

## K.D. Ghouri Vs Nanik Ram K. Israni

**Court:** Rajasthan High Court

**Date of Decision:** Sept. 14, 1972

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 500, 501

**Citation:** (1973) RLW 20 : (1972) WLN 780

**Hon'ble Judges:** M.L. Joshi, J; C.M. Lodha, J

**Bench:** Division Bench

**Final Decision:** Allowed

### Judgement

C.M. Lodha, J.

The facts giving rise to this appeal by the complainant K.D. Ghouri have been stated in our order dated 24-1-1972

whereby we had overruled the complainant's contention that the case ought to be remanded to the trial court for fresh decision on account of non-

compliance with the provisions of Section 526(8) Cr. P.C.

2. We have stated the facts in greater detail in our judgment dated 24-4-1972: D:B. Criminal Reference No. 285/68" K.D. Ghouri v. Bhojo

Motwani, whereby we partially allowed the reference and while maintaining the sentence of fine u/s 501 I.P.C. awarded to the co-accused

Motwani, we enhanced the amount of fine from Rs. 50/- to Rs. 1000/-. Suffice it to say that in the daily paper "Matra Bhumi" dated 11-5-

1965 a defamatory article was published against the complainant. The English translation of this article, we have reproduced in extenso in our order

dated 24-4-1972, and there is no denying the fact that this article is grossly defamatory. We may further state that the accused respondent

Nanakram Israni was admittedly the Chief Editor, Printer and Publisher of this paper and the other accused Bhojo Motwani was its Editor. The

learned Magistrate absolved shri Nanakram Israni of the liability for the publication of this article on the ground that Shri Israni had succeeded in

showing that he was absent at the time the impugned article was published, and his presumptive liability u/s 7 of the Press and Registration of

Books Act. (Act No. 25 of 1967) (hereinafter referred to as "the Act") was displaced. In coming to this conclusion the learned Magistrate relied

upon Narayan Singh Vs. Rajmal, and Emperor v. Muhammad Siraj 30 Cr. L.J. 201 : AIR 1928 All 400.

3. That the, respondent Shri Israni was the Chief Editor, Printer and Publisher of the daily paper "Matra Bhumi" in which the impugned article was

published is beyond dispute and was in fact admitted by Shri Israni, in his statement u/s 342 and 342-A Cr. P.C. The defence taken by him was

that in his absence and without his knowledge the impugned article was published by the Editor Bhojo Motwani and as soon as he came to know

that its contents were incorrect he published a contradiction in the issue of the paper dated 13-5-1965. Learned Counsel for the complainant has,

however, strenuously urged that Shri Israni very well knew the fact of the publication of the impugned article and that he got the same published out

of malice and ill-will he bore against the complainant. It has been further pressed upon us that the presumptive liability of the printer-publisher and

Chief Editor envisaged by Section 7 of the Act has not at all been displaced in the present case. In support of his contention learned Counsel has

relied upon a number of authorities.,

4. In order to appreciate the points canvassed before us it would be proper to refer to Section 7 of the Act which reads as follows:

7. Office copy of declaration to be prima facie evidence.

In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some

Court empowered by this Act to have the custody of such declarations, or in the case of the editor, a copy, of the news paper containing his name

printed on it as that of the editor shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be

subscribed to such declaration, or printed on such newspaper, as the case may be that the said person was printer, or publisher, or printer and

publisher (according as the words of the said declaration may be) of every portion of every news paper where of the title shall correspond with the

title of the newspaper mentioned in the declaration or the Editor of every portion of that issue of the newspaper of which a copy is produced.

5. In Narayan Singh Vs. Rajmal, it was found that the editor was absent from duty for a bonafide purpose and the work of editing was entrusted to

a subordinate, who occupied the position of a sub-editor. The learned Judge observed that the opponent editor did not rest by disclaiming his

liability on the ground of his absence but examined the sub-editor Mahgilal who admitted that it was he who had published the defamatory matter

on the strength of a post-card. In this state of evidence the learned Judge found that the presumptive liability of the editor was displaced It may be

noticed that in that case the opponent editor had gone out to Ratlam whereas the paper was published from Mandsaur.

6. In Emperor Vs. Muhammad Siraj, the learned Judges found that there was no evidence what soever to suggest that the accused, the declared

printer, was absent in bad faith, that is, that he knew that a defamatory article was about to be printed, and that he merely absented himself with a

view to escaping liability. In other words it was found that the accused was absent in good faith and without knowledge of the defamatory article.

This was found sufficient for acquittal of the accused. In the present case the paper was printed and published from Ajmer and the respondent Shri

Israni, who is a practising Advocate at Ajmer was admittedly present in Ajmer on the date the impugned article was published. It has been stated

by him as D W. 2 that he was looking after his professional work in the courts upto 12 A.M. and went to the press at about 5 p m by which time

the paper containing the impugned article had already been printed, and he was- informed that the impugned article had been published on the

basis of information received by post, and further that the same had been published for the public good. He has further stated that in the evening on

that, day he met P.W 2 Devdutta, PW. 3 Kishan Gopal and P.W 4 Moolchand at the house of one Pandit Bhagwan Das, whose daughter"s

marriage was being celebrated. The accused goes on to state that the aforesaid witnesses enquired from him as to how the impugned article had

been published, and thereupon he told them that he would verify the correctness of the contents of the article in 2 or 3 days. Accused has also

stated that on 11 5 1965, that is, the next day of the publication of the article he met the Collector and the Additional District Magistrate posted at

Ajmer and came to know from them that the news published in the impugned article was false and thereupon in the issue dated 13.5.1965 (Ex D.I)

he published a contradiction controverting the facts mentioned in the impugned article. We may here advert to the evidence of P.W. 2 Deo Dutt,

P.W. 3 Kishan Gopal and P.W. 4 Moolchand, P.W. 2 Deo Dutt has stated that on enquiry being made by him regarding the correctness of the

impugned article, the accused Shri Israni replied that the contents of the article were correct. Similarly the statement of Shri Kishan Gopal is that

when they told the accused that they were not prepared to accept the news contained in the article as correct, Shri Israni replied that he had fully

investigated into the matter, "and the article contained true and correct facts. The same is the statement of PIW 4 Moolchand Goyal The learned

magistrate has disbelieved the evidence given by the aforesaid witnesses P.W. 2, P.W-3 and P W. 4 on the ground that P W. 12 and P.W. 3 are

not able to say as to who read out the article written in Sindhi to them, whereas P.W. 4 Moolchand has categorically stated that the accused Shri

Israni himself read out and explained the contents of the article "to" the witnesses. This the learned Magistrate has taken as a material contradiction

in the evidence of the witnesses. Another contradiction pointed out by him is that P W. 2 and P.W. 3 are not able to say who was carrying the

papers where as P.W. 4 and P.W. 5 have categorically stated that Shri Israni himself was carrying on the news paper in his hand. He has also

observed that these witnesses bore grudge against the accused because of party affiliation"s.

7. We have carefully gone through the statements of these witnesses as. well as those of PW7 Sewa Ram. PW8 Durga Prasad and PW9; Madan-

Singh. The last of these is an Advocate, and in the course of cross-examination Shri Madan Singh has stated in clear terms that the accused Shri

Israni went on insisting that the contents of the impugned article were correct But on the witnesses telling again and again that the article did not

contain the correct news, the accused agreed to publish a contradiction- It is "true that there are some sort of political differences between the

witnesses PW2, PW. 3 and PW4 and the accused inasmuch as the accused is a Jansinghisi and the witnesses are Congressites or at any rate have

sympathy for the Congress party. But while assessing the veracity of the evidence of these witnesses we cannot forget that the accused himself has

admitted in his statement u/s 342-A Cr. P.C that he had met the three witnesses PW2, PW3 and PW4 at the house of Pt. Bhagwan Das in the

evening of 10-5-1985, and a talk had taken place among them in connection with the impugned article- The accused has further clearly admitted

that he had told the witnesses that he would be able to tell them precisely in 2 or 3 days whether the news contained in the impugned article is

correct As already stated above the accused was in Ajmer on that day and had actually reached the press when the paper had been published but

before it was despatched for distribution. It, therefore, cannot be said on the facts and in the circumstances of the present case that the accused

was absent in good faith and without knowledge of the defamatory article and on that ground he cannot disclaim the presumptive liability of the

Chief Editor, Printer and Publisher. In our view the facts of the Allahabad case Emperor Vs. Muhammad Siraj, and the Madhya Pradesh case

Narayan Singh Vs. Rajmal, are altogether distinguishable and the principle laid down there in has no application to the facts & circumstances of the

case on hand.

8. In the present case we have come to the conclusion that in the first place the accused Shri Israni was not absent and further that the publication

of the impugned article was within his knowledge. We are also of opinion that he did not exercise due care" and attention in the publication of the"

impugned article which he should have as its Printer, Publisher and Chief Editor. We are further of opinion that the accused Shri Israni cannot

disclaim his responsibility for the publication of this article on account of the presumptive liability attached to him in his position as Chief Editor,

Publisher & Printer u/s 7 of the Act. In this view of the matter the learned" Magistrate was not justified in acquitting the accused of the charge

under Sections 500 & 501 I PC.

9. Learned Counsel for the complainant appellant vehemently argued that the publication of this article was motivated by malice and ill will the

accused Shri Israni bore against the complainant, and, therefore, substantive punishment should be awarded to him- It is urged that the complainant

Shri Ghouri arrested the accused Shri Israni in 1955 A.D. in connection with some political agitation and on account of this incident the accused

had a grudge against the complainant and for that reason he published the impugned article to lower down the prestige of the complainant and to

harm his reputation, and thereby jeopardise his career as a nigh Police Official.

10. We have carefully considered the contention raised by the learned Counsel in the matter of sentence. We may here point out that the

contradiction was published a day after the publication of the impugned article. The alleged incident of arrest of the accused by the complainant

took place as far as back in 1955, that is, about 10 years before the publication of the impugned article. It further appears to us that the person

mainly responsible for the publication of this article was the Editor Shri Bhojo Motwani whom we have awarded a sentence of fine of Rs. 100/-. It

is true that the accused Shri Israni was grossly negligent in the discharge of his duties and responsibility as a Chief Editor, Printer and Publisher. It is

admitted by him that the news contained in the impugned article was received from a secret correspondent whose identity has not been disclosed in

the course of trial. In these circumstances though the respondent Shri Israni cannot escape the criminal liability for publication of the impugned

article yet we are of opinion that no case has been made out for imposing upon him a more severe punishment than that awarded to the Editor Shri

Bhojo Motwani,

11. In the result we allow this, appeal. set aside the order of acquittal of the respondent Shri Israni by the learned Magistrate and convict him u/s

500 I.P.C. and sentence him to pay a fine of Rs. 1000/-. He is granted one month's time to deposit the amount of fine in the trial court, in default

of payment of fine he shall undergo simple imprisonment for a period of six months. The- trial court will see that the accused is made to undergo

the sentence awarded to him in case he does not pay the amount of fine within the time granted to him.