GAHC010243062023

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1197/2023

JAYANTA BARUAH
S/O LATE DEBANANDA BARUAH
R/O MOTHER TERSA ROAD,
ZOO TINI ALI, P.S. GEETANAGAR
DIST. KAMRUP (M), ASSAM-781024

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:ANUPAM CHOUDHURY
S/O LATE NAGENDRA PAD CHOUDHURY
R/O NIZPAKUA

P.O. NIZPAKUA

MOUZA- PAKUA
P.S. BELSOR AND DIST. NALBARI
ASSAM
PIN-78135

Advocate for the Petitioner : MR P KATAKI, MRS R BEGUM,MR D CHAKRABORTY

Advocate for the Respondent : PP, ASSAM, MR. S N KRISHNATRAYA (R-2),MR. J PAYENG (R-2),MR. G SARMA (R-2)

BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA

JUDGMENT

Date : 17-09-2026

Heard Ms. R. Begum, learned counsel for the petitioner and Mr. S. N. Krishnatraya for the respondent No. 2. Also heard learned Addl. Public Prosecutor, Assam appearing for the State respondent.

2. This is an application under Section 482 of the Cr.P.C., 1973 praying for quashment of the proceeding of C.R. Case No. 154/2019 registered under Sections 500/34 of the IPC, pending in the Court of the learned Chief Judicial Magistrate (CJM), Nalbari.

3. In the said proceedings, cognizance of offenses under section 500/ 34 of the IPC has been taken by the learned CJM, Nalbari by its order dated 02.08.2019, passed in C.R. Case No. 154/2019. The learned counsel for the petitioner submits that the petitioner is the proprietor and owner of Asomiya Pratidin and Sadhin Printers.

4. The case of the petitioner, in brief, is that on 24.06.2019 the Complainant Sri Anupam Choudhury lodged a complaint before the court of Chief Judicial Magistrate, Nalbari that he is a Government Registered Contractor and also well known person as well as is actively involved in community service and has a clean record, never engaging in corruption. However, on 30.05.2019 & 31.05.2019, a news report, published without proper investigation by accused individuals, falsely implicated him in irregularities related to public construction projects. This unfounded news severely harmed the complainant's reputation, affecting his personal and social life.

5. On the basis of the said complaint and upon examination of the complainant and his witnesses, the learned Magistrate took cognizance of the offense by the aforesaid order.

6. On 19.09.2023, the petitioner filed a petition before the learned Magistrate being No. 1624/2023 seeking dropping of the criminal proceedings against him. However, after hearing the arguments from the learned counsels and upon examining the petition along with the evidence on record, the learned trial court rejected the said petition. The court held that it lacked the authority to quash criminal proceedings against the accused. Subsequently, on 15.09.2023, the matter was fixed for report/appearance of the accused, which led to the filing of the present application.

7. It is submitted on behalf of the petitioner that the petitioner is the proprietor of the newspaper where the alleged defamatory news item was published and as the owner of the press he is not liable for any criminal action for defamation in view of the provisions of 7 the Press and Registration of Books Act, 1867 (hereinafter referred to as "the Act").

8. The learned counsel for the complainant/opposite party, on the other hand, submits that learned Magistrate committed no Illegality in taking cognizance of the offence under sections 500/34 I. P. C. against the petitioner as he is liable to be prosecuted in view of the fact that the petitioner No. 1 is the proprietor of the newspaper, even in absence of any specific allegation and/or statement with regard to his role in the publication of the defamatory article.

9. The Act was enacted for regulation of printing-presses and newspapers, for the preservation the copies of books and newspapers printed in India and for the registration of such books and newspapers. The term 'editor' as defined in section 1 of the Act means the person who controls the selection of the matter that is published in a newspaper.

10. Section 3 of the Act provides that every book or paper printed within India shall have printed legibly on it the name of the printer and the place of printing, and if the book or paper be published, the name of publisher, and the place of publication.

11. Section 5 provides for rules as to publication of newspapers. It lays down, amongst others, that no newspaper shall be published in India, except In conformity with the rules laid down in sub-sections 1 to 8. Section 5 (1) provides that 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.

12. Section 5 (2) provides that the printer and the publisher of every such newspaper shall appear in person or by agent authorized in this behalf in accordance with rules made under section 20, before a District, Presidency or Sub-divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published and shall make and subscribe, in duplicate, a declaration that he is the printer (or publisher, or printer and publisher) of the newspaper entitled (name of the newspaper) and to be printed or published or to be printed and published, as the case may be at (premises where the printing or publication is conducted). Section 5 (2a) provides that every declaration under rule (2) shall specify the title of the newspaper, the language in which it is to be published and the perlodicity of Its publication and shall contain such other particulars as may be prescribed.

13. Section 5 (2b) lays down that where the printer or publisher of a newspaper making a declaration under rule (2) is not the owner thereof, the declaration shall specify the name of the owner and shall also be accompanied

by an authority in writing from the owner authorizing such person to make and subscribe such declaration. Section 5 (2c) provides that a declaration in respect of a newspaper made under rule (2) and authenticated under section 6 shall be necessary before the newspaper can be published.

14. Section 7 of the Act, which is very relevant, 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 declaration, or, in the case of the editor, a copy of the newspapar 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."

15. A perusal of Section 7 would go to show that under Section 7 of the Act, in any legal proceeding, civil as well as criminal, unless the contrary is proved, production of a declaration or in the case of the editor, a copy of the newspaper containing the name of the editor, shall be held to be sufficient evidence that the persons whose name appear in the declaration as the printer or publisher, or printer and publisher are the printer or publisher, or the printer and publisher and the name of the editor as printed in the newspaper is the editor of every portion of that issue of the newspaper. Thus, presumption can be drawn against the editor, publisher and printer with regard to publication of a news item. In

view of the aforesald, the persons declared as editor, publisher and printer are liable for any defamatory imputation in any news item In a newspaper as presumption as to awareness of contents of news item can be raised against them.

16. It is submitted that as per the provisions of section 7 thereof, it is only the publisher or printer or the Editor of the newspaper, who can be proceeded against in the event of any defamatory material being published in the concerned newspaper. But the proprietor is immune from such prosecution. It is submitted that the present petitioner who has been arrayed as accused No. 3 in the complaint petition has been wrongly described as the publisher of the newspaper and it is stated in the body of the complaint petition that the defamatory article has been published by the petitioner.

17. The copy of the newspaper dated the 4th of March 2018 is available in the record and the said publication contains a statement about ownership and other particulars about newspaper Asomiya Pratidin in form- (iv) under Rule 9 of the Rules framed under the Act. In the said statement the name of the printer as well as the publisher is shown as one Sri Jatindro Chowdhury and the name of the Editor is shown as Nitab Borah. The name of the present petitioner Jayanta Baruah is shown against the column No. 7 i.e. "The names and addresses of individuals who own the newspaper and partners or shareholders holding more than one percent of the total capital".

18. From the above, it is evident that the present petitioner is the owner of the newspaper and not the publisher or the Editor and therefore, prima facie, the petitioner cannot be held liable in an action for criminal defamations or publication of any alleged defamatory material in view of the provisions of the

Act as discussed here in before.

19. Moreover, as per the provisions of section 7 of the Act, in order to make the publisher liable, in any legal proceedings, whether civil or criminal, the production of a copy of the declaration made under section 4 of the Act would be regarded as sufficient evidence against the persons whose names shall be subscribed to such declaration.

20. No such declaration has been furnished along with the complaint petition. However, whether it would be permissible for the complainant to furnish such declaration during the trial is a question that need not be decided in the present proceedings. Regardless of that, on the basis of the documents submitted by the complainant himself before the learned Magistrate, it transpires that the petitioner is the proprietor of the newspaper and as already discussed above, such proprietor cannot be made liable in an action of the present nature.

21. In Pepsi Food Ltd. and Anr. Vs. Special Judicial Magistrate and Ors., reported in (1998) 5 SCC 749, the Apex Court had observed:

> "28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. "

22. In the instant case, the learned Magistrate has clearly erred in not taking into consideration the document discussed above and therefore, the order of

cognizance must be held to be illegal, as against the present petitioner. Consequently, the impugned order dated 02.08.2019 and 19.09.2023, passed by the learned Chief Judicial Magistrate, Nalbari as against the present petitioner, as well as the impugned proceedings in so far as the present petitioner is concerned, stands quashed.

23. The Crl. Petition stands allowed.

JUDGE

Comparing Assistant