

CALCUTTA HIGH COURT

W. Hay

Vs.

Aswini Kumar Samanta

Civil Revn. Case No. 21 of 1957

(P.N. Mookerjee and P.K. Sarkar, JJ.)

15.04.1957

JUDGMENT

P. N. Mookerjee, J.

1. This Rule raises a short but interesting question. It is directed against on order of the learned Subordinate Judge, Second Court, Alipore, refusing the petitioners prayer for rejecting the plaint on the ground that it discloses no cause of action.

2. The suit which was filed by the opposite party against the present petitioners was one for mandatory injunction and damages. The suit was instituted on June 27, 1955 and upon the following allegations, inter alia,:

- (i) That the opposite party was an old employee holding a responsible post under Mackintosh Burn Ltd. of which the petitioners were Directors;
- (ii) That the opposite party was the Secretary of the (Workers') Union and, on account of his efforts to improve the lot of the workers, he had incurred the displeasure of his employers; and
- (iii) That, actuated by malice, the petitioners, on false pretext, issued a warning order to the opposite party, threatening him with dismissal; and they also had it circulated amongst the opposite party's co-workers through their agents and lowered him in their estimation and injured his reputation.

3. The warning order was in the following terms:

"The Directors take a very serious view of the whole affair and you are hereby warned that any incident of the type in future will lead to your dismissal".

4. The opposite party claimed that it was wrongful, mischievous and defamatory and prayed for mandatory injunction, directing withdrawal of the order and also prayed for damages on account of loss of reputation etc.

5. The defense was a denial of the plaintiff's material allegations and there was, inter alia, a specific plea that the plaintiff had no cause of action for the suit. Upon that plea, an issue was raised as to whether the plaint "discloses a cause of action" and that issue appears to have been taken up and tried by the court as a preliminary issue in connection with the defendants' application for rejection of the plaint on the ground that it discloses no cause of action.

6. So far as mandatory injunction was concerned, the trial court agreed with the defense and held that there was no case or cause of action for mandatory injunction.

7. On the question of damages, however, for alleged defamation, the court accepted the plaintiff's contention that the plaint contained sufficient averments to furnish a good cause of action for damages. Whether the averments could be proved or not at the trial was a different matter, but the court held that, on the plaint, as it stood, it disclosed a good cause of action for damages for defamation and hence it could not be rejected for want of cause of action, as prayed for by the defendants.

8. The defendants' application was, accordingly, rejected by the court and the preliminary issue was apparently answered in the affirmative in favor of the plaintiff. Against this order, the present Rule was obtained by the defendants.

9. Before the trial court, the arguments covered a wide field, but the scope became very much limited in this Court on account of the attitude, taken up by the learned lawyers, appearing on the two sides. The finding of the trial court that there was no case or cause of action for any mandatory injunction was not challenged by the plaintiff and so the only point that was discussed at the hearing of the rule was whether the trial court was right in holding that the plaint, as it stood, disclosed a good cause of action for damages for defamation. On this point also, the dispute was confined within very narrow limits.

10. Mr. Sen's contention that, in a libel action, it was obligatory on the plaintiff to set out in the plaint the actual defamatory words (together with the innuendo or defamatory meaning thereof, where necessary) was not disputed by Mr. Roy Choudhury. Mr. Roy Choudhury, however, contended that the plaint in the present case did not suffer from any defect on that score. He drew our attention to the warning order, as set out in the plaint and submitted that the said order, worded as it was, was per se defamatory. He further submitted that, in any event, the defamatory words are all to be found in the said order as quoted and the necessary innuendo, conceding that innuendo was necessary, could easily be gathered from paragraphs 26 and 28 of the plaint. He also argued that the context or the circumstances in which the warning order was issued and

published were all set out in the plaint and that ought to be sufficient to cure the defect, if any, on the above score, when the Court is considering only as a preliminary question whether the plaint discloses any cause of action.

11. It is well settled that, in a libel action, the defamatory words must be set out in the plaint. Where the words are per se or prima facie defamatory only the words need be set out. Where, however, the defamatory sense is not apparent on the face of the words, the defamatory meaning, or as it is technically known in law, the "innuendo" must also be set out and set out in clear and specific terms. These are universally accepted propositions. Where again the offending words would be defamatory only in the particular context, in which they were used, uttered or published, it seems to us that it is necessary also to set out, except where, as in England, the law is or has been made expressly otherwise, the offending context (Colloquium) in the plaint and to state or aver further that this context or the circumstances, constituting the same, were known to the persons, to whom the words were published, or, at least, that they understood the words in the defamatory sense. In the absence of these necessary averments, the plaint would be liable to be rejected on the ground that it does not disclose any cause of action.

12. Bearing in mind what we have stated above, (and which will be found to be amply supported by authorities, vide, in particular, Gately on Libel and Slander, Fourth Edition, (1953), pp. 460-1 and 465; Bullen and Leake's Precedents of Pleadings, 10th Edition, (1950), pp. 364-5, 431 and 769; and the *Capital and Counties Bank Ltd. v. G. Henty and Sons*¹, See also Fraser on Libel and Slander, 7th Edition, (1936), pp. 245, 247 and 302-11), let us examine the present plaint. The plaint undoubtedly sets out the warning order which, as we have said above, was worded as follows:

"The Directors take a very serious view of the whole affair and you are hereby warned that any incident of the type in future will lead to your dismissal".

13. The words, however, as quoted above, are not, in our opinion, defamatory per se, or even prima facie. In the context of modern times, it is difficult to hold that the mere fact that a particular employee has offended his employers or received a warning order would necessarily lower him in the estimation of right-thinking men. Instances are not rare in these days that, in particular circumstances, such incidents have actually added to his reputation " amongst his fellow workers and right-thinking people. The warning order, as quoted" above, does not show anything more than this that the plaintiff offended his employers and was given a warning. That, however, as we have said above, would not make it necessarily defamatory.

14. The plaint no doubt sets out a context of circumstances which might give the warning order a defamatory meaning, but that meaning or the "innuendo", as it is technically called, was not set out in the plaint. Paragraph 26 of the plaint, to which our attention was drawn in this connection by Mr. Roy Choudhury, is wholly insufficient for the purpose. There is nothing in it to show what

sense was actually conveyed by the alleged defamatory warning order, - far less any specific or clear averment of any defamatory meaning. There is also no statement in the plaint that the context of circumstances which might have rendered the warning order defamatory was known or circulated to the persons, to whom the warning order was published. In paragraph 28 of the plaint, which states the accrual of the cause of action, there is no doubt a vague and general statement that the defamatory statement was circulated but it is not at all clear therefrom as to what particular statement was meant to be included in the expression. The whole story of circulation appears to be set out in paragraph 26, but it refers only to the circulation of the warning order. It is not also the plaintiff's case that except the warning order which was circulated there was anything defamatory.

15. Clearly then, neither the necessary innuendo nor the circulation of context of circumstances which alone may make the warning order defamatory was averred in the plaint, and, in the absence of such averment, the plaint is liable to be rejected as not disclosing any cause of action.

¹(1882) 7 AC 741

16. We would, therefore, make this Rule absolute, set aside the order of the learned Subordinate Judge and direct him to reject the plaint as not disclosing any cause of action.

17. It is only necessary to mention that Mr. Roy Choudhury towards the conclusion of his argument, made a submission that, if the plaint, as it stood, were defective in law, the plaintiff should be allowed to remedy the defect and supply the deficiency by appropriate amendment. There was, however, no actual application for any amendment and, accordingly, we have not considered that question.

18. In the result, this Rule is made absolute as above, the order of the learned Subordinate Judge is set aside and the case is sent back to him to be dealt with in accordance with law in the light of this judgment.

19. We make no order for costs in this Rule which succeeds only on a technical ground.

Sarkar, J.

20. I agree.

Rule made absolute.