
Smt. Chandana Bose Vs Saturday Club Limited and Others

G.A. No. 2707 of 2000 and C.S. No. 252 of 2000

Court: Calcutta High Court

Date of Decision: Dec. 11, 2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 39 Rule 1, Order 39 Rule 2#Penal Code, 1860 (IPC) " Section 4, 65#Specific Relief Act, 1963 " Section 41

Citation: (2003) 3 CALLT 73

Hon'ble Judges: Pinaki Chandra Ghosh, J

Bench: Single Bench

Advocate: Dipankar Ghosh and S.K. Kapoor, for the Appellant; Pratap Chatterjee, R.K. Khanna and Joy Saha, for the Respondent

Judgement

Pinaki Chandra Ghosh, J.

The petitioner has filed a suit in this Hon"ble Court. This application has been filed in the said suit. In the said suit

the petitioner has filed this application inter alia praying for an injunction restraining the respondents from giving effect from acting on the basis of

letter dated 22nd April, 2000 until the desposal of the suit and further prayed for an injunction restraining the respondents or anyone and each one

of them from publishing or repeating or circulating or disseminating the libels contained in the said letter dated 22nd April, 2000 and a letter dated

20th May, 2000 and further the order of injunction restraining the respondents and each one of them from taking any further steps in respect of the

complaints lodged by the respondents and/or their servants, agents and/or assigns dated 16th December, 1999, 7th January, 2000 and 6th March,

2000, further injunction restraining the respondents from holding any meeting or from conducting any disciplinary proceedings or taking any steps

to suspend or expel the petitioner until the disposal of the suit.

2. The petitioner has also prayed for appointment of a Receiver over the vouchers, letters, correspondences, books of accounts and other

documents relating to the subject matter of the said letter dated 22nd April, 2000 and further the Receiver be directed to take possession of all the

cash payment vouchers issued in relating to the business affairs of the respondent Club, and further Receiver and/or Administrator be appointed to

take charge of the business and affairs of the Saturday Club Limited. Further injunction has been prayed from restraining the respondents and each

of them from utilising any of the funds or resources of the said respondent Club for the purpose of defending themselves in the said suit.

3. Facts of the case pleaded in the petition briefly are as follows:

The petitioner is a Horticulturist by profession and involved and associated with several organisations like Horticultural Society of India, Rose

Society, Dalhia Society and Puspa-Bitan etc. The petitioner is also associated with several non-Governmental organisations. The petitioner is highly

reputed member of the Society and having a well respected social standing.

4. The respondents Nos. 1 to 5 are the office-bearers of the Saturday Club Limited (hereinafter referred to as the said Club). The respondent

Nos. 6 to 11 are also members of the said Club and/or members of the General Committee. The petitioner was admitted as a member of the

respondent Club in or about 1981. In 1996-97 and 1997-98, the petitioner was elected as a member of the Balloting Committee of the said Club.

Thereafter, she was elected as a member of the General Committee of the respondent Club for the years 1998-99 and 1999-2000.

5. According to the petitioner, the usual practice of the said respondent Club that the members of the various sub-committees are authorised to

draw funds from the Club for meeting the expenses in connection with the various social events organised by the respondent Club.

6. In December, 1998, the said Club organised a Children's Carnival at the Club premises. In January, 1999 it was decided that the respondent

Club would participate in the flower shows to be organised by this Hon"ble Court, Agri-Horticultural Society of India, South Suburban

Horticultural Society etc. In the month of May, 1999 the Entertainment Sub-Committee of the respondent Club proposed to hold a Carnival

Dance Programme, in the Club premises and in November, 1999 the Entertainment Sub-Committee decided to hold a function which was

designated as ""Moonlight & Roses"".

7. At the request of the respondent No. 3 the petitioner took the leading role in organisation the said Children's Carnival and for the payment of an

advance to purchase gifts for the children a sum of Rs. 15,000/- was required to be drawn from the Club's funds, the petitioner approached the

Secretary (the respondent No. 4) and the Chief Accountant (the respondent No. 5) for such payment of advance. The respondent Nos. 3 to 8,

being the then convener of the Entertainment Sub-Committee advised the petitioner to withdraw the said amount in the name of the respondent

No. 8 by signing a voucher. The petitioner accordingly withdrew and signed the said payment voucher on behalf of the respondent No. 8 and the

said advance of Rs. 15,000/- was paid for the purpose of purchasing the gifts for the children. Similarly, for the purpose of taking part in respect of

the flower shows, an amount of Rs. 10,000/- was required for making payment of advance for the expenses relating to such participation, and the

consent and approval of the respondent Nos. 6, 9, 4 and 5 the petitioner withdrew the said sum of Rs. 10,000/- by signing the payment voucher

on behalf of the respondent No. 6 and withdrew the said Rs. 10,000/- on 2nd February, 1999.

8. Similarly, advance was required for making advance payment to purchase dresses for the children who would participate in the Dance Carnival

on 4th May, 1999 in the Inter-Club dance competition and the petitioner after consultation with the respondent No. 8 duly withdrew the said sum

of Rs. 15,000/- after signing the payment vouchers prepared therefore in the name of the respondent No. 8. The bills/invoices for the said

purchase were duly submitted along with the surplus amount to the respondent No. 4 and entries were made in the books of accounts of the

respondent Club in respect thereof.

9. Similarly, for the purpose of ""Moonlight & Roses"" function a sum of Rs. 5,000/- was required to be paid to the florist in advance and the

petitioner with prior consent of the respondent Nos. 2, 4 and 5 withdrew the said amount and duly paid the said sum of Rs. 5,000/- to the florist.

The respondent Nos. 3, 4, 5, 6 and 7 had full knowledge and notice of the said fact.

10. According to the petitioner, all the respondents had duly knowledge and notice and consent of the entire procedure and duly approved the

same.

11. In or about April 22, 2000 the petitioner for the first time received a letter on behalf of the membership Committee of the said Club signed by

the respondent No. 4 whereby the petitioner was charged that without the knowledge and consent of Mrs. Soma Sarma, Mrs. Uma Roy and Mr.

Kunal Dutta, who have confirmed in writing that they neither took the money nor the petitioner has consulted with them before writing their names

in the vouchers and further vouchers were neither signed by them nor the money has ever been received by them and the signatures appearing in

the vouchers were forgeries and the petitioner was called upon to give an explanation in writing within three days of receipt of the said letter in

respect of such acts and conducts to show cause therefore.

12. According to the petitioner, the petitioner is a member of the General Committee of the respondent Club and the petitioner is entitled to prior

notice of any meeting of the membership committee. No notice was ever received by the petitioner convening any meeting of the membership

committee of the respondent club at which it was proposed to consider or decide on the issue of the said letter dated 22nd April, 2000 to the

petitioner.

13. According to the petitioner, no such meeting was ever held at which such decision was taken to issue the said purported letter dated 22nd

April, 2000. According to him, no prior notice of such notice was received by the petitioner. The proceedings at which convening meeting, if any,

is wholly illegal and invalid. No minutes of any such alleged meeting has been given to or received by the petitioner till the date of filing of the suit.

According to the petitioner, such letter caused to be issued to the petitioner in furthermore of a conspiracy by and between the respondent Nos. 2,

3, 9, 10 and 11. The said five respondents and such one of them wrongfully and maliciously and with intent of injure the petitioner have conspired

together to publish or cause to be published of and concerning the petitioner in connection with her office as a member of the General Committee

of the Club, false and defamatory statement, both oral and in writing. The said respondents, for various reasons arising from their mal-

administration of the affairs of the respondent Club and the petitioner's opposition thereto, are bitterly hostile to he petitioner and have been and

still are continuing to act as such and/or have conspired with each other in order to cause injury to the petitioner in all ways possible. The said letter

has been issued to malign the petitioner. The petitioner did not commit forgery or any other criminal offence as falsely and maliciously alleged in the

said letter dated April 22, 2000. The petitioner duly replied the said letter and asked for the inspection of the said documents.

14. On 13th May, 2000 the petitioner alongwith her advocate attended in time to take inspection of the documents and thereafter inspection was

refused.

15. By a letter dated 20th May, 2000 nine documents were forwarded to the petitioner and the respondent Nos. 2 to 5 and 9, 10 and 11

wrongfully, illegally and deliberately repeated the libels and/or defamatory matters falsely alleged against the petitioner. The said reply was written

at the direction and instruction of the said respondents and/or on their behalf.

16. According to the petitioner, the respondents procured letters dated 16th December, 1999, 7th January, 2000 and 6th March, 2000 from the

signatories of the said those letters by coercion and undue influence. According to the petitioner the contents of the said three companies are false,

concocted and afterthought.

17. Further case of the petitioner that the respondents and each one of them have acted in a manner to disparage the petitioner as a member of the

General Committee of the said Club. Steps taken by the respondents to cause injury to the petitioner's reputation, character and credit. Such

action on the part of the respondent authorities to lower down the reputation of the petitioner in the eyes of the right thinking members of the

society. The petitioner has suffered damages on such action of the respondents.

18. Respondents are prevented and intend to prevent the petitioner from exercising her rights as a member of the General Committee of the said

Club.

19. Mr. Dipankar Ghosh alongwith Mr. Kapoor appearing on behalf of the petitioner contended that the letter dated 22nd April, 2000 imputes,

inter alia, the commission of the crime of forgery. It has been alleged that the signatures appearing on the said vouchers were forgery. Such offence

is punishable u/s 465 of the Indian Penal Code. It is also stated in the said impugned letter that the acts of the petitioner are criminal in nature and

the petitioner is guilty of unlawful acts and conducts. It is well settled that the imputation of commission of crime is prima facie defamatory. Mr.

Kapoor drew my attention to Ratanlal & Dhirajlal's Law of Torts (21st Edition), page 197 and submitted as follows:

The falsity of the charge is presumed in the plaintiff's favour. The burden of proof that the words are false does not lie on the plaintiff. Defamation

of a person is taken to be false until it is proved to be true. However, if a man has stated that which is false and defamatory, malice is also

assumed.

20. He further contended that the petitioner is not merely relying on a presumption that the defamatory statement is false. Under the criminal law of

the land there is a presumption of innocence i.e. a person is not guilty of an offence until it is proved beyond reasonable doubt. In the facts and

circumstances, the petitioner has established a good prima facie case to show that the libel is false,

21. His further contention is that the Affidavit-in-opposition has not been verified properly. No information has been furnished in the affidavit. The

verification in the affidavit is defective. Therefore, the statements so verified in the said affidavit should not be relied upon by this Hon"ble Court. In

support of such contention he relied upon the judgments reported in A.K.K. Nambiar Vs. Union of India (UOI) and Another, and Sukhwinder Pal

Bipan Kumar and Others Vs. State of Punjab and Others, and submitted that the affidavit has not properly verified, therefore should not be relied

upon.

22. He further contended that the vouchers were signed with the knowledge and consent of the three other members of the said Club being the

respondent Nos. 6, 7 and 8. Therefore, the same are admitted. He further drew my attention to the endorsement of the Chief Accountant of the

said Club written by Smt. Uma Roy and the respondent No. 6 which is reproduced hereunder:

.....Mrs. Chandana Bose... submitted full account for clearing the advance. Nothing is due to the Club on this account.

23. He further drew my attention to the endorsement of the letter dated 12th November, 1999 written by Smt. Soma Sarma wherein the Secretary

of the Club has authorised payment after speaking to the then President of the said Club. Therefore, according to him, these letters would show

that there was no mis-appropriation of any amount which was drawn from the said Club by the petitioner. He further submitted that no allegation

has been made in the Affidavit-in-opposition and there is no averment that any sum was mis-appreciated by the petitioner which were withdrawn

by the petitioner from the said Club. He further submitted that the statements of books of accounts of the Chief Accountant of the Club appeared

in the said books of accounts. Therefore, prima facie there can be no doubt that the letter dated 22nd April, 2000 is libelous and defamatory. He

further submitted that although the suit is for damages, but the Hon"ble Court has power to grant an injunction restraining the respondents from

repeating the libel. In support of his contention he relied upon a judgment reported in National Sugar Mills Ltd. Vs. Ashutosh Mukherjee, and also

Gately on Libel and Slander, 9th Edition, para 1571. He further drew my attention to Order 39 Rule 2 of the CPC and submitted that the Court

has power to restrain the commission of any other injury. He further submitted that in these facts and circumstances this Court would be pleased to

pass an order in terms of prayer (a).

24. Mr. Pratap Chatterjee, learned senior advocate appearing on behalf of the respondents contended that the petitioner withdrew the amount

from the said Club in the name of the said members by signing the name of the said members on the vouchers. The respondent Nos. 6, 7 and 8

have specifically stated that they never authorised the petitioner to withdraw such amount in their names. The show-cause notice was issued by the

Club which was duly replied by the advocate of the petitioner and the Club duly replied by the advocate of the petitioner and the Club duly lodged

complaint with the Officer-in-Charge, Shakespeare Sarani on June 19, 2000 under Sections 120B, 467, 471 and 406 of the Indian Penal Code.

The suit has been filed therefor. Prayers made in the petition, according to Mr. Chatterjee, are beyond the scope of the suit. He further drew my

attention to the prayers of the plaint and submitted that the suit is only for damages and nothing else.

25. According to him, prayers made in the petition are wholly in excess and totally outside the scope of this suit. He further relied upon a judgment

reported in Sree Jain Swetambar Terapanthi Vid.(S) Vs. Phundan Singh and Others, and submitted that no relief should be granted in interlocutory

proceedings beyond the scope of the suit. He further contended that the respondents have pleaded justifications in the affidavit filed by the

respondent Club and others. Charges made against the petitioner have also been admitted and acknowledged by the petitioner both in the plaint as

well as in the petition. Therefore, the petitioner's case of defamation cannot succeed. He further drew my attention to paragraph 14A of the

petition and submitted that the facts have been admitted by the petitioner.

26. He further relied upon a judgment reported in Abdul Wahab Galadari Vs. Indian Express Newspaper (Bombay) Ltd. and others, .) and

contended that no order ought to be passed when a plea of justification is adopted by the respondent. He further relied upon another judgment

reported in 1993 3 SCC 565 (Malhotra Syndicate v. Punjab Chemi-Plant Ltd.) and submitted that the Hon"ble Supreme Court has held that if

there is any irregularity the same may be rectified by the respondents as the point has been taken by Mr. Kapoor that the verification has not been

done properly. He further contended that the petition has been filed as an intention to frustrate the criminal proceedings. The petitioner had applied

for anticipatory bail before this Hon"ble Court which has been rejected by the Hon"ble Division Bench of this Court on 26th July, 2000. In these

facts he submitted that this Court should not grant any interim order at this stage.

27. Learned advocate appearing on behalf of the respondent No. 5 submitted before this Court that the respondent No. 5 was appointed in or

about September, 1989 as the Chief Accountant of the Saturday Club Limited. The duty of the respondent No. 5 was to carry out the instruction

of the Secretary of the Club and to carry out the bills of the Secretary of the Club. It was the duty of the respondent No. 5 (Chief Accountant) to

send the instruction to the billing section of the Club to process and prepare the vouchers after approval of the bill by the Secretary of the Club.

28. He further submitted that the petitioner had no occasion to meet the Chief Accountant of the Club for getting any suggestion. All the club

members including the petitioner had access to the Secretary of the Club to discuss any matter concerning the administration and management of

the Club. As per the normal procedure the order for making payment for disbursement usually came from the Secretary of the Club and the Chief

Accountant of the Club had to carry out the orders of the Secretary of the Club.

29. He further contended that the respondent No. 5 has only been dragged into this litigation without any reason. The duty of the respondent No. 5

was to record all monetary transactions in the bills of the Club in proper manner and which were duly audited by the statutory auditor every year

and he has nothing to do with the matter in question.

30. I have heard the learned counsel appearing on behalf of the parties. I have gone through the facts and the submissions made before me and I

have found that the suit has been filed for the following reliefs:

(a) A decree for Rs. 2 crores and by way of damages for defamation;

(b) In the alternative, an enquiry into the damages suffered by the plaintiff by reason of publication and/or circulation of the aforesaid libelous

allegation mentioned in the plaint and a decree for such sum as may be found due and payable to the plaintiff upon such enquiry;

(c) Receiver;

(d) Administrator;

(e) Injunction;

(f) All interlocutory reliefs and remedies;

(g) Attachment;

(h) Costs;

(i) Further and other reliefs;

31. The petitioner in this application has also prayed for an injunction restraining the respondents from giving any effect or further effect or from

acting on the basis and/or in furtherance of the impugned letter dated 22nd April, 2000 until the disposal of the instant suit. It further appears that

the respondents lodged a FIR, with the Officer-in-Charge, Shakespeare Sarani Police Station. Such complaints were made on 16th December,

1999, 7th January, 2000 and 6th March, 2000. In my opinion no order can be made by a Civil Court restraining a party to take any step or

institute any proceedings against person in a Court of Law. Therefore, such injunction cannot be granted at this stage. Incidentally, such complaints

have been lodged in terms of letter dated 22nd April, 2000. Therefore, in my opinion, no order of injunction can be passed also in favour of the

petitioner restraining the respondent to take any steps in accordance with the said letter. When the petitioner has specifically admitted the facts

pleaded in the petition for withdrawal of the said amount in the name of the said respondents, therefore, in my opinion no such injunction can be

passed in favour of the petitioner restraining the respondents not to take any steps in accordance with the said letter dated 22nd April, 2000. It

further appears that the petitioner has filed this application which will only stretch the relief claimed by her in the plaint and in my opinion the

prayers made in the petition are outside the scope of the suit and the same cannot be entertained at this stage. It is well settled and established that

no orders can be passed on any interlocutory application which are not in aid of the final relief in the suit. Following the decision reported in 1999 3

SCC 377 (supra) it appears to me that no relief can be granted at this interlocutory stage which are beyond the scope of this suit. I do not further

want to make any comment at this stage which may cause prejudice to the parties and I refrain myself expressing any such opinion at this stage. In

these circumstances, in my opinion no order can be passed on this application excepting it would be proper for me to expedite the suit and with a

direction to the respondents to file written statement within a period of 6 (six) weeks from date, cross-order for discovery within 2 (two) weeks,

inspection forthwith and the matter will appear in the prospective list 12 (twelve) weeks after.