

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE SIDE
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

FMAT 72 of 2023

CAN 1 of 2023

Soumendra Kumar Biswas
Vs.
Sheshadri Goswami & Ors.

Appearance:

For the Appellant : Mr. Jishnu Chowdhury, Adv.
Mr. Souradeep Banerjee, Adv.
Mr. S. K. Banerjee, Adv.
Ms. S. Sinha, Adv.

Judgment On : **18.10.2023**

Harish Tandon, J.:

Despite the service having effected upon the respondent there is no appearance on their behalf. The supplementary affidavit filed by the plaintiff/appellant containing various documents revealing that the address at which the service is effected is the address shown by the respondent and, therefore, the service should be treated to have been effected upon them.

We, thus, proceeded to dispose of the appeal in their absence as they did not appear despite the service having effected upon them.

The present appeal arises from an order dated 7th January, 2023 and 16th January, 2023 passed by the learned Civil Judge, Senior Division, 5th Court, Alipore in MS no. 13 of 2023 filed by the appellant claiming compensation/damages for the defamatory statement made against him by the defendants along with the permanent injunction restraining the defendant/respondent from publishing and/or approaching the persons of the society with the notion that the plaintiff has been disclosed in relation to the affairs of the then company in which he held the post of a Director. The entire claim in the plaint is founded upon a purported letter dated 1st December, 2022 claimed to have been issued by the Defendant no. 1 to the learned Public Prosecutor, High Court, Calcutta, Mr. Bijon Nag (Chairman, IFB Group) and the plaintiff (Director of IFB Group). In the said letter, the said Respondent no. 1 expressly averred that the several Criminal cases which are mentioned therein are filed with ill motives motivatedly in order to stop the hearing of the pending cases in the Trial Court being Case no. 287 GR no. 1881 arising out of Shakespeare Sarani Police Station. It is categorically asserted that the plaintiff along with the other persons named therein intended to jeopardise the Respondent no. 1 & Ors. by filing the false case one after another and, therefore, appropriate steps are to be taken so that all those matters which are pending, as mentioned therein may be listed urgently for hearing. The aforesaid statements and the demeanour of the respondents herein have a larger impact on the reputation acquired by

the plaintiff/appellant during his service career and also in a public and private life as approaches are made to the relatives, friends and the right thinking persons who always have a due regard for the plaintiff/appellant.

The facts, as unfurled, from the plaint are that on the basis of the written complaint lodged by the Respondent no. 1 on behalf of the IFB Investors Forum before the Shakespeare Sarani Police Station being Case no. 287 of 2015. An investigation was conducted by the police and ultimately no prima facie materials were unearthed which would amount to proving all the charges levied against the plaintiff/appellant. The final report was submitted before the Chief Metropolitan Magistrate at Calcutta and by an order dated 01.06.2017 the said Judicial Officer accepted the closer petition while dropping the proceedings. The said order was challenged before the High Court by the Respondent no. 1 on behalf of the IFB Investors Forum in revision which was registered as CRR no. 646 of 2018 which was disposed of granting liberty to file an application under Section 173(8) of the Code of Criminal Procedure. Pursuant to the said liberty having granted a protest petition was filed by the Respondent no. 1 on behalf of the said forum for further investigation into the matter. The said protest petition was further replaced by another protest petition by the Respondent no. 1 claiming himself to be the Secretary of the other forum without serving a copy thereafter upon the plaintiff/appellant.

Suppressing the entire fact, another complaint case was registered with the Chief Metropolitan Magistrate at Calcutta against the appellant and Ors. making the self same allegations which gave rise to registration of the

Shakespeare Sarani Police Station Case no. 287 of 2015, which was dismissed by the said Chief Metropolitan Magistrate on concealment of material facts. The plaint further proceeds to disclose that several affidavits are filed in the criminal revision which are pending before this Court wherein the Respondent no. 1 claimed authority to represent the forum and ultimately in a Writ Petition no. WPA 19795 of 2022 the High Court observed that there is no existence of any registered society or firm or organization under the name and style of IFB Investors Forum yet the respondents are continuing and claiming such authority on behalf of the aforesaid forum. It is further disclosed in the plaint that a suit was instituted by the IFB Industries Ltd. against some of the respondents being Title Suit no. 1651 of 2022 in the Court of Civil Judge, Senior Division, 5th Court, Alipore and an order of injunction restraining the respondents from using the name of IFB Forum was passed on 06.12.2022. It is stated that by a letter dated 01.12.2022 being a motion letter was circulated by e-mail containing the scurrilous and defamatory statement that the plaintiff has percolated a ill motive in order to stop the hearing of the pending cases. It is further stated that the respondents have caused such letter in circulation both physical and through internet portals to many friends and acquaintance of the plaintiff/appellant raising a question on the honesty and integrity which the plaintiff/appellant possessed and, therefore, they should be restrained from circulating the said letter being per se defamatory.

On the backdrop of the aforesaid facts, an application for temporary injunction was filed seeking a restraint order against the respondent and by the impugned order the Court refused to pass an ad interim order of injunction solely on the ground that the moment plaintiff/appellant can be adequately compensated in terms of the money, the injunction should not be passed. Interestingly, the Trial Court even after having observed that although the plaintiff has been suffering more or less because of such action of the respondent yet he can be compensated in terms of money.

At the very outset this Court must record that in a suit based on defamation though the compensation are claimed in the monetary form yet there is no impediment on the part of the Court to grant an injunction as the continuing wrong has a larger impact on the reputation of a person which he possessed in the society and in the eyes of his acquaintances. The Apex Court in ***Subramanian Swamy vs. UOI, reported in (2016) 7 SCC 221*** held that though Article 19 (1) (a) of the Constitution of India gives a fundamental right of speech and expression yet it is circumscribed with certain reasonable restrictions as the freedom of speech cannot be regarded as so righteous that it would make the reputation of another individual absolutely ephemeral. It is further held that the Court when called upon to decide the case of such nature, a balance between the fundamental rights and the reasonable restrictions imposed by the statutory provisions is required to be made in this regard. It is no doubt true that the right to freedom of speech and expression is always regarded not only a

Constitutional right but a right inhered in every human yet, such right is not absolute or inchoate as it is circumscribed with reasonable restrictions. It is thus held that the balancing of a fundamental right with the reasonable restriction is an inviolable constitutional necessity in the following:

“144. The aforementioned authorities clearly state that balancing of fundamental rights is a constitutional necessity. It is the duty of the Court to strike a balance so that the values are sustained. The submission is that continuance of criminal defamation under Section 49 IPC is constitutionally inconceivable as it creates a serious dent in the right to freedom of speech and expression. It is urged that to have defamation as a component of criminal law is an anathema to the idea of free speech which is recognised under the Constitution and, therefore, criminalisation of defamation in any form is an unreasonable restriction. We have already held that reputation is an inextricable aspect of right to life under Article 21 of the Constitution and the State in order to sustain and protect the said reputation of an individual has kept the provision under Section 499 IPC alive as a part of law. The seminal point is permissibility of criminal defamation as a reasonable restriction as understood under Article 19 (2) of the Constitution. To elucidate, the submission is that criminal defamation, a pre-constitutional law is totally alien to the concept of free speech. As stated earlier, the right to reputation is a constituent of Article 21 of the Constitution. It is an individual’s fundamental right and, therefore, balancing of fundamental right is imperative. The Court has spoken about synthesis and overlapping of fundamental rights, and thus, sometimes conflicts between two rights and competing values. In the name of freedom of speech and expression, the right of another cannot be jeopardised. In this regard, reproduction of a passage from Noise Pollution (5), in re would be apposite. It reads as follows: (SCC p. 746, para 11)

“11. ... Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. While one has right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears of mind of others. Nobody can indulge in aural aggression. If anyone increases his volume of speech and that too with assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution free life guaranteed by Article 21. Article 19 (1) (a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21. We need not further dwell on this aspect. Two decisions in this regard delivered by the High Courts have been brought to our notice wherein the right to live in an atmosphere free from noise pollution has

been upheld as the one guaranteed by Article 21 of the Constitution. These decisions are Free Legal Aid Cell Shri Sujan Chand Aggarwal v. Govt. (NCT of Delhi) and P.A. Jacob v Supt. Of Police. We have carefully gone through the reasoning adopted in the two decisions and the principle of law laid down therein, in particular, the exposition of Article 21 of the Constitution. We find ourselves in agreement therewith."

We are in respectful agreement with the aforesaid enunciation of law. Reputation being an inherent component of Article 21, we do not think it should be allowed to be sullied solely because another individual can have its freedom. It is not a restriction that has an inevitable consequence which impairs circulation of thought and ideas. In fact, it is control regard being had to another person's right to go to court and state that he has been wronged and abused. He can take recourse to a procedure recognised and accepted in law to retrieve and redeem his reputation. Therefore, the balance between the two rights needs to be struck. "Reputation" of one cannot be allowed to be crucified at the altar of the other's right of free speech. The legislature in its wisdom has not thought it appropriate to abolish criminality of defamation in the obtaining social climate."

In an earlier decision rendered in case of **John Thomas v. Dr. K. Jagadeesan reported in (2001) 6 SCC 30** the Apex Court was considering a matter where a hospital in the metropolitan city (Chennai) was sought to be defamed by publishing an article in the newspaper concerning the trafficking of the human kidneys.

On the conspectus of the aforesaid case it is held:

"10. Shri Sivasubramaniam, learned Senior Counsel for the appellant contended that the imputations contained in the publication complained of are not per se defamatory. After reading the imputations we have no doubt that they are prima facie libellous. The only effect of an imputation being per se defamatory is that it would relieve the complainant of the burden to establish that the publication of such imputations has lowered him in the estimation of the right-thinking members of the public. However, even if the imputation is not per se defamatory, that by itself would not go to the advantage of the publisher, for, the complaining person can establish on evidence that the publication has in fact amounted to defamation even in spite of the apparent deficiency. So the appellant cannot contend, at this stage, that he is entitled to discharge on the ground that the imputations in the extracted publication were not per se defamatory."

Much prior thereto the Division Bench of the Calcutta High Court in ***W. Hay & Ors. vs. Aswini Kumar Samanta, reported in AIR 1958 CAL 269*** was considering a case relating to tarnishing of the reputation through a libel action and held that innuendo must be set out in clearer and specific terms with more precision that the words used in the context is defamatory on the face of the words used in a particular context. The Division Bench further highlighted that there may be a case that the words are used in the context of the modern times and, therefore, making it difficult to hold that it would harm the reputation but if it is apparent from the bare reading of such statement that it would harm the reputation amongst the fellow members or a right thinking people it would constitute an act of defamation and the Court can pass an order of injunction.

The Single Bench of High Court, Delhi in a recent decision rendered in case of ***Vinai Kumar Saxena vs. Aam Aadmi Party & Ors. reported in 2022 SCC Online Del 3093***, held that the right to freedom of speech and expression is not an unfettered right in juxtaposition with the defamatory statements impacting the reputation of a person. It is further held that if the Court is of the view that the statements are per se defamatory and devoid of any truth, there is no fetter on the part of the Court to grant injunction in the following:

30. On a prima facie view, the various statements/interviews/press conferences/tweets/retweets/hashtags made by the defendants are per se defamatory. The same have been made in a reckless manner, without any factual verification, in order to tarnish the reputation of the plaintiff. It cannot be gainsaid that reputation of a person is earned after years and the same cannot be tarnished by any other individual in a casual manner.

The damage caused to the reputation of an individual is immediate and far-reaching on the internet. So long as the impugned content continues to be in circulation and visible on social media, it is likely to cause continuing damage to the reputation and image of the plaintiff. Balance of convenience is in favour of the plaintiff and against the defendants. Grave and irreparable harm and injury would be caused to the reputation of the plaintiff if the aforesaid defamatory content continues to exist on the internet and the social media platforms of Defendants 7 and 8/or if the defendants are permitted to continue making defamatory statements of this nature against the plaintiff.”

The law as enunciated in the above reports leaves no ambiguity in our mind that the Court is not denuded of power to grant injunction in a defamation suit containing the monetary relief. It is not an absolute principle that the moment the harm and injury suffered by a person can be compensated in monetary form, it creates a bridle in the Court to pass an injunction. The reputation of a person is one of the primary factor which weighs in the society and any attempt either by a spoken word or publication or letters circulated through internet portal on the basis of an unsubstantiated and false allegation can be restrained. The right to freedom of speech and expression though fundamental right is not an inviolable right but circumscribed by a reasonable restriction having a fundamental right of right to freedom of speech and expression into an individual does not confer such right in absolute form if it tarnishes the image and reputation of a person which he owes the society and therefore, a balancing is required in this regard.

The facts narrated hereinabove obviously goes to show that despite having unsuccessful, an attempt is made to tarnish the reputation of the plaintiff/appellant not only by causing a letter but circulating the same

amongst the friends and right thinking persons in the society by the use of the electronic mode. The expression “ill motive” demeans the person and affects the reputation without any supporting document in this regard when admittedly all the proceedings initiated ended in favour of the plaintiff/appellant. Even a misfeasance proceeding initiated under the Companies Act at the behest of the official liquidator against the plaintiff/appellant was dismissed as no evidence in this regard was found.

We, therefore, find that the order of the Trial Court cannot be sustained.

There shall be an ad interim order of injunction restraining the defendant/respondent from posting the said letter dated 01.12.2022 either in a physical form or in electronic form by use of the internet portal for a period of 10 weeks from date or until further order, whichever is earlier.

The Trial Court is directed to dispose of the application for temporary injunction after completion of the service and giving a liberty to the defendants to contest the same by filing affidavits as expeditiously as possible. In the event the application for temporary injunction cannot be disposed of within 10 weeks from date.

It is upon to the Trial Court to extend, vary or refuse to extend the *ad interim* order of injunction granted by this Court upon hearing the respondents if the circumstances so warrant without any further reference to this Court.

With these observations the appeal and applications are disposed of.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)