

Mr. Mammen Mathew, Editor, Malayalam Manorama Vs Shri Kuniel Kumar and State of Maharashtra

Court: Bombay High Court

Date of Decision: Feb. 28, 2003

Acts Referred: Constitution of India, 1950 " Article 226, 227
Penal Code, 1860 (IPC) " Section 499, 500

Citation: (2004) CriLJ 852

Hon'ble Judges: J.G. Chitre, J

Bench: Single Bench

Advocate: Subodh Desai, for the Appellant; P.K. Dhakephalkar and S.V. Saste, APP., for the Respondent

Final Decision: Dismissed

Judgement

J.G. Chitre, J.

The Petitioner is hereby taking exception to the act of the learned Magistrate to issue process against him for offences

punishable u/s 500 IPC in context with the complaint filed by respondent NO. 1, the complainant. Shri Desai, counsel appearing for the petitioner,

submitted that the imputation as alleged in the complaint is not at all defamatory and a reading of it indicates that the provisions of Section 500 of

IPC cannot be attracted. On that count, according to him, the complainant should have been dismissed by the Magistrate refusing to take the

cognizance.

2. He placed reliance on two judgment of Supreme Court (1) K.M. Mathew v. State of Kerala and Anr. reported in 1992 SCC (Cri) 88 and (2)

Jawaharlal Darda and Others Vs. Manoharrao Ganpatrao Kapsikar and Another, . Relying on K.M. Mathew v. State of Kerala and Anr. (supra),

Shri Desai submitted that the Chief Editor cannot be held responsible for the item published in the newspaper and, therefore, on this ground the

learned Magistrate should have refused to take cognizance of the complaint of respondent No. 1. He sought the support from the judgment of

Supreme Court in Jawaharlal Darda"s case (supra).

3. Mr. Dhakephalkar appearing for Respondent No. 1 read out the complaint, more particularly, paragraph No. 7 of it wherein a specific

allegation has been made by the present petitioner that the said matter has been published in the said newspaper at the instance of all the accused

and their active collusion with accused No. 1, the present petitioner. The complainant - the present respondent No. 1 - has alleged that the said

matter was deliberately printed in Malayala Manorama daily. Therefore, according to Shri Dhakephalkar, Chief Editor, the present petitioner,

cannot be exonerated without there being judicial application of mind of the trial Court on these issues. He submitted that the petitioner should have

an application before the trial Court and should have sought an adjudication on the point involved. But instead of doing that, the petitioner has

approached the High Court directly and, therefore, on that count, the petition is fit to be dismissed.

4. This Court dismisses the submissions advanced by Shri Dhakephalkar appearing for respondent No. 1 on the point that the petitioner is

precluded from approaching the High Court directly. There is no such restriction because the powers of the High Court are wide and exhaustive. It

is a matter of day to day experience that on account of the pressure of the work in trial Court the grievances are not adjudicated within reasonable

time and the people are required to attend the Court on and often without there being an active hearing of the matter. Attending the Court of the

Magistrate and thereafter moving the Session Court and thereafter the High Court would be also a time consuming process. If the person

aggrieved has reasonable grounds to believe that there is no case against him which can be tried in a criminal court, he has got a legal right to move

the High Court for quashing such show cause notice, process issued, the proceedings initiated. He need not undergo the ordeal suggested. There

cannot be restrictions on the powers of High Court indicated by Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as

Code"" for convenience) and Articles 226 and 227 of the Constitution of India.

5. This Court upholds the submissions advanced by Shri Dhakephalkar that the ratio of the judgments of the Supreme Court in K.M. Mathew's

case (supra) and Jawaharlal Darda's case (supra) would not be applicable to the present case. Needless to indicate that each and every case has

to be adjudicated on the facts and circumstances of it, independently. There cannot be a general rule applicable to all cases because every case has

its different set of facts and circumstances. There has to be a judicial application of mind for the purpose of adjudicating as to what role has been

alleged to have been performed by so indicted accused. For that the complaint has to be perused at the first instance. If there is no case made out

in the complaint prima facie, the Magistrate should not take cognizance of such complaints and allow its time to be consumed for such hastily and

frivolous litigations because every visit to the Court implies annoyance, distraction of such person from his occupation of livelihood and expenditure

in getting the legal advice and engaging a lawyer to defend him. In addition to that, the expenditure incurred in furnishing the surety bonds, etc. it

causes humiliation to such person also because he is required to visit the Court frequently and has to answer the queries of the persons present

there who are curious to know the reason for his presence there. It is a matter of experience that everybody loves to be in peace and loves to

carry on his occupation calmly, quietly, pleasantly with peace of mind.

6. The observations of the Supreme Court in K.M. Mathew's case (supra) cannot be applied without application of judicial mind to the complaint

and without its perusal. If there are allegations made by the complainant against the accused, if they are born out by the material which has been

annexed to the complaint, the Magistrate is obliged to apply judicial mind to it before he takes cognizance of that or dismisses the complaint at the

threshold. In K.M. Mathew's case facts were indicating that the Chief Editor of Malayalam Manorama was not concerned whatsoever at all with

the matter which was published in said issue of Malayalam Manorama. It appears from the tone of the judgment that there were no allegations

made against him specifically in the complaint and no role was attributed to him. But in this case a role has been attributed to him by making a

positive and specific allegation that there was collusion between the brother of the deceased and the present petitioner, the Chief Editor of

Malayala Manorama and on account of that the said imputation was published in the said issue of Malayala Manorama. Therefore, counsel

appearing for the petitioner cannot bid for discharge of the petitioner without reading paragraph 7 of the complaint.

7. Shri Dhakephalkar submitted that the tone of the imputation published has to be understood keeping oneself acquainted with the expectations of

the people from other State to which the deceased, the petitioner, respondent No. 1 happened to be belonging. He submitted that the deceased

was working in the commercial institution owned by the respondent No. 1. He happened to be the resident of Kerala State. Therefore, the people

residing in the said village must have been expecting that respondent No. 1 who happened to be the resident of Kerala State should do something

for the purposes of helping the concerned persons to get the dead body carried to the State of Kerala, the native place of the deceased. But the

imputation published suggests that he did not do so. Defamation can be by two clauses : (1) by direct imputation and (2) by way of innuendo. The

present is prima facie case of imputation by innuendo. Therefore, such complaint needs a judicial enquiry to be held by the Magistrate in whose

court the said complaint has been presented. It means a judicial enquiry to probe the role of the present petitioner.

8. The cases which are based on direct imputation and cases which are based on imputations by innuendo had to be given due considerations. For

the purposes of finding out whether the imputations are sufficient to attract the provisions of Section 499 of IPC a judicial enquiry has to be made

prima facie by the concerned Magistrate. It cannot be dismissed at the threshold without application of judicial mind and without due judicial

enquiry. When it is a case of direct imputation, the matter becomes simple. But when it is based on innuendo defamation the trial Magistrate has to

be given sufficient scope to exercise his rightful jurisdiction and discretion. In such cases, High Court should be cautious in interfering and should

not interfere unless it is satisfied at least reasonably.

9. Thus, the petition stands dismissed. The stay stands vacated. Rule stands discharged. The petitioner is at liberty to move appropriate application

before the trial Court. The trial Court should decide the case as early as possible and should consider the application for exemption if presented by

the accused in view of Section 205 of the Code. The observations made in this judgment should not weigh at the time of judicial enquiry or the trial

which Magistrate may do at various stages of the trial for avoiding possibility of any prejudice to either side.