

A.F.R.

Judgment Reserved On 10.3.2022

Judgment Delivered On 23.03.2022

Court No. - 91

**Case :- APPLICATION U/S 482 No. - 29818 of 2021**

**Applicant :- Sanjay Gupta**

**Opposite Party :- State of U.P. and Another**

**Counsel for Applicant :- Chandra Bhan Gupta**

**Counsel for Opposite Party :- G.A,Santosh Kukmar Tiwari**

**Hon'ble Syed Aftab Husain Rizvi, J.**

1. Heard learned counsel for the applicant, learned AGA for the State and learned counsel for opposite party no.2.

This criminal misc. application U/s 482 Cr.P.C. is filed to quash the entire proceeding of complaint case no.4444 of 2016 (Brijesh vs. Devendra Deva and ors) under section 500 of IPC, P.S. Sadar Bazar, District Shahjahanpur pending in the court of ACJM-II, Shahjahanpur and the summoning order dated 19.09.2017 passed in the aforesaid case as well as order dated 21.10.2021 passed by Special Judge, SC/ ST Act, court no.2 Shahjahanpur in criminal Revision No.210 of 2019.

2. The opposite party no.2 filed a complaint before the concerned Magistrate alleging therein that a news item was published in Bareilly edition of Dainik Jagaran, daily newspaper alleging defamatory and malicious imputation against the complainant and by the said publication the accused persons had acted to defame him. By the said news, the Dainik Jagran Published a news item that on the order of DIG a case has been registered in which his and his brother's name i.e. Ram Prem was published. By the said news item it was published that a

case in connection with attempt to murder and assault (maar-peet) had been registered, whereas he and his brother are reputed and respected persons and further they are never involved in any criminal case. By the said news item the Bureau Chief Devendra Deva, Editor-in-Chief Sanjay Gupta, printer and publisher and General Manager Anugrah Narain Singh have disreputed the complainant. He sent a notice on 29.04.2016 however neither they have given any reply nor published any disapproval.

3. The complainant examined himself under Section 200 Cr.P.C. and produced other witnesses under section 202 Cr.P.C. Learned Magistrate by the impugned order has summoned the applicant and three others to face trial for offence under section 500 IPC. Applicant and other co-accused preferred a criminal Revision no.210 of 2019 before the Sessions Judge which has been dismissed by the order dated 21.10.2021.

4. The submissions of learned counsel for the applicant is that Vipin Mishra filed an application dated 04.04.2016 lodging an FIR against the persons named in the application and at the instance of DIG Range, FIR crime no.663 of 2016 under section 420 IPC was lodged against Ram Pratap and Dixit Guest House Shahjahanpur. In the said FIR, it is mentioned that FIR crime no.1991 of 2010 under sections 307, 323, 504 & 506 IPC, P.S. Powayan was registered against Ram Pratap S/o Baburam, Sangam S/o Ram Pratap, Brijesh (opposite party no.2) and Ram Pratap (brother of opposite party no.2). Proceeding/ said case is going on. So the aforesaid impugned news item was published on the basis of the version of the FIR dated 27.04.2016. Learned counsel contended that applicant is Editor-in-Chief of Jagaran Prakashan Ltd and is not responsible for day to day reporting in local editions and same is done under

knowledge and supervision of editors and local reporters. Applicant has no knowledge of the reports being published in the local edition and could not have been impleaded as accused. It is also contended that there is no specific allegations against the applicant and in absence of any positive allegations, the Magistrate was not justified to summon him. The learned Magistrate has also failed to consider that one witness examined by the complainant is his real brother while other is also near relative and there is no independent witness. It is further contended that in the present case there was no intention to cause damage to the image of opposite party no.2 and hence section 500 of IPC is not applicable. Applicant has no personal enmity with the opposite party no.2. The summoning order has been passed against the applicant without application of judicial mind in casual manner without assigning any reason and it is an abuse of process of the court and law. Learned counsel relied on following case laws:

*Jaibrat Roy Chief Editor Rashtriya Sahara vs. State of U.P. (Laws (All) 2000 3 37)*

*Vivek Goenka vs. State of Maharashtra and another (2007 CRI. L.J. 2194)*

*K M Mathew vs. State of Kerala 1991 LawSuit (SC) 598*

*Application U/s 482 Cr.P.C. No.25644 of 2007*

5. Learned AGA and learned counsel appearing for the opposite party no.2 contended that the news item published in daily news paper was based on totally wrong facts which stands corroborated from the police report. According to police report, no criminal case is registered against the complainant (opposite party no.2) and his brother. It is further contended that news item is based on false facts just to disrepute the complainant and his family. Learned Magistrate enquired the matter and on the basis of material available on record found that a prima-facie

case is made out and has passed the summoning order. There is no illegality or infirmity in impugned summoning order. The revision filed against the impugned summoning order has also been dismissed, as there was no sufficient ground to quash the impugned summoning order.

6. It is undisputed that applicant is Editor-in-Chief of Jagran Prakashan Ltd. There is no specific averment in relation to him in the complaint.

7. Learned counsel for the applicant has relied on the case law *K M Mathew vs. State of Kerala 1991 LawSuit(SC) 598*, in which it has been held by Hon'ble Supreme Court that the Chief Editor of a newspaper cannot be prosecuted as there are no positive averments in the complaint regarding his culpability. It has also been opined that 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 present complaint filed by the opposite party no. 2 complainant does not contain any positive averments in the complaint about the knowledge of the objectionable character of the matter mentioned in it.

8. In *Vivek Goenka vs. State of Maharashtra and Another 2007 CRI. L. J. 2194*, on which applicant has placed reliance, it has been held that the presumption would be that the person whose name is printed as Editor or Resident Editor is responsible for publication of news item and the Chairman or Managing Editor would not be responsible for the news item published. The proceedings were thereby quashed regarding the Chairman and Managing Editor.

9. Being Editor-in-Chief in absence of specific allegations against the applicant the legal bar will apply against him. He

cannot be held responsible and prosecuted for any news item published in any edition of the news paper. The learned Magistrate has failed to consider the legal aspect of the matter and has passed the summoning order, in violation of legal provisions, hence summoning order in respect of the applicant is not sustainable and is liable to be quashed.

10. Application U/s 482 Cr.P.C. is *allowed* and the impugned summoning order dated 19.09.2017 in respect of only applicant- Sanjay Gupta is hereby quashed.

**Order Date:- 23.03.2022**  
C. MANI