

**P. Lankesh and Another Vs. H. Shivappa and Another**

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**Court :** Karnataka

**Decided On :** Jul-27-1994

**Reported in :** 1996(1)ALT(Cri)231; 1994CriLJ3510; ILR1994KAR2410; 1994(4)KarLJ295

**Judge :** S. Venkataraman, J.

**Appeal No. :** Crl. Petn. No. 1671 of 1993 (To set aside order of JMFC, Davanagere, in C.C. No. 2203 of 1992)

**Appellant :** P. Lankesh and Another

**Respondent :** H. Shivappa and Another

**Advocate for Def. :** S.S. Koti, Adv.

**Advocate for Pet/Ap. :** S. Shankarappa, Adv.

**Judgement :**

ORDER

1. The first petitioner who is the printer, editor and publisher of a news magazine of Lankesh Patrike, in whose magazine an article containing alleged defamatory imputations against the respondent complainant written by the second petitioner is stated to have been published and the 2nd petitioner are being prosecuted by the respondent for an offence under section 500 I.P.C. in the court of the J.M.F.C., Davanagere. The respondent lives in Davanagere and the Bharda Sugar Factory,

of which he is the chairman, is also located in Davanagere taluk. The alleged defamatory article refers mainly to the respondent's conduct as chairman of the said sugar factory.

2. The petitioner, by an application under section 177 read with Section 179 Cr.P.C., contended that as the news magazine was admittedly printed and published at Bangalore the offence has been completed at Bangalore and the Court at Davanagere had no jurisdiction to try the case merely because the complainant resides there or that the article is read there. The respondent who had alleged in the complaint that the news magazine is widely read throughout the State, in his objections to the application filed by the petitioners clarified that the paper is circulated throughout the State and that even the edition containing the defamatory article was circulated at Devanagere.

3. The learned Magistrate after hearing both sides held that the court had jurisdiction as the defamatory article is stated to have been published in Devanagere by the circulation of the particular issue and also as the harm to the reputation of the complainant had occurred within the jurisdiction of that court.

4. The petitioner who are aggrieved by the order of the Magistrate have questioned its correctness in this petition.

5. The learned Counsel for the petitioner relying entirely on the decision in C. S. Sathya v. State of Karnataka, (1993) 1 Kant LJ 56 : (1994 Cri LJ 1954) (Kant) contended that as the alleged offence was completed by the printing and publishing of the news magazine at Bangalore, the Court at Davanagere will not have jurisdiction to try the offence merely because the paper might have been read or circulated within the limits of that jurisdiction of that Court.

6. The learned Counsel for the respondent contended that the consequence of defamatory article namely harming reputation of the respondent has taken place in Devanagere, where the respondent lives and the sugar factory is located and that as such by virtue of Section 179 Cr.P.C. Davanagere Court has jurisdiction. He further contended that in the case of newspaper, though it may be printed and published at one place, wherever the paper containing the defamatory article is

sold or circulated the defamatory article gets published at each such place and the court having jurisdiction over that place can try the offence under section 500 IPC. He submitted that the decision in C. S. Sathya's case (1994 Cri LJ 1954) is restricted to the facts of that case and that it cannot be taken to lay down a proposition of law that even if the newspaper containing defamatory article is sold and circulated at a particular place other than the place where it is printed and published, the court having territorial jurisdiction over such other place will not have jurisdiction to try the offence under section 500 IPC. He cited some authorities in support of this contention.

7. To attract Section 179 Cr.P.C., the ensuing consequence of the act done must be an integral part of the offence. To constitute the offence of defamation the ingredients required to be proved are; (1) making or publishing any imputation concerning any person;

(2) such imputation must have been made :

(i) by words either spoken or intended to be read or;

(ii) by signs or;

(iii) Visible representation;

(3) such imputation must have been made with the intention of harming or with knowledge or having reason to believe that it will harm the reputation of the person concerning whom it is made.

8. The intention has to be gathered from the nature of the imputation itself. If the natural result of the imputation is harming of the complainant then intention to harm has to be inferred. To complete the offence of defamation it is not necessary to show that the reputation was actually harmed. As such Section 179 Cr.P.C. cannot be pressed into service in a case of this type.

9. The important question which arises is as to where a defamatory imputation in any newspaper can be said to have been published. One of the essential ingredients of the offence is publication of the defamatory imputation. In the case

of a newspaper which contains the defamatory article and which is circulated or sold at various places can the publication be said to be done only at the place where the newspaper has its printing and publishing office or whether the publication can be said to have been done in all places where the newspaper is circulated or offered for sale.

10. In Chambers 20th Century Dictionary, the meaning of the word 'publish' is given as 'to make public, to divulge, to announce, to proclaim, to send forth to the public, to put forth and offer for sale any article, new books, newspapers, to put into circulation'. The word 'publish' is used in Section 499 IPC in its ordinary sense. It cannot be said that the act of publication comes to an end as soon as one issue of the newspaper is released at one place. If that newspaper is despatched by the printer and publisher to other places for being sold or circulated the defamatory article gets published at each such place. Mere fact that the headquarters of a newspaper is based at a particular place or that it is printed and published at one place does not necessarily mean that there cannot be publication of defamatory article contained in the paper at another place. If the defamatory imputation is made available to public at several places then the offence is committed at each such place. Though the first offence may be committed at the place where it is printed and first published, it gets repeated wherever the newspaper is circulated at other places. I may refer to some of the decided cases on this aspect. The earliest case is that of *Queen Empress v. Girja Shankar Kashiram* (ILR 15 Bom 286). In that case an issue of a newspaper printed and published in Bombay was sent to certain person at Ahmedabad. The Bombay High Court held that the editor and proprietor of the newspaper is responsible for the circulation of newspaper in Ahmedabad of such copies of the paper as have been so sent. It was held that there was a publication of the defamatory article in Ahmedabad. In *Emperor v. Jhabbar Mal* : AIR1928 All222 relying on the decision in *Girjashankar's* case it has been held that, to prove publication of libel through newspaper it is sufficient to prove that the paper was delivered within the postal area over which the court had jurisdiction and it need not be proved that the article was read by some particular person.

11. In *Munithayamma v. Muddobalappa* (AIR 1955 Mys 135) : (1955 Cri LJ 1512) a plaint in a suit containing defamatory allegations was filed in the court at Chikkaballapur and the copy of the plaint was served on the defendant at Devanahalli. The erstwhile High Court of Mysore held that the complaint for the offence punishable under section 500 can be filed either in the Magistrate's court at Chikkaballapur where the defamatory matter was written and published or in the court of the Magistrate within whose jurisdiction the said matter was again published by serving a copy of the plaint.

12. *Chellappa Pilla v. Karanjia* (1962 (2) Cri LJ 142) (Ker) it has been held at p. 142 as hereunder :

'To maintain a prosecution for defamation in a particular court there must be publication of that court. Where it is a publication of a newspaper containing the libel it is sufficient to prove that the paper was delivered within the territorial jurisdiction of the court and it need not be proved that the libellous matter was seen or read by any particular person as in the case of a letter. Newspaper is a commodity printed for the purpose of being read and it can be presumed that it was so read.'

13. In *Sunilakhaya Chowdhury v. H. M. Jadwet* : AIR1968 Cal266 an issue of a Bengal weekly published in Calcutta contained a defamatory article regarding the complainant. The complainant filed the complaint in the court at Port Blair stating that the court at Port Blair had jurisdiction to entertain the complaint as the accused had made and published the article and circulated for sale the paper at Port Blair. The Calcutta High Court has held that the gravamen of the question of jurisdiction is the test of publication and that where a defamatory statement is published in newspaper it is sufficient to prove that the paper was delivered within the jurisdiction of that Court.

14. This Court in Cr.R.P. No. 185 of 1970 (*Venkateshmurthy v. State of Mysore* - reported in 1970 Short Notes of Recent Decisions Item 204 page 94) has held that though newspaper might have been printed outside the jurisdiction of the court, if it is alleged that the publication and circulation of the paper was made within the jurisdiction of the court, the court has jurisdiction to try the complaint. In that case

a complaint was filed against the accused who was an editor of the newspaper which was printed and published at Bangalore in respect of an article containing imputations concerning the complainant in the court of Magistrate at Hassan. The Magistrate held that he had no jurisdiction to try the case as the paper had been printed at Bangalore. That order was set aside by this Court.

15. In *Dr. Subramaniam Swamy v. Prabhakar S. Pai* (1984 Cr LJ 1329) (Bom) an alleged defamatory statement was made by the accused in press conference called by him at Chandigarh. The said defamatory statement was reported in Delhi edition of Indian Express. That Delhi edition of Indian Express was circulated for sale at Bombay. The complainant filed the complaint for the offence under section 500 I.P.C. in the court at Bombay. The jurisdiction of the court at Bombay to try the offence was challenged before the Bombay High Court and the main ground urged was that as the statement was made at Chandigarh and the publication took place at Delhi the court at Bombay had no jurisdiction. The contention was negatived and it was held that the Indian Express in which the impugned news item was published was circulated and read in the city of Bombay where the complainant was residing, that the consequence of the statement made at Chandigarh had been completed at Bombay by circulation of the said newspaper and therefore the offence of defamation was completed in city of Bombay. It was held that the courts both at Bombay and Chandigarh had jurisdiction to entertain the complaint. In *Sardar Diwan Singh Magtoon v. Emperor* (AIR 1935 Nagpur 90) : 36 Cri LJ 744) it has been held that every publication or circulation of libel constitute a fresh and distinct act and therefore a separate offence.

16. The above authorities would clearly indicate that where a newspaper containing a defamatory article printed and published at one place and is circulated or should at other places by or on behalf of the accused responsible for the printing and publishing the newspaper, then there would be publication of the defamatory article in all such other places and the jurisdictional Magistrate can entertain the complaint for defamation.

17. In *C. S. Sathya's case* (1994 Cri LJ 1954) (Kant) the facts, as could be gathered from the reported judgment are that the petitioner had published an

article defaming the complainant in his weekly 'Jwalamukhi' which was printed and published at Bangalore and that the complainant saw the weekly at Hubli the contents of paras 5 and 6 would indicate that the complaint had been filed before the JMFC at Hubli. But later portions of the judgment would show that the complaint had been filed in the court at Udupi. In para 14 it is stated that in that case the publication was made at Bangalore and that there was no fresh publication of the alleged defamatory matter at Udupi and that as such the Udupi court had no jurisdiction to try the case. It would appear that in case the complainant only saw the news weekly at Hubli but filed the complaint in Udupi and there was no allegation that there was any circulation or publication of the newspaper within the limits of the jurisdiction of Udupi court. Therefore on facts this court held that the Udupi court had no jurisdiction. But further in para 15 (at p. 1957 of Cri LJ) it is observed as hereunder;

'Therefore, mere circulation of the paper at Udupi is not a consequence ensued from the act of the accused which forms part of the ingredients of the offence alleged in the case, as no part of the offence or its consequence has ensued within the jurisdiction of Udupi court, and hence that court has no jurisdiction to try the offence alleged by the complainant in his complaint.'

18. The above observations have to be understood in the context of the facts of that case as per which there was no circulation of the newspaper at Udupi at the instance of the accused. The judgment does not purport to lay down a proposition that even when the newspaper is circulated or sold at the instance of the accused in places other than the place of printing and publishing the newspaper, the court having territorial jurisdiction over such other places will not be competent to try the offence under section 500 IPC.

19. The learned Counsel for the petitioners contended that there is no allegation of the complaint that the news magazine in question was circulated at the instance of the accused in Davanagere and as such Davanagere Court can have no jurisdiction. There is a specific allegation in the complaint that the said weekly is widely read throughout the State of Karnataka. When it is alleged that a news magazine is read throughout the State, it has to be understood that that

newspaper has got circulation throughout the state. In fact in the objections filed to the application filed by the petitioners the complainant has specifically clarified that that the paper is circulated throughout the State and that the issue in question was also circulated through out the State including Davanagere city. Therefore it cannot be said at this stage that there is no averment regarding publication of the article in question within the limits of territorial jurisdiction of the Magistrate at Davanagere. In the present case if it is established that the newspaper in question was sold or circulated in Davanagere and that the first petitioner was responsible for the same the court at Davanagere will have jurisdiction to try the offence. In the circumstances the petitioner's prayer for quashing the proceedings before the lower court at this stage, on the ground of lack of territorial jurisdiction cannot be entertained.

20. For the above reasons this petition is rejected.

21. Petition dismissed.

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