

Biswanath Bubna and anr. Vs. the King

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Court : Kolkata

Decided On : Jan-26-1949

Reported in : 1949CriLJ972

Judge : Sen, J.

Appellant : Biswanath Bubna and anr.

Respondent : The King

Judgement :

Sen, J.

1. This appeal is by two persons Biswanath Bubna and Eanadhir Sahitya Lankar. I shall refer to them hereafter as Bubna and Lankar respectively. They were tried together by Sri N. Ehashtgir, Additional Presidency Magistrate. Bubna was charged with having committed an offence punishable under Section 600, Penal Code, that is to say, with the offence of defamation. He has also been charged with having committed an offence punishable under 9. 601, Penal Code, that is to say, the offence of printing a defamatory matter. Lankar has been charged with defamation only. be to the appellants have been convicted of the charges framed against them. Bubna has been sentenced to pay a fine of as. 400, in default to suffer simple imprisonment for four months with reference to the charge under 8. 500, Penal Code. No separate sentence was passed against him with respect to the offence punishable under Section 501, Penal Code. Lankar has been sentenced to

pay a fine of Us. 100, in default to suffer simple imprisonment for a period of one month with reference to the offence punishable under Section 500, Penal Code.

2. To understand this case properly certain admitted facts will now have to be stated. The person who states that he has been defamed is one Aditya Misra Kumar who is the chief editor of a cinema magazine known as Chitraloke. He has a wife named Aruna who is the proprietress of this magazine. The magazine is written in Hindi. Bubna is the chief editor, proprietor, printer and publisher of a Hindi cinema magazine named Abhinaya. Lankar is an editor of the same magazine. Formerly, Aditya Misra Kumar was a co-proprietor with Bubna of the magazine Abhinaya. The partnership was dissolved in 1940 and the magazine Chitraloke was started by Aditya Misra Kumar. It was a rival magazine. These are the admitted facts.

3. Aditya Misra Kumar filed a petition of complaint on 8th January 1918 stating that there were certain matters published in the magazine Abhinaya which defamed him directly and also defamed him indirectly by casting aspersions on the chastity and character of his wife Aruna, and he set out in a schedule to the petition of complaint the passages against which he was complaining.

4. The defence taken is (1) that these state, merits were published in the Abhinaya but that they had no reference either to Aditya Misra Kumar or his wife Aruna. They referred to other persons and the statements were in answer to questions put to the editor of the paper by certain individuals. This is one of the defences taken. (2) The next defence taken is that the statements are not defamatory in character and that they were intended to be merely humorous. It was also the defence case that no reasonable person could possibly connect these alleged defamatory statements with Aditya Misra Kumar or his wife Aruna. (3) The third defence taken is that there has been a misjoinder of charges inasmuch as one of the alleged defamatory statements was published in the November (sic) issue of the Abhinaya and the others in the November. December issue of the same magazine. It is contended that there could not be a joint trial with respect to these separate publications. Another branch of this objection as regards the legality of the trial is that a person cannot be tried at one trial for offences punishable under

Sections 600 and 501, Penal Code A third branch of this argument is that there has been a misjoinder of persons and that Bubna could not be tried jointly with Lankar.

5. I shall first deal with the question whether these statements can be said to relate to Aditya Misra Kumar and his wife Aruna. I give below verbatim the statements in the order in which they were made.

6. The first statement is Ex. 2 (I) and it was published in the November issue of the Abhinaya.

It is as follows:

Aditya Kumar Mishra, Caloutta.

Q. I am going to publish a cinema paper with the grace of my beautiful wife. Shall I be successful.?

A. Why not? But for securing advertisements you will have to send her. It won't do if you go. If you do not believe me you may ask Desai Shaheb.

7. The other statements which I am about to reproduce verbatim were published in the November-December issue of the Abhinaya at pages 29, 80, 64, 65, 31 and 82. They form together Ex. 10 (1). They are as follows : (2, 3, I, R and 6)

(2) Just a fun for a few minutes.

Reply to letters to Editor.

Nobody should take these things in a bad light; in the world of jokes this is entirely prohibited.

Sm. Aruna, Caloutta.

Q. In the Dewall New Year Number you have described your business trip to be may. What, would you not write something about your personal pleasures, meetings and rambles?

A. Your Honouc' a (Hazur's) orders are highly appreciated. In the next issue this bumble self will be at your service, but the only fear is, may not this create any of-wife's jealousy? Because, in Calcutta your name is the very emblem of pleasure and alter years and even with as many as three certificate, the thrill has not decreased and I cannot bear the same to be so.

Q. My so-called 'he' is extremely jealous of you, I am trying much to oonsole him but to no effect. Please say what am I to do?

A. Did you not say that the daya to make another understand are gone? Come out openly in the field. If he is to maintain himself out of your income, what to speak of him, even his god will obey you. If not, what else can he do?

(3) Kasturchand Dammani, Calcutta.

Q, How far Is it corieat to meet one's end by unfair means?

A. So far as it brings money. If you do not believe me you may ask that editor who utilises even his wife for securing advertisements and besides this hunts for photographs, and flatters, oils and at the same time be asts as a journalist.

(4) Bitaram Proaad, Purnea.

Q. What should the Headers of the Abhinaya expect from the Abhinaya?

A. Juet the very things I did in the shape of 'advioes' to Aruna-just as Mr. Jinnah expects from Pakistan and just as I expect from my readers, and I expect from them the same as I expect from you.

(5) Morarji Desai.

Mr. Bubhakaranji is also a splendid fellow. He has come once again and Bhown that the Hindi stage is still alive and not dead. 'Jhansiki Hani' proves that.

A writer of the season.

This is wholly wrong Mr. Editor. According to me the credit is neither due to the proprietor Shubha-karanji nor to the writer Banadhirji-but to full page

advertisements, otherwise, instead of comments, what is the necessity of quoting couplets (duhai) in every column or making flatteries therein.'

(6) Well is this a business to make one's wife an organiser and himself an editor along with several simple-minded friends to start publishing a paper ?

A personal complaint.

But what harm is there Well, Mr. this is an age of self-support. My friend told me that if there were a dozen of sons or so, they might at once be made composers so that the pupur might come out through family affection and labour and the loans might be made up (in that way). Where is the harm?

8. The statements were all in Hindi and they have been translated by a Translator of this Court. In order to show the connection of statement 5 with Aditya Misra Kumar and his wife Aruna a passage in the Chitraloke has been exhibited. It is Ex. II (1). The passage is as follows:

Jhansi Ki Rani on its way to success. Sri Subha Earani Jalan is a splendid fellow, Once again he has come and shown that the Hindi stage is still alive and not dead. 'Jhansi Ki Rani' is the proof. Thousands of people have seen it so far, but even then the house remains full in every show. Its popularity can be judged -from this. Sita Debi's acting has undoubtedly been attractive and along with it Ealekha's acting has also been very beautiful. All the players played their parts well.

9. Reading all these statements and the passages I do not think that there can be any shred of doubt that these statements referred to the complainant Aditya Misra Kumar and his wife Aruna. In the first statement, the enquirer is said to be one Aditya Kumar Misra. This is obviously a distortion of the name Aditya Mishra Kumar. In the second statement the questioner is Aruna. Having regard to all the circumstances of this case and to what I shall presently say there can be no doubt that this refers to Aruna, the wife of Mishra Kumar. The 3rd statement is supposed to be in answer to a questioner named Kasturohand Dammani. The defence have not produced any letter addressed to the editor of the Abhinaya by any such person. The fourth statement purports to be an answer to a question put by

Sitaram Prosad of Purnea. No such person was produced nor was any letter from such a person produced by the defence. The fifth statement is an answer to a question put by one Morarji Desai. No such person was produced nor was any letter by him produced and I would point out here that this statement quotes verbatim a passage published in the Chitraloke, the magazine of Aruna and the complainant. As regards this statement there is no mention of who the questioner is and no one has been produced to show that he put any such question to the editor of the magazine Abhinnya. ' [10] I omitted to mention in dealing with the Statements, (1) and (2) which were made in answer to questions put by one Aditya Kumar Mishra and Aruna respectively that the defence case is that these two persons had written letters to the editor of the Abhinaya putting these questions and asking him to publish the answers in his paper. The letters are Bxs, A and B, A bare perusal of these two letters will be sufficient to indicate the utter falsity of the defence case regarding them. The envelopes in which they are alleged to have been sent have not been produced. Neither Aruna Devi who is supposed to have written this letter nor Aditya Kumar Mishra has been examined to prove that they wrote these letters. The letter alleged to be written by Aruna Devi to the editor of the Abhinaya is as follows:

Dear Editor, Dated 26th October 47. I am also asking you questions; please publish them in due time.

Q. In the Dewali New Year Number you have given only the description of the journey to Bombay, what won't you write anything about your own comforts, interviews and pleasure trips?

Q. My husband says that he is suffering greatly on account of you. I am trying much to console him but to no effect. Please say what am I to do?

Q. Why should women remain slaves although Jindan Bsthan has become free? When are you going to make me free? You must publish these three questions of mine.

Ever yours,

Aruna Duvi

On the face of it, this letter is clearly a fictitious one and has been manufactured for the purposes of this case. I cannot conceive of any woman writing in this fashion to the editor of a newspaper. The defence have given no explanation why any one should write a letter of this description to the editor of the Abbinaya. The whole thing is fantastic I cannot imagine a woman writing to the editor of a newspaper that her husband is suffering on account of the editor and that she is trying to console him and thereafter asking the editor to give her advice and to publish these questions and the answers in his paper. The letter Ex. B is in the following terms:

58 Banstolla Street,

Calcutta

Dated 19th September 47.

Dear Editor.

You do not know me but I know you, not personally but as a successful paper publisher as it may well be said that there is no example of a Hindi Cinema, paper. It is of course true that no obstacle in the form of rivalry came before you. When you were going to gain a foothold nobody pushed you down. Whether you agree or not, I am also going to publish a cinema paper and it is my great desire that I should take your help in the matter. I do not know whether this will be available to a rival. I have got a beautiful wife who has not seen Calcutta and who is obstinate, I want to take her help also in the matter. Of course I do not want to have her name tarnished and I am writing this letter in order to remove that apprehension. If you reply to this letter personally, well and good; otherwise kindly oblige me by publishing the questions in the coming issue. My two questions will be as follows and kindly take pity on me by publishing them in the column 'Majakki Dunia,' (world of jokes) and thereby make my position favourable.'

Q. I am going to publish a cinema paper with the help of my beautiful wife, please say whether I shall be successful.

Q. In a recently published cinema paper why have you been praised and blamed so much?

Q. Can you say whether you also are writing a drama which may be played on the Minerva stage Well this much today. More after I receive your reply.

I am yours,

Aditya Kumar Mishra

Here, again it is impossible to believe that any man would write to the editor of a paper stating that he has got a beautiful wife who is obstinate and asking him his advice about the starting of a newspaper. I entirely agree with the learned Magistrate that this letter had been fabricated by the defence and was a very clumsy attempt to show that they were be no fide questions put to the editor of the Abhinaya and that the answers were be no fide. The defence have thus entirely failed to show that any real person put these questions to the editor of the Abhinaya. On the contrary, these two letters Exs. A and B and the other circumstances of the case indicate that all these questioners are fictitious persons. The prosecution has succeeded in showing that the questionnaire did not emanate from the persona alleged by the defence. This is one element proved against the appellants.

11. The next question is whether the answers referred to the complainant Aditya Miahra Kumar and his wife Aruna. I have no doubt that they do having regard to the fact that two of the statements actually mention the names of these two persons in a disguised form. There is also the admitted fact that Aruna is the proprietress of the Chitraloke and that Aditya Mishra Eumar is working in a subordinate capacity in that paper. The fact that the fifth statement reproduces verbatim a passage from the Chitraloke also shows that the answers are meant to refer to Aditya Mishra Kumar and his wife Aruna. Any one knowing certain facts which are now admitted would connect these statements with Aditya Mishra Kumar and his wife Aruna. A farther question for decision is whether these statements are defamatory of Aditya Hiehru Kumar. Once it is assumed that they refer to him and his wife there can be no vestige of doubt that they are highly

defamatory. There is the persistent allegation made in all these statements that Aditya Mishra Kumar was using his wife in an immoral and improper manner for the purpose of making a success of the paper Chitraloke. He was utilising the charm and beauty of his wife for this purpose. There is also an allegation made in the second statement which can only mean that Aditya Mishra Kumar's wife Aruna is the mistress of the editor of the Abhinaya and there is an allegation that Aditya Mishra Kumar is living on the earnings of his wife. The trend of all these statements is that Aditya Mishra Kumar is a worthless person living on his wife's earnings and utilising his wife in an immoral manner for the purpose of gain. I omitted to mention that one of the objections taken by learned advocate appearing for the appellants is that there can be no finding of any defamation with respect to Aruna except upon a complaint made by her and in this connection he refers to Section 198, Criminal P. O. His contention is that as Aruna did not file any complaint the question whether Aruna has been defamed or not cannot be investigated. It is quite true that no charge for defaming Aruna would lie except upon a complaint made by Aruna having regard to the fact that Aruna is a person who does appear in public, but the present case is not one in which the appellants are charged with defaming Aruna. They are charged with defaming Aditya Mishra Kumar by making scurrilous attacks upon the character of his wife. There can be no doubt that a person may be defamed in this manner although nothing against him personally is alleged. For instance, if one alleges of a person that his wife is a prostitute that would amount to defaming him within the meaning of Section 499, Penal Code, If the wife wishes to bring a Charge of defamation, then undoubtedly she should make a complaint unless She can bring herself within the exception provided for in Section 198, Criminal P. C. The position here is that Aditya Mishra Kumar has been defamed be to directly as being a worth, less person using his wife in an unworthy manner and also indirectly by suggesting that his wife is a woman of loose morals who is in the keeping of another, I find therefore that these statements amount to defamation of Aditya Mishra Kumar, be to the accused are responsible for the publication of these statements.

12. I now turn to the question whether the trial has been vitiated by any misjoinder of charges or of persons. The decision of that question will depend largely on the answer to the-question whether all the statements form part of the same

transaction, Mr. Sanyal appearing on behalf of the appellants says that they cannot form part of the same transaction as they were published in two different issues of the magazine and that there was no proximity of time. He also contends that the statements were distinct and separate statements not connected with each other. On behalf of the Crown learned advocate arguea that there have been established be to proximity of time and continuity of purpose and that therefore all these statements should be treated as forming part of the same transaction. I have not the slightest doubt in accepting the contention urged on behalf of the Crown. The first statement was published in the November issue and the other four statements were published in the November-December issue of the same magazine. They were published in quick succession and one cannot but hold that one of the ingredients necessary to establish that a number of acts form the same transaction namely proximity of time had been established in this case. Still more important, than that is the fact that all these statements are intimately connected with one another and they had been made in furtherance of a single purpose that of lowering Aditya Mishra Kumar in the estimation of persons and besmirching his character. The statements cannot be said to be unconnected with each other. One is really a continuation of the other. I hold therefore that all these statements form one transaction. Now, if these statements form one transaction, then there can be no bar to trying Bubna for having committed offences punishable under S3. 500 and 501, Penal Code, at the same trial. This is provided for in Section 235 (1), Criminal P. C.

13. The next question is whether Bubna and Lankar could have been tried together. In this connection I would refer to the provisions of Section 289 (d), Criminal P. O. which says:

The following persona may be charged and tried together namely.

(d) persons accused of different offences committed in the course of the same transaction.

Having held that all these statements form part of the same transaction and it having been established that Lankar is the editor of the Abhinays I can see no difficulty in trying Bubna and Lankar together. There has therefore been no

misjoinder of charges or of persons and it cannot be said that there is any defect in the form of the trial, These remarks I think will dispose of all the objections raised on behalf of the appellants.

14. I am of opinion that the learned Magistrate is perfectly correct in finding the appellants guilty of the offences charged against them and I dismiss this appeal.

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