

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA No.6398 of 2017 (O&M)
Date of Order:17.02.2018

Luxmi Kant

..Appellant

Versus

Hans Raj Goyal and others

..Respondents

(2) RSA No.6468 of 2017 (O&M)

Luxmi Kant

..Appellant

Versus

Hans Raj Goyal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Gupta, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)
C.M.No.16588-C-2017
C.M.No.16694-C-2017

Prayer in these applications is for bringing on record the legal representatives of respondent nos.6 and 20.

For the reasons mentioned in the applications, which are supported by affidavits, the applications are allowed, subject to all just exceptions. The legal representatives mentioned in paragraph 2 of the applications are brought on record for the purpose of prosecuting this appeal only.

Main

By this judgment, this Court shall be disposing of two appeals arising out of a suit filed by the plaintiff claiming damages by way of defamation.

Plaintiff filed a suit claiming damages for defamation to the tune of Rs.10,00,000/-. Plaintiff claims that he is member of various organizations including permanent member of Sh. Vaishya Sabha registered Society. He has submitted that he was removed from the membership vide resolution dated 08.07.2007 and such resolution was circulated in the public and therefore he has been defamed.

Defendants, who are 22 in number contested the suit and pleaded that the resolution was passed after findings arrived at in civil suit as well as in the criminal case. It was further found that the plaintiff was acting against the interest of Sh. Vasihya Sabha registered Society, hence he was removed. Circulation of the copies of resolution in the city was denied.

Learned trial court after appreciating the evidence available on the file, decreed the suit for a sum of Rs.1,00,000/-. However, learned first appellate court after re-appreciating the evidence, dismissed the suit.

Learned first appellate court has dealt with the entire matter and has recorded the following findings:-

15. Plaintiff was a defeated candidate in the presidential election of Sh. Vaish Sabha while defendants were elected executive members of it. Defendants and plaintiff have formed two groups in Sh. Vaish Sabha and both of them have filed many cases against the members of other group. A careful perusal of record reveals that plaintiff has neither given the particulars of publication of defamation by the defendants in his pleadings nor in the evidence and only general and vague allegations have been leveled against all the defendants since neither any

date, month or year or place has been mentioned on which defendants have made publication nor it is mentioned that whether they made publication jointly or individually or in group nor it has been mentioned specifically whether publication was made orally or written. Order VII Rule 2, C.P.C. requires that a pleading should contain material facts on which the party relies for his claim or defence. Rule 4 requires that wherever necessary, particulars of such material facts shall also be given. Hence in an action for defamation, plaintiff has to give particulars as to when and where the libel or slander was published and the person to whom it was published. In such a suit the law requires that the plaintiff ought to allege the publication of the defamatory statement, set out the actual words used and also state that they were published or spoken to some individuals and specify the time and place when and where they were published. As discussed above in the instant case material facts qua defamation has not been pleaded which is serious lacuna in the case of the plaintiff.

16. Plaintiff has not produced any independent person of the society in whose presence publication to defame the plaintiff was made by the defendants and failed to prove that his reputation was lowered in the eyes of general public by the publication. PW4 Kamlesh Kumar and PW5 Parkash Chand Bansal are related to plaintiff/PW2

as admitted by him during cross examination. Moreover, they also not stated anything about how, when, where and in what manner defendants made publication, therefore, they cannot be relied upon.

17. Record further reveals that plaintiff has failed to prove that resolution dated 08.07.2007 was published by the defendants since the material by which said publication was made has not been produced and proved on record. Moreover, law is settled that justification of truth is an exception to defamation and if defendants proves that words used by him has truth in it then suit of the plaintiff for damages on account of defamation must fails. The case of the plaintiff is that defendants have passed a resolution dated 08.07.2007 vide which plaintiff was removed from the executive membership of the committee of Vaish Sabha by leveling allegation against him that plaintiff had filed a false civil case against Sh. Vaish Sabha and its elected members which was later on dismissed by the court and he also filed a false criminal case of a criminal breach of trust against them which was also found false during police investigation but still plaintiff is perusing the aforesaid case by filing protest petition. It is further case of the plaintiff that defendants after passing the said resolution started publicizing about the said resolution in the society which defiles the reputation of the plaintiff in the

public at large. Perusal of the record shows that resolution Ex P10 dated 08.07.2007 was passed by Vaish Sabha in general body meeting which was attended by its 61 members including defendants who were elected members of executive committee and it was duly signed by 61 members showing their presence at the time of passing the said resolution. Plaintiff has not challenged the resolution dated 08.07.2007 in the present suit as no relief to set aside it is prayed. Ex.D1 the orders dated 16.10.2008 passed by Sh. A.D.Diwan, the then learned Sub Divisional Judicial Magistrate Hansi shows that a private complaint filed by plaintiff/Laxmi Kant against Ram Bilas under section 409, 467,468,471,120-B IPC was dismissed at the stage of summoning. Ex.D2 further shows that on the complaint of plaintiff/Laxmi Kant an FIR No.267 dated 6.9.2003 was registered by the police but after thorough investigation his allegations were found false, therefore, police filed the cancellation report. Record further reveals that civil suit No.159-C/2007 was filed by Kamlesh Kumar relative of plaintiff (PW4 in the present case) against Vaish Sabha and Dev Raj Garg etc. but the same was dismissed as compromise vide orders dated 6.10.2010 passed by the court of Sh. Gagandeep Mittal, the then learned Civil Judge (Jr.Divn.), Hansi, therefore, all the allegations made in the resolution dated 8.7.2007 has truth in it in the light

of aforesaid documents. Therefore, even if for the sake of arguments, if we assume that defendants have made publication regarding resolution dated 08.07.2007 though there is no evidence in this regard, even then said publication comes within the exception of justification of truth and is a complete defence to the suit of the plaintiff for damages on account of defamation, therefore, plaintiff is not entitled for any damages and the suit of the plaintiff ought to have been dismissed by the trial court but the learned trial court has failed to appreciate the aforesaid vital aspect of the case and came to wrong conclusion as such findings of the trial court on issue no.1 is perverse and illegal and is hereby reversed.

This Court has heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellant has vehemently argued that removal of appellant from membership is one aspect, however, in the resolution defendants could not have commented upon the character of the appellant. He has further submitted that due to circulation of the resolution, the appellant suffered lot of humiliation and to prove that fact he has examined certain witnesses.

This Court has considered the arguments of learned counsel for the appellant.

This Court has also gone through the alleged resolution passed by Sh. Vaishya Sabha registered Society. A careful reading of the

resolution would prove that in first part, President of the Sh. Vaishya Sabha registered Society has informed the members present that the plaintiff and one Ram Chand are instigating various persons for filing false suits. In the second part of the resolution, it has been noticed that the plaintiff-appellant was involved in civil and criminal cases, which have gone against him and the Court has recommended to the police to take action against the plaintiff-appellant for filing a false and frivolous cases. It is further noticed that inspite of the aforesaid recommendation, plaintiff-appellant is continuing with false and baseless litigation.

In the considered opinion of this Court, such resolution which is based upon facts, not proved to be incorrect cannot be made basis for filing a suit for defamation. In a suit for damages for defamation, correct facts, is one of the defences available. Plaintiff has failed to prove that the facts as noticed in the resolution were incorrect.

Still further, learned first appellate court has noticed that the plaintiff has failed to prove that such resolution was circulated in the general public or was ever published. The court has further noticed that the witnesses examined by the plaintiff are related to him.

Such being the position, this Court does not find any good ground to interfere with the findings of fact arrived at by the learned first appellate court.

Both the regular second appeals are dismissed.

February 17, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No