

Boregowda and Another Vs. C.D. Devaiah

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Court : Karnataka

Decided On : Aug-04-1998

Reported in : 1999(4)KarLJ496

Judge : T.N. Vallinayagam, J.

Appeal No. : Regular Second Appeal No. 1302 of 1995

Appellant : Boregowda and Another

Respondent : C.D. Devaiah

Advocate for Def. : Sri M. Shivaprasad, Adv.

Advocate for Pet/Ap. : Sri M. Shivappa, Adv.

Judgement :

1. The defendants challenge the grant of decree of damages of Rs. 1,000-00 granted by the Courts below on rendering on concurrent finding of facts.

2. The damages came to be claimed by the plaintiff on the ground that a notice of partition issued on 20-12-1985, the defendants replied calling the plaintiff is a cheat and he has been involved in many cheating cases and suffered imprisonment and he is having bad character addicted to bad habits and involved in antisocial activities. The above statements have created mental agony to the plaintiff and his reputation is badly affected in the society and the reply notice has

been given due publication and the allegations made therein are all false and are made with an intention to defame the plaintiff in the eye of public and thus they had badly affected his reputation and status in the society and therefore the plaintiff is claiming damages of Rs. 1,000/- from the defendants.

3. Denying the allegation made and amount mentioned therein and the notice was not intended to damage the reputation of the plaintiff and to undermine his prestige and that there is no publication as alleged by the plaintiff and it is strictly confidential, the same will not amount to damages for defamation.

4. The Trial Court accepted the case of the plaintiff and placed the burden on the defendant to justify the remarks made by him. It was specifically urged by the plaintiff's Counsel that drafting of the reply notice was prepared at the instruction of the defendant's Advocate office in the presence of some other persons coupled with the fact that the written portion was got typed elsewhere, certainly amounts to publication; besides the defendants have also proved that the said allegation touching the character of the plaintiff is true and added fuel to fire. In the cross-examination the defendant 1 deposed that the plaintiff had illicit relationship with the wife of one Dyavanna and he speaks as if he is an eye-witness to the said incident. Considering these aspects, the Trial Court granted the decree of Rs. 1,000/- and the same was confirmed by the first Appellate Court.

5. It is now contended before me that the plaintiff is not entitled to damages and the Courts below are not justified in decreeing the suit of the plaintiff for damages on the basis of suit for action of defamation. Even though the respondent/plaintiff has failed to establish the defamation in the eye of law. The presumption that the reply notice as well as the statement was construed as defamatory is reflected in the issues framed and even otherwise such issues must have been proved by the plaintiff but not by the defendants.

6. The facts in this case are admitted. So naturally it was for the defendant to justify the allegations made by him and on his failure to justify the same, the decree for damages is a must. A person who makes allegation which was prima facie defamatory and there can be from the civil or criminal identity only on the certain circumstances such as.-

1. That the defendant never published any of the words complained of.
2. That the words complained of did not refer to the plaintiff.
3. That the words complained of did not bear any meaning defamatory of the plaintiff.
4. That the words complained of were true in substance and fact.
5. That the words complained of were published on an occasion of absolute privilege.
6. That the words complained of were published on an occasion of qualified privilege.
7. That the words complained of were fair comment on a matter of public interest.
8. That the words complained of were published innocently and an offer of amends was made, known as 'unintentional defamation'.
9. That the words complained of were published with the consent and by the authority of the plaintiff.
10. Accord and satisfaction.
11. Release.
12. Lapse of time.
13. Resjudicata.

7. None of those exceptions are claimed by the defendant in this case nor is there a denial of publication. In fact D.W. 2 in his cross-examination unequivocally admitted that there were more than five persons in the office of the lawyer and in their presence he gave all the details for drafting the notice and after notice was drafted it was handed over to him and thereafter he went to the typist and got typed the said notice in Pete Beedi and thus this shows that the defamatory matter contained in the notice thus seen, that there was a due publication of the

defamatory matter. It is worthwhile to quote. In Halsbury's Laws of England, Fourth Edition, Vol. No. 28, paras 60 and 61 are stated thus.-

'60. What amounts to publication.--For the purposes of a civil action for libel publication is the communication of defamatory matter to a third party. However, for the purpose of criminal proceedings, publication to the person defamed is sufficient. Merely to write down defamatory words is not to publish a libel. Even to deliver defamatory statement to another is not to publish it to him if he does not become aware of the defamatory words. Publication consists in making known the defamatory statement after it has been reduced to some permanent form. If the writer of a letter locks up in his own desk, and a thief comes and breaks it open and takes away the letter and makes its contents known, that would not be a publication by the writer. Each communication of a libel is a separate publication in respect of which a civil action may be brought or criminal proceedings may be instituted. However, the Court has power to stay actions which are vexatious and an abuse of the process of the Court.

Failure to erase or otherwise remove defamatory matter from a place where it may be seen by others may constitute evidence of publication, for instance failure on the part of the person responsible for a notice board to remove a lampoon from it.

61. Incidental publication.--Although as a general rule the writer of a libel is not liable civilly if he addresses it to the plaintiff himself, yet if he addresses it to the plaintiff knowing or having reason to know that it is likely to be opened and read before it reaches the plaintiff's hands, for instance by a Secretary or Clerk, and it is so opened and read, there will be a publication for which the writer will be liable.

Conversely, if a letter containing libel intended for and addressed to the person libeled is wrongfully opened by a third person, there is no publication. However, where the defendant wrote a letter defamatory of the plaintiff and put it through her letter box and the letter was opened by her husband without looking at the name on the envelope, a finding that the letter was published to the husband was upheld.

It seems that the mere dictation of defamatory matter to a clerk or typist is the publication of a slander only, but if a person reads a defamatory document, knowing it to be defamatory, to any person other than the person defamed, it seems that there is publication of a libel. If a person dictates defamatory matter to a clerk or typist and instructs the clerk or typist to copy or transcribe the dictation, and the clerk or typist does so, there is publication of a libel to the clerk or typist'.

Thus the conduct of the defendant in getting the reply prepared after giving full instructions openly and having typed it by a third party-define the meaning of publication in the street-would certainly amount to a defamation. One can very well understand if the defendant has put forward a case of confidentially informing the Advocate alone and if the notice typed privately. But this is not the case here.

8. Defamation would impair reputation and mar his character especially in a judicial process. No person can be allowed to make allegation against another in a bad language which amounts to *prima facie* defamation. If such averments are made in a judicial proceedings or in the? process of judicial proceedings, it is *prima facie* defamatory and no further proof is necessary and man making such defamation must suffer the damages.

9. Therefore, there can be no two opinions about the same, I feel a sum of Rs. 1,000/- is too low a figure; anyhow as there is no cross appeal or demand from the plaintiff, I confirm the judgment and decree of the Courts below and dismiss the appeal with exemplary coat of Rs. 500/-.