

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3831 OF 2017

ORDER:

This petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.299 of 2015 in O.S.No.159 of 2014 dated 20.07.2017 passed by the Senior Civil Judge, Shadnagar.

I.A.No.299 of 2015 was filed under Order VII Rule 11 r/w Section 151 C.P.C to reject the plaint at the threshold, on the ground that there was no cause of action to claim damages for defamation as a civil wrong, in the absence of publication of defamatory allegations contained in the notice.

The respondent filed counter denying material allegations and raised a specific contention that the petitioner has no *locus standi* to issue notice, making such defamatory allegations against this respondent and sending notice through his counsel by registered post would attract defamation and prayed to dismiss the petition.

The Trial Court upon hearing argument of both the counsel, dismissed I.A.No.299 of 2015 observing that such question has to be decided after trial only, but not at this stage and held that the plaint cannot be rejected.

Aggrieved by the order of the Trial Court, the present civil revision petition is filed on various grounds, mainly on the ground that the plaint does not disclose cause of action and thereby, the plaint is liable to be rejected at the threshold by exercising power under Order VII Rule 11 C.P.C. But, the Trial Court did not

consider the request in proper perspective and committed an error in dismissing I.A.No.299 of 2015 and prayed to set-aside the same by allowing the civil revision petition by rejecting the plaint.

Learned counsel for the petitioner reiterated the contentions urged before the Court. Further, learned counsel for the petitioner would draw attention of this Court to the allegations made in the plaint, the basis for filing suit for damages, on the ground that the defamatory statement made in the legal notice addressed by the petitioner to the respondent's counsel. The plaint is totally silent as to the publication of such defamatory allegations in the entire plaint, which gives rise to cause of action to claim damages in the suit for the defamation.

The respondents counsel supported the order under challenge in all respects.

Section 499 of I.P.C. defines offence of defamation and it is as follows:

“499. Defamation:- Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1:- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

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

Explanation 3:- An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4:- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

Though definition of offence of defamation is not applicable to civil wrong, the ingredients of defamation under Section 499 I.P.C can be applied to civil wrongs.

Halsburys Laws of England, Fourth Edition, Vol. 28, defines 'defamatory statement' as under:

“A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of the society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling trade or business.”

While speaking about reputation, William Hazlitt observed *that a man's reputation is not in his own keeping, but lies at the mercy of the profligacy of others. Calumny requires no proof. The throwing out of malicious imputations against any character leaves a stain, which no after-refutation can wipe out. To create an unfavourable impression, it is not necessary that certain things should be true, but that they have been said. The imagination is of so delicate a texture that even words wound it.*

The word “defamation”, general term for words spoken (slander) or written (libel) to the prejudice of a person’s character, in such way as to support an action by such person against the speaker or writer.

Thus, any statement published if affects reputation of any person, it would amount to defamation (libel).

Defamation may contain either slander or libel.

In common law the origins of defamation lie in the torts of “slander” (harmful statement in a transient form, especially speech), each of which gives a common law right of action. Defamation in the general terms used internationally, libel is in written form. Libel and slander both require publication. The fundamental distinction between libel and slander lies solely in the form in which the defamatory matter is published. If the offending material is published in some fleeting form, as by spoken words of sounds, sign language, gestures or the like, then it is slander.

Libel is defined as defamation by written or printed words, pictures, or in any form other than by spoken words or gestures. Thus, criminal defamation may contain either “libel” or “slander”.

In **Gopinathan vs. Ramakrishnan**¹, the Kerala High Court held that, the act of any one who brings to the notice of another the libellous matter can be taken as publication. Therefore, a publication is to be construed in the contextual meaning to constitute an offence punishable under Section 500 I.P.C or a civil wrong which give rise to claim damages.

The word ‘defamation’, general term for words spoken (slander) or written (libel) to the prejudice of a person’s character, in such case as to support an action by such person against the speaker or writer. The term ‘publication’ is not specifically mentioned in Section 499 I.P.C.

In **SNM Abdi vs. Prafulla Kr. Mahanta and Ors.**², the Gauhati High Court held that the law regarding defamation is already settled. The law is that in order to be defamatory a

¹ 2002 (1) Cur Cri R 26 (Ker.)

² AIR 2002 Gau 75 at 76

publication must tend to lower the plaintiff in the opinion of men whose standard of opinion the Court can properly recognise, or tend to induce them to entertain an ill opinion of him. However, the plaintiff need not show a tendency of the imputation to prejudice him in the eye of every one in the community or all of his associates, but it is suffice to establish that the publication tends to lower him in the estimation of a substantial, respectable group, even though they are minority of the total community or of the plaintiffs associates. The law relating to defamation is a limitation upon the Constitutional guarantee of freedom of speech and of the press, and the vagaries and complex structure of such law, as it exists today, is to a large extent a direct result of the friction between them, as a restriction on untrammelled freedom of expression, and the highly cherished rights of freedom of speech and of the press. In any view of the matter, in the present facts of the case, the petitioner did not publish defamatory statement, except sending rejoinder to the reply notice to the legal notice sent by the second respondent and others, through her counsel. Therefore, it is difficult to conclude that, issue of notice would constitute a publication.

To constitute libel, there must be a publication. What is publication is not clarified anywhere.

In **B.P. Bhaskar v. B.P. Shiva**³, the accused was stated to have incorporated certain scurrilous imputations against the complainant in the notice issued by him. The notice so issued by the accused, it is said, had also been circulated to the friends and relations of the complainant. Consequently, it is said, the good

³ 1993 CrL.L.J 2685

name and fame enjoyed by the complainant was brought down and he was despised and neglected in many social functions by his close relatives and friends circle. But, the Madras High Court, by placing reliance on the judgment of the Kerala High Court in **P.R. Ramakrishnan v. Subbaramma Sastrigal**⁴ held that the sending of a communication to an advocate on behalf of his client is virtually a communication made to the client himself, as such there is no publication of the imputation concerning the client.

Similar question came up for consideration in **Ram S.S. Parihar v. Suniti Bhadauria and others**⁵, where a private complaint was filed for the offence punishable under Section 500 I.P.C and a process was issued by the Magistrate after taking the cognizance of the offence punishable under Section 500 I.P.C. When the matter reached the Additional Sessions Judge by way of revision, the Additional District Judge set-aside the order of issuing process by the Magistrate against the accused for the offence punishable under Section 500 I.P.C. Aggrieved by the order, revision was filed before the Bombay High Court. In the facts of the judgment, a notice was issued and to that, a reply was issued consisting of defamatory statement which is a libellous statement and the complainant claims that he is a businessman of repute and based on so called defamatory statement in the reply notice, the complainant filed a complaint for the offence punishable under Section 500 I.P.C, on the ground that reputation was badly effected on account of defamatory statement in the reply notice. But the respondent contended that issue of reply would not

⁴ AIR 1988 Ker 18

⁵ II (2007) DMC 567

constitute a publication and in the absence of any publication, it would not amount to libellous statement containing defamatory allegations and thereby, the petitioner is not liable to be proceeded for the offence punishable under Section 500 I.P.C. The Bombay High Court in paragraphs 13 & 14 of the judgment, held as follows:

13. Next, as far as this incident is concerned, on behalf of the accused, it is contended that there was no publication, even if it is considered that para 17 of notice dated 24.7.2004 contained defamatory statements since the said letter was sent by the Advocates of the parents of A1 /Smt. Suniti to the Advocate of the complainant. It is further submitted that in case Advocate Mr. Shrikant Nayak, on behalf of the complainant, chose to show the said letter to his junior or his office staff, A2/Shri Ravi and A3/Smt. Reena cannot be blamed for the same. On behalf of the accused, reliance has been placed on P.R. Ratnakrishnan v. S. Sastrigal and Anr. [AIR1988Ker18] , and also on [B.P. Bhaskar v. B.P. Shiva], wherein the decision in the first case has been followed.

14. As already stated, the said letter dated 24.7.2004 was sent as a reply to the notice dated 28.6.2004 sent on behalf of the complainant demanding from the parents of A1/Smt. Suniti the said sum of Rs. 3,91,253/- and the reply dated 24.7.2004 was sent on behalf of the said parents A2/Shri Ravi and A3/Smt. Reena by their Advocates. In my view, the said letter dated 24.7.2004, assuming it contained defamatory statements of the complainant was sent by the parents of A1/Smt. Suniti to the complainant himself, through their respective lawyers. There was no third person involved. In the first case of P.R. Ramakrishnan v. S. Sastrigal and Anr. (supra), it has been stated that sending of a communication to an Advocate on behalf of his client is virtually a communication made to the client himself and as such there is no publication of the imputation concerning the client. It may also be stated that in this case it was also held that a dictation given by a lawyer to his clerk and the transcription made by him of a per se libellous matter cannot amount to publication. The same view was followed in the second case of B.P. Bhaskar v. B.P. Shiva (supra), by the Madras High Court stating that the receipt of a notice by the complainant by itself is not sufficient to amount in law as "publication" and as such there was no cause for launching of the prosecution as no publication ensued. It may be noted that for Sections 499/500 to be attracted there must be making or publication of any imputation concerning any person by words either spoken or intended to be read, or by signs or by visible representations intending to harm, or knowing or having reason to believe that such imputation may harm the reputation of such person. In other words, for the offence of defamation to be completed there must be making or publication of an imputation concerning any person and the making or publication must be with intent to harm or knowing or having reason to believe that such imputation may harm the reputation of such person. The complainant tried to get out of this situation by making a

further allegation that when he went to meet the Advocate, his Advocate as well as his office staff started questioning him about the contents of the said notice and it was expressed by all of them that it was a heinous act on the part of the complainant and that the Junior Advocate, the staff of Advocate concerned appeared to have nursed a feeling of distress for the complainant, but the complainant failed to translate the said allegations in his statement on oath and all that he stated was that he was detained before Advocate S. Nayak, his family members and his staff and though he had requested Advocate S. Nayak to give a notice of defamation to the accused, he declined to do so. In fact, nothing prevented the complainant, to have examined either Advocate Nayak or for that matter his Junior Advocate or any member of his staff to substantiate what the complainant alleged in the complaint and unless the said allegations were translated into statement on oath there was no question of the learned J.M.F.C. having issued process against the accused and much less against Al/Smt. Suniti as far as the first incident was concerned.”

(emphasis supplied)

Similarly, in **C.H. Kadar and another v. Munnilakkath Valappil Fousia**⁶, while deciding an identical question regarding issue of notice containing defamatory statements held that when complaint filed alleging defamation through lawyer's notice and allegations in notice are sent through lawyer to complainant's lawyer be treated as allegations made to complainant herself, then the notice sent through lawyer does not diminish complainant's reputation in public. The Kerala High Court by placing reliance on **P.R. Ramakrishnan**⁴ and **Rev.Fr.Bernad v. Ramachandran Pillai**⁷, concluded that the allegation made in a reply notice sent to the counsel who issued a notice on behalf of the complainant would not constitute publication and thereby, it would not amount to defamation.

Yet, another circumstance came up for consideration before the Supreme Court in **M.C. Verghese v. T.J. Poonan and**

⁶ 1990 Cri.L.J 2356

⁷ 1986 KLT 1240

another⁸. In the facts of the above judgment, the respondent wrote three letters to his wife containing defamatory notes against appellant-father-in-law. The appellant filed complaint in Court of District Magistrate and District Magistrate discharged the respondent on ground that communication by husband to wife do not amount to 'publication' in law. The High Court stated that writing of defamatory matter contained in said three letters were not 'publication' in law and no charge under Section 500 be made out and discharged respondent . The appellant preferred revision before the Apex Court and claimed three letters to be admissible in evidence under Section 122. The Supreme Court observed prima facie case was set up in complaint made by respondent and that letters available for being tendered in evidence. Apex Court stated that Section 122 prohibits married person to disclose any communication made to him or her during marriage by his or her spouse except with consent of spouse and nowhere said Section prohibits admissibility of evidence in any other manner and held that, bar of inadmissibility to be adjudged in light of whether marriage subsisting or not at date of communication through letters and remanded the matter back, by setting-aside the order of the High Court. This principle was considered in **C.H. Kadar and another¹⁸** case, but the facts are totally different.

In view of the law declared by the Apex Court in then judgments referred supra, issue of notice by the counsel on behalf of his client to another counsel or a party would not constitute defamation, since there is no publication of such defamatory material. Hence, the Trial Court failed to consider the requirement

⁸ AIR 1970 SC 1876

to constitute defamation to enable the person who suffered damages to claim damages for such defamatory statement. In the absence of such publication of defamatory statement, there is no cause of action for the respondent who filed suit for damages based on notice containing alleged defamatory statement, issued by the learned counsel for the petitioner to the respondent. When the plaint, though, disclosed that, issue of notice was the date of cause of action. In fact, the cause of action in a suit for damages for defamation would arise only when the defamatory statement was published. In the absence of publication of defamatory statement in the entire plaint, the plaint shall be rejected at the threshold, by exercising power under Order VII Rule 11(a) C.P.C. The Trial Court did not consider the cause of action properly for claiming damages for making alleged defamatory statement in the legal notice issued by the counsel to the respondent's counsel and thus committed a serious error. Hence, the plaint is liable to be rejected.

In the result, the civil revision petition is allowed, while setting aside the order in I.A.No.299 of 2015 in O.S.No.159 of 2014 dated 20.07.2017 passed by the Senior Civil Judge, Shadnagar.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:27.02.2018

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