

Gambhirsinh R.Dekare vs Falgunbhai Chimanbhai Patel & Anr on 11 March, 2013

Equivalent citations: 2013 AIR SCW 1590, 2013 (3) SCC 697, 2013 CRI. L. J. 1757, AIR 2013 SC(CRI) 822, 2013 (3) ABR 335, (2013) 1 CURCRIR 688, (2013) 81 ALLCRIC 913, (2013) 2 CHANDCRIC 156, (2013) 2 CRIMES 1, (2013) 2 CRILR(RAJ) 500, 2013 CRILR(SC MAH GUJ) 500, (2013) 55 OCR 109, (2013) 2 ALD(CRL) 107, (2013) 1 MADLW(CRI) 684, 2013 CALCRILR 2 522, 2013 CRILR(SC&MP) 500, (2013) 3 MAD LW 194, (2013) 3 SCALE 302, (2013) 1 ALLCRIR 988, (2013) 2 RECCRIR 311, (2013) 125 ALLINDCAS 173 (SC), (2013) 2 MH LJ (CRI) 317, (2013) 2 ALLCRILR 480, 2013 (2) SCC (CRI) 1, 2013 (2) KLT SN 40 (SC), 2013 (3) KCCR SN 271 (SC), AIR 2013 SUPREME COURT 1590

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Bench: V. Gopala Gowda, Chandramauli Kr. Prasad

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.433 OF 2013
(@SPECIAL LEAVE PETITION (CRL.) NO. 3475 OF 2008)

GAMBHIRSINH R. DEKARE

... APPELLANT

VERSUS

FALGUNBHAI CHIMANBHAI PATEL
AND ANR.

...RESPONDENTS

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

The petitioner Gambhirsinh R. Dekare, at the relevant point of time was serving as Taluka Mamlatdar and an Executive Magistrate in Vadodara Taluka in the State of Gujarat. A Gujarati daily newspaper "Sandesh" is published from different places i.e., Surat, Valsad, Bharuch, Vadodara and other cities of India. Navinbhai Chauhan is the Resident Editor of Vadodara edition of "Sandesh" whereas Falgunbhai Chimanbhai Patel is the Editor of "Sandesh". The newspaper published a news item in its Vadodara issue dated 28.09.1999 that the petitioner "is in love and keeping illicit relations with the wife of a doctor at Ajwa Road with the following headlines:

"Mamlatdar Shri Gambhirsinh Dhakre is caught red handed by the youngsters- Mamlatdar is indulged in illicit relations with the wife of Doctor who is residing at Ajwa Road- attempts to conceal the matter- why the Government is not taking any action against the Mamlatdar?" According to the petitioner (hereinafter referred to as "the complainant"), the allegation published in the newspaper is false and defamatory. Accordingly, he filed complaint in the Court of Chief Judicial Magistrate, Vadodara. The complainant alleged that the news items are printed in the newspaper "as per the instructions and directions of the accused persons". In paragraph 3 of the complaint the complainant alleged as under:

"3. The Accused No. 1 and 2 of this case have deliberately published the news in the Page No. 12 of their daily newspaper 'Sandesh' dated 28/9/99 which is quite defaming and offending to us. The accused persons were in the knowledge that we the complainant shall be defamed in the Society due to publishing of such news and with a view to vilify us as the person having bad character, the accused persons, in collusion with each other, have published the following news in the newspaper deliberately." The complainant termed those allegations to be false and stated that the Editor and the Resident Editor have tried to prove him a characterless person in the society and because of that he had faced shameful and disgraceful situation amongst the family members and friends. The news item further brought him in disrepute in the Department and the public. It has been alleged that the accused persons have published the news item without any evidence or proof. The complainant denied to have any illicit relation with the doctor's wife. The complainant was examined on solemn affirmation in which he reiterated the allegation.

The Chief Judicial Magistrate, taking into account the allegation made in the petition of complaint and the statement of the complainant on solemn affirmation, took cognizance of the offence under Section 500, 501, 502, 506, 507 and 114 of the Indian Penal Code and issued process against both the accused.

Accused no. 2, Falgunbhai Chimanbhai Patel, the Editor of "Sandesh", aggrieved by the order taking cognizance and issuing process, filed an application before the High Court seeking quashing of the complaint filed before the Chief Judicial Magistrate, Vadodara on 08.10.1999. He sought quashing of the complaint on the ground that he is the Editor of the newspaper, stationed at Ahmedabad and the offending news item

was published in the Vadodara Edition of the newspaper, of which Navinbhai Chauhan, accused no. 1, is the Resident Editor. It was further contended that he was not aware of the offending news item being published in the newspaper or for that matter he had any role to play in selection of such item for publication. The High Court by the impugned order allowed the application and while doing so observed as follows:

“6. In the complaint itself, the petitioner is described as editor of the newspaper and his address is shown at Ahmedabad. Original accused No. 1 is described as a resident editor of Baroda of the same newspaper. It is not in dispute that the newspaper in question has its registered office at Ahmedabad and Baroda edition of the newspaper is being separately published from Baroda. It is also not in dispute that offending news item was carried in Baroda edition of the newspaper only.” The High Court further went on to observe as under:

“10. In the present case also, I find that there is nothing in the complaint to suggest that the petitioner herein was aware about the offending news item being published or that he had any role to play in selection of such item for publication. In absence of any material disclosed in the complaint and in view of the admitted fact that the petitioner is an editor of the newspaper stationed at Ahmedabad and the news item was carried in its Baroda edition alone where the newspaper has a separate resident editor, the petitioner cannot be proceeded against for the offence of defamation of the complainant.” The High Court came to the conclusion that prosecution of accused no.

2 would amount to miscarriage of justice and, accordingly, quashed the complaint and the process issued against him.

It is against this order that the complainant has preferred this special leave petition.

Leave granted.

Mr. Huzefa Ahmadi, Senior Advocate appears on behalf of the complainant (appellant herein) whereas accused no. 2 (Respondent no. 1 herein) is represented by Mr. Dushyant Dave, Senior Advocate.

Mr. Ahmadi, submits that according to the complainant, accused no. 2 was the Editor stationed at Ahmedabad and there is specific allegation against him that the news items are published in the newspaper “as per the instructions and directions of the accused persons”. The complainant has further alleged in the complaint that both the accused i.e. the Editor (accused no. 2) and the Resident Editor (accused no. 1) had deliberately published the news in their Gujarati daily newspaper “Sandesh” which is defamatory. The complainant went on to say that the “accused persons were in the knowledge that the complainant shall be defamed in the society due to publication of such news”. In the face of the aforesaid allegation, Mr. Ahmadi points out that the High Court committed a serious error by observing that “there is nothing in the complaint to suggest

that” accused no. 2 “was aware about the offending news item being published or that he had any role to play in selection of such item for publication”. Mr. Dave, however, submits that, according to the complainant’s own showing, accused no. 2 was the Editor of the newspaper stationed at Ahmedabad and the offending news item having been published at Vadodara for which there is admittedly a separate Resident Editor, it has to be assumed that the accused no. 2 was not aware of the same and had no role to play in the selection of such item for publication.

We have bestowed our consideration to the rival submission and we do not find any substance in the submission of Mr. Dave. Complainant has specifically averred in the complaint that the news item was printed in the newspaper as per the instructions and directions of the accused persons. The complainant had specifically alleged that accused nos. 1 and 2 have deliberately published the offending news and it was within their knowledge. At this stage, it is impermissible to go into the truthfulness or otherwise of the allegation and one has to proceed on a footing that the allegation made is true. Hence, the conclusion reached by the High Court that “there is nothing in the complaint to suggest that the petitioner herein was aware of the offending news item being published or that he had any role to play in the selection of such item for publication” is palpably wrong. Hence, in our opinion, the High Court has quashed the prosecution on an erroneous assumption of fact which renders its order illegal.

Mr. Ahmadi, further submits that the impugned order is vulnerable on another count. He points out that according to the complainant, the present accused was the Editor and his name has been printed as such in the publication and, therefore, he is responsible for the publication of the news item. Mr. Dave, however, submits that there being Resident Editor for the Vadodara Edition of the newspaper, the present accused, who is the Editor and stationed at Ahmedabad, cannot be held responsible for the publication. He emphasizes that it would be the Resident Editor who shall be responsible for the contents of the Vadodara Edition. In support of the submission he has placed reliance on a decision of this Court in the case of K.M. Mathew v. State of Kerala, (1992) 1 SCC 217.

A news item has the potentiality of bringing doom’s day for an individual. The Editor controls the selection of the matter that is published. Therefore, he has to keep a careful eye on the selection. Blue- penciling of news articles by any one other than the Editor is not welcome in a democratic polity. Editors have to take responsibility of everything they publish and to maintain the integrity of published record. It is apt to remind ourselves the answer of the Editor of the Scotsman, a Scottish newspaper. When asked what it was like to run a national newspaper, the Editor answered “run a newspaper! I run a country”. It may be an exaggeration but it does reflect the well known fact that it can cause far reaching consequences in an individual and country’s life.

The scheme and scope of Press and Registration of Books Act, 1867 (hereinafter referred to as “the Act”) also brings forward the same conclusion. Section 1 of the Act is the interpretation clause and the expression “Editor” has been defined as follows:

“1. Interpretation-clause.-(1)In this Act, unless there shall be something repugnant in the subject or context,-

xxx xxx xxx "editor" means the person who controls the selection of the matter that is published in a newspaper;" Section 5 of the Act provides for rules as to publication of newspapers and prohibits its publication in India except in conformity with the rules laid down. Section 5 (1) of the Act which is relevant for the purpose reads as follows:

"5. Rules as to publication of newspapers.-No newspaper shall be published in India, except in conformity with the rules hereinafter laid down:

(1)Without prejudice to the provisions of section 3, every copy of every such newspaper shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication.

xxx xxx xxx" From a plain reading of the aforesaid provision, it is evident that every copy of every newspaper published in India is mandated to contain the names of the owner and Editor thereof. It is in the light of the aforesaid obligation that the name of the accused no. 2 has been printed as Editor.

Section 7 of the Act makes the declaration to be prima facie evidence for fastening the liability in any civil or criminal proceeding on the Editor. Section 7 of the Act 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 newspaper 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 newspaper whereof 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." Therefore, from the scheme of the Act it is evident that it is the Editor who controls the selection of the matter that is published in a newspaper. Further, every copy of the newspaper is required to contain the names of the owner and the Editor and once the name of the Editor is shown, he shall be held responsible in any civil and criminal proceeding. Further, in view of the interpretation clause, the presumption would be that he was the person who controlled the selection of the matter that was published in the newspaper. However, we hasten to add that this presumption under Section 7 of the Act is a rebuttable presumption and it would be deemed a sufficient evidence unless the contrary is proved. The view which we have taken finds support from the judgment of this Court in the case of K.M. Mathew v. K.A. Abraham, (2002) 6 SCC 670, in which it has been held as follows:

“20. The provisions contained in the Act clearly go to show that there could be a presumption against the Editor whose name is printed in the newspaper to the effect that he is the Editor of such publication and that he is responsible for selecting the matter for publication. Though, a similar presumption cannot be drawn against the Chief Editor, Resident Editor or Managing Editor, nevertheless, the complainant can still allege and prove that they had knowledge and they were responsible for the publication of the defamatory news item. Even the presumption under Section 7 is a rebuttable presumption and the same could be proved otherwise. That by itself indicates that somebody other than editor can also be held responsible for selecting the matter for publication in a newspaper.” Now reverting to the authority of this Court in the case of K.M. Mathew v. State of Kerala, (1992) 1 SCC 217, relied on by Mr. Dave, in our opinion, same instead of supporting his contention, goes against him. In the said case it has been observed as follows:

“9. 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.” In this case the accused was the Chief Editor of Malyalam Manorama and there was no allegation against him in the complaint regarding knowledge of the objectionable character of the matter published. In the absence of such allegation, the Magistrate decided to proceed against the Chief Editor. On an application by the Chief Editor, the process issued against him was recalled. The High Court, however, set aside the order of the Magistrate and when the matter travelled to this Court, it set aside the order of the High Court. This Court made distinction between 'Editor' and 'Chief Editor'. In no uncertain terms the Court observed that the Press and Registration of Books Act recognizes 'Editor' and presumption is only against him. The Act does not recognize any other legal entity viz., Chief Editor, Managing Editor etc. for raising the presumption. They can be proceeded against only when there is specific allegation.

We may here observe that in this case, this Court has held that the Magistrate has the power to drop proceeding against an accused against whom he had issued process in the following words:

“8. 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 is 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.” However, this Court in *Adalat Prasad v. Rooplal Jindal* (2004) 7 SCC 338, has specifically overruled *K.M. Mathew* (Supra) in regard to the power of the Magistrate to recall its order issuing process. It has been observed as follows:

“15. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code.

16. Therefore, in our opinion the observation of this court in the case of *K.M. Mathew v. State of Kerala*, 1992 (1) SCC 217, that for recalling an erroneous order of issuance of process, no specific provision of law is required, would run counter to the scheme of the Code which has not provided for review and prohibits interference at interlocutory stages. Therefore, we are of the opinion, that the view of this Court in *Mathew's case* (supra) that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law.” Thus our reference to *K.M. Mathew* (supra) may not be construed to mean that we are in any way endorsing the opinion, which has already been overruled in *Adalat Prasad* (supra).

Thus the impugned judgment of the High Court is indefensible both on facts and law. Any observation made by us in this judgment is for the decision in this case. It does not reflect on the merit of the allegation, which obviously is a matter of trial.

In the result, the appeal is allowed, the impugned judgment of the High Court is set aside and the court in seisin of the case shall now proceed with the trial in accordance with law.

..... J. (CHANDRAMAULI KR. PRASAD)
..... J. (V. GOPALA GOWDA) NEW DELHI, MARCH 11, 2013
