

REPORTABLE

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **IAs No. 13106/2007, 13108/2006,**
10455/2006 & 1139/2007
AND
CS(OS) No.782/2006

% **Date of Decision : April 07, 2008**

#P.V. Raghunandan

..... Plaintiff

! Through: Plaintiff in person.

Versus

The Registrar General & Ors.

..... Defendants

^ Through: Mr. A.S. Chandhiok, Sr. Advocate
with Ms. Jyoti for defendant No.
1.
Ms. Zubeda Begum for
defendant No. 2.
Mr. Gaurav Sarin and Ms. Charu
Sarin for defendants No. 4 & 5.
Mr. S.D. Singh and Mr. Rahul
Singh for defendants No. 6 & 7.
Defendant No. 3 is ex-parte.

CORAM:-

*** HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

S.N. AGGARWAL, J.

The plaintiff is none other than a practicing Advocate. He proclaims himself to be a whistle blower. Is he really so? Let us see.

2 The plaintiff has filed this suit against the defendants for recovery of Rs.16,20,000/- as damages for the pain and insult allegedly suffered by him in the incident that took place on 02.05.2003 in PCO booth located at New Lawyers' Chamber Block, opposite to Supreme Court of India.

3 There are seven defendants in the case. Defendant No. 1 is the Registrar General (Court Administrator-cum-Secretary General) of the Supreme Court, defendant No. 2 is the Commissioner of Police, defendant No. 3 is the Secretary, Ministry of Home Affairs, defendant No. 4 is the Chairman, MTNL, defendant No. 5 is the Secretary of Ministry of Telecommunication, defendant No. 6 Vishal Gupta is the owner of PCO booth and defendant No. 7 Punit Khurana was an employee of defendant No. 6 working in the PCO booth at the time of incident on 02.05.2003. The plaintiff has claimed damages of Rs.20 lacs against defendant No. 1, Rs. 20 lacs against defendants No. 2 & 3, Rs. 20 lacs against defendants

No. 4 & 5 and Rs.20,000/- against defendants No. 6 & 7.

4 The genesis of the alleged cause of action against the defendants in the present suit is the incident that took place on 02.05.2003 in the PCO booth located at the New Lawyers' Chamber Block opposite to the Supreme Court of India. According to the plaintiff, on 02.05.2003 he had gone to make a phone call from the phone booth located in the New Lawyers' Chamber Block opposite to Hon'ble Supreme Court on the Bhagwan Das Road. He made a phone call from the PCO booth to mobile No.9810270253 and after the phone was made, defendant No. 7 who was present at the booth at that time asked the plaintiff to pay Rs.6/- for the call which he had made. This led to an altercation between the plaintiff and defendant No. 7 and during altercation between them, defendant No. 7 is alleged to have snatched a currency note of Rs.10/- from the hand of the plaintiff and when plaintiff tried to take back Rs.10/- currency note from defendant No. 7, defendant No. 7 allegedly slapped the plaintiff with his right hand on his left cheek. This is the incident that had taken place with the plaintiff in the PCO booth on 02.05.2003 for which the plaintiff had got a criminal complaint registered against the owner of

the booth and his employee Punit Khurana (defendants No. 6 & 7) with the Police of Police Station Tilak Marg. The plaintiff also made complaints regarding the alleged incident of 02.05.2003 to the defendants on various dates between the date of said incident till filing of the present suit filed on 02.05.2006 and insisted on them to terminate the license of defendant No.6 for running the telephone booth. The inquiry was held by defendants No. 1 to 5 against the booth operator on the basis of complaint received by them from the plaintiff regarding the alleged incident. During inquiry, it was found by defendants No. 1 to 5 that defendant No.6 has already removed defendant No.7 who allegedly misbehaved with the plaintiff on the date of incident.

5 The license to run the telephone booth was granted to defendant No.6 by the order of Hon'ble Chief Justice of India and the license deed was executed by the Registrar, Supreme Court, for and on behalf of Hon'ble Chief Justice of India. Defendant No.1 being the Court Administrator-cum-Secretary

General of the Supreme Court of India has already warned the booth operator (defendant No.6) to be careful in future so that the incident as allegedly happened on 02.05.2003 do not take place in future. The Police has also conducted investigation into the complaint regarding the incident alleged by the plaintiff with the Police of Police Station Tilak Marg and after investigation filed a Closure Report before the concerned Court of Metropolitan Magistrate. However, since the plaintiff was not satisfied with the action taken on his complaint by the defendants, he has filed the present suit for recovery of damages against them for non-performance of their public duties in accordance with law.

6 The plaintiff has alleged against the defendants that the defendants No. 1 to 5 being the public servants were under an obligation to terminate the license of the booth operator on account of breach of conditions of the license on his part and according to the plaintiff since the defendants have failed to terminate the license of the booth operator, they

have rendered themselves liable to pay damages to the tune of Rs.60,20,000/- to him.

7 The defendants have resisted this suit on the ground of its maintainability and they have filed four separate applications for rejection of the present suit under Order 7 Rule 11 CPC as disclosing no cause of action and also on the ground of limitation. Out of these four applications, one application being IA No.10455/2006 is by defendant No.1, second application being IA No. 13108/2006 is by defendant No.4, third application being IA No. 1139/2007 is by defendant No.5 and the fourth application being IA No. 13106/2007 is by defendants No. 6 & 7.

8 I have heard the arguments of the plaintiff and also of counsels for all the defendants on all these applications and have also gone through the entire record of the case. I have also gone through the written submissions filed by the plaintiff.

9 All the counsels who have appeared on behalf of the defendants had argued that the present suit is

liable to be rejected because according to them it does not disclose any cause of action against any of the defendants. They had further argued that the present suit is also barred by limitation and cannot be entertained by this Court. It was submitted on behalf of the defendants that the limitation for filing of the present suit is governed by the provisions of Articles 72 & 79 of the Limitation Act, 1963 according to which the suit could have been filed by the plaintiff within a period of one year to be reckoned from the date of incident. The contention of the defendants was that since the incident had taken place on 02.05.2003, the present suit filed by the plaintiff on 02.05.2006 was beyond the period of one year prescribed for filing of the said suit in Articles 72 & 79 of the Limitation Act and therefore they urged that the present suit should be dismissed as barred by limitation.

10 On the other hand, the plaintiff who argued his case in person had submitted that the cause of action for filing of the present suit is continuous one and

in the alternative, he also argued that when limitation and cause of justice are pitted against each other, then the limitation must pave way for doing justice in the facts and circumstances of a given case. The plaintiff, however, did not dispute the applicability of the provisions of Articles 72 & 79 of the Limitation Act, 1963 referred and relied upon by the defendants.

11 It shall be relevant to refer to the provisions of Articles 72 & 79 of the Limitation Act, 1963 which are extracted below:-

	<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>Article-72</i>	<i>For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act extends</i>	<i>One year</i>	<i>When the act or omission takes place.</i>
<i>Article-79</i>	<i>For compensation for an illegal, irregular or excessive distress</i>	<i>One year</i>	<i>The date of the distress.</i>

12 A plain reading of the above two Articles of the Limitation Act would show that the law prescribes a period of one year for filing a suit for compensation/damages for distress and the said period of one year prescribed by law is to be reckoned from the date of incident giving cause for alleged distress.

13 The incident in the present case that gave rise to alleged cause of action to the plaintiff had taken place on 02.05.2003. The present suit for recovery of damages/compensation was filed by the plaintiff on 02.05.2006 i.e after three years of the date of the incident. This suit on the face of it is barred by limitation. The argument of the plaintiff that the cause of action is continuous cannot be accepted because in case his said argument is accepted then a litigant can file a suit at his whims and fancies may be after 20 years, 50 years or even after 100 years. The objective of law of limitation is to provide certainty and peace in the society. The cause of action alleged by the plaintiff against the defendants

is non-performance of their public duties in not terminating the license of the booth operator for the alleged breach of terms of the license on his part. It is beyond my comprehension how the plaintiff can claim damages/compensation against the defendants only because the license of the booth operator was not terminated by them as desired by the plaintiff. The cause, if any, for the plaintiff to have filed the present suit could only be distress allegedly suffered by him on account of alleged misbehavior by the employee of the booth operator. The limitation for suing in relation to such a cause is one year from the date of distress which expired long ago prior to filing of the present suit. The argument of the plaintiff that the Court should prefer course of justice to the law of limitation also cannot be accepted because the law does not confer any discretion on the Court to condone the delay and extend the limitation prescribed for filing a suit. Section 5 of the Limitation Act does not apply to suits. Hence the suit of the plaintiff having been

filed beyond the limitation period cannot be entertained by this Court in view of provisions contained in Section 3 of the Limitation Act. Since the present suit filed by the plaintiff against the defendants is in contravention of the law of limitation, the said suit is liable to be rejected under Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908.

14 Even if it is assumed that the suit filed by the plaintiff against the defendants is within limitation, still the said suit is liable to be rejected under Order 7 Rule 11 CPC because it does not disclose any cause of action against any of them.

15 Paras 26 to 29 of the plaint deals with the cause of liability which is sought to be enforced by the plaintiff against the defendants in the present suit and it will be relevant to refer to these paras and the same are extracted below:-

“CAUSE OF LIABILITY

26. Defendant No.1:- That the license deed in its Clause had specified that the licensee/ defendant No.6 will not employ any one as the Telephone Operator or charge more than the rate fixed by the Government or behave in any unruly

manner. The license deed also specified that the Registry of the Hon'ble Supreme Court have the right to terminate the agreement without assigning any reason. That the Registrar of the Hon'ble Supreme Court had not acted in the manner it was suppose to act, by not terminating the license of defendant No.6, though the defendant No.6 had gone against the clause of the license by employing another person/ defendant No.7; by charging more than what was fixed rate of the call charge and plaintiff being slapped by the defendant No.7. The plaintiff has sent the letter to the Registrar on 19.08.2003 (nineteenth day of August two thousand three). The Registrar had not taken any kind of appropriate action on the demand notice where the plaintiff had specifically written that the plaintiff is going to sue for the damages. The said booth is still run by the defendant No.6 in the same premises of the New Lawyer's Chamber as on 01.05.2006 (first date of May two thousand six) and nothing can be more insulting than this for the plaintiff and for the law abiding citizens of this nation and for the rule of law that the law and rules failed to take action against the defendant No.6 in the very premises of the Hon'ble Supreme Court, the Sanctum Sanctorum of the justice. The defendant No.1 is a paid servant of the Government and his salary is paid by the Government which the Government collect through the public and where the public money involves the public interest get involved and by not taking care of the public interest is a civil wrong and also criminal act of negligence.

27. Defendant No. 2 and Defendant No. 3:- That the police department had not fulfilled their duty cast under law as per the Section 154 (01) or 154(03) of Criminal Procedure Code, 1973 by not registering the case on 02.05.2003 (second day of May two thousand three); by filing the wrong, malicious, perverted, diabolic, outrageous, outlandish, obnoxious and outrightly third rate rotten Final report on 01.05.2005 (fifteenth day of November, two thousand four) in the wrong Section of 382 of Indian Penal Code 1860, as in year 1866 it was decided by the Hon'ble Court that the moment hurt is caused, the Section 392 will apply, not the Section 382

of Indian Penal Code; by not mentioning the Medical Report in the charge sheet filed by the Investigation Officer on 28.05.2005 (twenty eight day of May, two though five); by not mentioning the source of information for the allegation stated in the charge sheet that the complainant/ plaintiff had spoken for more than two minutes. The Police department is meant to protect the general public and to punish the wrong doer who goes against the law and for doing same the Police personal are paid by the Government which the Government collect through the public and where the public money involves the public interest get involves and by not taking care of the public interest is a civil wrong and also criminal act of negligence. The defendant No.2 and defendant No.3 are the responsible authority for the deed of their department, the same department which failed to give any solace to the plaintiff, though around three year had over.

28. Defendant No.4 and defendant No.5:- By not responding at all in any form or manner to the plaintiff who sent the registered letter to Assistant Vigilance Officer of MTNL in CGO Complex, New Delhi on 19.08.2003 (nineteenth day of August two thousand three) regarding the whole incident and for the action to be taken against the defendant No.6 as he is running the telephone service of the MTNL and not only overcharging in the very premises of the highest temple of Justice but also his employee manhandled the customer. The whole incident was informed by the plaintiff earlier in two occasions through the phone, one by making the mobile call from the mobile of Mr. Deepak Sharma, Advocate, Tis Hazari Courts (mobile No.9891144454) to the Assistant Vigilance Officer of MTNL in CGO Complex, New Delhi and once from the Phone booth near the Tis Hazari Courts. The defendant No. 4 department had advertized also, by calling upon the public to complain if public call booth licensees are overcharging and on their direction the plaintiff sent the complaint. The Telecom department is meant to provide the telecom service to the general public and for same the public is charged with the service tax and the same tax goes on to give the salary and

other amenities and perks to the department personal, including the defendant No.4 and defendant No.5. The defendant No.6 is still running the phone booth at same premises of the New Lawyer's Chamber as on 01.05.2006(first day of May two thousand six).

29. Defendant No.6 and Defendant No.7:- The defendant No.6 had given the undertaking in the license deed with Registrar who signed it on behalf of the Hon'ble Chief Justice of India that he will not employ any one as employee and not to charge more than what is that fixed rate. The defendant No.6 acted in contravention of the Deed and because of that the plaintiff got slapped. The defendant No.7 is responsible for slapping the plaintiff and asking for more charge."

16 A meaningful reading of the plaint, particularly paras referred above, would show that the only grievance raised by the plaintiff in the present suit is non-cancellation of license of the booth operator by defendants No. 1 to 5. This Court is of the opinion that there is no obligation statutory, contractual or otherwise on the part of the licensor or the authorities to terminate the license merely on the asking of the plaintiff. It is within the absolute jurisdiction and discretion of the licensor whether to terminate the license or not, even in case of breach of any term or condition of the license. In case the licensor is satisfied that the act

complained of does not warrant termination of the license, the plaintiff cannot compel termination thereof. In view of the same, I am of the considered view that the plaint does not disclose a clear right to sue and no real cause of action has been set out in the plaint or even disclosed against any of the defendants. I am satisfied that this suit filed by the plaintiff against the defendants is inspired by vexatious motives and is altogether groundless.

17 In view of the above facts, I have no hesitation in holding that the plaintiff is making mountain out of a molehill by blowing the incident out of proportion. He who claims himself to be a whistle-blower is in fact a black mailer. I say so for the reason that he has dragged into this litigation such authorities like the Registrar General (Court Administrator-cum-Secretary General), Supreme Court of India, the Commissioner of Police, the Secretary, Ministry of Home Affairs, the Chairman, MTNL & the Secretary, Ministry of Telecommunication only with a view to sensualize the issue, when as noticed by me above no cause of action arose against

them. I, therefore, deem it proper to nip this frivolous and vexatious suit in the bud to avoid undue harassment of protracted litigation to them. This suit deserves to be dismissed with exemplary costs looking into the conduct of the plaintiff that he being an Advocate has misused the legal machinery only to satisfy his personal egos.

18 In view of the above, all the IAs filed on behalf of the defendants for rejection of the present suit are allowed and the present suit is dismissed both on the ground of limitation and also for want of cause of action under Order 7 Rule 11 CPC with costs quantified at Rs. 50,000/- to be deposited in the Lawyers' Welfare Fund of Bar Council of Delhi.

**S.N. AGGARWAL
(JUDGE)**

April 07 , 2008
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