

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA No.63 of 2013

Sri Subal Kumar Dey,
son of late Chandi Charan Dey,
Publisher and Editor of Syandan Patrika,
resident of 41, Sakuntala, Agartala,
P.S. West Agartala, District : West Tripura,
PIN : 799001

.....**Defendant-Appellant**

- Vs -

ARM Rohal Alam,
son of late Mantajuddin Ahmed,
permanent resident of Village- Raghunathpur,
P.S. & P.O. Bishalgarh, District : West Tripura,
presently residing at 11/44, Kunjaban, P.S. East Agartala,
Tripura West, PIN : 799102

.....**Respondent**

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the appellant : Mr. A.K. Bhowmik, Sr. Advocate
Mr. Raju Datta, Advocate

For the respondent : Mr. D.C. Saha, Advocate

Date of hearing : 20.01.2017

Date of delivery of Judgment and Order : 31.01.2017

Whether fit for reporting : NO

Judgment and Order

This is an appeal under Section 100 of the CPC against the concurrent finding of fact returned by the judgment dated 30.08.2013 delivered in Money Appeal No.18 of 2011 by the Additional District Judge, Court No.3, West Tripura, Agartala.

2. At the time of admitting the appeal, by the order dated 28.01.2014, the following substantial question of law was framed for hearing :

"Whether the judgment and decree passed by the inferior Courts suffer from perversity?"

3. At the beginning, this court was persuaded to ask the learned counsel appearing for the appellant to locate the perversity inasmuch as this court is not an appellate court for making fresh enquiry into the fact, rather the jurisdiction of the court is limited to appreciation of the substantial question of law involved in the appeal having filed under Section 100 of the CPC.

4. Mr. A.K. Bhowmik, learned senior counsel appearing for the appellant has submitted that the documentary evidence (Exbt.1 to 13), has not been read properly by the first appellate court while passing the judgment, affirming the judgment dated 12.07.2011, passed by the Civil Judge (Senior Division), Court No.1, West Tripura, Agartala, in Money Suit No. 03 of 2006.

5. Briefly stated the material facts are that the plaintiff-respondent who is a government officer, claimed to have been defamed by three news items published by the appellant's newspaper, named and styled as "Syandan Patrika" on 01.04.2005, 25.05.2005 and 21.06.2005. For such defamatory news items published without any foundation, the plaintiff's reputation has been damaged and on that cause the plaintiff filed

the suit for realizing the damage caused by those defamatory news as published by the defendant-appellant.

6. As it appears from the written statement, for the public good, the newspaper had published those reports and the publication so made is based on truth. The defendant-appellant has stated further that the Visa Officer, against whom the allegations are mostly targeted, did not file any case neither did he issue any contradiction of those news items and hence it has to be inferred that the publication was based on truth. An individual, as if cannot have the cause to realize the damage he suffered for defamatory act which had brought a collective of individuals in the ring of defamation. Even though five issues were framed by the trial court, the issue which is reproduced hereunder, was the foundation of adjudication :

"Whether the plaintiff is entitled to get compensation by way of damage if so what should be the amount."

7. After recording the evidence, the trial court has returned the finding as under :

"In the case in hand, the news items published on 01.04.2005, 25.05.2005, 21.06.2005 are definitely defamatory if the news items are published without any basis. The Madras High Court after referring to the English authorities and also defamation act 1952 came to the conclusion that equity and good conscience are not applicable in India moreover, in the opinion of the court, English Law had been altered by Section 4 of the defamation Act, by which the publishers of an innocent but defamatory statement can avoid his liability. It was therefore, held that, in India there was no liability for the statements published innocently. But the liability of the person who repeats a defamatory matter arises in the same way as that of the originator, because every repetition is a fresh publication giving rise to a fresh

cause of action. Not only the author of the defamatory matter is liable but its editor, printer, or publisher would also be liable in the same way. There is another class of persons who might disseminate the matter without knowing its contents i.e. book sellers, newspaper sellers and librarians. The law adopts a lenient attitude towards them. They are not liable if

I. They did not know or

II. In-spite of reasonable diligence could not have known that what they were circulating was defamatory.

In the case in-hand after publication of the news items dated 01.04.2005, 25.05.2005 & 21.06.2005, a protest letter was also published in the newspaper. But thereafter, again a news item was published in the editorial page which was also defamed the plaintiff. The plea of the plaintiff is that, after publication of the protest letter the editor of the newspaper might have took reasonable care and caution in publishing the second letter supporting the news items published on the earlier dates but he did not do so nor he explained about the authentication of his publication of those news items on those days. It is fact that defamation is such a thing which depends upon man to man. Definitely the news item dated 01.04.2005 involved the plaintiff and if the news item is not correct than definitely the said news item defamed the plaintiff and his family members. In relation thereto the news items dated 25.05.2005 and 21.06.2005 also damage the reputation of the plaintiff and his family if the news items are not correct."

[Emphasis supplied]

8. Having appreciated the evidence, the trial court found that, from the documentary evidence as admitted by the plaintiff-respondent in the evidence, it has clearly transpired that even after publication of the contradiction, the defendant-appellant continued to publish defamatory content against the plaintiff-respondent and accordingly the damage was asserted at Rs.30,000/- and that was directed to be paid with interest @ 6% per annum from 16.01.2016.

9. Being aggrieved by the said judgment dated 12.07.2011, the appellant herein preferred a first appeal under

Section 96 of the CPC in the court of the District Judge, being Money Appeal No. 18 of 2011, which has been dismissed by the impugned judgment dated 30.08.2013 returning the finding of affirmation and observing as under :

"10. I have gone through the impugned judgment as well as the evidence adduced by the parties. I find that there is no dispute about the publication of the news items. On perusal of the impugned judgment I find that all the issues were decided in favour of the respondent and ultimately, the suit was decreed. Issue No.3 is the main issue which is decided in favour of the respondent that respondent is entitled to get a lump-sum award of compensation amounting to Rs. 30,000/- w.e.f. 16.01.2006. From the impugned judgment I find that the learned Court below discussed all the news items which were allegedly published against the respondent containing defamatory news. Regarding appreciation of evidence by the learned Court below I find nothing illegality or impropriety. Now, the question is whether the appellant is liable to pay any compensation by way of damage to the respondent in view of his publication of news items in the newspaper. Hon'ble Apex Court in the case of Gambhirsinh R. Dekare (Supra) at Para 14 observed that "A news item has the potentiality of bringing doom's day for an individual. The Editor controls the selection of the matter that is published. Therefore, he has to keep a careful eye on the selection. Blue-pencilining of news articles by anyone other than the Editor is not welcome in a democratic polity. Editors have to take responsibility of everything they publish and to maintain the integrity of published record. Again at Para 18 Hon'ble Apex Court observed that "Therefore, from the scheme of the Act, it is evident that it is the Editor who controls the selection of the matter that is published in a newspaper. Further, every copy of the newspaper is required to contain the names of the owner and the Editor and once the name of the Editor is shown, he shall be held responsible in any civil and criminal proceeding.""

The submission of Mr. Bhowmik that the news item was published mainly against the Visa Officer of Bangladesh Visa Office and that Visa Officer did not send protest letter against those news items at that time has no force as because Visa Office of Bangladesh Visa Office may not take interest in protesting news item. But the respondent being aggrieved with the news items while the name of the respondent was involved in the news item felt defamed and since there is the cause of action for this suit I hold that the Learned Court below rightly decided the suit and accordingly, decreed it."

[Emphasis supplied]

10. Mr. A.K. Bhowmik, learned senior counsel and Mr. Datta, learned counsel appearing for the appellant has submitted that the evidence has not been properly read. Moreover, the news items had been published on proper enquiry by a reporter who filed the said report for publication and that was published in public good and good faith. There was no mala fide, and as such, the contradiction issued by the plaintiff-respondent was duly carried by the defendant in the issue of the newspaper dated 06.07.2005.

11. The defendant-appellant in the written statement, has categorically admitted the publication in his newspaper, the materials as referred in paragraphs 4, 5 and 6 of the plaint. In the written statement, it has been further admitted that on 04.10.2005, the defendant-appellant published the materials in the readers' column as referred in Para-8 of the plaint. He has categorically asserted in the written statement that the purpose of the publication was that, at the relevant time a racket was operating from the Bangladesh Visa Office at Agartala. Corrupt practices of the then Visa Officer and others in that Visa Office were rampant and there were reasons to be apprehensive about the national security. At that stage the newspaper of the defendant in the interest of national security and public good made the publication referred to by the plaintiff after verifying the fact at appropriate level and while making criticism of such practices in the Bangladesh Visa Office, the name of the plaintiff

had surfaced for his involvement. At the relevant time, the plaintiff had enormous influence on the Visa Officer and other persons dealing with Visa for Bangladesh. The defendant-appellant had asserted that after the publication which is based on truth, the concerned Visa Officer was withdrawn from Agartala by the Government of Bangladesh within a short time. The plaintiff did not file any case so long the said Visa Officer was posted at Agartala and he instituted the suit only after departure of the said Visa Officer from Agartala. The reporters who were involved in the investigation found that a large number of persons used to visit the residence of the plaintiff for obtaining visa for Bangladesh as the plaintiff became pivotal figure in obtaining visa through his undue influence upon the Bangladesh Visa Office at Agartala. The publications were based on truth and published for public good and in the national interest. The defendant-appellant did not intend to defame the plaintiff.

12. It is no denying fact that by bringing two documentary evidence the plaintiff-respondent admitted the copies of the newspaper dated 01.04.2005, 25.05.2005, 21.06.2005, 04.10.2005 and 16.10.2005 [Exbt. 1,2,3,4 and 5]. While admitting those copies of the newspaper, objection was raised as the original manuscripts were not filed. But from the written statement it has transpired that the defendant-appellant has clearly admitted of having the content of those reports published in his newspaper and such admission comes within the embrace of

Section 17 of the Evidence Act. Such objection was raised while admitting Exbt.9, the letter dated 28.10.2005 and Exbt.11, the letter dated 29.05.2005. But similar objection was not made while admitting the letter dated 07.07.2005. It is on the record that the plaintiff-respondent adduced witnesses, such as, Md. Sahajahan (PW-3), who has categorically stated that he had lost all respects that he had for the plaintiff. Even his wife Nazmun Nahar (PW-2) has categorically stated that her husband suffered loss of reputation, even she had to face the mental pain and injury. It further appears that the defendant-appellant reiterated his stand what he had reflected in his written statement. In the cross-examination, the defendant (DW) has stated that "my reporters had duly enquired into the allegations and only then the same have been published. Witness volunteers : Various other organs have also made enquiry and investigation in this matter." He has further admitted in the cross-examination that he did not file any document to substantiate his claim as it is not practicable. He has admitted categorically that he has not disclosed the name of any of his reporters who carried out the investigation. He has admitted that he had published the letters which are alleged of containing some defamatory materials in his newspaper. He has also admitted that the plaintiff-respondent had launched a criminal prosecution against him for defamation as well. Even though one Jawhar Roy who was a personal friend of the plaintiff-respondent, wrote a letter dated 05.10.2005 and filed the examination-in-chief by affidavit but did not appear for the cross-examination.

13. Mr. Bhowmik, learned senior counsel and Mr. Datta, learned counsel have submitted that the imputation based on truth, which public good requires to be revealed or published, is not defamation. If it be for the public good, the imputation, even if, should be revealed or published. They have however admitted that whether or not it is for the public good, is a question of fact. Even if, some materials are published relating to conduct of any person touching any public question, it is not defamation if the same is expressed in good faith.

14. From the other side, Mr. D.C. Saha, learned counsel appearing for the respondent has submitted that all the material facts have been admitted by the defendant-appellant. His only defence is that the publications were based on truth. The plaintiff-respondent has established the fact that he has been defamed without any foundation of truth. He had categorically denied by filing a contradiction that he was not involved with such act or conduct as imputed. Even thereafter, the defendant-appellant continued the publication and as such the defendant-appellant, as the editor of the newspaper who is responsible for selection of the content, is grossly responsible for disproving or proving the fact for demonstrating that the material so published is based on truth and truth alone. Then only the defence relating to publication in the public good or any public interest can be availed by the defendant-appellant. The defendant-appellant has clearly admitted that the investigation was done, not by him, but by

some other reporters of his newspaper. Neither their report in this regard nor were they adduced in the trial to prove that particular fact and as such, both the courts below have rightly returned the finding that there is no iota of evidence that the imputation made against the plaintiff-respondent was on truth. Hence no interference is required in this matter.

15. Having appreciated the submission and scrutinized the records for limited purpose to appreciate the substantial question of law, this court is of the view that when the materials based on which defamation has been alleged, are admitted to have been published by the defendant-appellant in clear terms and those newspapers are produced before this court, no technical objection to their admissibility can be sustained by any court. From the reading of the materials what has transpired is that, if there is no truth, and the truth is not the foundation of the said publication, these are highly defamatory and bound to cause damage to individual's reputation. That has been shown by way of evidence on discharging his initial burden. It can now be safely said that the defendant-appellant has utterly failed to prove that there was foundation of truth. He has simply stated that those were published in the national interest. Unless the foundation of truth is not established, the statement as to the national interest and national security would not help the defendant-appellant out from the liability for the damage that has been caused by publication of those materials as referred in the plaint. The materials, if

consolidate in a short campus, would be that the plaintiff-respondent was involved in nefarious activities which might compromise the National Security and he was involved in a racket for getting the visa for travelling to Bangladesh, in tandem with the then Bangladesh Visa Officer obviously. He had created a well-knit 'racket' of illegal activities for purpose of "selling visas". Even some other imputations are in the said predication. Both the courts below have found that the plaintiff has established that for the publication of the defamatory materials by the defendant-appellant the plaintiff-appellant had suffered damage.

16. The apex court in **Gambhirsinh R. Dekare Vrs Falgunbhai Chimanbhai Patel**, reported in **(2013) AIR SCW 1590**, has held that :

"A news item has the potentiality of bringing doom's day for an individual. The Editor controls the selection of the matter that is published. Therefore, he has to keep a careful eye on the selection. Blue-pencilings of news articles by anyone other than the Editor is not welcome in a democratic polity. Editors have to take responsibility of everything they publish and to maintain the integrity of published record."

It has been held that the editor alone shall be responsible for a civil and criminal proceeding for publication of the news item.

17. It evinces further that the defendant-appellant being the editor of "Syandan Patrika" has failed to place on record the materials which would show the imputations or insinuations as made in the news items under reference were published on truth. Hence, there is no infirmity in the appreciation as projected. The

oral and documentary evidence as laid by the plaintiff-respondent have clearly established first that the plaintiff was bound to suffer damage and that the plaintiff had suffered that damage. As there is no appeal or cross-objection from the plaintiff-respondent in respect of quantification of the damage, it is not essential to go into that aspect of the matter in this appeal. Thus, this court is persuaded to hold that there is no perversity at all.

18. Hence, this appeal being bereft of merit, is liable to be dismissed and accordingly it is dismissed.

Draw the decree accordingly.

Send down the LCRs thereafter.

JUDGE

Sabyasachi. B