

State of Maharashtra

Vs

Dr. R. B. Chowdhary & 2 Ors.

Criminal Appeal No. 11 of 1965

(M. Hidayatullah, C. A. Vaidialingam JJ)

19.04.1967

JUDGMENT

HIDAYATULLAH, J.

This is an appeal against an order of a learned Single Judge of the High Court of Bombay discharging the respondents in a criminal case in which they were made accused with out one Sudhakar Gopal Madane.

The matter arises in this way. The Public Prosecutor, West Khandesh, Dhulia with the previous sanction of the State Government filed a complaint against four persons who are members of the Editorial Board of a Maharathi Weekly named "Maharashtra" under S. 500 of the Indian Penal Code. The complaint was that in an issue of the Maharashtra dated October 30, 1959, they had published an article which tended to the defame one M. A. Deshmukh I. A. S. Collector and District Magistrate, West Khandesh in respect of his conduct in the discharge of his public functions. We need not go into the facts of that article or the gravamen of the charge of defamation. This Weekly Maharashtra is registered as a newspaper and a declaration in Form 1 under Art. 3 of the Press and Registration of the Books Act, 1967 has been filed by Sudhakar Gopal Madane who has described himself in the declaration as the editor, printer and publisher of the newspaper. The particular copy of the Maharashtra in which the alleged defamatory article appeared bore the name of the Madane as the editor printer and publisher of the newspaper. It also showed on the front page the Editorial Board consisting of the three respondents and Madane the Editor. The short question which has arisen in the present matter is whether the Members of the Editorial Board other than the Editor can be prosecuted for the defamatory article.

The Additional Sessions Judge Dhulia, who is trying the case held by an order dated October, 26, 1963 that the respondents, 2, 3, and 4 could be charged with the Editor because they were Members of the Editorial Board. He held that there was no evidence so far adduced by the prosecution to establish that they were the Editors, Printers and Publishers of the Weekly yet in view of the Editorial Board there was a prima facie case proved against them that they were makers of the impugned article. The learned Additional Sessions Judge further said that the prosecution would have to lead satisfactory and cogent evidence to prove and establish that respondents 2, 3, and 4 were Editors, Printers and Publishers. The present respondents 2, 3, and 4 thereupon filed an application for revision before the High Court and the impugned order came to be made on their application. It was held by the learned Single Judge also showed at the bottom of the last page the name, of Madane and Editor. Since there was no other cogent evidence against the present respondent for framing a charge against the present respondent and they ought to be discharged. He made an order in that behalf.

The State of Maharashtra which appeals by special leave, contends that the learned Single Judge of the High Court was wrong in treating the Statement under s. 342 of the Code of Criminal Procedure of Madana as accused No. 1 as evidence in the case tending to exonerate the present respondent. The State also urges in addition that a presumption under S. 7 of the Press and Registration of Books Act 1867 can be raised against the Editorial Board and they can therefore be held responsible for the defamatory article. We shall deal with these for the defamatory article. We shall deal with these two questions.

The first argument is correct. No doubt under the Code of the Criminal Procedure the statement of an accused may be taken into consideration in an inquiry or trial but it is not strictly evidence in the case. An accused when he makes his statement under S. 342 does not depose as a witness because no oath is administered to him, when he is examined under that section. The recent amendment of the Code, however, enables an accused to give evidence on his own behalf under S. 342-A and this is only when an accused offers in writing to give evidence on his own behalf that this statement can be read as evidence proper.

However, the matter is not to be decided on whether the statement of Madane could be read as evidence or not but who was the editor of the newspaper. Section 7 of the Press and Registration of Books Act allows a presumption to be raised under certain circumstances. That section reads as follows :-

"7. In any legal proceedings 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 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 persons 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 the every portion of every (newspaper) whereof the title shall correspond with the title of the (newspaper) mentioned in the declaration (or the editor of the every portion of that issue of the newspaper of which a copy is produced.)

The term 'editor' is defined in the Act to mean a person who controls the selection of the matter that is published in a newspaper. Where there is mentioned an editor as a person who is responsible for selection of the material s. 7 raises the presumption in respect of such a person. The name of the person printed on the copy of the newspaper and in the present case the name of Madane and admittedly was printed as the Editor of the Maharashtra in the copy of the Maharashtra which contained the defamatory article. The declaration in Form I which has been produced before us shows the editor. In the out opinion of the presumption will attach to Madane as having selected the material for publication in the newspaper. It may not be out of the place to note that Madane admitted that he had written this article. In the circumstance not only the presumption cannot be drawn against the others who had not declared themselves as editors of the newspaper but it is also fair to leave them out because they had no concern with the publishing the article in question. On the whole therefore, the order of discharge made by the learned Single Judge appears to be proper in the circumstances of the case and we see no reason to interfere.

The appeal fails and is dismissed.

V. P. S. Appeal dismissed.

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