

(2001) 09 CAL CK 0006

Calcutta High Court

Case No: G.A. No. 3108 of 2001 and C.S. No. 183 of 2001

Dr. Vijay Pahwa

APPELLANT

Vs

Bratati Mukherjee

RESPONDENT

Date of Decision: Sept. 21, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, Order 7 Rule 11(d), 80

Citation: 106 CWN 66

Hon'ble Judges: Bhaskar Bhattacharya, J

Bench: Single Bench

Advocate: R. Deb, R. Kapoor and S.R. Kakranla, for the Appellant; D. Shome and I.P. Mukherjee, for the Respondent

Judgement

Bhaskar Bhattacharya, J.

The defendant in a suit for defamation has come up with the instant application for rejection of plaint on the ground that even on the basis of averment made in the plaint, the same is liable to be rejected. The plaintiff has filed the instant suit claiming Rs. 5 crore as damages for defamation and his case as made out in the plaint may be summarized thus:

- 1) The plaintiff is an ophthalmologist of repute and a leading practitioner in the said field. He has chamber at 2, Russel Street, Calcutta and residence at Flat No. 9H. 67 Park Street, Calcutta. -
- 2) The plaintiff is also a trustee of charitable organization named "Sarala Pahwa Memorial Eye Centre" which treats eye ailments at minimal and/or at no cost.
- 3) On January 20, 2000 at about 8.30 a.m., the defendant, an Income Tax Officer with a team of several persons came to the chamber of the plaintiff while he was examining his patients and started conducting raid, search and seizure and such raid continued till 6 a.m. on the next day.

4) After interrogating the plaintiff for about an hour the defendant left the sitting room of the plaintiff and went to the waiting room and loudly uttered the following statements falsely and maliciously in the presence of Saikat Biswas, Raju and Ayan Ghosh and also to the hearing of the plaintiff and other officers of the Income Tax Department sitting in the chamber of the plaintiff:

- a) Dr. Pahwa is a hardened criminal;
- b) Dr. Pahwa is a phoney and a quack;
- c) Dr. Pahwa is a man who cheats his patients of money and should be debarred from practicing medicine.

5) The plaintiff came to know that the said allegations of the defendant had been given wide publicity and special damage resulted to the plaintiff within May 31, 2000 when many of his regular patients cancelled appointments and he was requested by the trustees of the said "Sarla Pahwa Memorial Eye Centre" to either give up his trusteeship or refrain from operating or treating any patients. The plaintiff also suffered loss of reputation and prestige in the eye of his professional peers and increasingly between May 31, 2000 to January 31, 2001 his clientele had diminished as a result of such slanderous statements.

6) In Paragraph 14 of the plaint, the following averments were made to show that the suit is not: barred by limitation:

14. The said special damage having occurred since May 31, 2000 and being in the nature of a continuing breach where slander is concerned the suit is not barred by any statute including the statute of limitation.

2. Mr. Shome, the learned counsel appearing on behalf of the defendant has first submitted that the defendant being a public officer and the accusation made herein having been allegedly done by the defendant in course of her official duty as such public officer, in the absence of any notice under Section. 80 of the CPC ("Code") the suit is not maintainable. Mr. Shome contends that in the plaint no averment has been made that any notice u/s 80 of the Code has been served upon the defendant. According to Mr. Shome, such averments are mandatory and in the absence of such averments the plaint is liable to be dismissed.

3. Secondly, Mr. Shome contends that in this case the cause of action of the plaint being based on slander and the plaintiff having alleged in the plaint that such slanderous statements were made on January 20, 2000, but the suit having been filed on May 18, 2001, the same was patently barred by limitation. Mr. Shome points out that according to Article 76 of the Limitation Act, 1963, in this type of cases limitation should run from the very date of utterance because the allegations as made in the plaint, if treated to be true, are actionable per se.

4. The aforesaid contentions of Mr. Shome have been seriously disputed by Mr. Deb appearing on behalf of the plaintiff. According to Mr. Deb, in the instant case, there is no necessity of serving any notice u/s 80 of the Code in view of the fact that the act of the defendant complained of does not come within her official duty. It is no part of a job of an Income Tax Officer, Mr. Deb continues, to make any slanderous statement against any assessee and as such the act complained of was done by the defendant not in course of official duty and the same was beyond the scope of her employment. Mr. Deb thus contends that in such a case no notice u/s 80 of the Code need be given.

5. As regards the question of limitation, Mr. Deb contends that question of limitation is a mixed question of law and fact and therefore such question cannot be adjudicated on an application under Order 7 Rule 11 of the Code. In support of such contention Mr. Deb has relied upon the following decisions :

1) [British Airways Vs. Art Works Export Ltd. and Another, .](#)

2) [Khaja Quthubullah Vs. Government of Andhra Pradesh and others, .](#)

3) Arjan Singh & Ors. vs. Union of India & Ors., AIR 1987 Del 165.

6. Mr. Deb next contends that the allegations of the plaintiff as made in the plaint do not make out a case of slander actionable per se. According to Mr. Deb. on the basis of those slanderous statements right to sue for damages accrues only on sufferance of a special damage. According to him, in this case such special damages having occurred on May 31, 2000, the suit was well within the period of limitation.

7. In reply to the aforesaid contention of Mr. Deb. Mr. Shome appearing on behalf of the defendant submits that the allegation that the plaintiff is a hardened criminal or that he is phoney and a quack or that he is a man who cheats his patients of money and should be debarred from practicing medicine are all actionable per se without the proof of special damage and the right to sue accrues immediately on utterance of the words.

8. As regards the service of notice u/s 80 of the Code. Mr. Shome contends that even if the defendant acted beyond the scope of her employment in uttering those words, notice u/s 80 of the Code must be given in order to maintain a suit for damage against a public officer. In support of such contention Mr. Shome relies upon a decision of the Apex Court in the case of [State of Maharashtra and Another Vs. Shri Chander Kant, .](#)

9. The first question that falls for determination is whether a notice u/s 80 of the Code is at all required to be given for maintaining the present suit.

10. Section 80 of the Code demands that no suit Shall be instituted against the Government or a public officer in respect of any act purporting to be done by such Officer in his official capacity until the expiration of two months next after notice in

writing has been delivered or left at the place mentioned therein stating the cause of action, the name, description and place of residence of the plaintiff and the reliefs he claims. In the instant case, the plaintiff never alleged that the slanderous statements which is the source of cause of action were made by the defendant purported to be in her official capacity; on the other hand his grievance is that it was no part of her job to make those statements. In other words, the plaintiff has not claimed damages for searches and seizure but his action is based on the slanderous statements alleged to have been uttered by the defendant.

11. In the case of State of Maharashtra & Anr. vs. Chander Kant (supra) relied upon by Mr. Shome, a suit was filed for setting aside order by Registrar under M.P. Public Trust Act. 1951. declaring Gajanan Maharaj Sansthan of Mangrue - Dastagir to be a public trust. In the said context, the Supreme Court observed that the word "act" in the phrase "any act purporting to be done in his official capacity" extends to illegal omission and on distinction can be made between acts done illegally and in bad faith and acts done bona fide in official capacity.

12. In my view, the principles laid down in the said decision cannot have any application to an act done beyond the scope of official duty. Thus, if an Income Tax Officer in course of search and seizure illegally sets fire on the place of search, the aggrieved assessee is not required to give notice u/s 80 of the Code for filing a suit against such officer for recovery of damages due to such tortious act because it was no part of the official duty of the said officer to set on fire.

13. Thus, I hold that no notice u/s 80 of the Code was required to be given before filing of the present case and as such the plaint cannot be rejected for non-service of such notice.

14. The next question is whether the suit is barred by Article 76 of the Limitation Act even if we accept all the statements made in the plaint to be true.

15. According to Article 76 of the Limitation Act. 1963, in case of a suit for compensation for slander, the period of limitation is one year and the time runs when the words are spoken, or, if the words are not actionable in themselves, when special damage complained of results.

16. In the present case, according to plaint the slanderous words were spoken on January 20, 2000 whereas the suit was filed on May 18, 2001, admittedly more than one year from the date of utterance. But the plaintiff in paragraph 14 of the plaint has alleged that limitation started on May 31, 2000 when special damage mentioned in plaint occurred and the same continued.

17. I am at one with Mr. Shome that the plaintiff will not get the benefit of the second part viz. occurrence of special damage if it appears that the words alleged to have been spoken by the defendant are actionable in themselves.

18. It is now settled law that in the following cases slander is actionable per se without proof of special damage:

- a) An imputation that the plaintiff has committed a criminal offence;
- b) An imputation that the plaintiff suffers from an existing contagious or infectious disease;
- c) An imputation of unchastity against a woman;
- d) An imputation against the plaintiff in the way of his business or office.

(See Salmond and Heuston on the Law of Torts; 12th edition by R.F.V. Heuston and R.A. Buckley, page 192).

19. As mentioned earlier, the allegations of the plaintiff is that the defendant made the following slanderous statements:

- i) Dr. Pahwa is a hardened criminal;
- ii) Dr. Pahwa is a phoney and a quack;
- iii) Dr. Pahwa is a man who cheats his patients of money and should be debarred from practising medicine.

20. It is thus apparent that the first of the aforesaid three statements comes with the clause (a) mentioned above and the second and the third statements come with the mentioned under the Clause (d).

21. Although Mr. Deb assiduously tried to convince this court that a mere statement that a particular person is a hardened criminal does not mean that such person has committed a criminal offence, I am not at all impressed by such submission.

22. The noun "criminal" according to Oxford Advanced Learner's Dictionary of Current English, Fourth Edition by A.S. Horn by means a person who commits a crime or crimes.

23. Black Law Dictionary, Seventh Edition has gone further and has defined the noun "criminal" not only as one who has committed a criminal offence but also as "one who has been convicted of a crime". The addition of the adjective "hardened" to the noun "criminal" manifests an idea that such a criminal shows no sign of shame or repentance.

24. Therefore, I find substance in the contention of Mr. Shome that all the allegations made in the plaint, if accepted as true, constitute actionable slander by themselves and thus the limitation for filing a suit for damages runs from the date of utterance. In such a case, the plaintiff is not required to wait till he suffers special damage. The limitation, in this case, will therefore, start from January 20, 2000 and the suit filed on May 18, 2001 is patently barred by limitation even on the basis of averments made in the plaint.

25. Mr. Deb tried to persuade me by the proposition that the question of limitation being a mixed question of law and fact, a plaint cannot be rejected on the ground of limitation. If in a given case, the question of limitation appears to be really a mixed question of law and fact, I am prepared to accept the submission of Mr. Deb; but in a case, like the present one, where even on the basis of the plaint case, the claim is barred by limitation, the question is one of inference from the undisputed facts and thus is a pure question of law and in such a case, plaint can be rejected on the ground of limitation. It is unnecessary to repeat that for purpose of hearing of an application under Order 7 Rule 11 of the Code the court will presume that all averments made in the plaint are uncontroverted. The three decisions cited by [British Airways Vs. Art Works Export Ltd. and Another, ,](#) [Khaja Quthubullah Vs. Government of Andhra Pradesh and others,](#) and Arjan Singh & Ors. vs. Union of India &, Ors., AIR 1987 Del 165, all deal with cases where the question of limitation was a mixed question of law and fact. Therefore, the principles laid down therein have no application to the facts of the present case. Therefore, on consideration of the averments made in the plaint I find that even if those are treated to be true, the claim is barred by limitation. The plaint is therefore rejected in terms of Order 7 Rule 11(d) of the Code of Civil Procedure.

No costs.