

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

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Date of decision: 17th December, 2013

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RFA246/2003

VEER ARJUN NEWSPAPER PVT.LTD.

..... Appellant

Through: Mr. Nitinja Chaudhry, Advocate.

Versus

BAHORI LAL & ORS.

..... Respondents

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment and decree (dated 16th November, 2002 of the Court of the Addl. District Judge, Delhi in Suit No.62/99 filed by the respondent no.1 for recovery from the appellant and the respondents no.2&3 of damages of Rs.5 lacs on account of defamation) of recovery of Rs.1 lac against the appellant and the respondent no.3 Chief Editor, Dainik Public Asia and in addition directing the appellant and the respondent no.3 to publish the rebuttal of articles dated 4th May, 1998, 15th April, 1998 and 17th April, 1998 published in their respective newspapers, in the form of unconditional apology on the front pages of their respective newspapers at a conspicuous place.

2. The appeal was admitted for hearing and subject to the appellant/defendant depositing 50% of the decretal amount with interest, the execution of the judgment and decree was stayed. The respondents no.2&3 failed to appear despite service by publication. The appeal was dismissed in default on 23rd January, 2013 and upon application for restoration being filed by the appellant/defendant, notice was issued to the respondent no.1/plaintiff who has also failed to appear despite service. The counsel for the appellant/defendant has been heard and the Trial Court record perused.

3. The respondent no.1/plaintiff had instituted the suit, pleading:-

- (a) that he is a class II gazetted officer working as Deputy Education Officer, Palika Kendra, New Dehli-110001;
- (b) that the respondent no.2 Shri Hari Ram Tiwari had been working as Pharmacist in Nagar Palika Co-ed Primary School No.1, Moti Bagh falling under the Education Department;
- (c) that the respondent no.2 had been indulging in malicious activities against the respondent no.1/plaintiff, maligning the respondent no.1/plaintiff who is a member of scheduled caste, by publishing defamatory and derogatory articles and by making false complaints against the respondent no.1/plaintiff;

- (d) that the respondent no.2 got published in the newspapers of the appellant/defendant and the respondent no.3, articles aimed at defaming and demoralizing the respondent no.1/plaintiff; the articles were published in the newspapers of the respondent no.3 on 15th April, 1998 and 17th April, 1998 and in the newspaper of the appellant on 4th May, 1998;
- (e) that the appellant/defendant and the respondent no.3 published the articles without verifying the correct position and in collusion and connivance with the respondent no.2; and,
- (f) that the said articles were defamatory of the respondent no.1/plaintiff and the contents thereof were false.

4. The appellant/defendant contested the suit by filing a written statement on the grounds:-

- (i) that the article published on 4th May, 1998 was on the basis of reports received from the respondent no.2 and on the strength of the letters dated 28th March, 1992 and 30th March, 1992 and on the basis of writ petition filed in this Court by Shri H.P. Meena against the NDMC and the respondent no.1/plaintiff;

- (ii) the article in question was published on the basis of the complaint of Dr. A.K. Raghav, Professor, Indian Institute of Technology (IIT), Hauz Khas, New Delhi who had complained to the Secretary, NDMC, New Delhi vide his letters dated 28th March, 1992 and 30th March, 1992 regarding the maltreatment and public humiliation of his wife Mrs. Sadhana Sishodia, a TGT in NPSS School, Ansari Nagar, New Delhi;
- (iii) that in the said letters it was mentioned that for public humiliation of his wife, action had been taken *inter alia* against the respondent no.1/plaintiff;
- (iv) that the said letters contained serious allegations against the respondent no.1/plaintiff;
- (v) that the appellant/defendant had no intention of defaming or demoralizing the respondent no.1/plaintiff in any manner;
- (vi) that on a later date, upon respondent no.1/plaintiff denying the contents of the letters aforesaid and the article, the appellant/defendant had published article dated 15th May, 1998 containing the denial by the respondent no.1/plaintiff of the allegations in the impugned article published on 4th May, 1998;

- (vii) the appellant/defendant as a newspaper had thus published both the versions without any malice; and,
- (viii) denying that the impugned article dated 4th May, 1998 was defamatory.

5. Viz-a-viz the defence of the appellant, *inter alia* the following issues were framed on 8th May, 2001:-

- “3. *Whether defendant no.3 was justified in publishing the offending article in its issue dated 4.5.98?*
- 4. *Whether defendant no.3 is exonerated from liability by reason of publication of denial in its issue dated 15.5.98?*
- 5. *To what amount, if any, is the plaintiff entitled to recover and from which of the defendants?”*

6. The learned Addl. District Judge, qua the appellant/defendant has found/observed/held:-

- A. that the witnesses of the appellant/defendant had deposed that the impugned article dated 4th May, 1998 was published though on the complaints received, but also after independent verification and enquiries;
- B. that the freedom of Press was coupled with a responsibility;

- C. that the impugned article dated 4th May, 1998 was *per se* defamatory as the respondent no.1/plaintiff therein had been described as drunkard, gangster, incompetent and man of colourful nature and misusing his official position;
- D. that the appellant/defendant did not enjoy any absolute privilege in publishing such articles;
- E. that the appellant/defendant had not pleaded qualified privilege;
- F. if the news item is false and defamatory than publishing of the same inadvertently or without any malice is no defence;
- G. that the witnesses of the appellant/defendant had admitted that they do not have any documentary evidence to substantiate the truthfulness of the allegations in the impugned article;
- H. that the appellant/defendant was not justified in publishing the impugned article; and,
- I. that the subsequent article published by the appellant/defendant on 15th May, 1998 was neither a denial of the contents of the impugned article nor an apology and the said publication was also without any verification; the same was a mere statement and unless and until the appellant/defendant itself condemned

the earlier publication and tendered an apology, it could not be said that the appellant/defendant was exonerated from the liability for the reason of subsequent publication.

7. The counsel for the appellant/defendant has referred to ***Chaman Lal Vs. The State of Punjab*** AIR 1970 SC 1372 and ***Ram Singh Batra Vs. Sharan Premi*** 133 (2006) DLT 126.

8. I have perused the two articles.

9. The impugned article dated 4th May, 1998 is concerning the prevalent corruption in Education Department and mentions the malpractices in the schools of the New Delhi Municipal Committee (NDMC). As part of the said narrative, the article referred to the complaint lodged by Smt. Sadhana Sishodia a teacher in the said school, including against the respondent no.1/plaintiff and reported the contents of the said complaint.

10. The article dated 15th May, 1998 fully set outs the response of the respondent no.1/plaintiff, of the allegations against him being without any basis and being motivated for the reason of him belonging to a Scheduled Caste.

11. I have also perused the deposition of Smt. Sadhana Sishodia recorded before the Trial Court as D1W1. She reiterated the contents of the complaint aforesaid made by her and reported in the impugned article. No contradiction could have elicited in her cross examination by the respondent no.1/plaintiff. She also denied that she had got the impugned article published in collusion with Shri Hari Ram Tiwari, to defame the respondent no.1/plaintiff. She rather deposed that on the basis of her complaints, an enquiry was held and the respondent no.1/plaintiff was transferred.

12. The witnesses of the appellant/defendant in their deposition deposed that the article had been published after making due enquiries of such complaint against the respondent no.1/plaintiff having indeed been made and upon the respondent no.1/plaintiff rebutting the same, his version was also published.

13. It is not the case of the respondent no.1/plaintiff also that the complaint which has been reported in the impugned article was not made against him or had been found to be false or frivolous prior to the date of impugned article.

14. In the aforesaid state of affairs, I am unable to agree with the view taken by the learned Addl. District Judge. The appellant/defendant, by the impugned article had as a matter of fact informed its patrons of the complaint having been made against the respondent no.1/plaintiff and the contents of the complaint. The appellant/defendant in the impugned article, except for reporting the contents of the complaint, did not make any other allegations of its own against the respondent no.1/plaintiff. The appellant/defendant, while so reporting the factual matters as part of its activity of publication of a newspaper, cannot be burdened with the liability of consequences of defamation. If it were to be held otherwise, it would result in nothing but the final result of all enquiries/disputes/judgments being published in the newspapers and the patrons of said newspapers being denied the knowledge of the complaints/disputes pending for enquiry/adjudication. The respondent no.1/plaintiff in his position, at the time of institution of the suit as a Deputy Education Officer and earlier as a teacher in a NDMC school was performing a public duty and the public through newspapers is entitled to know of the complaints made before appropriate authorities against such public officials and the result thereof.

15. Further, from the conduct of the appellant/defendant of, within a few days of the impugned article, fairly publishing the denial of the allegations therein by the respondent no.1/plaintiff, also shows that the respondent no.1/plaintiff in publication of the impugned article was merely performing its duty as a publisher of a newspaper and did not act with any malice or motive.

16. The appeal therefore succeeds. The impugned judgment and decree, in so far as against the appellant/defendant, is set aside and the suit of the respondent no.1/plaintiff against the appellant/defendant is dismissed. No costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

DECEMBER 17, 2013

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