

HON'BLE SRI JUSTICE A. GOPAL REDDY

**CRL.P.Nos.7592 OF 2007, 264, 1252, 1590, 1638, 1646 AND 1874
OF 2008**

DATE: -04-2011

CRL.P.No.7592 OF 2007

BETWEEN

M.J.Akbar and another

...Petitioners

AND

The State of A.P.,

Rep. by the Public Prosecutor,

High Court Buildings, Hyderabad and another.

...Respondents

CRL.P.No.264 OF 2008

BETWEEN

Gulab Kothari and others

...Petitioners

AND

The State of A.P.,

Rep. by the Public Prosecutor,

High Court Buildings, Hyderabad and another.

...Respondents

CRL.P.No.1252 OF 2008

BETWEEN

Lateef Mohammad Khan

...Petitioner

AND

The State of A.P.,

Rep. by the Public Prosecutor,

High Court Buildings, Hyderabad and another.

...Respondents

CRL.P.No.1590 OF 2008

BETWEEN

Ahmad Ali Shaik and others

...Petitioners

AND

The State of A.P.,
Rep. by the Public Prosecutor,
High Court Buildings, Hyderabad and another.

...Respondents

CRL.P.No.1638 OF 2008

BETWEEN

Rajdeep Sardesai and another

...Petitioners

AND

The State of A.P.,
Rep. by the Public Prosecutor,
High Court Buildings, Hyderabad and another.

...Respondents

CRL.P.No.1646 OF 2008

BETWEEN

Hemender Sharma and others

...Petitioners

AND

The State of A.P.,
Rep. by the Public Prosecutor,
High Court Buildings, Hyderabad and another.

...Respondents

CRL.P.No.1874 OF 2008

BETWEEN

Ashish Joshi and another

...Petitioners

AND

The State of A.P.,
Rep. by the Public Prosecutor,
High Court Buildings, Hyderabad and others.

...Respondents

THIS COURT MADE THE FOLLOWING:

HON'BLE SRI JUSTICE A. GOPAL REDDY

CRL.P.Nos.7592 OF 2007, 264, 1252, 1590, 1638,

1646 AND 1874 OF 2008

ORDER:

All these petitions are filed under Section 482 of Cr.P.C. to quash the proceedings against the petitioners pending before various Courts, which will be detailed during the course of order, for the offences punishable under Sections 499, 500, 501, 502 and 120-B IPC. They are heard together and are being disposed of by this common order.

2. With regard to the publication of a news item on 17.7.2007 in Deccan Chronicle English Daily newspaper on 12.5.2007, in Rajasthan Patrika and the statement reported in Siasath Urdu Daily, dated 8.5.2007 making defamatory false implication against second respondent-Rajiv Trivedi, I.P.S. Officer, who was holding the post of Additional Commissioner of Police (Crimes and SIT), Hyderabad, A.P., in respect of Sohrabuddin encounter case, State Government sanctioned permission for prosecution of the accused in G.O.Rt.No.6583, dated 27.10.2007 and G.O.Rt.No.6580, dated 27.7.2000. The State represented by Public Prosecutor filed the complaints against all the accused for the above offences, which are now sought to be quashed by A.1 & A.5 in C.C.No.27 of 2007 on the file of III Additional Metropolitan Sessions Judge; A.1 to A.9 in C.C.No.3 of 2007 on the file of II Additional Metropolitan Sessions Judge; A.1 and A.4 in C.C.No.24 of 2007 on the file of I Additional Metropolitan Sessions Judge, Nampally, by filing Crl.P.Nos.7592 of

2007; 264 of 2008 and 1252 of 2008 respectively. The news was telecasted in CNIBN English News channel under the caption “30 minutes—Sohrabuddin Inside Story” on 13.5.2007 and thereafter in CNN-IBN English news channel. On State sanctioning to prosecute the accused vide G.O.Rt.No.6581, General Administration (SC-X) Department, dated 27.10.2007, the Public Prosecutor filed complaint against 30 accused connected with the telecast for the offences under Sections 499, 500, 120-B IPC. A.10, A.14, A.16 and A.17 in C.C.No.1 of 2008 on the file of IV Additional Metropolitan Sessions Judge were Correspondents, who are Correspondents of CNNIBN Channel filed Crl.P.No.1590 of 2008; A.1-Editor-in-Chief, A.5-Service Editor filed Crl.P.No.1638 of 2008; A.12 and A.13 who are reporters; A.2-Executive Producer filed Crl.P.No.1646 of 2008; and A.11 & A.15-reporters filed Crl.P.No.1874 of 2008 to quash the proceedings in C.C.No.1 of 2008.

3. The gist of the complaint allegations, according to the complainant, in each of the C.Cs., briefly stated, are as under:

C.C.No.27 of 2007 is filed with regard to the publication of news item in Deccan Chronicle English Daily newspaper, dated 17.7.2007 under the caption “3 cops from State charged Shorabuddin Encounter”. In the said news item it is stated that ‘three I.P.S. officers of Andhra Pradesh – former Additional Commissioner of Police (Crime) Rajiv Trivedi (L.W.1), Chittoor Superintendent of Police T.V.Sashidhar Reddy and Adilabad S.P. Anil Kumar- were charged with providing logistic support to Gujarat police team led by Pandian. A separate charge sheet will later be filed against police officers of Andhra who were allegedly involved in the fake encounter said CID sources.’ According to the complainant, the manner, text and tenor of the language used and imputations made clearly indicate that the accused with animus made the above allegations to defame L.W.1 in the eyes of general public, the department, the political circles, officials, friends, relatives, colleagues and others. It is alleged that the accused have

conspired and hatched a plan to damage L.W.1's reputation with a view to achieve circulation knowing fully well that the allegations they have made and published are untrue, false, frivolous and only aimed at defaming L.W.1 and to gain circulation. The headline of the first page of the newspaper showing "3 cops from State Charged-Sohrabuddin Encounter" is nothing but misleading and creating suspicion about the participation of L.W.1 in the alleged and fake encounter, which are made and published scandalously to bring down L.W.1 from the post as Additional Commissioner of Police (Crime and SIT), thereby to weaken the confidence of L.W.1 as well as that of the Government.

4. In C.C.No.3 of 2007 the complaint in C.C.No.3 of 2007 is with regard to the publication of news item in Rajasthan Patrika, Saturday edition, dated 12.5.2007 under the heading "Vanjara Par Kastha Phanda", wherein, the allegations made, according to L.W.1, are defamatory and scandalous, which read as under:

"A. *"Vanjara par kasta funda"* (Noose tightening around Vanjara), *"Hyderabad ke police upayukta se pooch taahh"* (Hyderabad Police Deputy Commissioner questioned).

B. *Sohrabuddin farzi muthbhed mamley ki jaanch kar rahi Gujarat CID teamki pramukh Geetha Johri ne shukravar ko Hyderabad ke police upayukta Rajiv Dwivedi se Poochh taachh ki.*

(Geetha Johri, the leader of Gujarat CID team investigating the Sohrabuddin fake encounter matter questioned the Deputy Commissioner of Police of Hyderabad, Rajiv Dwivedi on Friday.)

C. *Iske alawa muthbhed mamley mein Andhra Pradesh police ki sandigdha bhoomika ko dekhte huey bhi pooch taachh ko zaroori manaja raha tha.*

(Other than this, in view of the suspicious role of Andhra Pradesh police in the encounter matter, the questioning was being considered necessary)

D. *"Ullekhneeya hai ki IPS adhikari D.G.Vanjara, Rajkumar Pandiyan our Dinesh M.N. ke Dwivedi se gaharey sambandh rahey hain"*

(It is worth mentioning that IPS officers D.G.Vanjara, Raj Kumar Pandiyan and Dinesh M.N have had deep relations with Dwivedi)."

5. C.C.No.24 of 2007 is filed with regard to the publication of news items in Siasath Urdu Daily, dated 8.5.2007, which are

defamatory and scandalous according to L.W.1. The news item is under the caption “Rajiv Trivedi “Hyderabad Ka Vankara” Fauri Barkhast Karne Ka Mataleba”. The alleged defamatory and scandalous allegations against L.W.1 are quoted as under:

“A. Janab Latif Mohammed Khan, Secretary, Civil Liberties ney ek bayaan mey kaha key Hyderabad ka Additional Commissioner Police (Crime) ke insaaneyat-soz muzloom ab manzare aam par aa chuke hain.

Mr. Latif Mohammed Khan, Secretary, Civil Liberties, has said in a statement that the inhuman torturing by the Additional Commissioner of Police (Crime), Hyderabad are now public knowledge.

B. Ye insano ko azlyatey de kar taskeen mahsoos karta hai.

He feels satisfaction in torturing human beings.

C. Iske liye who aziyatrasani ke nit naye tareeke apnata hai. Aur ek khaas baatyeh hai keye IPS ohdedar khud apne hathon se taluon par lathiyon barsata hai aur us waqt uski halat ek wahashi junooni ki si hojati hai.

For this purpose he adopts new methods of torturing. And a special thing is that this IPS officer rains lathi blows on the soles with his own hands and at that time his condition becomes like that of an inhumanly insane person.

D. Iske khud ki aziyatgahen hain jo Hyderabad ke rihashi apartments ke alawa muzafat mey farm houses mey waqe hain. Ye kada Hindutva zahaniyat ka hamil aur musulmano se beinteha nafrat karta hai. RSS ka karkoon hai.

He has his own torture chambers, which are in, apart from residential apartments of Hyderabad, also in farm houses in the outskirts. He has a hardcore Hindutva mindset and he hates Muslims limitlessly. He is a worker of RSS.

E. Beinteha daulat ka malik aur kai benami jayezaden aur amluk rakhta hai. Hyderabad ke mutammaltareen ilakon mein iske bangley hain. Is tarah sey Rajiv Trivedi “Hyderabad ka Vanzara” hai aur Andhra Pradesh ki secular Congress huqumat is badnaam zamana ohdedar ko Palpos rahi hai aur iska kirdar mashqooq ho jane ke bawzood abhi tak barkhast nahi kiya gay a hai aur khavi ummeed hai ke ye apne khilaf sabooten ko apne ohdey ke istemal sey mita sakta hai Kam se kam ab Rajiv Trivedi ko barkhast karte huey Hyderabad ke shahriyon ki zindagi ka tahafuz kiya jaye.

He owns limitless wealth and has several benami properties. He has bungalows in the posh areas of Hyderabad. In this way, Rajiv Trivedi is "Vanzara of Hyderabad" and secular Congress government of Andhra Pradesh is nurturing this infamous officer and in spite of his bad role he has not been dismissed yet and there is full expectation that he will erase the evidence against himself by using his position. At least now Rajiv Trivedi should be dismissed and the lives of Hyderabad citizens should be saved."

6. The news was telecasted in CNN-IBN English News channel under the caption "30 minutes—Sohrabuddin Inside Story" on 13.5.2007 at 1730 hours, which is subject-matter of C.C.No.1 of 2008.

The gist of said telecast is thus:

"Police sources say Vanjara and Pandian nabbed Kousarbi in Bidar with help from S.P. Rajiv Trivedi of the Hyderabad Special Investigation Unit.....Rajiv Trivedi provided cars with fake number plates in which Sohrabuddin was brought to Ahmedabad and then killed in a fake encounter."

7. Sri C.Padmanabha Reddy, learned senior counsel appearing for the petitioners would contend that there is no whisper as to the role of each of the petitioners in the entire body of the complaint; and that the entire complaint does not disclose the status of the individual accused vis-à-vis CNN-IBN English News Channel. The Sanction given by the Government under G.O.Rt.No.6581, dated 27.10.2007 shows that the sanction is to launch necessary prosecution against the CNN-IBN Channel, but in fact, there is no sanction for prosecution against individuals. The Government of Andhra Pradesh can not be said to be an aggrieved party inasmuch as there is no whisper even in the complaint muchless in the programme said to have been telecasted about either the State or the A.P. Police as such and even the sanction order does not state so. The complaint does not disclose the names of the person/individuals who suppose to have made the statement. The alleged programme as such is not defamatory as there is no statement made in the entire programme and attributed in the complaint which would amount to defamation. Further without

attributing knowledge to A.1 to A.5, making a complaint against them and taking cognizance thereof is abuse of process of law and the same is liable to be quashed. By issuing G.O.Rt.No.6583, dated 27.10.2007, Government granted sanction to launch prosecution against the Editor of Deccan Chronicle newspaper only and even in the application, the request was made to prosecute the Editor only. Similarly, the Government in G.O.Rt.No.6582, dated 27.10.2007 granted sanction to prosecute the petitioners for the offences under Sections 500, 501, 502 and 120-B IPC, but the allegations in the complaint, even taking at their face value, do not constitute any offence under the above sections. In the absence of any allegation against A.1 in C.C.No.3 of 2007, who is Editor-in-Chief for publication of the news item, he cannot be made liable for the alleged offences. Second accused in C.C.No.3 of 2007, who is an Advisor for Rajasthan Patrik, is nothing to do with the printing and publishing the newspaper and no presumption can be drawn against third accused, who is described as Printer and Publisher of newspaper and the fourth accused is only the Editor-in-Charge of the paper. The petitioner-accused in C.C.No.24 of 2007 is alleged to have made a statement in Siasat Urdu Daily Newspaper making several wild and defamatory and false implications against L.W.1, but the said comments were made basing on the bitter criticism from many quarters of the society inclusive of press and electronic media and therefore, the said statement is only a *bona fide* but not defamatory. The finding recorded by the learned Magistrate for taking cognizance against the accused that it is of common knowledge that in case of libel, Editor, Printer and Publisher are liable for defamation of reputation of complainant is erroneous. Further there is no sanction to prosecute the petitioners under Section 120-B IPC in terms of Section 196(2) of Cr.P.C. which is conspicuously missing and therefore, the petitioners cannot be added as accused with the aid of 120-B IPC. Even assuming there are some *per se* defamatory statements against the individual for having acted illegally,

highhandedly and in violation of the constitutional fundamental rights of the citizen, it cannot be said to be an action in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions. Therefore, the State as against whom or the department as against which, there is no whisper in the alleged programme cannot be said to be an aggrieved party to sanction for prosecution. He lastly contended that the issue is before the Supreme Court of India, which has been monitoring the case in W.P.(Criminal) No.115 of 2007, wherein the Supreme Court directed the investigation by C.B.I. and the C.B.I. is reporting the status report to the Supreme Court. In view of the same, the petitioners cannot be prosecuted for the alleged telecast made. In support of said submissions, the learned senior counsel relied on the following decisions. **K.M.Mathew v. State of Kerala and another**^[1]; **K.M. Mathew v. K.A.Abraham and others**^[2]; **Dasari Narayana Rao v. R.D.Bhagvandas and another**^[3]; **T.Venkatram Reddy v. Sri M.Malla Reddy and another**^[4]; **Rubabbuddin Sheikh v. State of Gujarat and others**^[5]; and **P.C. Joshi and another v. The State of U.P.**^[6].

8. Per contra, learned Public Prosecutor would contend that in all the cases, Public Prosecutor was permitted to lodge the complaint by the Government as contemplated under Section 199(4) Cr.P.C. and such permission is only permitting the Public Prosecutor to lodge the complaint on behalf of the State but not against the specific persons, but against the persons who are responsible for such defamatory statement. To buttress his submission, he relied on **Sewakram Sobhani v. R.K.Karanjiya, Chief Editor, Weekly Blitz and others**^[7] and **John Thomas v. Dr.K.Jagadeesan**^[8].

9. Sri Nageshwar Rao Pappu, learned counsel appearing for second respondent-Rajiv Trivedi (de facto complainant) would

contend that the complaint allegations clearly disclose the conspiracy among all the accused to defame the de facto complainant and to harm his reputation and without there being any truth into the said allegations, and therefore, it is not a fit case to quash the proceedings at the initial stage. In support of his submission, he relies on **Jeffrey J.Diermeier and another v. State of West Bengal and another**^[9].

10. In the light of the above submissions, the following points arise for consideration:

1. Whether the Public Prosecutor, who was authorized to launch prosecution has to confine against the person and offences referred to in the sanction order only or not?

2. The allegations in the complaint are sufficient to proceed against the accused for the alleged offences or the proceedings are liable to be quashed?

11. Before adverting to the above rival submissions, it is appropriate to notice various provisions contained in Chapter-XXI of the Indian Penal Code. Section 499 IPC defines defamation as under: "499. Defamation.-- Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person."

Section 500 deals with punishment for defamation, which reads thus:

"500. Punishment for defamation.-- Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

Section 501 deals with the printing or engraving matter known to be defamatory, which reads thus:

"501. Printing or engraving matter known to be defamatory.-- Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

Section 502 reads thus:

“502. Sale of printed or engraved substance containing defamatory matter.-- Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

Section 199 of Code of Criminal Procedure deals with the procedure for prosecution for defamation and taking cognizance for the said offence, which reads thus:

“199. Prosecution for defamation.

(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence: Provided xxxxxx

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who at the time of such commission, is the President of India, the Vice- President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) xxxx (omitted as not necessary)

(4) No complaint Under sub- section (2) shall be made by the Public Prosecutor except with the previous sanction-

(a) xxxx (omitted as not necessary)

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;”

11. Section 199 Cr.P.C. is an exception to the general rule that a complaint can be filed by anybody whether aggrieved or not and modified that rule by permitting only an aggrieved person to make a complaint. The ‘complaint’ as defined under Section 2(d) of Cr.P.C. is as under:

“2(d) “Complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not

include a police report.”

The complaint need not code any section of penal law. The substance of the charge as disclosed in the facts given is to be recorded as a complaint. Sub-section (2) of Section 199 Cr.P.C. engrafts a kind of exception on the general rule that only a person aggrieved by a defamatory statement should be permitted to move the Court for redress. It provides for a special procedure for the trial of a certain category of defamation of high dignitaries and public servants in respect of their conduct in the discharge of public functions. In order that a court of session may take cognizance of such offence it is necessary that there must be a complaint made in writing by the public prosecutor with the previous sanction of the authorities specified in sub-section (4). The object is obviously to save a public servant from the embarrassment of a private prosecution in respect of a defamatory statement made against him in the discharge of his public duties. The intervention of the State can be justified only on the ground that the Government has an interest in protecting its reputation when it is likely to be tarnished if an attack on its officers goes unchallenged or in other words, the defamation, besides causing harm to the individual, has caused appreciable injury to the State (see 41st Report of Law Commission). As the provision in sub-section (2) is in addition to and not in derogation of sub-section (1), the public servant concerned may therefore either take recourse to this sub-section or lodge a complaint himself under sub-section (1). The conditions for making a complaint are; (i) The offence is alleged to have been committed against any of the persons specified in respect of his conduct in the discharge of public function; (ii) the offence must be committed at the time when the person holds the office; (iii) written complaint to the Sessions Judge by the public prosecutor; (iv) complaint is to be made by the public prosecutor with the previous sanction of the State Government or Central Government as mentioned in sub-section (4); (v) the complaint shall set forth the fact which constitutes the alleged offence, its nature

and such other particulars as may be necessary to give a notice to the accused of the precise charge he has to meet; (vi) complaint is to be filed within six months from the date of the commission of the offence. Sub-section (2) is an exception to the provisions of sub-section (1) (*see Sahib Singh*, AIR 1965 SC 1451). If a public servant is defamed in respect of his conduct in the discharge of public functions, two alternative courses are open: (i) The public prosecutor may file a complaint on his behalf under sub-section (2) or (ii) the public servant himself may avail of his original right to complain under sub-section (1). Therefore, sub-section (2) is not in derogation of sub-section (1). The person aggrieved is also competent to file a complaint himself and ordinarily it is he who should file it under sub-section (1). Sub-section (4) of Section 199 Cr.P.C. authorizes the public prosecutor to make a complaint after obtaining the previous sanction of the Government concerned, that is to say, in the case of President or Vice-President of India or Administrator of Union Territory or Minister of Union or Union Territory or public servant employed in connection with the affairs of the Union, sanction of the Central Government is to be obtained; in the case of Governor or Minister of a State or any other public servant employed in connection with the affairs of the State, sanction of the State Government is to be obtained. Section applies when the dignitary or the public servant defamed holds office at the time of defamation. A public prosecutor can with the previous sanction of the Government concerned, file a complaint in writing in the sessions court directly with respect to an offence under Section 500 IPC committed against a public servant in respect of his conduct in the discharge of his public functions (*see Sahib Singh*, AIR 1965 SC 1451).

12. From the scheme as referred to above, previous sanction is required to prosecute for the offence committed against a person who, at the time of such commission is a public servant employed in connection with the affairs of the Union or of the State in respect of his

conduct in discharge of his public functions, and against all such persons, who committed the offence, but not against certain individuals only. Therefore, the contention advanced by the learned counsel for the petitioners that the prosecution should be confined against the persons named in the G.O. and for the offences referred to only, does not merit consideration.

13. In **Sim v. Stretch**((1936) 2 All.E.R.1237 (H.C.)) Lord Atkin has noticed the quotation of the Salmond, the Law of Torts 13th edition page 355 which reads as follows:

“The test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinion or feelings of other persons. The typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct.....”

The essentials of defamation generally must be proved by the plaintiff:

1. The words must be defamatory;
2. They must refer to the plaintiff; and
3. They must be “maliciously” published.

14. Now, in order to appreciate the rival submissions advanced, I would like to consider the judgments cited across the bar and the principles laid down therein touching on the subject.

15. The Supreme Court in **K.M.Mathew** (1 supra) reiterating the principles laid down earlier in **Haji C.H. Mohammad Koya v. T.K.S.M.A.Muthukoya**^[10] wherein, the complainant relied upon presumption under Section 7 of the Press and Registration of Books Act, 1867, held that the presumption under Section 7 is only against the person whose name is printed as Editor as required under Section 5(1) of the Act. There is a mandatory (though rebuttable) presumption that the person whose name is printed as ‘Editor’ is the editor of every portion of that issue of the newspaper of which a copy is produced. Section 1(1) of the Act defines ‘Editor’ to mean the person who controls the selection of the matter that is published in a newspaper.

Section 7 raises the presumption in respect of a person who is named as the Editor and printed as such on every copy of the newspaper. The Act does not recognize any other legal entity for raising the presumption. Even if the name of the Chief Editor is printed in the newspaper, there is no presumption against him under S.7 of the Act. In **K.M. Mathew**, the Supreme Court after referring to Section 7 of the Press and Registration of Books Act, 1867 and the Editor as defined under the said Act and Section 5(1) of the Act, held that 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 summons were issued against them. It was further held as under:

“...the complainant in each case has alleged that these appellants who are either Managing Editor, Chief Editor or Resident Editor had knowledge and were responsible for publishing defamatory matter in their respective newspaper publications. Moreover, in none of these cases, the “Editor” had come forward and pleaded guilty to the effect that he was the person responsible for selecting the alleged defamatory matter published. It is a matter of evidence in each case. 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 the alleged libelous matter published in the newspaper, the complainant would be left without any remedy to redress his grievance against the real culprit. We are not unmindful of the powers of the Court under Section 319 of the Code of Criminal Procedure, but such powers are circumscribed by limitations.”

16. In **Dasari Narayana Rao** (3 supra), this Court held as under:

“The petitioner is only the Chairman of the Board of Directors of the Company. Though in the complaint it is alleged that the petitioner and the other two accused conspired to malign the first respondent, the complaint was not taken on file under S.120B read with Ss.500 and 501 of the Penal Code. By no stretch of imagination,

the petitioner can be imputed with knowledge of the contents of the impugned articles printed in the two issues of the newspapers.”

In **T.Venkatram Reddy** (4 supra), the petitioner is a partner of the Deccan Chronicle English Daily newspaper which publishes the newspaper ‘Deccan Chronicle’. This Court held that in the absence of any criminal liability fastened on the owner/partner of the firm, which publishes the daily newspaper, by the complainant in the complaint, the proceedings against the petitioner is abuse of process of law and quashed the proceedings. In **Rubabbuddin Sheikh** (5 supra), the Supreme Court while monitoring the investigation by the Central Bureau of Investigation, observed that ‘it appears from the charge itself that it does not reveal the identity of police personnel of Andhra Pradesh even when it states that Shorabuddin and two others were picked up by Gujarat Police personnel...’. In **P.C.Joshi and another** (6 supra), the Editor, Printer and Publisher of “New Age”- an English Weekly news was prosecuted for the offence under Section 500 IPC on the sanction accorded to the Public Prosecutor to launch prosecution under Section 198B (3) of the Criminal Procedure Code. The Supreme Court has pointed out that where the offence of defamation is alleged regarding publication of certain articles in the newspaper the High Court would not be justified in taking into account the exceptions provided to Section 499 I.P.C. for the purpose of quashing such criminal proceeding. It was held that if the facts which constitute the charge do not appear on the face of the sanction, it must be established by extraneous evidence that those facts were placed before the authority competent to grant the sanction and that the authority applied his mind to those facts before giving sanction. The facts constituting the charge appear on the face of the sanction; and evidence has also been led that the facts were placed before the sanctioning authority, that the authority considered the facts and sanctioned the prosecution. In **John Thomas** (8 supra), the Supreme Court while considering the contention that the imputations contained

in the publication complained of are not *per se* defamatory, observed that the only effect of an imputation being *per se* defamatory is that it would relieve the complainant of the burden to establish that the publication of such imputations has lowered him in the estimation of the right thinking members of the public. However, even if the imputation is not *per se* defamatory, that by itself would not go to the advantage of the publisher, for the complaining person can establish on evidence that the publication has in fact amounted to defamation even in spite of the apparent deficiency. Therefore, at that stage, the accused cannot contend that he is entitled to discharge on the ground that the imputations in the extracted publication were not *per se* defamatory.

17. The Supreme Court while dealing with the appeal filed by the accused against the dismissal of a petition by the High Court filed under Section 482 Cr.P.C. to quash the private complaint filed for the offence under Section 500 read with 34 IPC, held that to bring a case within the scope of the Tenth Exception, it must be proved that the statement/publication was intended in "Good faith" to convey a caution to one person against another; that such caution was intended for the good of the person to which it was conveyed, or of such person in which that person was interested, or for the "public good". It was further observed that while the publication refers to the interim order passed by the Delhi High Court, it omits to mention that the said injunction will not come into effect till the end of current academic session of the CFA programme, which, according to Respondent 2, was to conclude in May 2009, and that the order would not mean expression of final opinion on the matter. According to Respondent 2, the omission of the last two sentences of the interim order was a conscious and deliberate suppression to somehow project ICFAI in a bad light in order to harm its reputation in the eyes of the professional community and, therefore, the offending publication was neither in "good faith" nor in "public interest". The mere plea that the accused

believed that what he had stated was in “good faith” is not sufficient to accept his defence and he must justify the same by adducing evidence. However, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. Therefore, it is neither feasible nor possible to lay down a rigid test for deciding whether an accused person acted in “good faith” and for “public good” under the said Exception. The question has to be considered on the facts and circumstances of each case, having regard to the nature of imputation made; the circumstances on which, it came to be made and the status of person, who makes the imputation as also the status of the person against whom the imputation is allegedly made. These are all questions of fact and matters of evidence and therefore, the proceedings cannot be quashed at that stage.

18. From the reading of all the above judgments, it is clear that the complaint need not disclose all the ingredients of the offence and if any fraudulent intention is alleged, that would be a matter of evidence, and in case any offence is committed by publishing the articles in newspaper, there could be a presumption against the Editor that he committed such offence, but not against the Chief Editor and such presumption is a rebuttable presumption. Further, where offence of defamation is alleged regarding publication of certain articles in the newspaper the High Court would not be justified in taking into account the exceptions provided to Section 499 I.P.C. for the purpose of quashing such criminal proceedings.

19. In the light of the above principles, I will proceed to consider the allegations made in the complaints in the present case. In C.C.No.27 of 2007, the accused is the Editor-in-Chief of Deccan Chronicle English daily newspaper. The complaint therein is that the news item/allegations published against L.W.1 in Deccan Chronicle without any hesitation are false and malicious and come within the

definition of Section 499 I.P.C. The manner, text and tenor of the language used and imputations made clearly indicate that the accused with animus made the above allegations to defame L.W.1 in the eyes of general public, the department, the political circles, officials, friends, relatives, colleagues and others. It is alleged that the accused have conspired and hatched a plan to damage L.W.1's reputation with a view to achieve circulation knowing fully well that the allegations they have made and published are untrue, false, frivolous and only aimed at defaming L.W.1 and to gain circulation. But there is no attribution that the petitioner therein-Editor-in-Chief is responsible for the publication of the news item nor the Chairman and the Editor-in-Chief conspired with the other accused in publication of the impugned article prior to its publication. Then all the witnesses shown in the list by the prosecution are only witnesses to prove defamation caused to L.W.1 on such publication of defamatory and scandalous allegations, but not to speak about the conspiracy prior to its publication. The de facto complainant was shown as L.W.147 in the charge sheet filed on 16.7.2007, but the allegations against him were made on 17.7.2007. Therefore, the meeting of A.1 and A.5 with other accused and their conspiring in publication of the news item on 17.7.2007 does not arise. There is no specific allegations against petitioners A.1 and A.5 nor it is alleged that they were responsible for publication of alleged news item. The presumption under Section 7 of the Press and Registration of Books Act, 1867 can be drawn only against the Editor, whose name is printed in the newspaper. The said newspaper contained the followed declaration:

"Printed and Published by D. Thomas (A.3) on behalf of Deccan Chronicle." In view of the judgments of the Supreme Court in **Haji C.H. Mohammad Koya** (10 supra) and **K.M.Mathew** (1 supra), A.1 being Editor-in-Chief would not be liable for publication of certain articles in the newspaper and the person liable is only the Editor. Admittedly, in the instant case, the other accused namely, D.Thomas (A.3) was the

Printer and Publisher and Ms.A.T.Jayanthi (A.2) was the Editor and S.A.Ishaqui (A.4) was the Reporter of the Deccan Chronicle. In the absence of any allegations implicating the Editor-in-Chief (A.1) and the Chairman and Managing Director (A.5) in order to rebut the presumption arising under Section 7 of the Press and Registration of Books Act, 1867, there would not be any presumption against them. Therefore, the impugned proceedings in CrI.P.No.7592 of 2007 are liable to be quashed as against the petitioners therein only.

20. In C.C.No.3 of 2007, it is alleged that the accused therein had published a news item in their newspaper on 12.5.2007 from their office located at Kesargarh, J.L.N.Marg, Jaipur, Rajasthan making several wild defamatory, false implications concerning L.W.1 to harm his reputation knowing fully well that L.W.1 was holding the post of Additional Commissioner of Police (Crime and SIT), Hyderabad. After reproducing the scandalous allegations published, it is stated that the said allegations without any hesitation come within the definition of Section 499 I.P.C. The manner, text and tenor of the language used and imputations made clearly indicate that the accused with animus made the said allegations to defame L.W.1 in the eyes of general public and that all the accused have conspired and hatched a plan to damage his reputation with a view to achieve circulation. The allegations so published are untrue, false, frivolous and only to gain publicity. The accused who are described as A.1 to A.4 are shown as Editor, Advisor, Printer & Publisher and Editor in-charge, who are petitioners in CrI.P.No.264 of 2008. The contention of the learned senior counsel appearing for the petitioners is that A.1 is the Chief-Editor and A.2 is the Advisor of the newspaper and therefore, they cannot be prosecuted for the alleged offences. In the complaint it is nowhere shown that A.1 is the Chief-Editor, but he was shown as Editor and A.2 was shown as Advisor. Whether A.1 is Chief-Editor or not is a matter of evidence to be adduced by the parties. As of now, no documents are filed to substantiate the plea that A.1 is the Chief-Editor

and he had no connection with the news item published.

21. In C.C.No.24 of 2007, the complainant-L.W.1 after reproducing the defamatory and scandalous allegations published in the newspaper (Siasat Urdu Daily), in para 12, alleged that A.4 made a defamatory statement which was published by A.1 to A.3 on 8.5.2007. All the accused hatched a plan to damage L.W.1's reputation with a view to achieve religious and political mileage knowing fully well that such allegations as made and published are untrue, false, frivolous and to gain publicity and popularity and to improve the circulation by speculation. A.4 who made the statement and published it in the newspaper filed CrI.P.No.1252 of 2008. The petitioner-A.4 has not asserted that the said statement was not made by him, but contrarily asserted in ground No.4 in the petition filed under Section 482 Cr.P.C. that the statement made by him is not defamatory either under law or on facts and it is a statement given by him on having verified and believed by him to be true and that his comments are real and not imagined conduct of L.W.1. There are allegations on L.W.1 about his misusing the powers of his office particularly on a section of people of the society. The way L.W.1 performed his public office has come under bitter criticism from many quarters of the society. During that time only, petitioner gave the alleged statement and so according to him, it is a bona fide comment and not defamatory. If that be the case, the aspect whether the statement falls under any of the exceptions under Section 499 IPC has to be established during the course of trial. Therefore, at this stage, the impugned proceedings cannot be quashed against the petitioner.

22. In C.C.No.1 of 2008 the allegation is with regard to telecasting a news programme in CNN-IBN English News channel under the caption "30 minutes—Sohrabuddin Inside Story" on 13.5.2007 at 1730 hours. After reproducing the gist of the telecast, it is alleged in the complaint that A.2 (petitioner No.3 in CrI.P.No.1646 of 2008) is the

Executive Producer and A.3 and A.4 are Producers and the Programme was edited, supervised and presented by A.5 (petitioner No.2 in CrI.P.No.1638 of 2008). A.6 to A.9 are members of the production team. A.10 to A.17 are Reporters. A.18 to A.26 are Cameramen. A.27 and A.28 are Specialists in Graphics & Packaging. A.29 and A.30 are the Editors of the said programme. A.1 (petitioner No.1 in CrI.P.No.1638 of 2008) is the Editor-in-Chief, who is responsible for all the programmes telecasted in the channel. It is alleged that all the accused conspired to defame L.W.1 and in furtherance of their common intention, made several wild defamatory, false implications concerning L.W.1 to harm his reputation knowing fully well that L.W.1 was holding the post of Additional Commissioner of Police (Crimes and SIT), Hyderabad. The learned Sessions Judge by order dated 9.1.2008 examined the culpability of A.1 to A.30 and observing that it is of common knowledge that in the case of libel, Editor, Printer and Publisher are liable for defamation affecting the reputation of the complainant, held that the case is not liable to be taken on file against A.3, A.4, A.6 to A.9 and A.18 to A.30, but took the case on file for the offence under Section 500 IPC as against A.1, A.2, A.3 and A.10 to A.17 only and ordered for issuance of summons. The main contention of the learned senior counsel for the petitioners is that the news broadcasted is not integrally connected with the official duties of L.W.1. In the programme, it was stated that while the Andhra Police denies involvement, certain officers secretly helped Vanzara to nab Sohrabuddin. The news telecasted as mentioned in the earlier part of the order clearly discloses that the image of L.W.1 was lowered in the eyes of the viewers and harmed his reputation and whether it amounts to defamatory, libel or scandalous is a matter that can be decided on the evidence to be adduced by the parties. Therefore, in the absence of any privilege to the broadcaster on par with Section 7 of the Press and Registration of Books Act, 1867, the petitioners cannot claim that the impugned proceedings have to be quashed.

Therefore, this Court does not find any merit to quash the impugned proceedings initiated against the petitioners.

23. In the result, Crl.P.No.7592 of 2007 is allowed and the impugned proceedings are quashed as against the petitioners therein only. Except Crl.P.No.7592 of 2007, the remaining Criminal Petitions are dismissed.

A. GOPAL REDDY, J.

APRIL 29, 2011

Tsr.

[1] AIR 1992 SC 2206

[2] (2002) 6 SCC 670

[3] 1986 CRI.L.J.888

[4] 1999 (2) ALD 110

[5] (2010) 2 SCC 200

[6] AIR 1961 SC 387

[7] AIR 1981 SC 1514

[8] AIR 2001 SC 2651

[9] (2010) 3 SCC(Cri) 138 = (2010) 6 SCC 243

[\[10\]](#) AIR 1979 SC 154