

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

CS/235/2007

SIDDHARTHA MITRA
VS
PRATIDIN PRAKASHANI LTD. & ORS.

For Plaintiff : Mr. Domingo Gomes, Adv.

Hearing concluded on : 06.02.2024

Judgment on : 21.02.2024

Sugato Majumdar, J.:

This is a suit for defamation.

The plaint case in nutshell is that the Plaintiff is an advocate practicing in Calcutta High Court since 1983. He has obtained his honours degree in law from the London School of Economics & Political Sciences (University of London) in the year 1981 and was thereafter called to the Bar from the Lincoln's Inn in United Kingdom. Subsequently, the Plaintiff became a member of Bar Library Club, Calcutta High Court and also became a member of High Court Club, Calcutta. The Plaintiff is also a member of several clubs in Kolkata and has a wide circle of friends and relatives. He is highly respected in his society.

Defendant No. 1 is a Bengali Daily. Defendant No. 2 is the editor, printer and publisher of the Defendant No.1. It is averred in the plaint that the Defendant No. 1 published a news item on 1st September, 2007 bearing a heading and purported to convey that the Plaintiff subjected his father to cruel treatment and tortures. The Plaintiff is not regular reader of the Bengali Daily “Sangbad Pratidin” but came to know about the publication from his friends and associates. The Plaintiff caused a letter dated 5th September, 2007 to be issued by his advocate to the Defendant No. 1 and 2 setting out the true and correct facts. In spite of issuance of said letter the Defendant caused another news item to be published in the Bengali Daily “Sangbad Pratidin” on 5th September, 2007 bearing and heading purporting to say that the old father was tortured which was being investigated by the police. According to Plaintiff the news articles published in the “Sangbad Pratidin” on 1st September, 2007 and 5th September, 2007 were false and were contained in malicious/false suit calculated to vilify the Plaintiff and his wife and lower the esteem of the Plaintiff as well as his wife in his society. It is averred in the plaint that the news item conveys the impression to the readership that the Plaintiff is an ungrateful son who is avaricious, motivated by greed for which he subjected his aged father to untold misery, suffering, mental grief and agony. But for such publication, the Plaintiff has suffered considerable distress, mental anguish, embarrassment and humiliation as well as serious injury to his character, credit and reputation; the Plaintiff is exposed to public scandal and contempt. The Plaintiff’s letter to the Defendant No. 1 was replied by the Defendant without ameliorating the predicament. Therefore, the Plaintiff is constrained to file the instant suit praying for decree of Rs.10 Crores as damages; alternatively, enquiry to ascertain the damages suffered by the Plaintiff

and decree for such damages; injunction restraining the Defendants and their agents from publishing, printing or circulating any words defamatory to the Plaintiff along with other prayers.

Summons were served upon the Defendants who appeared in the suit on 22.02.2008 but did not file any written statement till 2nd March, 2023, that is to say for 15 years. Accordingly, the suit was heard as undefended.

The Plaintiff adduced oral as well as documentary evidences.

The Learned Counsel for the Plaintiff as well as the Plaintiff argued that the news items are defamatory and published with ill-motive to vilify the Plaintiff and lower the estimation of the Plaintiff in his society. The news items are false which is evidenced by the letters written by the brother and sister of his father as well as by other persons. The Plaintiff is a reputed and highly educated lawyer with long standing practicing history in the Calcutta High Court. Such reckless statements would in all possibilities, injured the reputation of the Plaintiff. Although special damages is not prayed for, the Plaintiff is definitely entitled to general damages and injunctive relief, as prayed for.

Ext.A is the news item published in Bengali Daily “Sangbad Pratidin” on 01.09.2007. There is a bold headline “Father of Barrister son tormented”. The content of the news item is that the 79 years old father is being tortured daily both physically and mentally by his only son and the son’s wife. The Plaintiff and his wife are named by the father. It is in the news item that in spite of approach to different authorities and police there was no redressal of grievance of the father and the seventy nine years old father is deprived of justice. The news item quoted

the statements of Tarun Kumar Mitra purporting to say that he had been tortured by the Plaintiff and his wife but none came to rescue him. In spite of his repeated approach to the Commissioner of Police, Deputy Commissioner and Phoolbagan Police Station nothing fared.

The second news item is Ext.B which was published in the Bengali Daily “Sangbad Pratidin” on 05.09.2007. The news item had a bold headline “Inflicting torture on old father - Police is investing the matter.” This news item states that for last seven years a senior citizen Tarun Kumar Mitra did not get justice in spite of numerous complaints to the authorities against such tortures perpetrated upon him by his son and daughter-in-law. It is also in the report that the Plaintiff and his wife implicated the cook of his father in false criminal case. This news item refers to a complaint wherein Tarun Kumar Mitra alleged various incidents of torture perpetrated upon him.

These publications were objected to by the Plaintiff through his Learned Counsel in terms of Ext.D being a letter dated 7th September, 2007. A reply was made from the Defendant to their counsel Late Mr. Gitanath Ganguly bearing dated 20th September, 2007 wherein it is stated that the reports are fair and accurate and based on materials-on-record. It is also mentioned in the reply by Late Mr. Ganguly that the report is based on photo copies of documents provided by the said complainant Tarun Kumar Mitra. In substance publications were justified as true, as such, not defamatory.

Ext.F is a letter written by Smt. Bithika Bose, sister of Tarun Kumar Mitra, the father of the Plaintiff alleging falsity of the news items. Ext.G is a letter written in Bengali address to the editor of “Sangbad Protidin” written by the

teachers of a Kinder Garden School. This letter contains specific statement that the news items convey false impression based on false facts. Ext.H is another letter written by the workers of Indian Steam Laundry. This letter also specifically contends that the articles in questions are false. Ext.E is a letter dated 10th September, 2007 written by the brother of Tarun Kumar Mitra addressed to the editor of “Sangbad Pratidin” objecting to the news items. All these letters purport to say that the reports were made the newspaper reports dated 1st September, 2007 and 5th September, 2007 are not only false but were published without ascertaining any truth of it.

What is important to consider, is the manner and mode of publication and its tenor. Tarun Kumr Mitra, the father of the Plaintiff, might had allegations against his son or daughter-in-law. He might have made allegations or complaint against them before the authority and it might be that the authorities have not taken any steps. But still then all these were in the level of allegations without being proved in adjudicatory process. The news items were catered in a way as if the allegations are true; as if in spite of being tortured physically and mentally by a Barrister son and his advocate wife, the old father is helpless and crying for justice and lost in wilderness. The bold headings of the reports convey to the mind of a people, whoever read it, supported by the contents of the items that a father is a septuagenarian old man being tortured for long by his son and his wife who are practicing advocates.

Observation of the House of Lords in **Lewis Vs. Daily Telegraph Ltd. [(1964) A.C. 234]** may be referred to in this context. In this case on 23rd December, 1958 two national newspapers published on their front pages,

paragraphs headed respectively “Inquiry on “Firm by City Police” and “Fraud Squad Probe Firm,” which stated in substance that the Police were inquiring into the affairs of a limited company of which one J. L. was chairman.” The defendants did not deny that the words in their ordinary meaning were defamatory but pleaded justification. The Trial Court awarded damages. An appeal was heard against the judgment of the Trial Court, by the House of Lords. The Appeal was dismissed. Lord Reid observed:

“What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning. Here there would be nothing libelous in saying that an inquiry into the appellants' affairs was proceeding: the inquiry might be by a statistician or other expert. The sting is in inferences drawn from the fact that it is the fraud squad which is making the inquiry. What those inferences should be is ultimately a question for the jury, but the trial judge has an important duty to perform.”

His Lordship further continued to observe that there is a great difference between saying that men have behaved in a suspicion manner and that he is guilty of an offence. His Lordship further elaborated:

“Before leaving this part of the case I must notice an argument to the effect that you can only justify a libel that the plaintiffs have so conducted their affairs as to give rise to suspicion of fraud, or as to give rise to an inquiry whether there has been fraud, by proving that they have acted fraudulently. Then it is said that if that is so there can be no difference between an allegation of suspicious conduct and an allegation of guilt. To my mind, there is a great difference between saying that a man has behaved in a suspicious manner and saying that he is guilty of an offence, and I am not convinced that you can only justify the former statement by proving guilt. I can well understand that if you say there is a rumour that X is guilty you can only justify it by proving that he is guilty, because repeating someone else's libellous statement is just as bad as making the statement directly. But I do not think that it is necessary to reach a decision on this matter of justification in order to decide that these paragraphs can mean suspicion but cannot be held to infer guilt.”

Lord Morris of Borth-y-Gest in this case observed that it is a grave thing to say that someone is fraudulent and it is different thing to say that someone is suspected of being fraudulent. As His Lordship phrased:

“My Lords, words are but instruments which men use to express and convey their meanings. The learned judge asked the jury to say what meanings the words in question would convey, not to people with some special or particular knowledge, but just to ordinary men and women going about their ordinary affairs. It

is in this sense that in defamation cases the phrase “natural and ordinary meaning” (which may include an implied or indirect meaning) is used. Not resting upon any technical process of analysis or construction, nor upon a process of critical reading, the inquiry is as to what meanings are conveyed to hearers or readers by the medium of words. This is a matter for the jury, though a jury must not be asked to consider a meaning which the words in question are not reasonably capable of bearing.”

In *Charleston and Another Vs. News Group Newspapers Ltd. and Another* [(1995) 2 AC 65 (HL)] the question was whether the newspaper article along with the headline and photographs were defamatory or not. Plaintiff’s suit for defamation was dismissed by the as being not defamatory. The Appeal of the Plaintiff was also dismissed. However, observations made by Lord Bridge of Harwich is relevant:

“Whether the text of a newspaper article will, in any particular case, be sufficient to neutralise the defamatory implication of a prominent headline will sometimes be a nicely balanced question for the jury to decide and will depend not only on the nature of the libel which the headline conveys and the language of the text which is relied on to neutralise it but also on the manner in which the whole of the relevant material is set out and presented. But the proposition that the prominent headline, or as here the headlines plus photographs, may found a claim in libel in isolation from its related text, because some readers only read headlines, is to my mind quite unacceptable in the light of the principles discussed above.”

In the instant case the Defendants plea, as manifest in the Advocate's letter (Ext.I), is truth. What is typical and specific of the news items are the very manner of catering. As stated above, these news items with bold headlines conveys that an octogenarian father is being tortured and tormented by his Barrister son and daughter-in-law and the old man is not getting any redressal from any authority, although complaint of. It not only creates suspicion but also implicates the Plaintiff in the alleged act as if the same is true. Truth is that allegations are made which are yet to be proved. What may be the facts are making of allegations to authorities or possible enquiries but the contents of the allegations are not facts because there to be proved. The news items published the news in a manner as if the same is true. It is not mere a creation of suspicion but stigmatizing someone with derogatory and libelous statements. It is to indicate that the Plaintiff had tortured his octogenarian father and now police is investigating. Even though the Defendants have not come forward to contest the suit by filing the written statement yet a defense was truth taken by them. That defense is no longer applicable. The news items would clearly convey in the mind of ordinary man, far more than mere suspicion but impression that they have actually perpetrated tortures which demands interference of police. These reports would definitely injure the reputation of the Plaintiff and would affect his standing in the society being vilified with such calumny. Such impression is evidenced by the latest written by the brother of the old man Tarun Kumar Mitra (Ext.E), Sister Bithika Bose (Ext.F) and outsiders (Ext.G & H). They expressed their shock and dismay. Obviously, the news items with such contents would paint a negative image of the Plaintiff and would definitely lower his esteem in his society as being one with downgraded moral and humanitarian value. This is

defamatory. It is established that the statements published in the Bengali Daily “Sangbad Pratidin” on 1st and 5th September, 2007 are libelous and the Plaintiff is entitled to general damage for such publication.

In view of discussions, made above, the instant suit succeeds.

It is ordered, therefore, that the instant suit be allowed.

The Plaintiff do get a decree of Rs.1,00,000/- as the general damages payable jointly and severally by the Defendants. The Defendants, as well as their servants and agents, are hereby restrained by permanent injunction from publishing any news or articles similar to the present one or any other defamatory news item regarding the Plaintiff.

In case the said amount of Rs.1,00,000/- is not paid within two months of drawing up of the decree, the Plaintiff shall be at liberty to put the decree in execution.

Appropriate Court Fees be paid, if not paid.

The instant suit is disposed of along with applications, if any.

(Sugato Majumdar, J.)