couple of times and was under the influence of liquor and when only a weapon like a small stick has been recovered, in the absence of any criminal antecedents, the applicant deserves to be granted bail subject to usual conditions. Hence, I pass the following order :

ORDER

(i) The application is allowed.

(ii) The applicant be released on bail on his executing a P.R. Bond for an amount of Rs.25,000/- and furnishing a surety in the like amount subject to the following conditions :

(a) He shall not tamper the evidence or influence the witnesses.

(b) He shall not get involved in any other crime.

(iii) Bail before the trial court.

***Result*:-** Application allowed.

ABC 2019 (I) 295 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(Bela M. Trivedi, J.)
Criminal Misc. Application No. 2718 of 2012
Decided on 10 December, 2018

AJAYSINH DALPATSINH UMAT ***- Appellant(s).***

Versus

PATEL RAJUBHAI DASHRATHBHAI ***- Respondent(s).***

Law Covered*:-** ***(A) Constitution of India — Article 226 & 227 — Code of Criminal Procedure, 1973 — Section 482 — Quashing of order of issue of process —Indian Penal Code, 1860 — Sections 499, 500, 501 & 502—Press and Registration of Books Act, 1867— Section 7 — Complaint against Resident Editor of a news daily — No allegation against the applicant except describing him as the "Resident Editor" in the cause title of the complaint — much less his knowledge with regard to the alleged defamatory news item published news daily — Held, the complaint even if taken at its face value to be true does not constitute any offence qua the present applicant — proceedings against the owner, publisher and printer already quashed — Application allowed. (Para 11)

March 2019

(B) Press and Registration of Books Act, 1867— Section 7 — Presumption under —Scope — Held, the presumption is a rebuttable presumption — & 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— K.M. Mathew versus K.A. Abraham — relied. (Para 10)

(C) Code of Criminal Procedure, 1973 — Sections 200, 202 & 203 — Issue of Process vis-à-vis Dismissal of complaint — Vitiated order of the Magistrate — Giving relief to an aggrieved accused by invoking Sec. 203 — Held, recalling an erroneous order of issuance of process — would run counter to the scheme of the Code of Criminal Procedure 1973, which has not provided for review and prohibits interference at interlocutory stage. (Para 13)

Facts:- *The applicant was working as the Resident Editor, for a daily newspaper. A news item was published regarding the arrest of the respondent No. 1 and his father for allegedly committing offence of assault on a woman and threatening her to kill. The respondent No. 1 filed a Criminal Complaint against the present applicant and three others in the Court of JMFC for the alleged offence u/ss 499, 500, 501, 502, IPC. Pursuant to the said complaint the trial Court issued the process. The applicant, therefore, made an application before the trial Court for dropping of the process/summons and discharge the applicant from the said case. The said application was rejected by the trial Court. Hence, the present petition has been filed, challenging the said order as well as for quashing the said complaint. The hon'ble High Court upheld the rejection by the trial Court in the application for dropping the process, however, the order of issue of process was quashed.*

Held:- 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. (Para-10)

However, so far as the facts of the present case are concerned, the respondent - complainant except describing the applicant as the "Resident Editor" in the cause title of the complaint, has not made any allegation against him, much less has alleged about his knowledge with regard to the alleged defamatory news item published in Mehsana edition of Divya Bhaskar. Hence, the complaint even if taken at its face value to be true does not constitute any offence qua the present applicant. It may also be noted that the proceedings against the owner, publisher and printer of the local Daily Divya Bhaskar, Shri Sudhir Agrawal, who was the accused No. 4 in the complaint, have already been quashed by the Co- ordinate Bench in Criminal Misc. Application No. 2546 of 2012. (Para-11)

Thus the Supreme Court held that the view taken in the case of K.M. Mathew versus State of Kerala reported in (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 stage. (Para-13)

Counsel:- ***For Appellant(s):*** *Mr. M.C. Bhatt, Mr. Yogesh S. Lakhani, Mr. Amresh N Patel, Advs.*

For Respondent(s): *Mr Dhaval N Vakil, Mr. Mitesh Amin, Advs.*

Cases Referred:-

1. *State of Maharashtra versus Dr. R.B. Chowdhary and others, AIR 1968 SC 110, (Para-4)*
2. *Adalat Prasad versus Rooplal Jindal, (2004) 7 SCC 338, (Para-5)*
3. *Gambhirsinh R. Dekare versus Falgunbhai Chimanbhai Patel and Another, 2013 (3) SCC 697, (Para-5)*
4. *K.M. Mathew versus K.A. Abraham, 2002 (6) SCC 670, (Para-5)*
5. *K.M. Mathew versus State of Kerala, (1992) 1 SCC 217, (Para-12)*

JUDGMENT

BELA M. TRIVEDI, J.: - 1. With the consent of learned advocates for the respective parties, the matter is finally heard and decided at the admission stage.

2. The present Criminal Misc. Application has been filed by the applicant under Article 226 and 227 of the Constitution of India and under Section 482 of Cr.P.C. seeking mainly the following relief : -

"(A) Quashing and setting aside the order dated 24.01.2012 passed by learned Principal Judicial Magistrate, First Class, Visnagar below application Exh. 38 in Criminal Case No. 1453/2008 and further be pleased to quash the proceedings of Criminal Case No. 1458/2008 pending before learned Principal Judicial Magistrate, First Class, Visnagar and discharge the petitioner;"

3. The short facts are that the applicant was working as the Resident Editor, for a Gujarati daily newspaper Divya Bhaskar for its Ahmedabad edition in the year 2007. In Mahesana edition of Divya Bhaskar dated 20.11.2007, a news item was published regarding the arrest of the respondent No. 1 and his father for allegedly committing offence of assault on a woman and threatening her to kill. The heading of the said news published was that "father and son wandering as Don in Visngar, arrested." The respondent No. 1 filed a Criminal Complaint being No. 1453 of 2008 against the present applicant and three others in the Court of Judicial Magistrate First Class, Visnagar at Mahesana (hereinafter referred to as 'the trial Court') for the alleged offence under Section 499, 500, 501, 502 of the Indian Penal Code alleging *inter alia* that the said news item published in the Mahesana edition of Divya Bhaskar dated 20.11.2007 at page 10, was defamatory. Pursuant to the said complaint lodged by the respondent, the trial Court had issued the process on 06.12.2008. The applicant, therefore, had made an application Exh. 38 on 05.11.2011 before the trial Court for dropping of the process/ summons and discharge the applicant from the said case. The said application Exh. 38 was rejected by the trial Court vide the impugned order. Hence, the present petition has been filed, challenging the said order as well as for quashing the said complaint.

4. The learned advocate Mr. M.C. Bhatt for the applicant submitted that the accused No. 4 - Sudhir Agrawal, who was the owner, publisher and printer of the local daily Divya Bhaskar, had filed an application being Criminal Misc. Application No. 2546 of 2012 under Section 482 of Cr.P.C., and the Coordinate Bench vide the judgment dated 05.04.2018, has already quashed the proceedings against the said accused No. 4. He further submitted that except stating in the cause title of the complaint, that the applicant was a Resident Editor, there was no allegation made against the applicant that he had the knowledge of the alleged publication of the news item. Mr. Bhatt pressing into service Section 7 of the Press and

Registration of Books Act, 1867 (hereinafter referred to as 'the said Act'), submitted that Section 7 raises presumption against the Editor, who is the person responsible for publishing the defamatory matter, but the applicant being the Resident Editor, as per the declaration made under the Act, no presumption could be raised against the applicant as contemplated under Section 7 of the said Act. Reliance is placed on the decision of Supreme Court in the case of ***State of Maharashtra versus Dr. R.B. Chowdhary and others*** reported in ***AIR 1968 SC 110***, to submit that in absence of any allegations made against the present applicant in the complaint, and in absence of any statutory liability of the applicant, the complaint against the present applicant deserves to be set aside.

5. However, Mr. Dhaval Vakil, learned advocate for the respondent No. 1 - complainant vehemently submitted that the application of the applicant for dropping the proceedings before the trial Court was not maintainable in view of the decision of Supreme Court in the case ***Adalat Prasad versus Rooplal Jindal reported in (2004) 7 SCC 338***, and the trial Court having rightly rejected the same, the present application for challenging the said order, deserves to be dismissed. Learned advocate Mr. Vakil has also relied upon the decision of Supreme Court in the case of ***Gambhirsinh R. Dekare versus Falgunbhai Chimanbhai Patel and Another*** reported in ***2013 (3) SCC 697***, to submit that whether the applicant was an Editor or Resident Editor, having knowledge of the publication of the news or not, would be a matter of evidence, to be appreciated at the time of trial. He has also placed reliance on the decision of Supreme Court in the case of ***K.M. Mathew versus K.A. Abraham*** reported in ***2002 (6) SCC 670,*** to submit that in absence of any convincing reason to quash the proceedings, the proceedings should be continued in accordance with law.

6. At the outset, it would be beneficial to refer to some of the provisions of the said Act. The word "Editor" has been defined under Section 1(1) of the said Act, which reads as under : - "

> " "Editor" means the person who controls the selection of the matter that is published in a newspaper."

7. It may be noted that Section 5 deals with the Rules as to the publication of newspaper and obliges every newspaper to contain the names of the owner and the Editor.

8. Section 7 of the said Act reads as under : -

"**7. Office copy of declaration to be prima facie evidence** - 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 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]."

9. The Supreme Court in the case of **K.M. Mathew versus K.A. Abraham (Supra)** while interpreting the aforestated provisions of the Act, observed as under : -

"**[13]** A conjoint reading of these provisions will go to show that in the case of publication of any newspaper, each copy of the publication shall contain the names of the owner and the editor who have printed and published that newspaper. Under Section 7 of the Act, there is a presumption that the Editor whose name is printed in the newspaper as Editor shall be held to be the Editor in any civil or criminal proceedings in respect of that publication and the production of a copy of the newspaper containing his name printed thereon as Editor shall be deemed to be sufficient evidence to prove that fact, and as the 'Editor' has been defined as the person who controls the selection of the matter that is published in a newspaper, the presumption would go to the extent of holding that he was the person who controlled the selection of the matter that was published in the newspaper. But at the same time, this presumption contained in Section 7 is a rebuttable presumption and it will be deemed as sufficient evidence unless the contrary is proved. Therefore, it is clear that even if a person's name is printed as Editor in the newspaper, he can still show that he was not really the Editor and had no control over the selection of the matter that was

published in the newspaper. Section 7 only enables the court to draw a presumption that the person whose name was printed as Editor was the Editor of such newspaper, if the publication produced in the court shows to that effect."

10. It was further observed in para 19 and 20 as under : -

"[19] 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.

[20] It is true that judicial process should not be an instrument of oppression or needless harassment and the Magistrate while taking cognizance should be satisfied that there is a prima facie case against the accused and at that he should be circumspect and judicious in exercising discretion and should take all relevant facts into consideration before issuing process and that vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice and it shall not be the means to wreak vengeance, but, at the same time, "the inherent power of the court under Section 482, Cr.P.C. should be very sparingly and cautiously used and only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. "So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage, it is not open either to sift the

evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out."

"Unless grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind the principle behind Section 465, Cr.P.C.. Any or every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Frequent interference by superior courts at the interlocutory stage tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system."

11. Of course, in the aforestated case, the Supreme Court did not find any convincing reasons to quash the complaint as the complainant had made specific allegations against the Managing Editor, Chief Editor or President Editor of the concerned newspaper about their knowledge of publication of the defamatory matter. However, so far as the facts of the present case are concerned, the respondent - complainant except describing the applicant as the "Resident Editor" in the cause title of the complaint, has not made any allegation against him, much less has alleged about his knowledge with regard to the alleged defamatory news item published in Mehsana edition of Divya Bhaskar. Hence, the complaint even if taken at its face value to be true does not constitute any offence qua the present applicant. It may also be noted that the proceedings against the owner, publisher and printer of the local Daily Divya Bhaskar, Shri Sudhir Agrawal, who was the accused No. 4 in the complaint, have already been quashed by the Co- ordinate Bench in Criminal Misc. Application No. 2546 of 2012.

12. Now, so far as the powers of Magistrate to recall its order issuing process is concerned, in the case of **Adalat Prasad versus Rooplal Jindal (supra)**, the three Judge Bench of Supreme Court held as under :-

"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 Section 200 & 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 Code.

16. Therefore, in our opinion the observation of this Court in the case of ***K.M. Mathew versus State of Kerala, (1992) 1 SCC 217***, that for recalling an order of issuance of process erroneously, 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 that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law."

13. Thus the Supreme Court held that the view taken in the case of ***K.M. Mathew versus State of Kerala*** reported in ***(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 stage. Hence, the observations made by the Supreme Court in the case of **K.M. Methew (supra)** to that extent were overruled. The Court, therefore, finds substance in the submission of learned advocate Mr. Vakil for the respondent that the petitioner could not have made an application Exh. 38 for dropping of the proceedings, after issuance of summons by the trial Court, and therefore, the trial Court has rightly dismissed the said application. Nonetheless, since the present application has been filed also for quashing of the proceedings under Section 482 of Cr.P.C. along with challenge of the impugned order passed by the trial Court, the Court is of the opinion that the present application to the extent of quashing of proceedings under Section 482 of Cr.P.C. would still be maintainable, in view of observations made in case of **Adalat Prasad (Supra).**

14. In that view of the matter, the Court is of the opinion that the proceedings of the complaint filed against the applicant and pending before the trial Court, deserve to be quashed and set aside.

March 2019

15. The present application is allowed accordingly. The proceedings of Criminal Case No. 1453 of 2008 are quashed and set aside qua the present applicant.

Result:- Application allowed.

ABC 2019 (I) 304 GUJ
ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(A.G.Uraizee, J.)
Criminal Appeal No. 1156 of 2006
Decided on 3 December, 2018

SURSINH OGHADBHAI VALA KARADIA ***- Appellant(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Section 333 — Voluntarily causing grievous hurt to a public servant in the discharge of his duty — Conviction by trial Court — non-supporting the case by Panchas & neutral witnesses — Doubtful identification — Conviction set aside — Acquittal. (Para 12, 13 & 19)***

(B) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Identification of the accused — Conduct of witness —after initial hesitation identified the appellant for the first time in the Court— gap of more than seven years — not the prosecution case the appellant has known to him before the incident—No Test Identification Parade conducted — Held, it would not be safe to rely upon the identification. (Para 15)

(C) Indian Evidence Act, 1872 — Section 3 — Relevant fact — History to Medical Officer — no name was given by complainant — indicates that obviously at that stage he had no previous acquaintance. (Para 17)

(D) Code of Criminal Procedure, 1973 — Section 313 —Statement of the accused under —basing conviction on — Consideration of further statement — Held, statement u/s 313 as a whole has to be considered— The Court cannot & should not in isolation pick up the answers to questions in the further statement to record the findings that the accused has committed an offence or not. (Para 18)

Facts:- *As per the prosecution case PW-9 was working as a driver with Gujarat ST. on the relevant day he was on duty as driver of the ST bus*