

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) No.1313/2008**

Date of Decision : 05.10.2010

Vijay Gulati

.....Plaintiff

Through: Mr. M.S. Vинаик, Advocate

Versus

Radhika & Ors.

..... Defendants

Through: Mr. R. D. Itorara,
Advocate for Defendants
No.2 & 4.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

- | | | |
|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J.

1. This order shall dispose of two preliminary issues namely (1) whether the plaint is liable to be rejected under Order VII Rule 11(a) CPC on account of lack of cause of action and (2) whether the suit is barred by limitation.
2. Both these issues were framed along with other issues on 6th May, 2010 and it was observed that these two issues will be treated as preliminary issues and decided without permitting the parties to adduce evidence. Although at the time, when the issues were framed, the learned counsel for the parties had agreed to this, but during the course of submissions by the learned counsel for the plaintiff, one of the arguments urged is that the question of limitation is a mixed question of law and fact and therefore this requires adducing of evidence. This plea,

on the face of it, seems to be an afterthought and actuated by consideration to prolong the agony of the main contestant who happens to be a woman and is involved in matrimonial litigation with her husband, whom the plaintiff calls his friends son.

3. Briefly stated, the facts leading to the filing of the present suit are that the plaintiff, Vijay Gulati is claiming himself to be a leading businessman having widespread business interests both in the United Kingdom and India apart from other countries. It is alleged by him that he enjoys large social circle and is socially productive and philanthropic and he possesses excellent reputation in the society, in the country of his origin, as well as in UK where he is settled. The plaintiff is also claiming himself to be a member of the Management of International Society for Krishna Consciousness in the UK as well as, also on the Board of Management of a leading school in London.
4. The defendant No.1, Radhika is the lawfully wedded wife of one Vijit Nandrajog who he claims to be the son of the plaintiff's friend. It is alleged that the relations between Radhika and Vijit Nandrajog are estranged because of which the former has allegedly lodged some false criminal action against her husband and other family members. The defendant No.2, Satish Pruthi and defendant No.4, Veena Pruthi are stated to be the parents of Radhika while as defendant No.3 is a person who is stated to be a doctor though his credentials as a doctor are challenged by the plaintiff. It is alleged by the plaintiff that defendant No.3 along with defendants No.2 and 4 have connived with the plaintiff in lodging a criminal complaint not only against Vijit Nandrajog, his friend's son and other family members but has also enroped

him in the said complaint. The first of such complaint is stated to have been made in October, 2005 which is alleged to be defamatory by the plaintiff in some portion. The plaintiff has stated that this complaint had been taken back and a fresh complaint was made somewhere in the month of May, 2007 in which similar allegations of defamation were made against the plaintiff. On the strength of these complaints, it is alleged that there has been a publication of these complaints qua the plaintiff inasmuch as these complaints were circulated amongst the relations of the plaintiff as a consequence of which he has been defamed. The exact language of both these complaints need to be reproduced in order to appreciate the exact purpose of alleged allegations of defamation which are leveled by the defendant no. 1 against the plaintiff on account of which he has claimed damages to the tune of ₹2.00 crore. The first complaint reads as under :

“Sir,

I was married to Mr. Vijit Nandrajog according to Hindu marriage rights on 4.2.2005. My father at the time of marriage gave dowry as per his best capabilities. After my marriage it was all right for about two weeks but later on my mother in law, father in law and husband started taunting, abusing, harassing and beating me for sub-standard dowry as they use to say for the dowry articles. In the first week of March, 2005, my husband told me that he wants to start a separate business as his father and brother are having control on the joint business and are only giving Rs.1,00,000/- per month from his expenses which is 1/3 of the total share and therefore he requires independent source of income for which he requires Rs.70,00,000/- replied that I will not demand anything from my parents and what ever my husband wants to do should do his own. On this, my husband became very angry and passed unpleasant remarks regarding me and my family. He further told me that if I want to live in peace I have to bring this amount

otherwise he and his parents will make my life a living hell. He called me and my family a KANGLA FAMILY. From that day it became routine of my husband and my in laws to tease, abuse and harass me without any time or reason which created havoc on my mind. Their sole intention behind all these cruelties was to get money from my parents. On 3rd May, 2005, my mother in law told me that I should help my husband in starting a separate business. When I replied that I have no objection on his starting new business but I am not going to bring any amount from my parents. Hearing this, she started abusing me and my parents. When I requested her not to abuse, she told me that I am not more than a servant in my matrimonial home and if the amount of Rs.70,00,000/- is not given it will be difficult to remain in my matrimonial home peacefully. In the evening of the same day my husband after five minutes of entering home started abusing me badly. When I asked as to why he is abusing me he told me that in the afternoon I abused my mother in law. When I said that it was in fact Mummiji who abused me he slapped me and asked me to go out of the house.

End of June, one of my in laws every close family friends Mr. Vijay Gulati (present petitioner), who happens to be an influential NRI came down from London to put extra pressure on me to get the money from my parents. I was asked by his Uncle to give in to my husband and in laws demands and he also threatened against any police action.

On the day of Janamastmi (28.8.2005) I along with my Aunt Mr. Meenakshi Mahajan were going to Janakpuri Temple, when her driver notice two Motorcyclists were following us. We called at 100 number several times for police help but there was no response. Aunty called her father at Kirti Nagar where one of the followers was nabbed by the servants and we called the police. Police took him to Kirti Nagar Police Station and we also gave a complaint in writing to the police. The nabbed boy told the police on investigation that he was following us at the insistence of my husband and in laws as they wanted to know about my visits to different people. This act of my husband in laws caused extreme mental pain and agony to me.

On 2nd September, 2005 while having tea my husband again asked me if I had talked with my father about the amount to which I told him it is next to impossible. After hearing this from me he lost his temper yet again and thrashed my head against the

wall, threw me on the floor, pulled my hair and beat me up with all his force. I was then dropped at my parental home.

On two three occasions, stated above I was shunt out from my matrimonial home for not bring the amount of Rs.70,00,000/-. My husband and in laws clearly told me that I have to bring the amount to live peacefully in the matrimonial home and have to chose one either the matrimonial home or the amount.

Lastly, finding no way out, I told my husband and in laws that if they don't want to keep me in the matrimonial home they should return my dowry articles and further my husband should pay a sum of Rs.60,000/- per month towards my maintenance. Hearing this my husband said that he will get the divorce from me and not going to return any of the dowry articles and I and my parents can do anything they like. In the last week of September, (27.9.2005) my husband in the morning told me that he is going to London and therefore I should go to my parents house. When I said I will stay here only, he told me he didn't want any quarrel between me and my in laws. On my opposition he slapped and badly abused me and forcibly dropped me at my parents house. Since then I am at my parents house. I have been treated with extreme cruelties by me husband and in laws and even they are not returning my dowry articles which were entrusted to my husband and in laws after my marriage. I request for storm action against the above said persons and they be directed to return my dowry items.

Radhika Nandrajog.”

5. As has been already stated this first complaint is stated to have been taken back by the defendant. The second complaint which is purported to have been made in May, 2007 reads as under :

*“To
The DCP
Crime Against Women Cell
Nanak Pura
New Delhi.*

Sub : Complaint against :-

- 1) Vijit Nandrajog, S/o Naveen Nadrajog,*
- 2) Naveen Nadrajog S/o Late Dharmbir,*
- 3) Rekha Nadrajog W/o Naveen Nandrajog,*
All R/o 75/41, Punjabi Bagh West, New Delhi.

Sir,

I, Radhika Nandrajog W/o Vijit Nandrajog R/o 1307, D-1, Vasant Kunj, New Delhi, submits that I was married to Vijit Nandrajog according to Hindu Rites and Customs on 4th February, 2005. My father at the time of marriage, give dowry as per his best capacity. After my marriage it was all right for about two weeks but later on my mother-in-law, father-in-law and husband started taunting, abusing, harassing, and beating me for sub-standard dowry (as per them). In the first week of March 2005, my husband told me that he wants to start a separate business as his father and mother are having control over the joint businesses and only giving Rs.1,00,000/- per month for his expenses and therefore he requires Rs.70,00,000/- (Rs. Seventy lacs only) to start another business. I replied that she will not demand anything, from my parents and whatever my husband wants to do, he should do of his own. My husband became angry and passed unpleasant remarks regarding me and my family. He further told me that if I want to live in peace, I have to bring the amount otherwise he and his parents will make my life a living hell. He called my and my family a Kangla Family, from that day it became routine of my husband and my in laws to tease, abuse, harass me without any rhyme or reason which created a fear in my mind. Their sole intentions behind all the cruelties were to get money from my parents.

On 12th April, 2005 I was very distressed with the on going sarcasm and harassment by my-in-laws when my husband was out for work and when trying to sell him the same, he got physically and verbally abusive, pulled my hair slept my face threw me from the bed and banged my head against the cupboard. He beat me up all night and forced me to go to Chandigarh with his family and pretend every thing is normal.

On 15th April, 2005, in the evening while brushing the teeth in the washroom, I had the water running while brushing, I was hit by the head with a very hard punch by my husband and abuse and said “don’t waste money on water” and said again “teri aukat kya hai”.

On 3rd May, 2005, my mother-in-law told me that I should help my husband in starting a business. When I replied that I have no objection on his starting a new business, but am not going to bring any amount from my parents. Hearing this, she started abusing me and my parent. When I requested her not to abuse, she told me that I am not

more than a servant in my matrimonial home and if the amount of Rs.70,00,000/- (seventy lacs) is not given, it will be difficult for me to remain in my matrimonial home peacefully. In the evening of the same day, my husband just after five minute after entering home, started abusing me badly. When I asked as to why he is abusing, he told in the afternoon I abused my mother in law. When I said that infact it was Mummyji who was abused me, he slapped me and asked me to go out of the house.

On May 9th 2005, I asked permission from him and his parents to visit a beauty parlour I used to go before marriage. When I was in the parlor I received a call from my mother in the mobile phone my husband given me only on that day to keep a track on my movements. My mother asked me if I could come home to meet her. I was scared to see her without my husband's and mother in laws permission so I asked my mother and sister to come to the parlor if they wanted to see me. I do not know that my husband was following me all the way from home to the parlor and saw me meeting my mother and sister when they reached there. After they left, he approached me and he forced me to get into the car with him. Then he slapped me hard on my face and head in the middle on the road and dragged to his parents. His mother came out on the street, sat in the car and took me to a deserted lane in Punjabi Bagh area. She accused me of lying to them and my husband for not disclosing my supposed intention of meeting my mother outside their house. She said I had insulted my husband and to get his respect back, I should help him by getting money from my father for his business.

During meal time on the dinning table, my in-laws would generate fear in my mind by giving me an example of a lady in their neighbourhood who had tried to leave her in-laws house, how her husband pulled her hair and beat her up and dragged her back home, so she would not dare to escape in future or disclosed to any one, the treatment given to her at the home from her in-laws.

My mother in law objected to my relaxing in my bed room with the door closed and complained to my husband that I did not socialize with them. I was not allowed to either use the phone or the computer as my mother in law said it was not fit for girls to use new technology. She was scared that I would communicate my feeling and suffering to my parents as she wanted to cut off my contact with them. Often my in laws would narrate to me how a girl from a military background got married into a rich

family and was overwhelmed with the luxuries her parents could never provide her. They mocked me by saying, that they provide me with jewellery and good clothes and if I wanted to live in such luxury I would demand money from my father for my husband. They even did not tell us go for our honeymoon after marriage saying that they could not afford a holiday. They often threatened me that if I even dare to go back to my parents, my father would beat me and throw me out of his house and force me to go back to my in-laws house.

My in-laws crushed my self esteem by saying that my parents did not get along with any of their relatives and so did not have any social standing. They believed that they had a huge circle of friends and business contract who they had to oblige through social exchanges for which I was asked to get finances from my parents, hence they would instigate my husband on several occasions to beat me up.

On one such day, 15th May 2005, my husband had informed me that he would not return home at night if I did not start a dialogue with my parents about the dowry. On that night when he did not return home till very late ; my in-laws, came into my room and demanded an explanation about my husband's whereabouts. My husband had deliberately switched off his phone to mentally harass me. I told his parents that I did not know where he was but they blamed me that he did not want to come home as I was not cooperating with him in getting him finance for his business. When he returned home late in the night and having realized that I, hadn't had a word with my father about the money, he in a fit of rage, pulled me by my hair, banged my head against the wall, threw me on the floor and tore my clothes.

In the end of June, one of my in law's very close family friends, Mr. Vijay Gulati, who happens to be an influential NRI, come down from London to put extra pressure on me and get the money from my parents. I was asked by that person to give in to my husband in in-laws demands and he also threatened against any police action.

On the day of Janamastmi, 28th August, 2005, I along with my Aunt Ms. Meenakshi Mahajan, were going to Janakpuri Temple, when her driver notice two motorcyclists were following us. We called at 100 number several times for police help but there was no response. Aunty called her father at Kirti

Nagar who advised us to come to his office at Kirti Nagar where one of the followers was nabbed by the servants and we called the police. Police took him to Kirti Nagar Police Station. We also gave a complaint in writing to the police. They nabbed boy told the police on investigation that he was following us at the insistence of my husband and in laws as they wanted to know about my visits to different people.

On 2nd September 2005, while having tea my husband again asked me if I had asked my father about the amount. I told him it is next to impossible. After hearing this from me he lost his temper yet again and threshed my head against the cup board with all his force and badly bruised my arm and back. I was dropped at my parental home.

On 5-6 occasions, stated above, I was shunted out of my matrimonial home for not bringing the amount of Rs.70,00,000/- (seventy lacs). My husband and in laws clearly told me that I have to bringing the amount to live peacefully in the matrimonial home and have to choose one, either the matrimonial home or the amount.

Lastly, finding no way out, I told my husband and in laws that if they don't want to keep me in the matrimonial home they should return my dowry articles and further my husband should pay a sum of Rs.70,000/- p.m. towards my maintenance. Hearing this my husband said that he will get the divorce from me and not going to return any of the dowry articles and I and my parents can do anything they like.

In the last week of September 2005, my husband in the morning told me that he is going to London and therefore, I should go to my parents house. When I said I will stay here only, he told me he didn't want any quarrel between me and my in-laws. On my strong opposition, he slapped me and badly abused me and forcibly dropped me at my parents house. Since then I am at my parents house. I have been treated with extreme cruelties, by my husband and in laws and even they are not returning my dowry articles which were entrusted to my husband and in laws after my marriage.

Earlier I filed the complaint against the above said persons, but the same was got suspended by me when my husband requested me for the same and for reconciliation. Later on number of meeting were held between my parents, and my in-laws and relatives but my husband never came forward for

any settlement. In fact he got my complaint suspended just to gain time.

I, therefore, request you for strong action against the above said persons and they be directed to return my dowry items, which are in custody and control of my mother in law, father in law and husband.

*Sd/-
(Complainant)
Radhika Nandrajog
D/o Shri Satish Pruthi
R/o 1307, D-1, Vasant Kunj, New Delhi*

Enclosures:

List of dowry articles.”

6. Thus a perusal of the aforesaid complaints would clearly show that the portions which are alleged by the plaintiff to be defamatory qua the plaintiff have been highlighted. A perusal of these portions show that there is nothing which can be stated to be defamatory in these lines. It may at best be said that these paragraphs may not be factually accurate.
7. In paragraph 11, the plaintiff alleges that the open circulation of these copies of the complaint had the effect of defaming and causing severe damage to his reputation. The circulation of copies of the false complaint is stated to be a malicious act to bring disrepute to the plaintiff. The plaintiff is stating that he was summoned by Delhi Police on the basis of this false complaint. Para 15, the cause of action clause reads as under :

“The cause of action for the filing of this suit arose in the month of **October, 2005** the first defendant first lodged a false complaint with the police, and circulated copies of the same to various persons, so as to cause defamation to the plaintiff. The cause of action further arose in the month of **May, 2007**, when the second complaint was filed, on the same alleged cause of action by the first defendant, in connivance with the other defendants. The cause of action is still continuing. The cause of action further arose when the defendants failed to pay the

amount claimed despite the receipt of a notice from the Advocates of the plaintiff.

8. Thus on the basis of the aforesaid facts, the present suit for ₹2.00 crore by way of damages has been filed by the plaintiff against all the four defendants namely Radhika, her parents and one Mr. Tarun Jain, defendant No.3. The defendants No.2 and 4 have denied their involvement in the complaint purported to have been made by their daughter although the factum of the complaint having been lodged by the daughter is not disputed. It is stated by them that the plaintiff had not attached any prima facie proof to show as to how they were involved in making that complaint to the police. It is also stated by them that the plaintiff has not adduced any prima facie evidence by giving names etc. to show that he has been lowered in the estimation of right thinking people, who are running away from him. It is also stated by them that as a matter of fact the plaintiff was a go between the two families and that their daughter, defendant No.1 had conveyed to them that it was the plaintiff who was seeking money from the parents of defendant No.1. They have denied their involvement. In nutshell, they have denied that there is any cause for defamation for initiating present suit.
9. So far as defendant No.1 is concerned, she has not denied the fact that the complaint has been made by her. It is stated by her that the suit is liable to be rejected on account of lack of cause of action under Order VII Rule 11 and apart from the fact that the present suit for defamation is premature as the allegations which have been made by the plaintiff are yet to be examined by an appropriate forum, i.e. Criminal Court. It is

also stated by her that the present suit has been filed as a counter blast to the action initiated by defendant No.1 against her husband Vijit and his family and because the plaintiff happens to be a family friend and business partner of Vijit Nandrajog and his family, therefore, she is stating that this is a surrogate action initiated by the plaintiff. The defendant No.3, Tarun Jain has also filed his own written statement and the same is in line with the written statement filed by defendant No.1.

10. I have heard the learned counsel for the plaintiff and the learned counsel for defendant No.1 who are the main contesting parties to the suit. I have also gone through the record.
11. The main contention of the learned counsel for the plaintiff is that in para 5, 6 and 7, the plaintiff has given the specific averments with regard to the publication of the defamatory complaint against him by defendant No.1 which sufficiently needs to be decided on the touchstone by permitting the plaintiff to adduce evidence. It may be worthwhile to reproduce here paras 5 to 7 which read as under :

“5. The plaintiff further states that not only have the defendants conspired, to and lodged a false complaint with the police authorities in India, they have further taken to publicizing the said false allegations against the plaintiff. They have been openly distributing copies of the false complaint initiated by them to various persons, who are either related to the plaintiff, or who are dealing with him in his business activities. Besides circulating copies of the false complaint making false and outrageous allegations against the plaintiff, the defendants have also been spreading slander about the plaintiff among various persons who are closely known to him, and who have held him in high esteem in the past.

6. The malicious campaign of slander and calumny launched by the defendants has had the effect of considerably diminishing the plaintiff's reputation of excellence and integrity. Their ill-intentioned efforts have resulted in doing tremendous damage to the plaintiff by defaming him. The plaintiff states that for a person of his stature, and for a person with large commercial interest, such a defamatory campaign can be extremely damaging. Defendant No.2 being the father of Ms. Radhika, the first defendant, along with defendant No.3 and 4, have actively connived with her in committing the actions complained of. It is significant that the plaintiff had offered to sponsor a trip for the first defendant, along with her husband, to the United Kingdom at considerable personal expense.
7. The plaintiff states that the defamatory communications, of which a large number of copies have been circulated as stated above, to a large number of persons, known to the plaintiff. In fact, the first defendant has also made an admission of this fact in her Written Statement that she has filed in response to the petition filed by her husband, Vijit Nandrajog, praying for dissolution of his marriage by a decree of divorce. The said statement, made in the Written Statement of the first defendant in HMA No.3 of 2007, is evidence of them brazen nature of the efforts that have been undertaken by the defendants."

12. It was contended by the learned counsel for the plaintiff that in the light of the averments made by the plaintiff in paras 5 to 7 and the totality of the circumstances, it could not be said that either there was lack of cause of action or that the suit was barred by limitation. The learned counsel for the plaintiff in support of his contention placed reliance on the judgment titled **Maj. S.S. Khanna Vs. Brig. F.J. Dhillon** AIR 1964 SC 497 where it has been observed as under :

"The Judge of the Court of First Instance unfortunately assumed without a trial an affirmative answer to both these questions. Under O. 14 R 2 Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and

the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court : not to do so, especially when the decision on issues even of law depends upon the decision of issues of fact, would result in a lop-sided trial of the suit.”

13. It has been urged that the observations of the Supreme Court in **Maj. S.S. Khanna’s** case (supra) clearly apply to the facts of the present case and thus the plaintiff’s case cannot be rejected at the threshold itself on the ground of limitation without permitting the plaintiff to adduce evidence, as it involves the question of fact which requires adducing the evidence.
14. The learned counsel for the plaintiff has also placed reliance on the case title **Mangat Ram Vs. Ram Niwas** 2009 (163) DLT 199 which has taken note of the judgment of **Maj. S.S. Khanna’s** (supra) case and observed as under :

“After having gone through the order under challenge and having considered the arguments advanced by the counsel for the parties I have no manner of doubt that the trial Court’s order under challenge cannot be sustained. Order XIV Rule 2(2) of the Code of Civil Procedure does provide that if in a suit, issues of facts as well as law arise the Court can decide any issue of law as a preliminary issue but there is a rider also to the effect that the issue proposed to be decided as a preliminary issue must be a legal issue relating to the jurisdiction of the Court to try the suit or any bar to its maintainability created by any law for the time being in force. There is no doubt that a plea of limitation can also be decided as a preliminary issue, but only if the averments in the plaint itself show clearly that the suit was time barred and if any enquiry into some facts as to when the cause of

action for the suit arose is required to be undertaken then the plea of limitation cannot be tried as a preliminary issue.”

15. On the strength of both these judgments, it has been urged by the learned counsel that the plaintiff must be given opportunity to adduce evidence before this suit is decided in either way so far as the question of limitation is concerned.
16. This argument of the learned counsel for the plaintiff was vehemently contested by the defendants. The contention of the learned counsel for defendant No.1 has been that the plaintiff of his own averment in para 15 of the plaint pertaining to the cause of action states that it accrued to him in the month of October, 2005 when the allegedly false complaint was lodged with the police and circulated. It is stated that this complaint was actually taken back by defendant No.1 at the instance of some of the common friends with the assurance that she will not be ill-treated. Since those assurances did not come to be observed, she was forced to lodge a complaint afresh again in the month of May, 2007. The second cause of action in para 15 of the plaint is alleged to have arisen in the month of May, 2007 and this complaint was actually lodged by defendant No.1 on 28th May, 2007, the contents of which have already been reproduced hereinabove.
17. It has been contended by the learned counsel for the defendants that the suit itself has been filed on 31st May, 2008 while as the period of limitation which is prescribed under the Limitation Act for the purpose of filing the suit for recovery on account of damages for defamation is only one year. If that be so, then on

the face of it, the present suit is barred by limitation and it does not require any adducing of evidence.

18. I have carefully considered the respective contentions. Article 75 of the Limitation Act lays down limitation for compensation for libel as one year and the time from which the period begins to run is when the libel is published. Article 76 deals with compensation for slander which is also one year and the period starts to run when the words are spoken or if the words are not actionable in themselves, when the special damage complained of results. Article 76 admittedly is not applicable to the facts of the present case because it is not the case of the plaintiff that he has been defamed by spoken words. It is alleged that she has been defamed because of the circulation of the complaint purported to have been made by the defendant no.1 to the police and thereafter sending the copies of the said complaint to the relatives and friends of the plaintiff. Therefore what is important is the date of publication. There is no dispute about the fact that the first complaint which is purported to have been made by defendant No.1 is in October, 2005. The plaintiff in para 15 has himself said that the cause of action accrued to him in October, 2005. The complaint is stated to have been lodged by defendant No.1 with the Crime Against Women Cell in October, 2005, therefore assuming it to be the date of publication, the period of limitation starts running in October, 2005, no subsequent inability or disability of the plaintiff will stop the said period of limitation and the subsequent dates given by the plaintiff would not come to his rescue, thereby meaning that if at all the plaintiff wanted to file a suit for damages then the plaint

ought to have been filed within one year which in any case would expire on 31st October, 2006. Section 9 of the Limitation Act specifically lays down the continuous running of the period of limitation.

19. But in the instant case, the defendant No.1 in her written statement has stated that she had withdrawn the first complaint made by her in October, 2005 on some assurance having been given that she will not be ill-treated. This fact is not disputed by the learned counsel for the plaintiff. That is how the second complaint in May, 2007 is made by her. Even if the complaint of October, 2005 is ignored for the purpose of cause of action and the consequent limitation, this leaves us with the complaint of May, 2007 although the plaintiff ought to have given the specific date, but from the pleadings of the parties, this is not in dispute that the second complaint which is purported to have been made by defendant No.1 is on 28th May, 2007. If that be so, then the period of limitation starts running on the immediately next date i.e. 29th May, 2007 and the period of limitation being one year would expire on 28th May, 2008. It is settled principle that in calculating the period of limitation, the day on which the event has taken place, has to be excluded and consequently the period of limitation is to be reckoned from the next day. Keeping in view these facts, if we examine the plaint it is found that the endorsement which is made at the back of the plaint indicates that the suit for damages of ₹2.00 crores was filed for the first time on 31st May, 2008 and thus it is barred by limitation by two days. That being so, the suit on the face of it is barred by limitation. This is totally erroneous of the learned counsel for

the plaintiff that the question of limitation in the instant case is a mixed question of law and fact and therefore, requires adducing of evidence when the dates make it crystal clear that the suit is barred having been filed beyond one year from the date of accrual of cause of action. The averments which have been made in paras 5 to 7 do not in any manner justify the change of the cause of action clause which has been averred by the plaintiff so as to calculate the period of limitation of one year from any other day as is envisaged under Section 15. Therefore, I am prima facie of the view that the suit of the plaintiff is on the face of it is barred by limitation and has to be necessarily rejected.

20. The second preliminary objection which was raised on which the submissions were made by the learned counsel for the parties was with regard to the rejection of the plaint on the ground of lack of cause of action. It will be pertinent here to refer to the judgment of the Apex Court in **T. Arivandandam Vs. T.V. Satyapal & Anr.** AIR 1977 SC 2421 in order to appreciate this issue. It was observed in the said judgment :

If on a meaningful -- not formal -- reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Trial Court should exercise his power under Order VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. The Trial Courts should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them.
.....

If the Trial Court is satisfied that the litigation was inspired by vexatious motives and altogether groundless, it should take deterrent action under Section 35A, i.e. having imposed heavy cost.

21. The judgment which have been cited by the learned counsel for the plaintiff are distinguishable from facts of the present case. Nobody could dispute the proposition laid down in both these judgments that a case must be put to trial in case it involves a question of fact and should not be thrown out. While as in the instant case, the dates which have been taken by the Court for rejecting the plaint as being time barred are given by the plaintiff himself and are matter of record.
22. Such were strong observations by the Apex Court which have to be considered in the light of the fact that presently the Courts are burdened with cases as a consequence of which the valuable time of the Court is lost on frivolous luxurious litigation while as the rightful party is subjected to grave delay of harassment, torture apart from expense. It is in this background that if the present case is seen essentially, then this is one such case in which the observations of the Apex Court fit in with all force.
23. The case of the plaintiff is that he is a family friend of Nandrajogs whose son happens to be married to defendant No.1. On account of certain estrangement, the husband and the wife who happens to be defendant No.1 could not pull on well which culminated into some kind of mediation or interaction by the plaintiff perhaps to bring about rapprochement between the two warring infections. It is in that context that defendant No.1 in her first complaint which was made in October, 2005 has made a reference to the plaintiff which needs to be adduced which reads as under :

“End of June, one of my in laws every close family friends Mr. Vijay Gulati, who happens to be an

influential NRI came down from London to put extra pressure on me to get the money from my parents. I was asked by his Uncle (refers to the plaintiff) to give in to my husband and in laws demands and he also threatened against any police action.”

24. In the second complaint in May, 2007, the sum and substance of these allegations have been repeated. On the face of it, this is an allegation on the basis of which it has been informed to the Court that a case has been registered against not only the husband but other family members of Nandrajogs which is still under investigation and perhaps the charge sheet has also been stated to have been filed. In the charge sheet, the present plaintiff is also arraigned as an accused, therefore till the time the said charges which are levelled against the present plaintiff are not disproved or not proved, it could not be said that these allegations are without any merit and certainly they could not be said to be as defamatory. I do not find anything defamatory in these allegations which are yet to be tested judicially. Further there is no date, no name of the person to whom this complaint is given. A document cannot be deemed to be published qua the defamed person himself if he does not show prima facie that it has been sent to any other person. A person cannot be said to be lowered in his own estimation unless it is shown that the alleged complaint is purported to have been read by some person. In the absence of these particulars of the plaintiff's case lacks cause of action.
25. This suit seems to have been initiated by the present plaintiff as a surrogate litigation as a counter blast and to use it as a lever to tame defendant No.1. This is evident from the fact that even if we assume for the sake of argument that defendant No.1 had

defamed the plaintiff by making such allegations in the criminal complaint, there was hardly any occasion or justification for the plaintiff to include her parents, defendant No.2 and 4 as also a party to the suit and also to implead some gentleman by the name of Tarun Jain who is totally stranger also as a person from whom the damages are sought to be claimed by making allegations that all of them have defamed him. The plaintiff seems to be a man of resource in the sense that he has ample money and therefore the snail pace at which the cases continue in Courts here, the plaintiff has fully utilized this opportunity to put defendant No.1 on the defensive by initiating the present suit so as to sap her energies, resources and money as well, so that the present proceedings could be used as a lever to get the dragnet by criminal cases. There is not even a whisper in the plaint by the plaintiff as to which of his relatives or friends has been circulated with the alleged defamatory complaint by defendant No.1 on account of which the plaintiff has been defamed. I therefore feel that the plaintiff in the absence of having given these bare minimum facts, there has been suit for damages on the ground of defamation as he lacks cause of action.

26. Cause of action is a bundle of facts which gives rise to a cause to an aggrieved person to seek redressal of his grievance from the Court which in the absence of the names of the persons or the relatives, I feel the present suit is lacking cause of action so as to put the civil law into action by way of present suit.
27. The learned counsel for defendants No.1 in support of his contention has also referred to ***Bira Garari Vs. Dulhin***

Somaria & Ors. AIR 1962 PATNA 229 wherein it has been observed by the Division Bench that in a case of defamation on the basis of registration of a cognizable offence, it could not be said that the person has been defamed unless and until the said complaint is tested before the appropriate forum. In other words, once a person has a legitimate grievance and he puts criminal law into action, the other side cannot lodge and bring about a suit for defamation so as to stop those criminal proceedings. The appropriate remedy for him would be either to get a case for damages for malicious prosecution or to get a case registered under Section 182 Cr.P.C. in case the charge sheet is not filed on the basis of the report or if he is able to earn acquittal, then a specific finding to the effect that the allegations against him were false. The said judgment, in my view, aptly applies to the facts of the present case also that till the time the present criminal complaint which has been initiated by defendant No.1 is not finally rejected, the maintainability of the present suit on the ground of the plaintiff being defamed is premature and therefore lacks cause of action apart from being barred by limitation.

28. For the aforesaid reasons, I accordingly reject the plaint.

V.K. SHALI, J.

October 05, 2010
skw