CASE NO.:
Appeal (crl.) 688 of 2001
Special Leave Petition (crl.) 1875 of 2001

PETITIONER:
JOHN THOMAS

Vs.

RESPONDENT:
DR. K. JAGADEESAN

DATE OF JUDGMENT: 12/07/2001

BENCH:
K.T.Thomas, R.P.Sethi

JUDGMENT:

THOMAS, J.
Leave granted.

A renowned hospital in the Metropolis of Madras (Chennai) has been caricatured in a newspaper as the abattoir of human kidneys for trafficking purposes. When the Director of the Hospital complained of defamation, the publisher of the newspaper sought shelter under the umbrage that the libel is not against the Director personally, but against the hospital only and hence he cannot feel aggrieved. The accused/publisher, who raised the objection before the trial court, on being summoned by the court to appear before it, succeeded in stalling the progress of the trial by clinging to the said contention which the trial magistrate has upheld. But the High Court of Madras disapproved the action of the magistrate and directed the trial to proceed. Hence the accused has come up to this Court by filing the special leave petition. But after hearing the learned senior counsel, who argued for the appellant, we did not find the necessity to wait for the respondent - complainant to reply to those arguments as the appeal is only liable to be dismissed in limine.

The complainant (respondent in this) stated that he is running a hospital as its Director under the name "K.J. Hospital". He claimed to be the Honorary Overseer Adviser of Royal College of Physicians and Surgeons of Glasgow in UK. His grievance in the complaint is that a news item was published by the "Madras Times" on 21.3.1991 containing highly defamatory imputations against his hospital. The said newspaper is a daily published and circulated by the appellant as its editor. The passage which, according to the complainant, is defamatory to him has been quoted in the complaint. It is extracted below:
"It is stated that the hospital used to stealthily deprive of its patients of one of their kidneys when they were admitted for minor operations. Women who were admitted for caesarian operation had one of their kidneys removed without their knowledge. More than 120 women have so far been

affected by this trading in kidneys. It is reported that the kidneys were later exported to Malaysia. The hospital has engaged brokers to the lure in the needy poor to part with one of their kidneys for a hefty sum. The nefarious activity has been going on for many months now."

So the complaint was filed by the respondent before the Court of Metropolitan Magistrate for the offence under Section 500 of the IPC. The magistrate, who took cognizance of the offence, issued process to the appellant. It seems, the appellant is interested in taking up his defence and contentions only in a piecemeal manner. At the first instance, he approached the High Court for quashing the complaint on the ground that the magistrate ought to have examined all the witnesses for the complainant before issuing the process to the accused. The High Court dismissed his petition and repelled his contention on that score as per an order passed in Crl.O.P. No.2189/93. Thereafter the appellant moved the trial court for discharging him from the proceedings for which he raised two other contentions. The first among them is that the publication did not amount to defamation, second among them is that "K.J. Hospital" is a private limited company whereas the complainant is a private individual who had no locus standi to file the complaint.

On the first contention, the trial magistrate found that the imputations are "derogatory remarks about the hospital". The learned magistrate upheld the second contention for which he made the following observations:

"Even though the respondent himself admits in his complaint that Dr. K. Jagadeesan is the Director of K.J. Hospital, mere admission by the complainant cannot give him the status of Director of the hospital without the Article of Association duly registered in the Company Law Board under Indian Companies Act. Therefore, onus is on the respondent to prove that he is the Director of K.J. Hospital, and he has the locus standi to file this complaint. The respondent has not discharged the onus that he is the Director of K.J. Hospital and so he has failed to prove that he has locus standi in filing the complaint against the petitioner."

The trial magistrate, on the above reasoning, discharged the appellant as per its order dated 10.2.1995. The complainant filed a revision before the High Court of Madras challenging the aforesaid order of discharge. A single Judge of the High Court reversed the order and restored the criminal proceedings to reach its logical culmination in accordance with law. It is the said order of the High Court which the appellant/accused is challenging now. The learned single Judge noticed that the trial court has already recorded evidence of two witnesses for the prosecution. He did not consider the points found against by the trial court, instead he observed that the trial court in a summons case cannot discharge the accused

after passing over to the stage of evidence. According to the learned single Judge, the accused should have filed the application for discharge immediately after he entered appearance and if he has not done so he could not do it after the court has moved to the stage of evidence taking. What the learned single Judge has stated on that aspect reads as follows:

"If such an application is filed before the court immediately after entering appearance before commencement of the trial as envisaged in Chapter XX Cr.P.C. the petition is maintainable. But now, the stage has passed and the evidence of two witnesses on the side of prosecution was recorded and at this stage in the absence of any provision for discharge of the accused the magistrate ought not to have discharged the accused and he should have allowed the trial to flow in accordance with the established procedure."

The appellant questioned the aforesaid view of the learned single Judge on the strength of Section 258 of the Code of Criminal Procedure (for short 'the Code'). It must be pointed out that the offence under Section 500 of the IPC is triable as a summons case in accordance with the provisions contained in Chapter XX of the Code. Sections 251 to 257 of that Chapter deal with the steps to be adopted from the commencement upto culmination of the proceedings in summons cases. One of the normal rules in summons cases is that once trial started, it should reach its normal culmination. But Section 258 is included in that chapter in the form of an exception to the aforesaid normal progress chart of the trial in summons cases. It is useful to extract the section here:

"258. Power to stop proceedings in certain cases.- In any summons case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witness has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge."

Summons cases are generally of two categories. Those instituted upon complaints and those instituted otherwise than upon complaints. The latter category would include cases based on police reports. Section 258 of the Code is intended to cover those cases belonging to one category alone i.e. "summons cases instituted otherwise than upon complaints". The segment separated at the last part of the section by the words "and in any other case" is only a sub-category or division consisting of "summons cases instituted otherwise than upon complaints". That sub-category is not intended to cover all summons cases other

than those instituted on police report. In fact, Section 258 vivisects only "summons cases instituted otherwise than on complaints" into two divisions. One division consists of cases in which no evidence of material witness was recorded. The section permits the court to acquit the accused prematurely only in those summons cases instituted otherwise than on complaints wherein the evidence of material witnesses was recorded. But the power of court to discharge an accused at midway stage is restricted to those cases instituted otherwise than on complaints wherein no material witness was examined at all.

The upshot of the above is that Section 258 of the Code has no application to cases instituted upon complaints. The present is a case which was instituted on complaint. Hence the endeavour made by the accused to find help from Section 258 of the Code is of no avail.

Shri Siva Subramaniam, learned senior counsel for the appellant, contended that the imputations contained in the publication complained of are not per se defamatory. After reading the imputations we have no doubt that they are prima facie libellous. The only effect of an imputation being per se defamatory is that it would relieve the complainant of the burden to establish that the publication of such imputations has lowered him in the estimation of the right thinking members of the public. However, even if the imputation is not per se defamatory, that by itself would not go to the advantage of the publisher, for, the complaining person can establish on evidence that the publication has in fact amounted to defamation even in spite of the apparent deficiency. So the appellant cannot contend, at this stage, that he is entitled to discharge on the ground that the imputations in the extracted publication were not per se defamatory.

The contention focussed by the learned senior counsel is that the respondent, who filed the complaint, has no locus standi to complain because he is only a Director of K.J. Hospital about which the publication was made and that the publication did not contain any libel against the complainant personally. It is not disputed that the complainant is the Director of K.J. Hospital. Explanation 2 in Section 499 of the IPC reads thus:

"Explanation 2.- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such."

In view of the said Explanation, it cannot be disputed that a publication containing defamatory imputations as against a company would escape from the purview of the offence of defamation. If the defamation pertains to an association of persons or a body corporate, who could be the complainant? This can be answered by reference to Section 199 of the Code. The first sub-section of that section alone is relevant, in this context. It reads thus:

"199. Prosecution for defamation.- (1) No court shall take cognizance of an offence under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence."

The collocation of the words "by some persons aggrieved" definitely indicates that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of the publication is a matter to be determined by the court depending upon the facts of each case. If a company is described as engaging itself in nefarious activities its impact would certainly fall on every Director of the company and hence he can legitimately feel the pinch of it. Similarly, if a firm is described in a publication as carrying on offensive trade, every working partner of the firm can reasonably be expected to feel aggrieved by it. If K.J. Hospital is a private limited company, it is too farfetched to rule out any one of its Directors, feeling aggrieved on account of pejoratives hurled at the company. Hence the appellant cannot justifiably contend that the Director of the K.J. Hospital would not fall within the wide purview of "some person aggrieved" as envisaged in Section 199(1) of the Code.

The learned senior counsel made a last attempt to save the appellant from prosecution on the strength of the decision of this Court in K.M. Mathew vs. State of Kerala {1992 (1) SCC 217}. In that case prosecution against Chief Editor was quashed for want of necessary averments in the complaint regarding his role in the publication. That part of the decision rests entirely on the facts of that case and it cannot be imported to this case. It is pertinent to point out, in this context, that the appellant did not have any such point either when he first moved the High Court for quashing the proceedings or when he moved the trial court for discharge. Hence it is too late in the day for raising any such point, even apart from non-availability of that defence to the appellant on merits.

We, therefore, dismiss this appeal.