

(1985) 12 BOM CK 0001

In the Bombay High Court

Case No : Civil Revision Application No. 3-A of 1981

Dinkar Rajaram Pole

APPELLANT

Vs

Ramrao Nandanwankar

RESPONDENT

Date of Decision : 24-12-1985

Acts Referred:

Penal Code, 1860 (IPC) — Section 161, 409

Citation : (1986) MhLj 691

Hon'ble Judges : M.S. Ratnaparkhi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.S. Ratnaparkhi, J.—This revision application is directed against the preliminary findings recorded by the Civil Judge, Senior Division, Nanded, on 19-10-1981, in Special Civil Suit No. 26 of 1976, holding that the claim for damages for libel was barred by limitation. The facts giving rise to this litigation may briefly be stated as follows :

2. The present petitioner D. R. Pole is a practicing Advocate from Parbhani district bar. The defendant respondent was in the Government service at Nanded District of this region. It appears that the prosecution u/s 5(1)(c) read with section 5(2)(d) of the Prevention of Corruption Act and sections 409 and 161 of the Indian Penal Code was launched against him before the Special Judge, Nanded. The respondent engaged the petitioner as his Advocate for defending him. His fees were settled, but there is a dispute regarding the quantum of fees. It was the case of the present petitioner that Rs. 700/- were paid to him out of the agreed fees of Rs. 1,200/- . The prosecution ended in the conviction of the present respondent in the trial Court. However, he was acquitted by the appellate Court. A sum of Rs. 108 was deposited by the present respondent in the Court of Special Judge, Parbhani, towards the Bhatta of defence witnesses which he proposed to examine. However, as no defence witnesses were examined the same was lying with the Court. The present petitioner informed the respondent

that he would take necessary steps to withdraw this amount and adjust it towards his unpaid fees. He also called upon the defendant-respondent to make the remaining balance good. There was some correspondence between the parties. The defendant-respondent took a stand that he had paid full fees as was agreed and the petitioner was exploiting him. He, therefore, informed the Court where the amount was lying in the deposit that he had terminated the appellant of as his counsel and that the amount should not be paid to him. It is not necessary to consider the whole correspondence.

3. It is enough to point out at this stage that on or about 21st January, 1975, the present respondent addressed one application to the Maharashtra Bar Council requesting them to take action against the present petitioner u/s 35 of the Bar Council Act. The action contemplated was a disciplinary action. An affidavit was also sworn in by the respondent in support of his allegations made in the application and this affidavit was sworn some time on 12-2-1975. The Maharashtra Bar Council dismissed this complaint on or about 23rd April, 1975. It is the case of the petitioner that he was not aware of these proceedings at all, till 29th April, 1975, when he received the letter from Mr. Y. S. Deshpande, Advocate, that an application was sent against the petitioner for taking an appropriate action and that the Bar Council rejected that application. The petitioner then out of curiosity asked for copies of the application and affidavit made by the respondent. He received the copies on 27th May, 1975. On going through the application and the affidavit the petitioner came to know that the defamatory statements were published against him by the respondent before the Bar Council which adversely affected his reputation as Advocate. He also alleged that the present respondent initiated the proceedings against him before a statutory body of the Maharashtra Bar Council for disciplinary action with mala fide and dishonest intention, which according to him amounts to malicious prosecution. He, therefore, instituted the suit on 7th June, 1976 before the Civil Judge, Senior Division, Nanded (vide Special Civil Suit No. 26 of 1976), claiming compensation for malicious prosecution and also for libel. Subsequently in the same suit he claimed Rs. 10,000/- by way of compensation for libel and Rs. 1,000/- for malicious prosecution. His main contention before the trial Court was that he discovered it for the first time on 27th May, 1975, that he was defamed by the defendant. The Courts at Nanded were closed for summer vacation from 26th April, 1976 to 6th June, 1976. He, therefore, instituted the suit immediately on the day when the Courts reopened after the summer vacation.

4. It was the contention raised by the defendant that he sent an application supported by an affidavit to the Bar Council of the Maharashtra requesting them to take necessary disciplinary action against the present petitioner. He however, contends that the application was sent by him on 21st January, 1975, whereas the affidavit was sworn by him on 12th February, 1975, both at Nanded. His case was that if at all the application and the affidavit contains defamatory statements the statements were published on 21st January, 1975, and on 12th February, 1975 and hence the limitation would start running from these two dates. Th6

limitation for institution of suits of such nature has been prescribed by Article 75 of the Limitation Act and the limitation for a suit for compensation of libel is one year from the date when the libel is published. It was his contention that the limitation expired on 21-1-1976 or at the most on 12-2-1976, and therefore, the suit instituted on 7-6-1976 obviously was barred by limitation as far as the claim for compensation of liability is concerned.

5. It was the contention of the present petitioner that he came to know for the first time about the defamatory statements only on 25th May, 1975, and, therefore, the limitation would start running from then. There was no dispute that the limitation for institution of such suit is one year and that is provided by Article 75 of the Limitation Act. His explanation was that the Civil Courts in the Nanded district were closed for summer vacation till 6-6-1976, he would, therefore, be entitled to the exclusion of this period. He instituted the suit immediately on the reopening of the Court, hence according to him the claim was well within time.

6. The learned Judge framed preliminary issue whether the claim of the plaintiff was barred by limitation. The finding which the learned Judge recorded was that the claim for Rs. 10,000/- by way of damages for libel was barred by limitation. The learned Judge however held that the claim for Rs. 1000/- by way of damages for malicious prosecution was however, in limitation.

7. Feeling aggrieved with this finding the petitioner has come up in revision. As the remaining part of the finding relating to the other claim for damages for malicious prosecution was in his favour he was not concerned with that finding nor has that finding been challenged before me. So, it would not be necessary to consider that aspect of the case. The only point which survives for decision in this revision is whether the claim for damages suffering from the alleged libel is within limitation.

8. It is an admitted position that the limitation is governed by Article 75 of the Limitation Act and according to that Article the limitation for the suits of compensation has been prescribed as one year and the period commences from the period when the libel is published. According to the defendant-respondent the term "publish" has a very specific meaning in laws well as in colloquial language which conveys that as soon as "the third party gets the knowledge the process of publishing is complete. It does not wait for the knowledge of a person who is defamed. On the other hand it is the contention of the petitioner that he came to know for the first time about the scandalous publication on 27-5-1975 and, therefore, the limitation would start running from 27-5-1975. If this contention were correct there would be no alternative but to hold that the claim is within the limitation because admittedly the Courts were closed on 27th May, 1976 and the Courts reopened after the vacation only on 7-6-1976, when the suit was filed.

9. The controversy thus revolves in a very narrow compass. Everything would

depend upon the interpretation of the term "Publish".

10. Volume 4, Second Edition "Words and Phrases Legally Defined" throws some light on the meaning of the term "Publish" or "Publication". It states at page 230 second column as under :

Merely to write down defamatory words is not to publish a libel. Even to deliver a defamatory statement to another is not to publish it to him, if he does not become aware of the defamatory words. Publication consists in making known the defamatory statements after it has been reduced into some permanent form.

A person publishes a slander who speaks words defamatory of the plaintiff to or in the presence of a third person who hears them and understands them in a defamatory sense.

For the purposes of the law of libel and slander, the broadcasting of words by means of wireless telegraphy shall be treated as publication in permanent form" (Defamation Act, 1952 S. I.):

The first question is whether assuming the letter to contain defamatory matter, there has been a publication of it. What is the meaning of "publication" Making known defamatory matter after it has been written to some person other than the person of whom it is written. If the statement is sent straight to the person of whom it is written, there is no publication" of it; for you cannot publish a libel of a man to himself. If there was no publication the question whether the occasion was privileged does not arise. If the letter is not communicated to any one but the person to whom it is written, there is no publication of it. And, if the writer of a letter locks it up in his own desk, and a thief comes and breaks open the desk and takes away the letter and makes its contents known, I should say that would not be a publication. If the writer of a letter shows it to his own clerk in order that a clerk may copy it for him, is that a publication of a letter - Certainly it is showing to a third person; the writer cannot say to the person to whom the letter is addressed - "I have shown it to you and no one else"; I cannot, therefore, feel any doubt that, if the writer of a letter shows it to any person other than the person to whom it is written, he publishes it. If he wishes not to publish it, he must, so far as he possibly can keep it to himself, or he must send it himself straight to the person to whom it is written.

Halsbury's Laws of England, Third Edition, Vol. 24, page 35, Item 60 contains a caption "What amounts to publication". It reads :

A statement defamatory of a person which is made known to a third person or parties in writing or print or some other permanent form (d) constitutes a libel (e). Merely to write down defamatory words is not to publish" a libel (f) Even to deliver a defamatory statement to another is not to publish it to him, if he does not become aware of the defamatory words." Publication consists in making known the defamatory statement after it has been reduced into some permanent form (h). It seems that the mere dictation of defamatory matter to a clerk or a

typist is the publication of a slander only (i) If it is made known to a third person there is sufficient publication to support an action against the person responsible for the publication. If the statement is sent straight to the person of whom it is made, and is communicated to him alone, the publication will not support an action, though it will sustain an indictment, because it provokes or has a tendency to provoke a breach of peace.

This is in short the meaning that is attached to the term "Publication" and the same meaning has to be attached to the term when it is used in Article 75 of the Limitation Act. In short "publication is a process which commences from the writing and ends with "conveying it" to a third person, other than the defamed party". This process for its termination does not wait for the knowledge of the person defamed. The knowledge of the person defamed is immaterial as far as this process is concerned. It is true that he may have a substantial interest in the whole episode but his interest is irrelevant as far as this process is concerned. The essential ingredients of this process are (i) writing a defamatory statement (ii) conveying it to a third person other man the person defamed. These two processes make one complete process of "Publication".

11. If it were, the meaning of the term publication then it is difficult to appreciate the arguments of the learned counsel for the petitioner that his knowledge is necessary for the completion of the process. The simple argument advanced before me was that there cannot be defamation without the knowledge of the person who has actually been defamed. I have, however, grave doubts regarding this interpretation because according to me the commencement and completion of the process of publication is quite independent of the knowledge of the party defamed, because the defamed person has no concern either with the commencement or with the termination of this process. The process starts and becomes complete without the intervention of the person defamed. The learned counsel for the appellant relies on O. Rm. O.M. Sp. Firm vs. P.L.N.K.M. Nagappa Chettiar . It was a suit by a trustee against the stranger to recover trust funds which had been applied in breach of trust. The contention raised in the suit was that it was governed by Article 120 and not by Article 36 of the Limitation Act. Further, contention was that right to sue accrues when the trustee becomes aware of the breach. It was alleged in that case that the funds of the Trusts were mis-applied and mis-appropriated and the suit was instituted for recovery of these funds on the ground of fraud, misconduct etc. The controversy in that case was whether the suit was governed by Article 36 or whether it was governed by residuary Article 120 of the Limitation Act. Under Article 120 of the then Limitation Act, the time started running into "when the right to sue accrues." Their Lordships observed :

The question is whether the time began to run from 10th February, 1920, or from the date in 1929 when the plaintiff came to know that the money of the charities was set off against Subrahmanyam's debt to the appellant bank upon his overdraft. The suit having being brought in 1933 it is necessary for the

plaintiff to be able to calculate the time from the later date. The language of Article 120 makes no reference to the knowledge of the plaintiff and is in this respect in contrast with that of other Articles e.g. 90, 91, 92, 95, 96, 114; On the other hand it was recognised by the Board in 57-IA 325 that an infringement of the plaintiffs right or at least a clear and unequivocal threat to infringe it is necessary before time begins to run against the plaintiff under the article.

The appellate Bench acted upon a principle which has been accepted as applicable to this article in a number of cases in several of the High Courts: A 44 IC 551; (Peruri) Viswanadham and Another Vs. (Pendela) Narayana Dass and Another, . In the last mentioned case it was said that in cases in which the relief is sought on the ground of fraud, misconduct, mistake etc; it would appear that limitation is made to commence from the time when the fraud, misconduct or mistake becomes known to the plaintiff. Such Articles as 90, 91, 92, 95 and 96 were mentioned by way of illustration of this principle and it was considered that Article 120 being an omnibus one, the general expression employed in col.3 is necessitated by the variety of suits coming within its purview, in some only of which would fraud, misconduct or mistake be part of the cause of action. It was accordingly held that it would be in consonance with the scheme of the Act if the right to sue should be deemed to accrue under Article 120 from the time of the plaintiffs knowledge of fraud, mistake or misconduct where such a ground was the basis of the suit. Their Lordships can see some difficulties in this reasoning as a matter of interpretation of the language of the statute and had the matter been *res integra* they are not certain that this interpretation would have prevailed with them. But the decisions in India have established a rule of Limitation under Article 120 by which the plaintiff in the cases to which the rule applies cannot be debarred of his remedy unless with the knowledge of his rights he has been guilty of delay. The decisions which have been referred to were given in cases where the plaintiff sought to set aside a decree passed against him when a minor owing to the negligence of his guardian or a mortgage of property which belonged not to a mortgagor but to a temple, or a transfer by a debtor to defeat his creditors. The subject matter of the present suit is somewhat different but Their Lordships are prepared to follow the principle of the Indian decisions in the present case and to hold that the suit is within time.

The facts of the above case are rather different. It is in the peculiar circumstances of the case that the knowledge of the plaintiff was connected with accrual of cause of action, there being much scope for fraud and misconduct. In the present case there is no allegation of fraud, misconduct, mistake etc. The pleadings of the plaintiff are quite clear. He admits that the application was made in 1975 January. He admits that the affidavit was sworn in February, 1975. What he merely states is that he absolutely had no idea as to what the application and the affidavit contained and he got the knowledge when he read the copy of the application and the affidavit on 27th May, 1975. He wants this Court to infer that the period from January 21 to 27th May, 1975 be ignored from the consideration at all because the plaintiff had absolutely no knowledge as to what transpired

during this period. The real question that assumes importance in this case is whether this period can be treated as void and whether it could be held that the process of "Publication" remained in abeyance for want of knowledge on the part of the plaintiff.

12. Halsbury's Laws of England to which I have just referred to above does not admit of the process of publication remaining in abeyance and that too for want of knowledge to the aggrieved parties. "Knowledge to the aggrieved party" is a concept which has nothing to do with the process of publication, though a party may be subjectively interested in the outcome of the publication. The process starts and completes unabated irrespective of the knowledge of the plaintiff. This appears to be the real position of law.

13. In Ramaswamy Iyer's "The Law of Torts" Seventh Edition at page 216 under caption 17, "Publication" it is said :

This word (Publication) is not used here in the popular sense of giving publicity, but means the communication of the defamatory matter to some person or persons other than the defamed. This is the gist of wrong of defamation and not the mere speaking or writing of defamatory words.

Similar observations are also found in Winfield & Folowicz on Tort, 11th edition by W. H. Rogers. Thus, the meaning of the term publication is far from ambiguity. The knowledge of the said publication to the person affected is not the part and parcel of the publication and the process of the publication is complete in spite of the knowledge or otherwise to the affected person. It was, however, urged on behalf of the petitioner that this interpretation will leave no remedy open to the affected person because the limitation would already start running against him in spite of the fact that he has no knowledge about the accrual of the cause of action. Though these arguments sound well to the ears, the Legislature in its wisdom has specifically made the publication as a starting point of limitation and not the knowledge. It may be borne in mind at this stage that the different terms are used in the Limitation Act while prescribing the limitation for different causes. In some cases limitation starts running from the time of accrual of right, in some cases covered by fraud limitation starts running from the date when the fraud comes to the notice and so on. But, there is another category of cases where no fraud is pleaded, that limitation starts running from the date of the wrong. What is actionable is the wrong in torts. It has no relations with the person wronged though ultimately that person may have a right.

14. To sustain his reasoning the learned counsel for the petitioner invited my attention to the judgment reported in Nagumill Narayanmurthy vs. Gudimetla Gangaraju (AIR 1985 A. P. 451). In that case the facts were quite simple. A father deposited some amount with his eldest son. With regard to this amount the father then executed a Will under which the son was directed to pay interest accruing thereof to his wife (mother of the son). The wife died on 17-5-1937. By the time of her death a portion of interest had accumulated and remained un-

disbursed. The daughter of the deceased lady claimed on this amount as "Streedhan". She made a demand from her brother for this amount. Her right was repudiated by her brother. She instituted the suit. The question of limitation arose in that suit. It was held that the suit was governed by Article 120 of the Limitation Act and the period of limitation started running when the right of the daughter was infringed. There is no doubt that what the High Court was called upon to decide was the interpretation of Article 120 which prescribes the limitation of six years from the time the right to sue accrues. It is this term which was the subject matter and it is in that context that the High Court held accordingly. The position has been clarified by the Supreme Court in *Mst. Rukhmabai Vs. Lala Laxminarayan and Others*, where the interpretation of Article 120 of the Limitation Act was questioned. The Supreme Court observed in paragraph 33 of its judgment as under:

The legal position may be briefly stated thus: The right to sue under Article 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right however, ineffective and innocuous it may be cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.

15. It is thus dear that all these authorities referred to by the petitioner are regarding the interpretation of Article 120, which says that the limitation would run from the date when the right to sue accrues. The question that arises at this stage is whether it could be permissible to substitute this concept for the term "published" as is suggested by the petitioner. The petitioner virtually suggests that the term publishing necessarily imports the knowledge of the act at least to the person wronged, and, therefore, the act of publishing is complete with this knowledge. The argument thus advanced contains more than one fallacies. As it is already pointed out the process of publication is independent of the knowledge of the person wronged. Secondly, to impart the knowledge of this process would amount to substituting something which the Legislature in its wisdom does not permit. Thirdly, there is hardly any scope for interpretation as the petitioner wants because there is no ambiguity in the terms used by the Legislature.

16. The learned counsel for the petitioner then relied on *Lala Balmukund (Dead) through Lrs. Vs. Lajwanti and Others*, where the Supreme Court has made some observations about interpretation pertaining to the Limitation Act. The question involved in that case was about interpretation of section 12(2) of the Limitation Act which speaks about exclusion of the period required for obtaining a copy of the decree while computing the limitation. The Supreme Court observed in paragraph 19 as follows:

It will be sufficient to say that upon the language of section 12(2) both the constructions are possible, but the one adopted by the majority of the Courts,

appears to be more consistent with justice and good sense. The limitation Act deprives or restricts the right of an aggrieved person to have re-course to legal remedy, and where its language is ambiguous, that construction should be preferred which preserves such remedy to the one which bars or defeats it. A Court ought to avoid an interpretation upon a statute of Limitation by implication or inference as may have a penalising effect unless it is driven to do so by the irresistible force of the language employed by the legislature.

The observations of the Supreme Court are no doubt salutary. But, I have doubts whether these observations can help in deciding the present case. In the present case a very limited question of interpretation of the term "publication" is called for. If that process of publication admits within its folds the element of knowledge on the part of the person wronged then this interpretation would be permissible. But, when in an ordinary language publication is least concerned with the knowledge, then to import this concept would itself amount to violation of the spirit of Legislation. In fact, this controversy is set at rest when one goes through the pleadings. The present petitioner has made in his plaint some averments which do not leave any doubt for any ambiguity. The plaintiff nowhere disputes that the so called defamatory imputations are contained in the application dated 21-1-1975 and the affidavit dated 12-2-1975, of which the author is the defendant. In paragraph 24 of his plaint the plaintiff states that the defendant drafted, prepared and posted this application to the Bar Council of the Maharashtra dated 21st January, 1975 and the affidavit on 12th February, 1975 at Nanded and thereby completed the act of making false, malicious and defamatory statements at Nanded. There is thus no doubt in his mind that the objectionable statements were published at Nanded on the respective dates. He has no doubt in his mind that the defamatory statements were made on 21st January, 1975 and 12th February, 1975 and the act of publishing was complete. Only allegation which he makes in para. 28 of his plaint is that his suit is within the limitation and it is being instituted within one year from the date of knowledge. It is only here that a legal error is committed. He wants his knowledge to be the starting point of limitation which the Law does not permit.

17. There is one more aspect. The defamatory statements are published on 21-1-1975 and 12-2-1975. Even assuming the case of the plaintiff to be correct he came to know about defamatory statements on 27th May, 1975. As a man of diligence he had an ample time to institute the suit before the expiry of limitation because there were at least seven months at his hand to prepare the plaint and present it before the Court. But, he has waited up to the next summer vacation and then instituted the suit after reopening of the Courts (after the summer vacations) of 1976. Here again reference was made to the case reported in O. Rm. O.M. Sp. Firm vs. P.L.N.K.M. Nagappa Chettiar, where Their Lordships observed; that the decisions in India have established a rule of limitation under Article 120 by which the plaintiff in the cases to which the rule applies cannot be debarred of his remedy unless with knowledge of his rights he has been guilty of delay.

18. It is exactly what happened in the present case. The plaintiff got the knowledge of the alleged defamatory statements within four months of the publication and still he did not pursue his remedy for about a year even after the knowledge. The approach of the plaintiff discloses the adamancy in his stand rather than rationality. He waited for one full year and then came to the Court with a prayer that the limitation must be held to have commenced on the date when the matter came to his knowledge. This is not permissible.

19. In my opinion, therefore, the learned Judge of the trial Court has correctly held that the suit was not within the limitation. That finding is correct and deserves to be confirmed by this Court, with the result that the revision has to be dismissed, with costs. Rule discharged.