

Karnataka High Court Prabhu Chawla And Others vs A.U. Sheriff on 26 October, 1994 Equivalent citations: 1996 (1) ALT Cri 42, 1995 CriLJ 1922, ILR 1995 KAR 39, 1995 (4) KarLJ 131 Bench: A Murgod ORDER 1. The present petition under Section 482, of the Code of Criminal Procedure, 1973 is filed for setting aside the order dated 14-12-1992 passed in Criminal Case No. 15178 of 1992 on the file of the VI Additional Chief Metropolitan Magistrate, Bangalore City ordering registration of the case against the petitioners and two others for offence punishable under Section 500, read with Section 34 I.P.C. and directing process against them for their appearance before the Court, and to quash the entire proceedings against the petitioners. 2. The respondent Sri. A. U. Sheriff performed the marriage of his niece Reshma Sheriff with one Syed Manzoor Ahmed, son of Janab Syed Ibrahim Saheb, Proprietor : Master Travels, Bangalore on Sunday the 14th June, 1992 in Chandrasagar Marriage Hall, Jayanagar, Bangalore and that in that connection he had printed and issued marriage invitations in which it was printed as under :- "With Best Compliments from Hon. Minister for Railways, Alhaj C. K. Jaffer Sheriff and his Family." Thereafter in the Indian Express News Paper dated 24th July 1992 published from Bangalore an article by Ashwini Sarin, the 4th petitioner in the petition reading as under was printed and published. "By Ashwini Sarin, New delhi Rs. 600 crore deal as dowry ? It may seem incredible but that is what Union Railway Minister C. K. Jaffer Sharief has apparently done. Even as the Central Bureau of Investigation is looking into the leakage of top secret Government documents regarding the purchase of 6000 horse power electric locomotives from Asea Brown Boveri, starting details about the murky deals have begun to surface. The \$ 190, million contract was finally decided by the Railway Ministry in favour of Swiss multinational Asea Brown Boveri early this year after the Railway Minister hastened the award of the contract despite serious objections raised earlier by the Tenders Committee of his ministry, the Department of Economic Affairs and even the Committee of Secretaries. Mr. Sharief seems to have mastered the art of mixing family interest with official work. His niece, Reshma Sheriff, was married to Syed Manzoor Ahmed on June 14. As it happens, the bridegroom is employed with the Riyadh-based Arabian Electrical Industries Limited, being run in co-operation with the Asea Brown Boveri. The bridegroom's boos came all the way from Riyadh to Bangalore to attend the marriage. According to highly placed sources, Mr. Sharief was keen to visit Mecca in Saudi Arabia towards the end of June but the visit was scuttled when the Prime Minister, Mr. P. V. Narasimha Rao, turned down the proposal and advised the Railway Minister to postpone his visit. The Prime Minister had, in fact, acted on advice from top intelligence agencies which had submitted a detailed report on the award of the locomotive contract to ABB. Indian Railways had been deliberating the purchase of high horse power electric locomotives for a long time and among the main contenders for the deal were Asea Brown Boveri and Hitachi of Japan in collaboration with Bharat Heavy Electricals Limited. However, Mr. Sharief's interest in the deal began to show, sources said, ever since his niece's marriage proposal reached its final stage. The contract to ABB and the marriage seem to have been finalised around the same period. The Opposition did raise the issue of ABB deal in

the Rajya Sabha during its last session but to no avail. Mr. Sharief adopted a stonewalling attitude and refused to answer the Opposition's specific queries about the controversial deal. In any case, the Rajya Sabha debate took place on the last day of the session. The matter is yet to be taken up in the Lok Sabha. The \$ 190 million locomotive contract had been embroiled in controversy from the very beginning. But the undue haste which Mr. Sharief showed to finalise the deal in favour of ABB by ignoring the earlier recommendations of the Tenders Committee of his own Ministry has raised doubts about the deal being above board. Mr. Sharief himself has been meeting a large number of opposition MPs. individually these days in an attempt to convince them that there is nothing "unfair in the deal." Investigations have revealed that Mr. Sharief was not alone in pushing the ABB case. A detailed note was prepared on Feb 7, 1992, by Mr. Sudhir Kumar, director, Asian Development Bank (ADB) division in the Government, following the appointment of a committee of secretaries by the Finance Minister, Dr. Manmohan Singh, on Jan. 7 to review the Railway Ministry's decision to award the contract to ABB. The note had recommended the award to BHEL which had made the "lowest" bid. However, the contract went to ABB, as Mr. Sudhir Kumar noted, "since it is in the nature of the Government decision making that assessment of the superior authority is to prevail." On Feb. 10 - just three days later - the meeting of the secretaries committee, chaired by Mr. Montek Singh Ahluwalia, Secretary, Economic Affairs, decided that ABB offer has to be accepted "because it was technically correct." BHEL was not considered because detailed information on domestic value addition was not available. Repeated attempts to contact Mr. Sharief failed. However, inquiries made with the family of Mr. A. U. Sheriff, a cousin of the minister, who had sent the invitation cards for their niece Reshma's marriage in Bangalore on June 14, revealed that Reshma is the daughter of Mr. Jaffer Sharief's younger sister. The Railway Minister had taken "active interest and responsibilities" in the marriage. 3. In the Indian Express issue of Wednesday, July 29th, 1992 another article reading as under came to be published. "Bid to bail out Jaffer Sharief. No link with ABB deal, they claim ... Express News Service : NEW DELHI - An attempt is on to deny that Railway Minister Jaffer Sheriff is in any way linked to Reshma Sheriff, on whose wedding invitation card his name figures prominently. The wedding invitation had specified that Reshma was getting married to a person working for a Dubai-based company called Arabian Electrical Industries Ltd., which is linked to Asea Brown Boveri. And it is to Asea Brown Boveri that the ministry has awarded the controversial Rs. 600 crore deal for high horse power electric locomotives. Two denials have been issued in this connection. The first is by A. U. Sheriff, Reshma's uncle. He has claimed that the minister's wife and daughter did not attend the wedding, although eye witnesses have told this newspaper that they were indeed present on the occasion. Further, he has admitted that he did put the minister's name on the invitation card, thus proving the authenticity of the card reproduced by this news-paper. But he has followed this by making a strange claim that Jaffer Sharief was in no way related to either him or to the bride. His contention is that "despite not being related even distantly with him it was not necessary to

obtain prior permission of Mr. Jaffer Sharief for printing his name on the invitation card of the wedding of my niece." Is this a customary thing to do ? A. U. Sheriff would have us believe that this was done "with the sole intention of his (Jaffer Sharief's) and his wife's blessings for the couple, which is a usual practice in our community." The second denial has come not from the minister but from the Railway Ministry's public relations director. She has also claimed that no member of Jaffer Sharief's family attended the wedding at Bangalore on June 14. This denial argues that "surely, if there were any direct relationship with the Railway Minister having any bearing whatsoever on the ABB contract with the Indian Railways, this would not have been printed in an invitation card openly distributed to several invitees." Further, it claims the reference to the Railway Minister in the card was printed without the minister's permission." Ascribing "mischievous" motives to this news-paper, the Railway Ministry letter wonders why the invitation card was reproduced on July 24 when the wedding actually took place on June 14. The explanation it offers is that the aim is to reiterate falsehoods about the ABB locomotive contract, which it mischievously suggests is part of a campaign by rival business interests of ABB. The fact of the matter is that even when he had an opportunity of coming clean on the ABB locomotive deal on the last day of the previous session of the Rajya Sabha, Jaffer Sharief stonewalled the opposition. He sought to suggest he was speaking on behalf of the entire Government and refused to answer any of the specific questions put to him." 4. After the publication of these two articles, the respondent Sri A. U. Sheriff filed a private complaint in the Court of the VI Additional Chief Metropolitan Magistrate at Bangalore City with registration No. PCR 1249 of 1992 on 13-8-1992. In support of the petition averments respondent examined himself and three other witnesses. After considering the complaint and the sworn statements of the complainant and his witnesses, the learned Metropolitan Magistrate ordered on 14-2-1992 to register the case under Section 204 Cr.P.C. against the accused 1 to 7 for the offences under Section 500, of the Indian Penal Code read with Section 34, of the Indian Penal Code and to issue summons returnable by 13-1-1993. In the complaint in para-4 the respondent alleged that the petitioners with intent to defame the complainant and to destroy his moral, social and business reputation maliciously, printed and published the articles dated 24-7-1992 and 29-7-1992. The respondent has alleged in para 5 that the petitioner No. 4 falsely and maliciously wrote and published and petitioner Nos. 5 and 6 falsely and maliciously printed and published and petitioners 1, 2 and 3 falsely and maliciously allowed the article to be published and printed. 5. After referring to some of the extracts in the two publications in para 8 of the complaint, the respondent-complainant stated that the writings in the two articles in their natural and ordinary meaning were understood to mean that as a consideration for the marriage of Reshma, a Rs. 600 crore deal had been entered into by Mr. C. K. Jaffer Sharif with M/s. Asea Brown Boveri and Smt. Reshma is not the niece of Mr. C. K. Jaffer Sharief and the said Mr. C. K. Jaffer Sharief is not related to the complainant and therefore there was no occasion for the aforesaid contract being signed as a consideration for the marriage and that articles in question would harm the reputation and image of the complainant

in the eyes of right thinking people in the society. 6. In para 9 of the complaint the respondent stated that the persons known to him expressed shock, disbelief, anger and indignation at the false and malicious printing and publication by the Indian Express group of publication concerning him. 7. In para 10 of the complaint the respondent stated that it is the customary practice in the complainant's religion and community to mention the names of dignitaries who enjoy high status in public life with the purpose of seeking their blessings and since Mr. C. K. Jaffer Sharief was a respected person in his community and leader of the masses, his name had been included in the invitation card of english version without seeking the permission of Mr. C. K. Jaffer Sharief. 8. In the succeeding paragraphs in the complaint the respondent stated that the two articles contained false and malicious writings and were per se defamatory and his reputation had been harmed and he has suffered great loss and damage in the estimate of the persons known to him. 9. In support of the above grounds, the respondent gave evidence as P.W. 1 besides examining three witnesses mentioned in the list of witnesses. By the order dated 14-12-1992 the learned VI Additional Chief Metropolitan Magistrate concluded that the complainant had made out sufficient grounds prima facie to proceed against the petitioners and two others for offence under Section 500 read with Section 34 IPC. 10. In support of the contentions put-forth in the petition, the learned Counsel Sri. C. V. Nagesh for the petitioners submitted that the allegations in the complaint taken at their face value do not prima facie constitute the offence alleged; (2) that under Section 1(1) of the Press and Registration of Books Act, 1867 (hereinafter called 'the Act' for Short) only 'editor' has been defined and under Section 7 of the Act the presumption arises only against the editor, printer or publisher. Petitioners 1 to 3 who are described as the executive editor, managing editor and resident editor respectively do not come within the definition of Section 1(1) of the Act and there are no special averments made against them in the petition and therefore issuing of process against them needs to be quashed; (3) the learned Magistrate has not applied his mind to the facts of the case and has mechanically passed the impugned order and that is evident from issuing process against accused 6 and 7 who are described as the "managing director" and "the proprietor" respectively of the Indian Express Newspaper. 11. In reply, the learned Counsel Sri. Balan appearing for Sri. M. T. Nanaiah for the respondent submitted that the petition under Section 482 Cr.P.C. is not maintainable and that the allegations made in the impugned articles are per se defamatory and according to him dowry being a social evil implicating the respondent in the dowry transaction has defamed him and he has been brought down in the estimate of the persons known to him and the offence has been committed against him. 12. I will first deal with the contention regarding the maintainability of the petition under Section 482 Cr.P.C. The learned Counsel Sri. Balan for the respondent relied on *Madhu Limaye v. State of Maharashtra*, a decision of the Supreme Court of India and contended that an order directing issue of process by a Magistrate after taking cognizance of the case on a complaint is a final order and only a revision petition lies against such order and therefore a petition under Section 482 Cr.P.C. is not maintainable. This con-

tention is seriously disputed. In Madhu Limaye's case after process was ordered after taking cognizance an application was filed contending before the learned Sessions Judge that he had no jurisdiction to entertain the complaint and the three grounds urged were as under :- (1) That even assuming the allegations made against Shri Antulay were defamatory, they were not in respect of his conduct in the discharge of his public functions and hence the aggrieved person could file a complaint in the Court of a competent Magistrate who after taking cognizance could try the case or commit it to the Court of Sessions if so warranted in law. Then Court of Session could not take cognizance without the committal of the case to it. (2) The sanction given was bad inasmuch as it was not given by the State Government but was given by the Chief Secretary; and (3) The Chief Secretary had not applied his mind to the entire conspectus of the facts and had given the sanction in a mechanical manner and therefore it was bad in law. The application filed on these grounds was rejected by the learned Sessions Judge and the revision filed against that order before the High Court was allowed. The Supreme Court of India in this decision held that the order rejecting the application challenging the jurisdiction of the Court to proceed with the trial was not an interlocutory order to make it immune from the challenge in a revision petition. Madhu Limaye's case therefore is not an authority to hold that a petition under Section 482 Cr.P.C. is not maintainable for quashing the proceedings to prevent abuse of the process of any court or to secure the ends of justice or to give effect to the orders of the Court. In *K. M. Mathew v. State of Kerala*, towards the end of paragraph 7 (at pp. 3780, 3781 of Cri LJ) the Court has observed as follows :- "..... 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." At the conclusion of para 8 (at p. 3781 of Cri LJ), it is observed :- "..... 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 not bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused." 13. In *State of Haryana v. Bhajan Lal*, in paragraph 108 the categories of cases in which the High Court may exercise its powers under article 226 or under Section 482 Cr.P.C. are enumerated and that paragraph reads as under :- "In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make

out a case against the accused. 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. 3. Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. 4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. 5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. 6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. 7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.” Therefore, where the allegations made in the complaint when taken at their face value and accepted in their entirety do not prima facie constitute any offence. The proceedings before the Magistrate can be quashed by exercising the power under Section 482 Cr.P.C. Therefore the contention advanced in support of the maintainability of the present petition by the learned Counsel on behalf of the respondent is rejected. 14. The two impugned articles dated 24-7-1992 and 29-2-1992 in respect of which an offence of defamation is complained have been in extenso reproduced in the earlier part of this order. In the first article dated 24-7-1992 the opening words referred to Rs. 600 crore deal as dowry and there is nothing to indicate that the said dowry deal refers to the present respondent. The reference to respondent finds place in the last paragraph of the article dated 24-7-1992 and it says that repeated attempts to contact Mr. Sharief failed and inquiries made with the family of the respondent have revealed that Reshma was the daughter of Mr. Jaffer sharief’s younger sister. Not a word with regard to giving or taking dowry in any sum is imputed to the respondent. No portion with reference to this article is read out and referred to by the respondent in support of the contention that prima facie an offence of defamation with reference to the respondent is made out. So also there is nothing in the second article dated 29-7-1992 to show that any defamatory imputation is contained therein against the present respondent-complainant. The first article refer to awarding of contract by the Union Railway Minister to Asea Brown Boveri in Riyadh in co-operation of which Arabian Electrical Industries Limited is run and in which the bridegroom marrying Reshma is employed. The second article contains reference to denial issued by the respondent and another by the Railway Ministry. The respondent himself has made clear in the petition that

he is in no way connected with the Railway Minister and the bride also is not related to the Railway Minister and that he printed the name of the Railway Minister in the marriage invitation of Reshma without his consent just with a view to seeking the blessings as per tradition and custom in his community. The complainant's grievance is that he is defamed by the impugned articles and reading of the two articles on the assumption that the allegations therein are true at their face value do not make out any offence of defamation against the complainant. In that view taking of cognizance for an offence under Section 500 IPC on the basis of the allegations in the complaint filed by the respondent is impermissible in law and the same amounts to abuse of process of court. 15. As per definition of "editor" in Section 1(1) of the Act 'editor' means the person who controls the selection of the matter that is published in a newspaper. There is no reference to resident editor, executive editor, managing editor in the Act. There are no allegations against petitioners 1 to 3 in the complaint to show that they have any hand in selection of the matter that is published in the Indian Express Newspaper. In *K. M. Mathew v. State of Kerala*, (1992 Cri LJ 3779) referred to above paras 9 and 10 (at p. 3781 of Cri LJ) read as under :- "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 S. 7 of the Press and Registration of Books Act, 1867 ('the Act'). But S. 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 a person who controls the selection of the matter that is published in a newspaper. Section 7 raises the presumption in respect of the 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 S. 7 of the Act. (See *State of Maharashtra v. Dr. R. B. Chowdhari*, ; *D. P. Mishra v. Kamal Narain Sharma*, ; *Harasingh Charan Mohanti v. Surendra Mohanty*, ; and *Haji C. H. Mohammad Koya v. T. K. S. M. A. Muthukoya*, . 10. 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 untenable. The appeal is accordingly allowed. The order of the High Court is set-aside." 16. In the absence of positive averments against the petitioners 1 to 3 who are described as 'executive editor', 'managing editor' and 'resident editor' and in

the absence of presumption available under Section 7 of the Act against them, the learned Magistrate could not have ordered process for the alleged offence under Section 500 IPC. To ask the executive editor, managing editor and resident editor to undergo the trial because of issuing process against them would be oppressive. 17. In view of the above findings, other contentions do not need to be examined and the petition succeeds. Accordingly the petition is allowed and the proceedings in CC No. 15178 of 1992 on the file of the VI Additional Chief Metropolitan Magistrate, Bangalore City against the petitioners and two others stand quashed. 18. Petition allowed.