(1925) 12 BOM CK 0037

Bombay High Court

Case No: O.C.J. Suit No. 3090 of 1922

Hirabai Jehangir Mistri		APPELLANT
	Vs	
Dinshaw Edulji Karkaria		RESPONDENT

Date of Decision: Dec. 9, 1925

Acts Referred:

- Government of India Act, 1915 - Section 112
- Indian High Courts Act, 1861 - Section 9

Citation: (1926) 28 BOMLR 391

Hon'ble Judges: Crump, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Crump, J.

This suit came on for hearing on November 20, and issues were raised and some evidence was recorded. The suit then stood adjourned to November 24, and on that day the Advocate-General appeared for the defendant and stated that one defence only was raised, viz., that the suit was not maintainable. At the same time he reiterated the offer of Rs. 1,000 in full settlement which had been made at the first hearing but this the plaintiff declined to accept unless defendant undertook to pay her costs.

2. In the circumstances it is only necessary to deal with the pleadings so far as the question of the maintainability of the suit. The action is one for slander, and it must be taken that the allegations in the plaint are established and that the defendant did use the words set out in para 5 of the plaint. There is now no question of privilege or of any other defence than that already set out, and the only further question which can arise is an to the quantum of damages.

3. The point taken is shortly as follows :-The law to be applied is the English common law together with such statute law as is applicable. Under the English common law

an action for slander cannot be maintained without proof of special damage. No special damage is proved, The ease is not within any of the exceptions to the general rule. Adultery in the case of a woman is not a crime, and the Slander of Women Act 1891 (54 & 55 Vic. Cap. 21) is not in force in India. That is the substance of the argument and it requires examination.

4. There is no doubt that before 1891 words imputing unchastity to a woman were not at common law actionable in England without proof of special damage. The parties in this case are Parsis, and the judgment of Sir Michael Westropp in Naoroji Beramji v. Rogers (1867) 4B.H.C.R. 1 has decided beyond cavil that the Parsis are governed by the English common law except in matrimonial cases. The law applicable to them in such a case as this is the same as would be applicable between parties of British nationality. The Parsis have no law of slander of their own, and therefore Section 112 of the Government of India Act, 1915, does not touch the matter.

5. A study of the Charter of the Supreme Court shows that it had four jurisdictions :(1) Common Law, (2) Equity, (3) Ecclesiastical, (4) Admiralty, and further that as between parties other than "Mohammedans or Gentoos" it administered the English common law. The High Court succeeded to " all jurisdiction, power and authority " of the Supreme Court, save as otherwise directed by the Letters Patent or the Legislature in India (see Section 9 of the Indian High Courts Act of 1861). The original as well as the amended Letters Patent swept away the ecclesiastical jurisdiction. The only vestige of it is the matrimonial jurisdiction in cases between Christians preserved by Clause 35. So far as the common law jurisdiction goes the effect of Clause 19 is that the law to be administered is " such as would have been applied if the Letters Patent had not issued" that is to say the law which would have been applied by the Supreme Court. That this was the intention is made clear in para 24 of the Despatch from the Secretary of State. The result is that, except as between Mahomedans and Hindus, the English common law is to be administered, except in so far as the Indian Legislature has effected any change. In the particular matter now before me there has been no Indian legislation.

6. It is well known that at one time the Ecclesiatical Courts in England had power to deal with slanders imputing unchastity to women, But whether the Supreme Court could have exercised that jurisdiction in such cases is a matter of antiquarian interest only, for the High Court has not the Ecclesiastical Jurisdiction of the Supreme Court. Probably any such attempt would have met with the same fate as the attempt to apply to Parsi matrimonial causes in the exercise of the Ecclesiastical Jurisdiction "the Ecclesiastical Law now used and exercised in the Diocese of London" (see Ardaseer Cursetjee v. Perozeboye (1856) 6 M.I.A. 348.

7. It is hardly possible to doubt that had this case come before the Supreme Court it would have been dismissed on the ground that without proof of special damage the action was not maintainable. There was some attempt to suggest that there was

special damage but none is alleged in the plaint. The only argument was that the plaintiff was compelled to prosecute the defendant for defamation and that the expenses incurred by her constituted special damage. It is not necessary to do more than state the proposition. I may add as part of the history of the case that defendant was convicted and fined Rs. 50. It is, however, further urged that the English common law ought not to be followed as it is unsatisfactory and even "barbarous". Eminent Judges in England have said as much before the passing of the Slander of Women Act 1891, and it is unnecessary to cite the cases. But, in view of the legislative provisions which I have discussed, I do not feel free to reject this rule of law on any such ground. The point came before the Calcutta High Court in 1901: Bhooni Money Dossee v. Natobar Biswas ILR (1901) Cal. 452. The case is precisely similar to the case now before me. It was held that the action was not maintainable and, though I do not agree with all that is said there, I agree with the conclusion. I am not concerned in any way with cases arising outside the limits of The original civil jurisdiction and I do not therefore cite them. They can have no bearing on the point for the law to be applied is a different law.

8. In my opinion the enactment of the Slander of Women Act 1891 is also irrelevant. That Act does not extend to India, and there has been no similar Indian legislation. The law applicable was, so to say, crystallised by the Letters Patent of 1862, and has not been modified since that date. The suit is, therefore, in my opinion not maintainable.

9. Suit dismissed with costs.