AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 168 of 2004

1. Dr. P.K.Niyogi, S/o. Late Dr. T.P.Niyogi, Proprietor- Niyogi Sonography Centre, Manendragarh.
2. Dr. C.P.Karan, S/o. Dr. D.P.Karan, Dr. Naran Nursing Home, Ward No.15, Manendragarh, Tehsil Manendragarh, District Koria, Chhattisgarh.

---- Appellants

Versus

Praveen Nishi, Publisher, Printer & Chief Editor & Title Holder “Ghoomta Darpan” Fortnightly News Paper, Bus Stand, Manendragarh, District Koria, Chhattisgarh.

---- Respondent

For Appellants : Mr. Nishikant Sinha & Mr. Shakti Raj Sinha, Advocates

For Respondent : Mr. Ashish Beck, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Judgment On Board

03.12.2018

1. The instant appeal is against the judgment and decree dated 16.07.2004 passed in Civil Suit No.1-B/1998 by the Additional District Judge, Manendragarh, District Koria, wherein the suit for damages of Rs.1,00,000/- was dismissed by the learned Court below for alleging defamatory publication made in newspaper on the ground that justification of truth exists on the published news item. After dismissal of the suit, in this appeal, the appeal value was reduced to Rs.50,000/- for damages.

2. The plaintiffs' suit was that Dr. P.K.Niyogi carries on Sonography Centre at Mahendragarh and Dr. C.P. Karan carries on Nursing Home by name and style as Dr. Karan Nursing Home at

Manendragarh. It was stated that both the Doctors have acquired reputation and name by their work of extending different medical help to the people and were popular amongst the public. It was stated that they were respected in all the circles of the society. However, the defendant Praveen Nishi, who was a Publisher, Printer & Chief Editor of newspaper namely Ghoomta Darpan in between the period from 16.10.1997 to 31.10.1997 published news that the Doctors are committing dacoity with the poor in a news captioned as "चिकित्सकों के द्वारा चैनल सिस्टम से गरीबों को लूटा जा रहा है'' It was further published that the plaintiffs without any reason used to give injection to the patient and used to recover Rs.40-50/- fees, thereafter, used to prescribe medicine of Rs.40-50/- and without any reason they were subjected to sonography and were sent to a Sharma Pathology for blood & urine tests thereby were looting poor people. The plaintiffs stated because of such publication, the plaintiffs' image were tarnished which ultimately caused damage to reputation and reduction of their practice. The plaintiffs contended that they are competent Doctors and only in case of need, injection were prescribed to the patient and only on felt need patients were subjected to sonography and blood & urine test. The plaintiffs further stated that they have served the defendant a notice to apologies but despite service of notice, the defendant neither replied it nor extended his apology; therefore, a suit for defamation of damages of Rs.1,00,000/- was filed.

3. The defendant in his reply denied the averments and averred that the publication of news was made in the public interest and in all bonafide without any intention of damaging the reputation of

plaintiffs. It was stated that since the duty of a Doctor is related to the public on day to day basis the publication of like nature were made. It was stated that considering the plight of the general public mainly the tribal backward people, considering their problem, the publication of the news was made. It was stated that because of the publication no damage was caused to the profession of the plaintiffs and dismissal was prayed for.

4. On the basis of the pleading of the parties, the Court framed three issues and dismissed the suit. Hence this appeal.

5. Learned counsel for the appellants would submit that the plaintiffs have examined themselves as also the local residents of the area and have explained the damage cause to the reputation. It is stated that for the reason the plaintiffs refused to give an advertisement to the newspaper of the defendant, as a revenge, false publication of the news was made without any proof thereof. He submits that the nature of the publication so made definitely harms the reputation of a professional; consequently, the suit for damages was filed. It is further contended that the dismissal of the suit on the terminology of justification of truth is foreign to the issue. It is stated the dismissal of suit is completely misapplication of terminology and justification of truth is actually defence of justification or truth. He submits the evidence categorically shows that the damage is done to the reputation to which truth was absent. Consequently, the Court should have decreed the suit in favour of the plaintiffs.

6. Learned counsel for the defendant/respondent submits that taking into nature of publication made the defence of good faith existed. It was further stated that publication was made not to harm any

individual but was made in public interest. Therefore, the order passed by the Court below is well merited which do not call for any interference. He relied on *AIR 1970 SC 1372 & AIR 1961 M.P. 205*.

7. I have heard learned counsel appearing for the parties at length, perused the pleadings and the documents.

8. The pleading contains attacking the publication so made is completely false. According to the averments of the plaint, the plaintiffs stated that in between 16.10.1997 to 31.10.1997 in the newspaper Ghoomta Darpan in the last page, captioned was made "चिकित्सकों के द्वारा चैनल सिस्टम से गरीबों को लूटा जा रहा है" and plaintiffs were named and pointed out as Doctors who were looting the patients. The defendant completely denied the averments in written statement. It was further stated that the publication of the news so made were without any malice and was published with all bonafide considering the welfare of the public at large and the activities have been published because issue was related to the general public and further the publication had not damaged the image of the plaintiffs. The defendant further admitted the fact that the patients were adviced by Doctors that something is developing inside their human body and on such fear they were unnecessarily subjected to sonography and different test and two Doctors were also named. It was published that in public interest to save them, the publication was made. The defendant so admitted the fact that the publication of the news was made by him but it was in the public interest and truth exists there.

9. Now coming to the statement of the plaintiffs, Dr. P.K.Niyogi, plaintiff No.1, examined as PW-1 and Dr. C.P.Karan, plaintiff No.2

was examined as PW-4. Both have stated that they know the defendant Praveen Nishi, he is the Editor of the Newspaper Ghoomta Darpan. PW-1, P.K.Niyogi further stated that he worked as Block Medical Officer from 1988 to 1995 and he is MBBS & MS. In respect of Dr. C.P.Karan, it is stated that earlier he was in service, thereafter, after resigning, he started his private practice. The statement of the witnesses PW-1 & PW-4, the plaintiffs, would show that earlier they were both in government job, thereafter, they started their own practice. Both the witness in chief stated that in 1997 in the month of October, they came across in news publication in paper namely Ghoomta Darpan whose Publisher & Editor was Praveen Nishi. In the last page of the paper, the news was published that by channel system the poor persons are looted. The witness further stated that the sum and substance of the order was that Dr. P.K. Niyagi used to refer the case to Dr. C.P. Karan for income and likewise the patient was being referred to one Sharma Phathology for test of blood & urine for income. It is further stated that the result which was come out that for no reason the patient was subjected to sonography, x-ray, blood & urine test and used to commit loot from the patient with a channel. Dr. C.P.Karan, PW-4, has also made the like statement that the publication so made has damaged their reputation, which resulted into fact of reduction of their practice.

10. The reliance is placed by the respondent in case of ***Chaman Lal v. The State of Punjab*** reported in ***AIR 1970 SC 1372*** and the relevant part i.e. Para 10 is quoted herein under :

> "10. In the background of these findings of fact the plea of good faith of the appellant that he wrote the letter dated 2nd August, 1962, pursuant to the application and the

resolution of the residents of Sujanpur loses all force and has no foundation. In order to establish good faith and bona fide it has to be seen first the circumstances under which the letter was written or words were uttered; secondly, whether there was any malice; thirdly, whether the appellant made any enquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability that the appellant acted in good faith."

11. Further the reliance is placed in case of ***Purushottam Vijay v. State*** reported in ***AIR 1961 M.P. 205*** wherein Para 16 is relevant, which is quoted herein below :

16. In principle, our law on the subject is the same. On the other hand, the statement of facts need only be substantially correct and need not be micro-scopically or photographically true: nor can the plaintiff in a civil suit or the prosecutor in a criminal case, fasten himself on to an inaccuracy in the detail, unless that detail itself is such as to make substantial difference to the case. As stated in Surajmal B. Mehta v. B.C. Horniman, 47 Ind Cas 449: (AIR 1917 Bom 62) (SB):

"While a journalist is bound to comment on public questions with care, reason and judgment, he is not necessarily deprived of his privilege merely because there are slight unimportant deviations from absolute accuracy of statement, where those deviations do not affect the general fairness of the comment. The articles must be considered rather in their entirety than by separate insistence on isolated passages, and the Court must decide what impression would be produced on the mind of an unprejudiced reader, who knowing nothing of the matter beforehand, read the article straight through".

Courts, in fact, have gone to the extent of saying that even an exaggeration will not by itself disentitle the accused or the defendant from this defence. In Murlidhar v.

Narayandas, 27 Ind Cas 205: (AIR 1914 Sind 85) it was observed:

"Mere exaggeration, or even gross exaggeration does not make a comment unfair. Where in a newspaper report the main aspersion of the accused against the complainant is true, the fact that there is some exaggeration or departure from strict truth dos not deprive the accused of the protection provided in Exception 3 to S.499 Indian Penal Code.

It is necessary, however, in the present case to go far. In Dr. Khare v. M.R. Masani, AIR 1942 Nag 117 quoted by the learned Sessions Judge in para 23 of his judgment, we have the basic elements of this defence set out under three headings.

12. Reading of the two judgment would show the good faith and bonafide has to be seen when defence of like nature is advanced. Under the circumstances, the words were written whether there was any malice; whether any enquiry was made before allegations were made; whether there are reasons to accept the version that he acted with care and caution and whether there is preponderance of probability that the appellant acted in good faith are to be examined. Likewise another principle, which has been relied on AIR 1961 M.P. 205, it says that the statement of facts need only be substantially correct and any exaggeration thereof would not be amount to defamation and the Court must decide what impression would be produced on the mind of an unprejudiced reader, who, knowing nothing of the matter beforehand, read the article straight through.

13. The article of the newspaper which is admitted to have published by the respondent is Ex.P-1 and the captioned of the newspaper reads as under :

"चिकित्सकों द्वारा चैनल सिस्टम से गरीबों को लूटा जा रहा है"

"दर असल इस सिलसिले की शुरूआत कुछ इस तरह से होती है कि मरीज अपनी सिरदर, सर्दी, खासी, बुखार, शरीर दर्द या उल्टी दस्त जैसी मामूली सी बीमारियों का इलाज कराने के लिये डॉ. करन क्लिनिक में जाता है। डॉ साहब उसका परीक्षण निरीक्षण करते है, एक इंजेक्शन लगाते हैं, कुछ दवाईयों के नाम लिख देते है, तो कुछ दवाईया अपने पास से ही दे देते है और बदले में उस से 40 रू. अपनी फीस, 10 रू. इंजेक्शन चार्ज, 40–50 रू. दवाईयों की कीमत वसूल लेते है साथ ही उस मरीज को जाने से पहले इतनी सलाह अवश्य दे देते है कि आपके पेट में अमुक विकास, या आपके शरीर में कुछ स्पष्ट न समझ में आने वाली बीमारी की भी शंका नजर आ रही है अतः आप एक बार सोनोग्राफी करवा लीजिए तो आपको बीमारी क्या है इसकी पक्की जानकारी मिल जाएगी तत्पश्चात सही ईलाज भी हो पाएगा अत : आप डॉ. नियोगी के यहां जाकर हमारा नाम बता कर सोनोग्राफी करवा लीजिए।

स्वर्ग से गिरकर खजूर में अटकने को मजबूर मरीज किसी तरह पैसों की व्यवस्था कर नियोगी सोनोग्राफी सेण्टर पहुंचता है, सोनोग्राफी कराकर साढ़े तीन से चार सौ रूपए का खर्च वहन करता है और अंत में उसे यह जानकारी दे दी जाती है कि आपको कोई घातक बीमारी तो नही है फिर भी आप ''शर्मा पैथालॉजिकल लैब'' में जा कर अपने रक्त और मूत्र की जांच जरूर करा लीजिए हो सकता है रक्त या पेशाब में कोई विकास उत्पन्न हो गया हो।

इस तरह से गरीब मजबूर, अनपढ़, अंजान मरीज अपने मन की तसल्ली के लिये शर्मा पैथो लैब भी चला जाता है और वहां पर भी 100 से 150 रू. का चुना उसे लगा दिया जाता है, दिन भर में दो टाईम की रोटी का भी बड़ी मुश्किल से जुगाड़ कर पाने वाला एक गरीब मरीज, अपनी मामूली सी बीमारी का ईलाज कराने में हजार रू. का खर्च वहन करने को विवश हो जाता है और उसकी अशिक्षा, अज्ञानता, गरीबी और भोलेपन का लाभ उठा कर हजारों रूपए प्रतिदिन अवैध रूप से कमा रहे है।"

14. Reading of Ex.P-1 further shows that it reflects the name of both the appellants and stated that when the patient reaches to Doctor Karan for treatment of headache, cold, cough, fever, body-ache, omitting & dysentery, he is given some injection and Doctor takes his fee apart from the injection. Thereafter advise him to go for

sonography. Thereafter, the patient reaches to the Dr. Niyogi and Dr. Niyogi thereafter conducts sonography, takes his fee of Rs.300-400/- and at the end advise there is no terminal disease, but advices further that patient may go to Sharma Pathology for test of blood & urine. Therefore, the poor patient goes from one Doctor to another and has to pay the different amounts. Apart from this, the other facts have also been narrated.

15. The defendant DW-1, Praveen Nishi, has made statement that one name of Bharti, the lady patient, came to him and disclosed the above narration of fact. The hearsay evidence as disclosed that patient disclosed that she went to Dr. Karan wherein she was referred to Dr. Niyogi and subsequently she was referred to Sharma Pathology and had paid the fees. The said patient Bharti has not been examined before the Court. Likewise, DW-2 one Vijay Laxmi has stated that she had been to Dr. C.P. Karan for stomach ache wherein she was referred to Dr. Niyogi and subsequently she was subjected to test for blood & urine and eventually it was found that problem is because of gas formation. One document Ex.D-1 is filed, which is a photocopy of one prescription of Clinic of Dr. Karan Nursing Home. Nothing can be read out from that as to what is the impact or diagnosed for that patient. As against this, apart from the statement of PW-1 & PW-4 the plaintiffs got examined one Gopal Prasad Bunkar, PW-2, he stated that after reading the news in the paper, he carried out the impression that Dr. P.K.Niyogi and Dr. C.P.Karan are not good Doctor, they are committing loot to the patient and he had developed disrespect for them and stopped going to them. Another statement of Satya Prakash Verma, PW-3, is on record.

He had also made the similar like statement that after reading the newspaper, he initially stopped to go to them for any treatment.

16. In view of the aforesaid evidence, the defence whether the principles of good faith and no malice can be pressed into motion. The defendant has pleaded that the publication was an honest impression of facts made in good faith. The evidence however would go to show that those facts of attributing allegation on Doctors have not been established, it is only an impression of opinion and a hearsay. What was the facts on it to publish the evidence is missing. Reading of the paper Ex.P-1 would show it is defamatory allegation of fact in absence of evidence.

17. The Bombay High Court in case of ***Radheshyam Tiwari v. Eknath Dinaji Bhiwapurkar*** reported in ***AIR 1985 Bom 285*** following the principles laid down in ***Parke B. in Toogood v. Spyring (1834) 1 CM & R 181*** stated that publication of statements which are false and injurious to the character of another gives rise to an inference of malice in law and make the publisher liable in damages to the person affected. It is further held that malice in common acceptance means ill will against a person but in its legal sense means a wrongful act done intentionally without just cause or excuse. Absence of proper motive is termed malice in fact while term malice in law in taken to mean that defamation was wrongful and intentional. It is further held that inference of malice in law is successfully rebutted if the publisher is able to show that statement was made in the discharge of a public or private duty.

18. In the instant case, mere leveling the allegation against the Doctor without any substance or proof, the presumption cannot be drawn

that it was in the discharge of a public duty. It is also immaterial whether that duty is a legal duty or a moral duty. An occasion can be privileged only if it can be fairly stated that the person to whom it has been made has a corresponding duty. Furthermore, the statement of PW-2 & PW-3 which remains unrebutted on the facts that the impression which has been made in mind of third person who was knowing nothing but they have stated that after news was published they stopped going to Doctor and started disrespect. The defendant if was sanguine of the fact that the incident happened with someone, it has to be proved beyond the reasonable doubt and at least some acceptable evidence should have been on record apart from opinion of the witnesses and mere clamping charges and mud bungling will not help him to substantiate the defence.

19. In respect of publication of news item, the Supreme Court in case of ***Sewakram Sobhani v. R.K.Karanjia, Chief Editor, Weekly Blitz & Others*** reported in ***(1981) 3 SCC 208*** held as under :

> 11. The High Court appears to be labouring under an impression that journalists enjoyed some kind of special privilege, and have greater freedom than others to make any imputations or allegations, sufficient to ruin the reputation of a citizen. We hasten to add that journalists are in no better position than any other person. Even the truth of an allegation does not permit a justification under the First Exception unless it is proved to be in the public good. The question whether or not it was for public good is a question of fact like any other relevant fact in issue. If they make assertions of facts as opposed to comments on them, they must either justify these assertions or, in the limited cases specified in the Ninth Exception, show that the attack on the character of another was for the public

good, or that it was made in good faith : Per Vivian Bose, J. in Dr. N.B.Khare v. M.R.Masani & Ors.

20. Therefore, the aforesaid principle would go to show that the said privilege which has been claimed by the defendant as Editor cannot be accepted consequently it can be completely insulated by presumption or justification or truth.

21. The Calcutta High Court in ***Asoke Kumar Sarkar & Another v. Radha Kanto Pandey & Others*** reported in ***AIR 1967 Cal 178*** has drawn the definition of civil and criminal defamation and it was held that the essence of the cause of action in the civil suit for damages is the tortious liability for compensation for the damage to or loss in reputation suffered by the aggrieved party. It was held that harm to the reputation is common threat which passes even in criminal defamation under Section 499 of I.PC. as also under the civil defamation in criminal cases the conviction and sentence of imprisonment are essential features while in civil the damages are being granted. It is held that the exceptions to the criminal defamation provided in Section 499 of Indian Penal Code are also indicative of the test of civil and criminal defamation. Truth necessarily is the defence both in civil and criminal defamation, but the first exception to Section 499 of I.P.C. insists that in addition to truth, the imputation must be shown to have been made for public good. Public good therefore is an overriding relevant consideration in a criminal defamation which is concerned with the protection of the society unlike a private suit for damages for defamation. The public test in a criminal defamation can be traced in other exceptions like 4th, 5th, 6th, 7th, 8th & 9th exceptions. However, the public test as such is hardly a defence for a civil suit

for damages in a private action. No doubt the normal public test in a civil suit that the reputation must be lowered has to be satisfied.

22. Therefore, the defence which has been raised by the respondent that it was in the public interest in a defamatory damages suit may not be squarely applicable and accepted. Besides that no evidence is on record that such public interest is exists. The evidence is an opinion and is hearsay. Under the circumstances, I am agreeable to the principles laid down in case of ***Md. Ayub Khan v. The Editor, Dainik Sambad & Others*** by the High Court of Tripura at Agartala on 07.03.2018, which is quoted herein below.

> "36. The law is well settled that the mere fact that the defendants believed that what they stated was true by itself will not sustain the case of good faith as simple belief or actual belief by itself is not enough. It must be the belief rested in the rational basis and not to be just a rational belief. That apart, to come under such exception the defendants had to plead the fact relating to good faith and the burden to prove in this regard is to be discharged. It means that the exercise of due care and caution is essential to show that the imputation whatever is available in the news items is made bonafide or in the public good. Whenever, in a greater interest of public, a news item is published with criticism, such criticism shall not always be on a fine scale. If the foundation appears to have been made on the relevant papers, then, the onus for the news items if related to the public interest is on the defendants to reveal the foundation on which such news item was published."

23. Having scrutinized the entire evidence on record, the defence raised by the respondent cannot be accepted as he has failed to discharge his onus and the paper publication so made when compared against the statement of the plaintiffs do not allow the

defamatory tortuous suit to tail. In view of discussion in the foregoing para, I am of the opinion the justification or truth never existed for which the suit was dismissed by the Court below.

24. In a result, the appeal is allowed. The suit is decreed for Rs.50,000/- as against damages which to be paid and shared by both appellants equally. The defendant shall also be liable to pay the cost of the suit and appeal to the appellant/plaintiff.

Sd/-
(Goutam Bhaduri)
Judge

Ashok