A K.M. MATHEW

v.

STATE OF KERALA AND ANR.

NOVEMBER 19,1991

B [K. JAGANNATHA SHETTY AND YOGESHWAR DAYAL, JJ.]

Indian Penal Code, 1860—Sections 500, 34—Charges under—Complaint Case—No prima facie case against Chief Editor—Proceedings to be dropped.

C *Code of Criminal Procedure, 1973—Section 204—Complaint case—Absence of allegation involving accused in the commission of the offence—Magistrate cannot try—Reasons indicated.*

Code of Criminal Procedure, 1973—Section 204—Complaint case—Magistrate's power to drop proceedings—Nature and scope of—Order
D *issuing process—Nature of.*

Code of Criminal Procedure, 1973—Section 204—Complaint case against Chief Editor—Taking cognizance of offence by Magistrate—Requirements.

E *Press and Registration of Books Act, 1867—Section 7—Complaint case against Chief Editor—Presumption under—Applicability of.*

The appellant—the Chief Editor of a leading daily newspaper was arrayed as an accused in the complaint case initated by the respondent no.2, an advocate, who was aggrieved by a news item
F **published in the newspaper before the Additional Judicial Magistrate, u/ss. 500 and 34 I.P.C.**

The Magistrate issued summons to the accused-appellant, who pleaded not guilty. The appellant requested the Magistrate to drop the proceedings against him, before the evidence was recorded, con-
G **tending that there was no averment in the complaint that he had perused the material or edited before its publications or that it was published with his knowledge or consent.**

The Magistrate dropped the proceedings against the appellant.

H **The revision, moved by the complainant was allowed by the**

High Court. This appeal has been filed by special leave against the order of the High Court. A

Allowing the appeal, this Court,

HELD : 1. The power to drop proceedings against the accused cannot be denied to the Magistrate. Section 204 of the Code indicates that the proceedings before the Magistrate commences upon taking cognizance of the offence and the issue of summons to the accused. When the accused enters appearance in response to the summons, the Magistrate has to take proceedings under Chapter XX of the Code. But the need to try the accused arises when there is allegation in the complaint that the accused has committed the crime. If there is no allegation in the complaint involving the accused in the commission of the crime, it is implied that the Magistrate has no jurisdiction to proceed against the accused. [368 A-C] B C

2. It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. [368 C-D] D

3. No specific provision required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of its does not disclose any offence against the accused. [368 D-E] E

4. Section 7 of the Press and Registration of Books Act, 1867 has no applicability for a person who is simply named as 'Chief Editor'. The presumption under Section 7 is only against the person whose name is printed as 'Editor' as required under Section 5(1). 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. 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 Section 7 of the Act. [368 E-G] F G

5. No person should be tried without a *prima facie* case. For a Magistrate to take congnizance of the offence as against the Chief H

Editor, there must be positive averments in the complaint of knowledge of the objectionable character of the matter. The complaint in the instant case does not contain any such allegation. In the absence of such allegation, the Magistrate was justified in directing that the complaint so far as it relates to the Chief Editor could not be proceeded with. [369 B, A]

State of Maharashtra v. *Dr. R.B.Chowdhary & Ors.*, **[1967] 3 S.C.R. 708**; *D.P.Mishra* v. *Kamal Narain Sharma & Ors.*, **[1971] 3 SCR 257**; *Nara Singh Charan Mohanty* v. *Surendra Mohanty*, **[1974] 2 S.C.R. 39** and *Haji C.H. Mohammad Koya* v. *T.K. S.M.A.Muthukoya*, **[1979] 1 S.C.R. 664, referred to.**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 711 of 1991.

From the Judgment and Order dated 28.7.1988 of the Kerala High Court in Crl. R.P. No. 59 of 1988.

Kapil Sibal and E.M.S. Anam for the Appellant.

A.S.Nambiar and K.R.Nambiar for the Respondent.

The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. We grant special leave and proceed to dispose of the matter.

This appeal against a decision of the Kerala High Court raises an important question concerning the power of the Magistrate to drop proceedings against an accused in a summons-case after process is issued.

The facts are simple. K.M.Mathew—appellant is the Chief Editor of Malayalam Manorma. It is a daily newspaper with wide circulation the State of Kerala and seems to be the largest language newspaper in India. Separate editions of the newspaper are published from different centres, namely, Trivendrum, Kottayam, Cochin and Calicut. At each of these centres, there is a separate Editor who is responsible for selection and publication of news items. The Chief editor is based at Kottayam and he is responsible for the general policy of the Daily and various other publications of the Manorma group of publications. Respondent No. 2 is an advocate. He was aggrieved by a news item published in the Daily. His case was that the news item was published with the sole object of ridiculing and defaming him. He lodged a complaint before the court of Addi-

tional Judicial Magistrate against the Chief Editor, the Printer and Publisher of the newspaper alleging that they have committed an offence punishable under Sections 500 & 34 IPC. The learned Magistrate examined the complainant on oath and took the complaint on file as CC 496/85. He issued summons to the accused. The accused upon service entered appearance and pleaded not guilty.

Before the evidence was recorded, the Chief Editor requested the Magistrate to drop the proceedings against him. He contended that the complainant has not alleged that the Chief Editor was responsible for selection of the news item and publication thereof. There was not even an averment in the complaint that the Chief Editor has perused the material or edited before its publication or that it was published with his knowledge or consent. After hearing the parties the Magistrate accepted the plea of the Chief Editor and dropped the proceedings against him. To be more precise, the Magistrate directed that the complaint so far as it relates to the Chief Editor could not be proceeded with.

The complainant took up the matter to the High Court in revision. The High Court allowed the revision and set aside the order of the Magistrate.

The High Court did not examine whether the complainant has or has not made out a case against the Chief Editor. The High Court rested its conclusion solely on the procedural requirements of the trial of a summons-case. It has been pointed out that in any private complaint triable as a summons-case the Magistrate, after taking cognizance of the offence and issuing process, has no jurisdiction to drop proceedings against the accused. He is bound to proceed under Chapter XX of the Code of Criminal Procedure when the accused enters appearance. He will have to state the particulars of the offence and record the plea of the accused. When the accused pleads not guilty, he will have to hear the prosecution and take all such evidence produced in support of the prosecution. Then he will have to hear the accused and take all such evidence produced in support of the defence. The High Court went on to state that the question of conviction or acquittal will arise only after recording evidence of the parties. There is no question of discharging the accused at an intermediate stage. There is no provision in the Code for dropping the proceedings against any accused. So stating the High Court has directed the Magistrate to proceed with the trial of all the accused.

The High Court seems to be too technical in this regard. If one reads carefully the provisions relating to trial of summons-cases, the power to

drop proceedings against the accused cannot be denied to the Magistrate. Section 204 of the Code indicates that the proceedings before the Magistrate commences upon taking cognizance of the offence and the issue of summons to the accused. When the accused enters appearance in response to the summons, the Magistrate has to take proceedings under Chapter XX of the Code. But the need to try the accused arises when there is allegation in the complaint that the accused has committed the crime. If there is no allegation in the complaint involving the accused in the commission of the crime, it is implied that the Magistrate has no jurisdiction to proceed against the accused.

It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused.

In the instant case there is no averment against the Chief Editor except the motive attributed to him. Even the motive alleged is general and vague. The complainant seems to rely upon the presumption under Section 7 of the Press and Registration of Books Act, 1867 ('the Act'). But Section 7 of the Act has no applicability for a person who is simply named as 'Chief Editor'. The presumption under Section 7 is only against the person whose name is printed as 'editor' as required under Section 5(1). 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 recognise 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 Section 7 of the Act. See *State of Maharashtra* v. *Dr. R.B.Chowdhary & Ors.*, [1967] 3 SCR 708; *D.P.Mishra* v. *Kamal Narain Sharma & Ors.*, [1971] 3 SCR 257; *Narasingh Charan Mohanty* v. *Surendra Mohanty*, [1974] 2 SCR 39 and *Haji C.H.Mohammad Koya* v. *T.K.S.M.A. Muthukoya*, [1979] 1 SCR 664.

It is important to state that for a Magistrate to take cognizance of the offence as against the Chief Editor, there must be positive averments in the complaint of knowledge of the objectionable character of the matter. The complaint in the instant case does not contain any such allegation. In the absence of such allegation, the Magistrate was justified in directing that the complaint so far as it relates to the Chief Editor could not be proceeded with. 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 view taken by the High Court is untenable. The appeal is accordingly allowed. The order of the High Court is set aside.

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V.P.R. Appeal allowed.