

Chitra Narain Vs. Ndtv and ors.

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Court : Delhi

Decided On : Dec-15-2003

Reported in : 109(2004)DLT394; 2004(28)PTC238(Del)

Judge : J.D. Kapoor, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 200 and 202;
[Copyright Act, 1957](#) - Sections 51, 52A, 63 and 69

Appeal No. : Crl. R. 169 of 1999

Appellant : Chitra Narain

Respondent : Ndtv and ors.

Advocate for Def. : Sushil Bajaj, Adv.

Advocate for Pet/Ap. : Vishal Gupta, Adv

Disposition : Petition allowed

Judgement :

J.D. Kapoor, J.

1. The short question of law involved for determination in this petition preferred against the order dated 6.3.1999 passed by learned Chief Metropolitan Magistrate, whereby the complaint of the petitioner Mrs. Chitra Narain who was once the Chief

Producer of the All India Radio filed against respondents -- M/s. NDTV, Mr. Prannoy Roy, M/s. Star TV and Mr. Rupert Murdoch was dismissed without issuing the process is as under:

'Whether the Magistrate while holding an enquiry into a complaint can permit a person against whom the complaint is filed to participate in the proceedings for the purpose of adjudicating the guilt or otherwise of the person against whom the complaint is preferred.'

2. The answer lies in the provision of Section 202 of the Code of Criminal Procedure, 1973 itself and is emphatic 'No' .

3. In the instant case, the learned Chief Metropolitan Magistrate not only allowed the respondents to watch the proceedings but also allowed them to participate, file affidavits in support of their version and also written submissions as if the inquiry being conducted by him under Section 202 of Cr.P.C into allegations contained in the complaint was in the nature of a trial. The relevant extracts of Section 202 of Cr.P.C needs to be produced and are as under; -

Section. 202. Postponement of issue of process--(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, postpone the issue of process against the accused, and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

3. Another relevant provision is Section 200, which provides a procedure that a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witness present, if any and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. However, if such a complaint is filed by a public servant, the Magistrate has the discretion not to examine the complainant and the witnesses. Relevant extract reads as under: 'Section 200. Examination of complainant--A Magistrate taking cognizance of an offence on

complaint shall examine upon oath the complainant and the witness present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

4. As is apparent from the aforesaid provisions, the only object of the inquiry under Section 202, Cr.P.C is to ascertain whether the complaint has a valid foundation or ground calling for issuing the process to the person complained against or does not require any action.

5. Subsequent discussion would show that the inquiry into a complaint is not in the nature of trial as trial may commence after process is issued. Allegations contained in the complaint have to be at first instance ascertained by way of evidence produced by the complainant. The presence or participation of a person does not mean his participation by way of ascertaining his version or to adjudicate the allegations contained in the complaint. Court has to take decision whether to issue a process or not solely on the strength of allegations in the complaint and statements of complainant and witnesses and on no other material.

6. Let us examine the procedure adopted by the the learned Chief Metropolitan Magistrate in the light of the facts of the case, which need to be recapitulated in brief and are as under:

7. 'Petitioner who was the Chief Producer of All India Radio filed a complaint under Sections 51, 52A, 63, 69 of the Copyright Act of 1957 against M/s. NDTV and other respondents on the allegations that they have infringed and usurped her copy right over the feature entitled 'A National Anthem Born and Exile' which was researched, written and produced by her and broadcast on the National Network of All India Radio on January 23, 1980. According to her the feature produced by the petitioner and broadcast on AIR by her sheer labour and skill was a Original Work and she had used her ingenuity and innovative traits in making the research (for over 3 years), selection and compilation of this feature. This feature was widely hailed by the Press. A few of the comments by critics appearing in the leading national dailies were as follows:

'Seldom has Akashwani presented a more imaginative and absorbing commemorative broadcast.....'

'in unearthing the romantic story of the birth of our National Anthem the All India Radio has earned the gratitude of the nation and a bright feather in its cap'

'a great deal of research had apparently been done to piece the tale together, and to verify the authenticity of the tape recording of that historic first performance, now preserved in AIR's archives... the programme held attention and was well worth sitting upto 10.40 p.m.'

8. The petitioner continued to research the subject long after the broadcast and contemplated a thesis/book/film on the subject after her retirement.

9. Star channel (read respondent No. 3-accused) in its evening Hindi and English prime time news programme 'Star News' aired a special feature after the 'weather report' some time in Oct./Nov. 1997 which was nothing but their production of the petitioner's feature on the subject already broadcast on AIR on 23.1.80. That in spite of being well aware that the petitioner had researched, written and produced the feature, the respondents made no mention of the petitioner anywhere in their special feature. The respondents neither contacted the petitioner for seeking her permission or for payment of any royalty. The respondents deliberately edited the portion of the interview in which Dr. Anand, Director of National Gandhi Museum had very clearly given credit to the petitioner for the feature. After the telecast, Dr. Anand wrote a protest letter to the respondent No. 1 on the issue.

10. The respondents thus commercially benefited from the telecast of this feature (incidentally Star News is one of the most watched programmes on Star TV and is commercially heavily sponsored). On the other hand the telecast in a single stroke wiped out years of petitioner's labour denying her the royalty due and extinguished business plans of the petitioner on the subject in bringing out a thesis/book/film. Moreover the respondents denied to the petitioner the recognition which she was bound to receive at national and international level in future. Thus according to the petitioner the respondents thus clearly infringed and usurped upon the copyright of the petitioner by telecasting the said feature and committed the offences

punishable under Sections 51, 52A, 63 and 69 of the [Copyright Act, 1957](#).

11. The complaint was registered and the learned Chief Metropolitan Magistrate asked the complainant to lead evidence for inquiry under Sections 200 and 202 of the Cr.P.C. While the matter was listed for the said purpose, respondent No. 1 appeared on its own and moved an application through its Counsel stating that the information about the criminal complaint had been received through newspaper reports and it requested permission for taking part in the subsequent proceedings. The learned Chief Metropolitan Magistrate not only allowed the respondents to match the proceedings but they were allowed to file the affidavits, the transcripts of the two news items, arranging the video recording of the news item in question for purpose of these proceedings and even written submissions.

12. During the course of inquiry, complainant examined six witnesses including herself. In addition to the oral evidence, documentary evidence in the context of efforts during 1977-80 for discovery of facts for confirming the authenticity of the original tape of Ganpuley, the official nothings in the office of Directorate General of All India Radio, the material provided by Lutz from Germany, the correspondence exchanged between Dr. Y.P. Anand and the complainant on one hand and Dr. Y.P. Anand and authorities in All India Radio on the other, besides monograph Ex. P.I. the audio cassette containing the recording of the documentary feature aired in 1980 and video recording of the two news items telecast by accused No. 1 was brought on record.

13. Learned Chief Metropolitan Magistrate heard the audio cassette containing the recording of documentary feature broadcast by All India Radio on 23.1.80 and confirmed the correctness of the transcript as published from pages 33 to 48 in the ' monograph Ex. P1. Barring a few inaccuracies, the transcript was more or less true. Court saw the two impugned items in the news telecast on 17.11.97 by accused No. 1 and compared it with the transcript mark C1-2 and mark D1-2. The transcripts were true as per the actual telecasts.

14. Though on the face of it the procedure adopted by learned C.M.M was in complete violation of the provisions of Section 202, Cr.P.C still Mr. Sushil Bajaj, learned Counsel for the respondent has tried to uphold the validity of the

procedure adopted by learned Chief Metropolitan Magistrate by contending that any person including a person arraigned as accused has a right to watch and participate in the proceedings even at pre-summoning stage so that frivolous complaint can be nipped in bud and the persons shown as accused are saved from the harassment. In support of this contention Mr. Bajaj has relied upon *Chandra Deo Singh v. Prokash Chandra Bose and Anr.*, : [1964]1SCR639 , wherein the Supreme Court has held as under:

'Taking the first ground, it seems to us clear from the entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an inquiry is held by a Magistrate. He may remain present either in person or through a Counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witness produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go. It was, however, contended by Mr. Sethi for respondent No. 1 that the very object of the provisions of Ch. XVI of the Code of Criminal Procedure is to prevent an accused person from being harassed by a frivolous complaint and, therefore, power is given to a Magistrate before whom complaint is made.'

15. On the contrary, Mr. Vishal Gupta learned Counsel for the petitioner contended that the presence of the accused or his participation in the proceedings is one thing and calling upon the accused at the pre-summoning stage to file affidavits and written submission is another thing and any affidavit filed by the accused is not part of the proceedings as inquiry under Section 202, Cr.P.C is not a trial. In support of this contention Mr. Gupta has relied upon *Dr. S.S. Khanna v. Chief Secretary, Patna and Anr.*, : [1983]2SCR724 wherein the Supreme Court has taken the following view:

"An inquiry under Section 202 is not in the nature of a trial for there can be in law only one trial in respect of any offence and that a trial can commence only after process is issued in the accused. The said proceedings are not, strictly proceedings between the complainant and the accused. A person against whom a complaint is filed does not become an accused until it is decided to issue process against him. Even if he participates in the proceedings under Section 202 he does so not as an accused but as a member of the public. The object of the inquiry under Section 202 is the ascertainment of the fact whether the complaint has any valid foundation calling for the issue of process to the person complained against or whether it is a baseless one on which no action need be taken. The section does not require any adjudication to be made about the guilt or otherwise of the person against whom the complaint is preferred. Such a person cannot even be legally called to participate in the proceedings under Section 202.'

16. As is apparent, there is no conflict in the aforesaid judgments. Ratio of these judgments lays down the following--

- (i) Section 202, Cr PC does not require any adjudication to be made about the guilt or otherwise of the person against whom complaint is made.
- (ii) Section 202, Cr PC does not bar the presence of any person including a person against whom complaint has been made either in person or through Counsel or his agent.
- (iii) No person has a right to participate in the proceedings nor has the Magistrate power to allow him to do so as unless a person becomes accused after process is issued against him, his presence is like any member of public.
- (iv) No person unless summoned as accused has a right to either produce any evidence oral or documentary nor has a right to cross-examine the witness of the complainant.
- (v) Even the Magistrate has no jurisdiction to put any question to the witnesses of the complainant at the instance of such a person or a person named as accused.

(vi) Participation of a person named as accused in the proceedings is like a member of the public and not as an accused through legally such a person cannot be called upon to participate in the proceedings.

17. In nutshell, the legal position is that an inquiry under Section 202 is not in the nature of a trial for there can be in law only one trial in respect of any offence and that trial can commence only after process is issued against the accused as prior to this stage, said proceedings are not strictly proceedings between the complainant and the accused. A person against whom a complaint is filed does not become an accused until Court decides to issue process against him. Even if he participates in the proceedings under Section 202 he does so not as an accused but as a member of the public. The object of the inquiry under Section 202 is the ascertainment of the fact whether the complaint has any valid foundation calling for the issue of process to the person complained against or whether it is a baseless one on which no action need be taken. The section does not require any adjudication to be made about the guilt or otherwise of the person against whom the complaint is filed. Strictly speaking such a person cannot even be legally called to participate in the proceedings under Section 202.

18. By allowing the respondents to file the affidavits and written submissions as to their version and discussing their defense, the learned Chief Metropolitan Magistrate has indulged in adjudicating the guilt or otherwise of the respondents. Such a procedure or course is strictly prohibited by the provisions of Section 202, Cr.P.C.

19. In view of the aforesaid legal position, petition is allowed, the impugned order is set aside. Complaint of the petitioner against respondents stands revived and restored. Learned trial Court is directed to decide the matter independent of the affidavits filed by the respondents and solely based upon the allegations in the complaint and statements of complainant and witnesses produced by the petitioner without being influenced by the observations of the then learned Chief Metropolitan Magistrate in the impugned order.

20. Petitioner shall appear before the learned Chief Metropolitan Magistrate on 23rd January, 2004 for the aforesaid purpose.

