheques—It was incorrect as he had been convicted for dishonour of 1 cheque and acquitted in respect of the other cheque—Petitioners summoned by Trial Court under Section 500 read with Section 34 IPC—Quashing filed—Partly allowed—Matter remanded back to Trial Court.

Held that, Hind Samachar Limited is a company publishing various newspapers at different places and petitioners – Avinash Chopra and Amit Chopra are the Directors of accused No.1 – Hind Samachar Limited, therefore, the impugned order which has been passed without keeping in view the provisions of Section 7 of the Press and Registration of Books Act and without recording a finding as to whether there is any declaration qua these two petitioners under the said Act and, if not, on what basis they are sought to be prosecuted along with other accused persons is liable to be set-aside and the matter needs to be remitted back to the trial Court to pass afresh order after conducting such enquiry.

(Para 16)

Further held that, the Trial Court has not got conducted an enquiry under Section 202 Cr.P.C. and especially in view of the fact that one of the accused person namely R.K. Anand, Advocate is not an ordinary resident of Jalandhar and is a resident of a place where the trial Court has no territorial jurisdiction.

(Para 16b)

Further held that, the impugned summoning order dated 30.07.2015 (Annexure P8) is set-aside and the matter is remanded back to the trial Court to pass an order afresh after holding an enquiry under

Section 202 Cr.P.C.

(Para 17)

Vivek K. Thakur, Advocate
for the petitioner.
(in CRM-M Nos.28676 & 31354 of 2015)

N.S. Sahni, Advocate
for the petitioner.
(in CRM-M No.25493 of 2016)

Aditi Girdhar, Advocate
for the respondent.
(in all the petitions)

ARVIND SINGH SANGWAN, J. (Oral)

(1) Vide this common order, I intend to dispose of three petitions i.e. CRM-M Nos.28676 and 31354 of 2015 and No.25493 of 2016 as common questions of law and facts are involved for adjudication.

(2) Brief facts of the case are that the respondent/complainant namely Ashok Seth filed a criminal complaint before the trial Court against seven accused persons (petitioners) under Sections 499, 500 and 120-B of the Indian Penal Code (in short 'IPC') with the allegation that the complainant is a law abiding citizen and is a married person having grown up children. The accused Nos.2 to 4 are the Directors of accused No.1 i.e. Hind Samachar Limited which is the Editor, Printer and Publisher of a daily newspaper (Punjab Kesari and Jalandhar Kesari) having a large scale circulation in various places of Punjab including Jalandhar. The accused No.5 is working as a Reporter of accused Nos.1 to 4 who are the Directors, Printers and Publishers of petitioner No.1. The accused No.5 is having its office at Kapurthala. It is further stated in the complaint that all the accused persons hatched a criminal conspiracy in order to malign the image and to harm the reputation of the complainant, in the eyes of general public, his relatives, friends as well as business associates and in pursuance to the conspiracy, the accused Nos.1 to 4 published a news item in the Daily Jalandhar Kesari version of the Punjab Kesari newspaper dated 17.11.2011 containing defamatory allegations against the complainant. The said news item was published by accused Nos.1 to 4 by mentioning the name of accused No.5 as a Reporter of the news and accused Nos.6 and 7 were the informer of the said news to accused No.5. It is further

stated that the said news item was published with ulterior motive to defame the complainant and malign his image. For a reference, the news item is reproduced as below:-

“News Item

Imprisonment to resident of Jalandhar on
account of dishonor of Cheque

Kapurthala, 16 November (Sekhri) – Civil Judge G.K. Sabharwal, Kapurthala has ordered for 2 years imprisonment and a fine of Rs.10,000/- to Ashok Seth, resident of Jalandhar, in a case of dishonor of cheque. Advocate R.K. Anand told that Ashok Seth son of Nand Lal Sethi, 117, Raja Garden Lane, Opposite Daron Garden, Kapurthala Road, Jalandhar has given 2 cheques amounting to Rs.5,50,000/- in the year 2003 to my client Ajay Gupta son of late Sudesh Gupta, Mansoorwal Dona, Jalandhar Road, Kapurthala, who manufactures electric switches. He told that Ashok Seth has given cheque bearing No.168701 for Rs.2,80,000/- on 17.06.2003 from his account with Punjab National Bank, Chowk Sudan, Jalandhar and the second cheque was given bearing No.168702 dated 17.07.2003 for Rs.2,90,000/-.

Shri R.K. Anand, Advocate told that due to closure of account, the cheque amounting to Rs.2,70,000/- was returned, regarding which Ashok Seth issued a Legal Notice on 21.08.2003. Shri G.K. Sabharwal, Special Judicial Magistrate, Kapurthala in his judgment dated 08.11.2011, has pronounced 2 years imprisonment and a fine of Rs.10,000/- to Ashok Seth. R.K. Anand further told that as per the decision of the Hon'ble Court, in case of non-deposit of fine, Ashok Seth has to undergo imprisonment for 3 months more. Ajay Gupta told that he has been granted justice after a period of 8 years.”

(3) It is further stated in the complaint that despite the fact that accused persons know that the same is not correct, it was published with a heading “CHEQUE FAIL HONEPAR JALANDHAR NIWASI KO KAID” i.e. “a Resident of Jalandhar got imprisonment on account of dishonour of a cheque.” It is further stated in the complaint that as per the news item the complainant had given two cheques to accused No.6 – Ajay Gupta for an amount of Rs.5.50 lacs in the year 2003. Out

of the two cheques, one was for an amount of Rs.2.80 lacs and the other was for an amount of Rs.2.70 lacs. The cheque having value of Rs.2.70 lacs was returned back due to the bank memo giving a ground that the account is closed and in this regard in a complaint filed by the abovesaid Ajay Gupta, the trial Court convicted the complainant on 08.11.2011 for two years and imposed a fine of Rs.10,000/-. The complainant has further stated that the story given by accused No.6 – Ajay Gupta was totally incorrect as the complainant was acquitted qua cheque No.16870 having value of Rs.2.80 lacs vide judgment dated 05.06.2009 passed by the Additional Chief Judicial Magistrate, Kapurthala. However, the accused No.6 got the news item published with regard to both the cheques mentioning that the complainant has been convicted on account of dishonour of both the cheques.

(4) It is also stated in the complaint that even with regard to the cheque having value of Rs.2.70 lacs, the complainant had preferred an appeal before the Lower Appellate Court and his sentence was suspended vide order dated 14.11.2011 and the matter is *sub judice*.

(5) It is also stated that though the accused No.5 is having its office at Kapurthala and accused No.7 namely R.K. Anand, the Advocate who was representing accused No.6 in the Courts is also having his office at Kapurthala and the judgment was also passed by the Judicial Magistrate Ist Class, Kapurthala. The accused Nos.5 and 7 with ulterior motive got the news item published in the Jalandhar Edition of Punjab Kesari and Jalandhar Kesari as the complainant is resident of Jalandhar so that the people of Jalandhar including the relatives, friends and business associates of the complainant may read the said news item and feel bad about the complainant. It is also stated in the complaint that the complainant has constructed a Temple in his property and the visitors of the Temple also started talking bad about him and thus, the news item has caused damage to his reputation and lowered his image in the eyes of general public and it even affected the talks of the matrimonial alliance of his daughter. It was, thus, submitted that all the accused have committed an offence punishable under Sections 499, 500 and 120-B IPC.

(6) The trial Court recorded the preliminary evidence of the complainant, who examined himself as CW1 and deposed on the same line as per the version given in the complaint. He proved on record the news item Ex.C1. His daughter Princy appeared as CW2 and his wife appeared as CW3 and also deposed on the same line and thereafter, the complainant closed the preliminary evidence.

(7) The trial Court, thereafter, vide order dated 30.07.2015 (Annexure P8) on the basis of the preliminary evidence, held that there are sufficient grounds for issuing notice to the accused persons and accused persons are responsible for the news item and are liable to be summoned to face trial under Section 500 read with Section 34 IPC.

(8) The petitioners have filed the present petition praying for quashing of the impugned complaint dated 27.01.2012 as well as the summoning order dated 30.07.2015.

(9) In *CRM-M No.28678 of 2015* filed by Chander Kamal Sekhri (accused No.5 in the complaint), it is submitted that the complainant has issued a legal notice to the petitioner (Annexure P4) to which the petitioner submitted a reply stating that being a Reporter with accused No.1 – Hind Samachar Limited, he had published the news item after verifying the facts and seeing the certified copy of the judgment. It was also stated that subsequent to filing of the complaint, accused No.6 – Ashok Seth again filed a complaint under Section 138 of the Negotiable Instruments Act in which the complainant was convicted for a period of one year with a fine of Rs.5,000/- vide judgment dated 19.10.2012 (Annexure P7) passed by the Judicial Magistrate Ist Class, Kapurthala.

(10) In *CRM-M No.31354 of 2015*, filed by Rakesh Kumar Anand (accused No.7 in the complaint), it is stated that he is an Advocate practicing at District Courts, Kapurthala since 1985 and no criminal complaint or case has ever been filed/registered against him except the present complaint. It is also stated that he in the capacity of an authorized Advocate of accused No.6 – Ajay Gupta had filed two complaints under Section 138 of the Negotiable Instruments Act. Out of which, in one complaint vide judgment dated 05.06.2009, the complainant was acquitted and in the second complaint regarding dishonouring of a cheque amount of Rs.2.70 lacs, he again appeared on behalf of accused No.6 – Ajay Gupta and in that case, the respondent/complainant vide judgment dated 08.11.2011 was convicted by the Special Judicial Magistrate Ist Class, Kapurthala. It is also stated that in reply to the legal notice issued by the complainant regarding defamation, the petitioner has given a reply that the same has been published by the Hind Samachar Limited and the petitioner being an Advocate of Ajay Gupta had no role in publication of the news item.

(11) In *CRM-M No.25493 of 2016* filed by Hind Samachar Limited, Avinash Chopra and Amit Chopra (accused Nos.1 to 3 in the complaint), it is submitted that petitioner No.1 is a Company which

owns Daily Hind newspaper, Punjab Kesari and its supplements, Punjabi newspaper, Jagbani and its supplements and Urdu newspaper, Daily Hind Samachar. The newspaper i.e. Punjab Kesari is published from Jalandahr, Chandigarh, Ludhiana and Bathinda in Punjab apart from the States of Haryana, Himachal Pradesh and Jammu & Kashmir. It was further stated that petitioners No.2 and 3 (accused Nos.2 and 3 in the complaint) are the Directors of accused No.1.

(12) In all the three petitions, the following common grounds praying for quashing of the impugned complaint and the summoning order are raised by counsel for the petitioners:-

1. Firstly, it is submitted that accused No.1 is the public limited company incorporated under the Companies Act and, therefore, its Director cannot be held guilty for editing, printing and publishing of the newspaper.
2. Counsel for the petitioner has relied upon the judgment "***K.K. Mathew vs State of Kerala***", 1992(1) SCC 217 to submit that the petitioners being the Directors of the company cannot be held liable. It was further stated that there was no ill-will on the part of the accused No.5 – Kamal Sekhri in publishing the news item as it was based on a judgment passed by the Judicial Magistrate Ist Class. The news item was based on correct facts and, therefore, no defamation is made out.
3. It was further argued that before publishing the news item, due care and attention was taken by accused No.5.
4. Counsel for the petitioners has further relied upon the judgment passed by the Hon'ble Supreme Court in "***Abhijit Pawar vs Hemant Madhukar Nimbalkar and another***", 2017(1) RCR (Criminal) 405 to submit that in case where a defamatory news item is published in newspaper, the complaint against Chairman and Managing Director of the newspaper can be proceeded, only if there is a declaration qua them under the Press and Registration of Books Act.
5. It is further submitted on behalf of the petitioners that while summoning the petitioners, the trial Court has not assigned any proper reason for summoning the petitioners regarding the role attributed to each of the petitioner. It is also submitted that the petitioner – Rakesh Kumar Anand, being an Advocate of Ajay Gupta, the party who was the

complainant in the complaint filed under Section 138 of the Negotiable Instruments Act has been falsely implicated without there being any role.

6. It is further submitted that accused No.7 has no role in publishing the news item by accused Nos.1 to 3. It is also argued that on bare perusal of the complaint, no offence under Section 499 IPC is made out and continuation of the proceedings on the basis of the complaint amounts to abuse and misuse of process of law.

7. Counsel for the petitioners has further submitted that as per fourth Exception to Section 499 IPC, the publication of report of proceedings of Courts is not defamation as the news item was published on the basis of true reports of the proceedings of Courts of justice.

8. It is also argued on behalf of the petitioners that before passing the summoning order, the trial Court has not obtained the report under Section 202 Cr.P.C. as accused No.7/petitioner – R.K. Anand is a resident of Kapurthala and, therefore, the trial Court at Jalandhar has no jurisdiction to entertain the impugned complaint without obtaining a report under Section 202 Cr.P.C.

(13) In reply, counsel for the respondent has relied upon the judgment *Mohammed Abdulla Khan* versus *Prakash K.*¹ to submit that the powers under Section 482 Cr.P.C. should not be exercised casually. It is further submitted that it has been held by the Hon'ble Supreme Court in "*Jeffrey J. Diermeier and another* versus *State of West Bengal and another*"² that in absence of any evidence on record it is difficult to record a finding whether or not the accused has satisfied the requirement to fall in the exceptional clause of Section 499 IPC.

(14) Counsel for the respondent has further argued that the accused in conspiracy with each other has published a news item which was factually incorrect as the complainant was convicted in one case regarding dishonour of cheque of Rs.2.70 lacs whereas in the other case of dishonour of cheque of Rs.2.80 lacs, he was acquitted. It is further submitted that the matter pertains to Kapurthala and the petitioners got the news item published at Jalandhar intentionally as the complainant is

¹ 2017 AIR (SC) 5608

² 2010(3) RCR (Criminal) 183

an ordinary resident of Jalandhar. The news item which was published at Jalandhar was largely circulated and it has lowered the image and reputation of the complainant – Ajay Seth in the eyes of his relatives, friends and business associates. It is also stated that the matter in which the news item was published indicate that its object was neither for public good nor the remarks were made in good faith. It is further stated that the news item show that the accused persons had not made any enquiry with due care and attention about the truth of imputation and as such, the trial Court has rightly summoned the petitioners.

(15) After hearing counsel for the parties, I find merit in the present petitions on the following grounds:-

a) It has been held by the Hon'ble Supreme Court in *Abhijit Pawar's case (supra)* as under:-

"24. The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of 'enquiry' is needed under this provision has also been explained in Vijay Dhanuka 8 case, which is reproduced hereunder:

"14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word "inquiry" has been defined under Section 2(g) of the Code, the same reads as follows:

"2. (g) 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;"

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of

deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code."

25. When we peruse the summoning order, we find that it does not reflected any such inquiry. No doubts, the order mentioned that the learned Magistrate had passed the same after reading the complaint, verification statement of complainant and after perusing the copies of documents filed on record, i.e., FIR translation of complaint, affidavit of advocate who had translated the FIR into English etc. the operative portion reads as under:

"On considering facts on record, it appears that complainant has made out prima facie case against the accused for, the offences punishable under Sections 500, 501, 50 read with 34 of the Indian Penal Code. Hence issue process against the accused for the above offences returnable on 23.12.2009. case be registered as Summary Case."

26. Insofar as, these two accused persons are concerned there is no enquiry of the nature enumerated in Section 202, Cr.P.C.

27. The Learned Magistrate did not look into the matter keeping in view the provisions of Section 7 of the Press Act and applying his mind whether there is any declaration qua these two persons under the said Act and, if not, on what basis they are to be proceeded with along with the editors. Application of mind on this aspect was necessary. It is made clear that this Court is not suggesting that these two accused persons cannot be proceeded with at all only because of absence of their names in the declaration under Press Act. What is emphasised is that there is no presumption against these persons under Section 7 of the Press Act and they being outside the territorial jurisdiction of the concerned Magistrate, the Magistrate was required to apply his mind on these aspects while passing summoning orders qua A-1 and A-2.

28. No doubt, the argument predicated on Section 202

of the Cr.P.C. was raised for the first time by A-1 before the High Court. Notwithstanding the same, being a pure legal issue which could be tested on the basis of admitted facts on record, the High Court could have considered this argument on merits. It is a settled proposition of law that a pure legal issue can be raised at any stage of proceedings, more so, when it goes to the jurisdiction of the matter (See : **National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad, 2011(2) R.C.R. (Rent) 293 : (2011) 12 SCC 695.**

29. We may like to record that though Mr. Bhatt had refuted the arguments founded on Section 202 of Cr.P.C., even he had submitted that in case this Court is satisfied that mandatory requirement of Section 202 is not fulfilled by the learned Magistrate before issuing the process, this Court can direct the Magistrate to do so. Mr. Bhatt, for this purpose, referred to the judgment in the case of the National Bank of Oman.

30. For the aforesaid reasons, Criminal Appeal arising out of SLP (CrI) No. 9318 of 2012 is allowed thereby quashing the notice dated 24th November, 2009 in respect of A-1 with direction to the learned Magistrate to take up the matter afresh qua A-1 and pass necessary orders as are permissible in law, after following the procedure contained in Section 202, Cr.P.C.

31. Insofar as appeal filed by the complainant discharging A-2 is concerned, the High Court has quashed the notice on the ground that he is only shown as Chairman and is not shown to be actually associated with the publication of the newspaper. Since, we are relegating the matter insofar as A-1 is concerned, for the same reasons the complainant needs to be given an opportunity to show as to whether A-2 was actually associated with the publication or not. It is more so when we find that High Court has not given any cogent reasons on the basis of which it has said that Chairman is not shown to be associated with the impugned publication. Thus, we allow the second appeal as well and direct the learned Magistrate to hold the same inquiry as directed qua A-1 and apply his mind as to

whether notice against A-1 and A-2 needs to be issued or not.

32. No orders as to costs.”

(16) In view of the fact that the accused – Hind Samachar Limited is a company publishing various newspapers at different places and petitioners – Avinash Chopra and Amit Chopra are the Directors of accused No.1 – Hind Samachar Limited, therefore, the impugned order which has been passed without keeping in view the provisions of Section 7 of the Press and Registration of Books Act and without recording a finding as to whether there is any declaration qua these two petitioners under the said Act and, if not, on what basis they are sought to be prosecuted along with other accused persons is liable to be set-aside and the matter needs to be remitted back to the trial Court to pass afresh order after conducting such enquiry.

b) It is also not disputed that the trial Court has not got conducted an enquiry under Section 202 Cr.P.C. and especially in view of the fact that one of the accused person namely R.K. Anand, Advocate is not an ordinary resident of Jalandhar and is a resident of a place where the trial Court has no territorial jurisdiction. Moreover, it is held by the Hon'ble Supreme Court in *Abhijit Pawar's* case (supra) that the trial Court should satisfy itself that the mandatory requirement of Section 202 Cr.P.C. are fulfilled before issuing a process and, therefore, on this aspect also the matter needs to be remanded back to the trial Court.

c) The arguments of the petitioners that in view of the judgment passed by the Hon'ble Supreme Court in *K.M. Mathew's* case (supra), the prosecution of petitioners Avinash Chopra and Amit Chopra being Directors of Hind Samachar Limited is liable to be quashed by the High Court in exercise of its jurisdiction under Section 482 Cr.P.C. is not acceptable as the Hon'ble Supreme Court in *Mohammed Abdulla Khan's* case (supra) has held that the powers under Section 482 Cr.P.C. cannot be exercised casually and has remanded the case back to the trial Court in view of the directions given in the said case. The operative part of the judgment reads as follows:-

“18. Whether the content of the appellant's complaint constitutes an offence punishable under any one or all or some of the above-mentioned 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., 1973

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.*, (2002) 6 SCC 670.

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., 1973 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.

22. Even before this Court, the same submission was made.[1] This Court rejected the submission holding:

[1] 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]

"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 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**, **L.R. 3 QBD 60**. 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"

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. Mere 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, 1973 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.”

(17) In view of what has been discussed hereinbefore, the petitions are partly allowed, the impugned summoning order dated 30.07.2015 (Annexure P8) is set-aside and the matter is remanded back to the trial Court to pass an order afresh after holding an enquiry under Section 202 Cr.P.C. in the light of the judgments passed by the Hon'ble Supreme Court in **Abhijit Pawar's** case (supra) and **Mohammed Abdulla Khan's** case (supra) and also to record a finding in view of the provisions of Section 7 of the Press and Registration of Books Act.

(18) The parties through their counsel are directed to appear before the trial Court on 04.04.2018.

J.S. Mehndiratta