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

+ **CS(OS) 455/2017**

MR. DEEPAK TALWAR Plaintiff

Through: Mr. Prabhav Ralli, Adv. (mobile no.
9999249666)

versus

M/S. THE INDIAN EXPRESS (P) LIMITED & OTHERS

..... Defendant

Through: None

CORAM:

**SH. RAKESH KUMAR (DHJS), JOINT REGISTRAR
(JUDICIAL)**

ORDER

% **18.11.2019**

IA 2676/2018 (Application u/O 1 R 10 CPC filed by defendant for deletion of defendant no. 3 and 4)

1. By filing present application on 13.02.2019, the applicant/defendants seeking deletion of defendant no. 3 and 4 from the array of defendants on the ground that neither defendant no.3 nor defendant no.4 are designated edited of the Indian Express, Delhi Edition, and both of them are also not the person responsible for selection of matter published therein. It is contended that every edition of the newspaper which is published from different centres has a designated Editor for that edition and in terms of the requirement of the Press and Registration of Books Act 1867 [“Act”], the imprint line of each edition specifically mentions the name of the designated

Editor who is responsible for selection of matter published in that particular edition. Each edition also has a designated printer and a designated publisher as required by the Act. The designated editor and the designated printer and publisher are thus a statutory requirement.

2. It is submitted that as per the provisions of the Press & Registration of Books Act, 1867, the designated Editor and the designated Printer & Publisher are to be printed on every issue of the newspaper or magazine, as the case may be. This information which is statutorily required to be printed in the newspaper is known in newspaper parlance as the “imprint line” of a newspaper.

3. It is submitted that Section 7 of the Press & Registration of Books Act, 1867, raises a rebuttable presumption against these three designated positions under the said Act, viz., the Printer, the Publisher and the Editor of a newspaper. Inter alia against the Editor, the rebuttable presumption raised is that he has been the Editor of each and every part of the newspaper, that is to say that he was the person responsible for selecting the matter which was published in the newspaper including such matter as may be impugned in any court of law whether by way of civil or by way of criminal proceedings. **This presumption nevertheless is not available against a person, who is not described in the Imprint Line of a newspaper as its Editor.** In case a person is aggrieved by the publication of any article or news report in a newspaper, such a person can launch legal proceedings

against the Editor, Printer and Publisher of the newspaper by taking the aid of Section 7 of the Act which raises a rebuttable presumption against such functionaries. However, de hors the presumption, if the aggrieved person wishes to array some other person in the list of defendants/accused as responsible for the printing, publication and distribution of the impugned news report or article, it is necessary for such a plaintiff/complainant to make positive averments against such a person as the rebuttable presumption under Section 7 of the Press and Registration of Books Act, 1867, is not available against such a defendant/accused person. The applicant/defendant has relied upon the following judgments:-

- (i) Matthew 1 (K.M. Mathew V. State of Kerala, AIR 1992 SC 2206
- (ii) Mohd. Koya V. Muthukoya AIR 1979 Supreme Court 154
- (iii) H. K. Dua Vs. Jagat Singh 2012 CRI L.J. 1039
- (iv) Vivek Goenka Vs State (N.C.T. of Delhi) and Anr. and Shekhar Gupta Vs. K. M. Anees-Ul-Haq
- (v) Shobhana Bharti & Ors. V NCT of Delhi & Anr. 144 (2007) Delhi Law Times 519
- (vi) Viveck Goneka Vs. State of Maharashtra and Rajabhai Damodar Raikar 2007 CRI. L.J. 2194
- (vii) Viveck Goneka Vs. State of Maharashtra and Sanjay Devdas Sonawani 2003 CRI. L.J. 4058
- (viii) K. M. Mathew V. Ashok Tanwar IV (1995) CCR 543
- (ix) A. K. Jain V. State of Sikkim 1992 CRL. L. J. 839 (Sikkim High Court)

- (x) Ashok Kumar Jain & Ors. V. State of Maharashtra & Anr. 1986 CRI. L. J. 1987
- (xi) S. Nihal Singh & Ors. V. Arjan Das 1983 CRI L. J. 777
- (xii) Prabhu Chawla V. A. U. Sheriff 1995 Cr. L. J. 1922 (Kant).
- (xiii) Bombay High Court Criminal WP No. 2527/2013 Shri Viveck Goenka Vs. State of Maharashtra & Haribansh Singh
- (xiv) Bombay High Court Criminal Application no. 6710/2005 Shri Viveck Goenka V/s Rajabhau D Raikar & Others

4. Reply to the present application has been filed. It is contended that present application is frivolous and not maintainable. It is prayed that the present application be dismissed in limine with cost.

5. On merit all the contents of the application denied on the ground that admittedly, at the time of publication of the impugned defamatory news article/report, defendant no.3 was the chief editor of Indian Express and defendant no.4 was an editor thereof, as such it is a triable issue hence cannot be determined without adducing evidence.

6. It is also contended that the interpretation of the section 7 of the press and regulation of the Books Act, 1867, offered by the defendant is misconceived, as the person who has not been named as the editor in the imprint line of the newspaper may be liable for the publication of the defamatory material in the said newspaper.

7. It is further contended that it has not been disputed by the defendant in the written statement that the defendant no.3 was not the chief editor of the newspaper and defendant no.4 was the editor of the newspaper at the time of publication of the impugned defamatory news article/report. The plaintiff has relied upon the following judgments:-

- (i). “Madhusri Konar and Ors. Vs. New Central Book Agency Pvt. Ltd. and Ors.”
- (ii). K.M.Mathew Vs. K.A.Abraham and Others
- (iii). Vivek Goenka Vs. Padam Sambhav Jain and Another
- (iv). Hari Narain Nigam Vs. State of Bihar and Others
- (v). Sanovi Technologies (India) Pvt. Ltd. Vs. Aditya Shyam Bhatia

8. I have heard and perused the case.

9. Before proceeding further, it is pertinent to mention here that along with the present application, a photocopy of annexure 1 filed. On perusal of annexure 1, it reveals that the name of the chief editor namely Raj Kumar Jha and the editor namely Unni Rajan Shankar, defendant nos. 3 and 4 respectively, have been imprint, hence it cannot be presumed that they cannot be held responsible in respect to the alleged defamatory material/report especially when in the imprint line, it is clear cut mentioned that these persons are responsible for selection of news under PRB Act.

10. Further defendant nos. 3 and 4 are arrayed in the memo of parties by the plaintiff and specifically alleged that they are

responsible for the publication of alleged defamatory material and report in the newspaper/defendant no.1. It is settled law that all contents of the plaint has to be taken into consideration as a whole, as such I am of the considered view that without given an opportunity to lead an evidence to the plaintiff in respect to the role/ responsibility of defendant no. 3 and 4 as pleaded, hence the present application cannot be considered at this stage and the name of defendant nos. 3 & 4 cannot be deleted at this stage.

11. Further, the ratio of the judgments relied by the defendants are not applicable in the given facts and circumstances as well as in view of the law and provision referred in para no. 3 above. In this regard reliance can be placed upon judgment of Hon'ble High Court of Calcutta in case titled Madhusri Konar and Ors. (supra) in which it has been held:

9. I have considered the submissions made by counsel appearing for the parties. This is an unusual case where the defendants seek deletion of a plaintiff from the array of parties to the suit. Without taking into account any of the factual or legal contentions put forth by counsel for the applicants/defendants, one wonders why the defendants would take pains to persuade the Court that the second plaintiff is a superfluous addition to the plaint instead of expediting the trial for establishing that the plaintiffs indeed have no cause of action against the defendants for the reliefs have been claimed. The obvious question which

would follow is what prejudice can the defendants suffer if the second plaintiff, however irrelevant to the cause (allegedly), were to remain as a party to the suit? Second, whether the perceived prejudice would involve a liability on the defendants to make good any loss (allegedly caused to the plaintiffs) twice over? The last question was put to rest at the outset when it was clarified that the plaintiffs are together for the purposes of putting the defendants to task and that there is no scope for multiplication of the spoils, in the event the plaintiffs were to succeed in the suit.

10. Fortunately, in an application of the present nature, the plaint is the best and the only document which can convince a Court to decide whether a party is necessary or proper and whether that party is indispensable for deciding the issues raised in the suit. Before testing the application in the backdrop of Order I Rule 10(2) of The Code of Civil Procedure, 1908, (CPC), the relevant provision is set out:-

10 (2) "Court may strike out or add parties. - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be

necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added".

12. Even otherwise the judgment of Hon'ble Supreme Court **{(2002) 6 Supreme Court Cases 670}** which has also been relied upon by applicant/defendant itself in which it has been held that:

The appellants were either Managing Editor, Chief Editor or Resident Editor of their respective newspaper publications. Separate criminal complaints were filed against them under Section 500 IPC alleging that in their newspaper publications, libellous matter was published and that they had knowledge of, and were responsible for such publication and thus they had committed the offence of defamation besides other allied offences. The Magistrate took cognizance of the offences and issued summonses to the appellants. The appellants unsuccessfully challenged under Section 482 CrPC their prosecution on the ground that in view of Section 7 of the Press and Registration Act, 1867 (for short " the Act") they were not liable to be prosecuted and that the person whose name was printed on the newspaper as the "Editor" of that publication alone was so liable.

*Dismissing the appeals, the Supreme Court
Held:*

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.

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 items. 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.

13. After taking into consideration facts and circumstances of the present case, I am of the view that the present application is not maintainable at this stage, devoid on merit and is liable to be dismissed. Accordingly the present application u/O 1 R 10 CPC is

dismissed.

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Pleadings has been completed.

List the matter before the Hon'ble Court on 20.01.2020 for framing of issues.

**RAKESH KUMAR (DHJS)
JOINT REGISTRAR (JUDICIAL)**

NOVEMBER 18, 2019/NR