

V. Subair Vs. P.K. Sudhakaran

V. Subair Vs. P.K. Sudhakaran

SooperKanoon Citation : sooperkanoon.com/727051

Court : Kerala

Decided On : Feb-06-1987

Reported in : 1987CriLJ736

Judge : Chettur Sankaran Nair, J.

Appellant : V. Subair

Respondent : P.K. Sudhakaran

Judgement :

ORDER

Chettur Sankaran Nair, J.

1. The Courts below, concurrently found the petitioner guilty of the offence punishable Under Section 501, I.P.C. and sentenced him to pay a fine of Rs. 300/-, in default to undergo simple imprisonment for 3 months, The petitioner is the Editor, Printer and Publisher of a daily, 'Al Ameen'. The issue of the newspaper dt. 25-8-78 carried a report from Chokly (Ext. Pl(a)), that a young lady of the locality consulted a local medical practitioner for an ailment of her child, and that the physician wanted to examine her. Despite her protestations that she was in no need for medical attention, and had no money to pay for the same, she was persuaded to submit to a clinical examination. It turned to be such, that the woman had to flee from the physician to save her honour. The report goes on to say, that the medical practitioner, who was rendering free treatment on Saturdays had a weakness for comely woman and that as a result of his attentions, a woman patient was put to the necessity of an abortion. The complainant, P.W. 1 avers that the reference though veiled, is unmistakably to him, and that the readers of Ext. Pl(a) thought so. He says, his portrayal as a lecherous person, lowered his moral character and that he fell in the estimation of those who read Ext. PI (a). His professional standing was also tarnished. To prove the charges, besides the complainant (P. W. 1), P.W. 2 was also examined.

2. The trial Court found the petitioner guilty of the charge, and convicted and sentenced him as aforesaid. The Court of Session affirmed the conviction and sentence. The Courts below relied on the evidence of P. Ws. 1 and 2, to find the charge.

3. Counsel for petitioner argues that neither the medical practitioner, nor the woman was named in the report and that there are other doctors at Chokli who answer the description in the report.

4. On the contrary, the respondent's counsel would say that the publication soon after the complaint by Nabeesu, the close resemblance between Nabeesu's complaint and the contents of the report, the reference to the medical practitioner giving free treatment, and the setting in which the report was made, unfailingly suggest to a reasonable mind, that it related to P. W. 1. The Courts below for this reason found that the charge was proved. I do not think that the finding on evidence, is vitiated by any irregularity, illegality or impropriety.

5. Relying on *Raman Namboodiri v. Govindan*, 1962 Ker LT 538 : 1963 (1) Cri U 535, counsel for petitioner contends that the identity of the complainant should be established. The proposition is beyond reproach. But, it is not always necessary to name the person. If the description and attendant circumstances suggest with fair-certainty the identity of the person intended, that is sufficient to attract the offence. Explanation 3 to Section 499 states that an imputation in the form of an alternative or expression ironically, may also amount to defamation. Defamation by innuendo is well known. Hicks' case is illustrative in this regard. *Gatley on Libel and Slander - 8th Edition* (para 281) states:

To succeed in an action of defamation it must not only be proved that the defendant published the words and that they are defamatory: He must also identify himself as the person defamed. No writing whatsoever, is to be esteemed a libel unless it reflects upon some particular person : It is not necessary that the words should refer by name.

The reference need not be explicit. If the description is such that a reasonable person in the context in which it is made, will understand it as a reference to a particular person, it would suffice. It is not always that a libellous statement is made with directness, nor, does it mean that as long as it is not by specific reference, so long it is not libel. A degree of indirectness or innuendo is noticed in such attempts, and is to be expected. To defame is an offence, and it is reasonable to think that he who defames is not anxious to invite legal consequences. Satire or lampoons are instances of reference by innuendo. Limericks also sometimes make veiled references, not altogether complementary. To a point, they may justify themselves. But, transgression beyond, would attract penal consequences. The thin twilight zone is often the subject of controversy. But, it can be said with assurance that even without specific or explicit reference, by innuendo, defamation can arise. *Gatley* has noticed cases, where libel was found by reference to initial letters, by asterisks or even blanks,, and reference to fictitious or fanciful names, even where there was 'no peg or pointer for identification in the words complained of.'

6. In *Morgan v. Odhama Press Ltd.* (1972) 1 WLR 1239 (HL) it is stated:

It is the circumstances in which a statement is made which give it colour, meaning and thrust; they may combine to make a statement, seemingly innocuous in itself, an infamous defamation of a person who is caught and pointed to by those circumstances.

Thus viewed, it must be held that the complainant would be identified, as the doctor in *Chokli* in Ext. Pl(a), by those who knew of Nabeesu's complaint and of his rendering free medical aid.

7. Counsel for petitioner urged faintly - not taking the responsibility for the publication - that the Editor of a publication had a duty to reveal certain matters because the press was beholden to enlightening public opinion and upholding public weal. True. In the words of Madison:

It is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away to injure the vigour of those yeilding the proper fruits.

But, that is not to say that journalists are in a privileged or special position. The law in this regard has been stated by Lord Shaw with pellucid clarity:

The freedom of the journalist is an ordinary part of the freedom of the subject. His privilege is no other and no higher'. (*Arnold v. King Emperor* AIR 1914 PC 116 : 1914 (15) Cri LJ 309)

The Supreme Court affirmed the position in *Sewak Ram v. Karanjiya* : 1981 CriLJ894 :

Journalists are no better than any other person. Even the truth of an allegation does not permit a justification under first exception unless it is proved to be in the public good.

In *Sahib Singh v. State of U.P.* : 1965 CriLJ434 the Supreme Court has cautioned that 'reckless comments are to

be avoided'. In a free society, the press enjoys an important position and plays a vital role. It may articulate the yearnings and aspirations of the inarticulate and give voice and visage to them. A muffled or muted media cannot discharge the trust that it holds. But, the liberty of press, by its history and connotation must be deemed to have certain limitations. It has to keep within these bounds, and not transgress frontiers of decency and propriety. Vituperative exercises, or yellow journalism, cannot pass muster under the guise of freedom of press, no more than shilling shoozers, or salacious press can masquerade, as literary works. The freedom of press is no more important, than the good name of the press. It must set the right tune.

8. These considerations are however academic for purposes of the present case because, the accused did not take the stand that the article was authored by him or plead a specific defence. A vague defence of generality, now put forward cannot rescue the petitioner. The publication by the petitioner is proved and the innuendo, is unmistakable. It caricatures the complainant as a person of low moral character and as a professional debauching patients. Either way, it is highly defamatory. In *Jones v. Jones* (1916) 1 KB 351 (360) it was held that picturing a medical practitioner, as misbehaving with female patients, defamed him as a professional man. Such intemperate exercises, cannot be assented to.

The Courts below, are right in their conclusion. The conviction and sentence are confirmed, and the revision petition is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com