

(2008) 09 DEL CK 0043
In the Delhi High Court
Case No : CS (OS) 367 of 2002

Frank Finn Management Consultants

APPELLANT

Vs

Mr. Subhash Motwani and Another

RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 19, 20

Citation : (2008) 154 DLT 95 : (2008) 106 DRJ 921 : (2009) 2 ILR Delhi 158

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Valmiki Mehta, Ajit Nayyar, Amit, Gaurav Singh and Akansha Sharma, for the Appellant; Ashok Gurnani and Ranjan Roy, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The plaintiff claims Rs. 25 lacs as damages for defamation by the libelous article written and published by the defendants in their magazine "Opportunities Today" of September, 2001. The said article is under the column "Student Alert" and is titled "Flights of Fancy Crash Courses or Crashing Hopes '!". The article comments on the small/limited number of vacancies for the posts of flight purser, air hostess and cabin crew in the airlines industry and the large number applicants for the same. It proceeds to tell that there are over a dozen institutes offering various training programmes to entice students to pay between Rs 15000/- to Rs 20000/- with the hope of scores of vacancies awaiting them; the students are not told of the heavy odds against employment in the said industry and are enrolled with promises of jobs. After commenting generally on the dozen odd institutes, the impugned article comments in particular on "one of the Delhi based institutes" whose operations are at national level. The impugned article tells that the said institute advertises every two months in leading dailies of all metros in the country that there are over 150 vacancies of air hostesses and flight stewards expected to be filled, the institute claims to have DGCA approved professionals working with them as consultants and conducts a preliminary interview of prospective candidates and anyone applying for the interview has to pay non refundable Rs 750/- and

selected candidates have to undergo one week training programme of 18,000 rupees followed by a 100% job assistance and how the said institute is profiteering in this manner.

2. It is significant to state that the article nowhere names any of the institutes nor names the Delhi based institute commented upon in particular. The plaintiff, after the publication of the said article got sent a notice dated 9th October, 2001 (Exhibit P-1) to the defendants claiming defamation and consequent loss to its reputation and claiming Rs 25 lacs as compensation and apology. The defendants vide their advocate's reply Exhibit P2, inter alia, contended that the plaintiff had no cause of action and claimed to be carrying on a crusade against malpractices in the field of education and denied liability to pay or apologise. The suit was instituted within the prescribed period of limitation.

3. On the pleadings of the parties, on 29th April, 2004, the following issues were framed:

1. Whether this Court does not have territorial jurisdiction to entertain and decide the present suit? OPD

2. Whether the suit is signed, verified and instituted by a duly authorized person? OPP

3. Whether the article "Flights of Fancy Crash Courses or Crashing hopes '!" published by the defendants in the magazine "Opportunities Today" was a defamatory article and if so, whether the same was defamatory to the plaintiff's reputation? OPP

4. Whether there was any justification for publication of the aforesaid article and if so, its effect? OPD

5. Whether the plaintiff is entitled to recover any damages and if so, from whom and for what amount? OPP

6. Relief.

4. The plaintiff examined their Manager Mr Arun Kumar as their only witness and both the defendants also appeared as witnesses. The cross examination of all the witnesses was conducted before the Local Commissioner.

5. After hearing the counsel for the parties, my issue-wise findings are as under:

Re: Issue No. 1.

6. I had at the beginning of the hearing inquired from the counsel for the defendants whether he insisted on pressing this issue. The counsel for the defendants not only so insisted but has made elaborate arguments on the issue. It is, inter alia, the contention of the defendants that the magazine "Opportunities Today" in which the allegedly libelous article has appeared, is admittedly published from Mumbai, that the defendants are admittedly resident of Mumbai and are carrying on business at Mumbai and thus the suit could have

been instituted at Mumbai only and could not have been instituted at Delhi. It was the argument of the counsel for the defendants that if it was to be held that the courts at Delhi where the plaintiff has its registered office or were resident of, had jurisdiction to entertain the suit, it would lead to ridiculous conclusion and a newspaper or a magazine could be sued for defamation at faraway places or wherever the reader carried with him the said newspaper or the magazine. It was urged that the publishers of newspapers and magazines could not be permitted to be so harassed and could be sued only at the place where they carried on business and / or wherever they were published.

7. I have drawn attention of the counsel for the defendants to Section 19 of the CPC which is in relation to suits for compensation for wrong done to the person or to movable property and confers choice on plaintiff to sue either within the local limits of the jurisdiction of the court where the defendant resides or carries on business or within the local limits of jurisdiction of the court where the wrong was done.

8. The counsel for the defendants, however, argued that, the wrong, in a suit for defamation would be done at the place where the publication was made and not at the place where the same would have effect.

9. The plaintiff has invoked the jurisdiction of the courts at Delhi on the plea that the plaintiff has its office at Delhi and the impugned article besides publication in the magazine was also put by the defendants on its website and the magazine is circulated all over India; that the plaintiff noticed the said article in the magazine at Delhi and, therefore, the cause of action had arisen at Delhi.

10. The defendants, in their written statement in the corresponding paragraph of the plaint, did not deny having put the article on the website and also did not deny that the magazine is circulated all over India but, as aforesaid, contended that the cause of action had accrued at Mumbai and the publication had been effected at Mumbai and, therefore, the Mumbai Courts and not this Court had jurisdiction to entertain the suit. The plaintiff in replication reiterated that it has its registered office at Delhi and the magazine containing the article was displayed on the website and was circulated at Delhi and thus this Court had the jurisdiction.

11. The only witness of the plaintiff reiterated the averments in the plaint and proved the certificate of incorporation of the proprietor of plaintiff as Exhibit PW1/1 which shows the registered office at Delhi. He, in his cross examination, admitted that the magazine, containing the impugned article, was published from Mumbai and denied knowledge of how many copies of the magazine were printed and in response to a question as to where the magazine was circulated answered that it was circulated all over India through the website of the defendants. He could not tell how many subscribers were of the magazine. He further stated that the subscription receipt of the magazine from a Delhi resident could be produced. He claimed to have seen the magazine on sale on road side in Connaught Place

in Delhi and further claimed that the magazine was also available with his friend Shri Manmohan Gulati who had subscribed the magazine in Delhi; he claimed to have purchased the magazine at Delhi by paying cash in South Delhi but could not tell the name of the shop.

12. The defendant No. 1, appearing as DW1, in his affidavit by way of evidence reiterated that the courts at Delhi had no jurisdiction. In his cross examination, he could not tell as to how many subscribers were there of the magazine; he claimed that the magazine was circulated within Bombay limits and is available within Bombay limits only. However, he was forced to admit that the magazine could be subscribed in any part of the world, though he denied that the magazine had any subscriber in Delhi in 2001. He further admitted that the readers were informed that the magazine could be read on the website as well.

13. The defendant No. 2, appearing as DW2, adopted the evidence of the defendant No. 1 but in his cross examination admitted a receipt produced by the plaintiff in his cross examination as of subscription received from Mr M Gulati at Delhi and further admitted sending the magazine by post to Mr M Gulati at Delhi in pursuant to the said subscription. His attention was also drawn to the statement in the magazine that it was available on all railway stalls and reputed outlets and when asked to comment on the same, stated that it was meant railway stalls and reputed outlets in Mumbai city only.

14. In the aforesaid state of evidence and law, it has to be determined if this Court has jurisdiction.

15. The magazine containing the article has been proved as Exhibit P-3. Same, though shows to be edited, printed and published at Mumbai, does not contain any limitation that it is for circulation in Mumbai only.

16. From the evidence aforesaid, it stands established that the magazine was being or could be subscribed at Delhi. The magazine itself states that it is available at all railway stalls and reputed outlets and the version of the defendant No. 2 that the reference was to railway stalls and reputed outlets within Mumbai only, without it being so printed is unbelievable. Thus, it stands established that the plaintiff has its registered office at Delhi and the magazine has circulation at Delhi and is also put up on the website of the defendants. Even otherwise growing number of readers prefer to read newspapers and magazines via internet rather than in hard form. By putting the magazine on the internet, the magazine cannot be said to be for circulation within Mumbai only and is concluded to be having circulation all over India. The next question which arises is that if the magazine has circulation in Delhi, will any article in the magazine defaming a resident of Delhi, give jurisdiction, in an action for damages for defamation, at Delhi or the plaintiff will have to rush to Mumbai to sue the defendants.

17. The wrong within the meaning of Section 19 of the CPC in an action for defamation is done by the publication. The defendants are confusing publication

in the sense of printing, with publication as in the case of libel. The publication in the sense of a libel is not the mechanical act of printing of the magazine but is of communication of the libelous article to at least one person other than the plaintiff or the defendant. In this regard also see *Aley Ahmed Abdi v. Tribhuvan Nath Seth* 1979 All. LJ 542. If the magazine, as aforesaid, has a circulation at Delhi, then it cannot be said that the wrong would not be done to the plaintiff at Delhi and thus the courts at Delhi would have jurisdiction u/s 19 of the Act. A Division Bench in *T.N. Seshan v. All India Dravida Munnetira Kazhagam* 1996 AIHC 4283(AP) has taken the same view. Even if the test of Section 20 of the CPC were to be applied, even then the cause of action in part at least would accrue in Delhi. A Single Judge of the High Court of Bombay in *The State of Maharashtra Vs. Sarvodaya Industries*, has held that the phrase wrong done in Section 19 would clearly take in not only the initial action complained of but its result and effect also and Section 19 is wide enough to take in those places where the plaintiff actually suffered the loss because of the alleged wrongful act. It was further held that the court within whose local jurisdiction damage was caused or suffered or sustained, would clearly answer the requirements of Section 19 for the purposes of the suits mentioned therein. I respectfully concur with the said view and unless Section 19 of the CPC is so interpreted, the purpose thereof would be defeated. Similarly, *State of Meghalaya and Ors. v. Jyotsna Das* AIR 1991 Gauhati 96 also held that wrong done includes and covers the effect of the act. The counsel for the defendants has relied upon *Rashtriya Mahila Kosh v. The Dale View* 2007 IV AD (Delhi) 593 to address the principle of forum non conveniens. With respect, if under the CPC the court has jurisdiction, I find it hard to hold that on the doctrine in international law of forum non conveniens the plaintiff can be non suited. I, therefore, decide issue No. 1 in favour of the plaintiff and against the defendants.

Re: Issue No. 2.

18. The only witness of the plaintiff has proved the resolution passed in the meeting of the Board of Directors of the plaintiff company held on 6th February, 2002 as Exhibit PW1/26 authorising Mr Vijay Dewan to institute the suit and to sign and verify the plaint on behalf of the plaintiff. He has also identified the signature of Mr Vijay Dewan on the plaint. On the basis of the said evidence, the authority of Mr Vijay Dewan to institute the suit and to sign and verify the plaint stands established. The said witness was cross examined about the constitution of Frankfinn Management Consultants. However, the document Exhibit PW1/26 as well as the witness disclosed that Frankfinn Management Consultants was a unit of Frankfinn Aviation Services (P) Ltd. Thus, it is found that the suit has been instituted and the plaint has been signed and verified by a duly authorized person.

This issue is also decided in favour of the plaintiff and against the defendants.

Re: Issue No. 3.

19. The most striking aspect is that the article does not mention or name the plaintiff. It was at the outset only to put to the senior counsel for the plaintiff as to how the plaintiff could claim defamation without it being named in the article. The senior counsel for the plaintiff relied upon a passage in Tort Law by Nicholas J McBride and Roderick Bagshaw to the effect that a defamatory statement which did not on its face specifically refer to V will still be defamatory if ordinary, reasonable person who knew of V and his circumstances would have, on hearing or reading the statement in question, thought that it referred to V and would, as a result, have tended to think less of V or if the statement in question was published to one or more people who thought that it referred to V and if either of the said conditions was satisfied, it would be immaterial that V was not referred to by name. The counsel for the defendants relied upon a passage from the Law of Torts by Ratanlal & Dhirajlal, 25th Edition reiterating the same position and further stating that it is immaterial whether the defendant intended the defamatory statement to apply to the plaintiff or knew of the plaintiff's existence, if the statement might reasonably be understood by those who knew the plaintiff to refer to them. It is not necessary that all the world should understand the libel; it is sufficient if those who know the plaintiff can make out that he is the person meant.

20. I find that in a case where the plaintiff alleging defamation is not named, it is incumbent upon such a plaintiff to establish that the persons/people who knew him, understood the impugned article to be referring to him, in spite of him being not so named in the impugned article. Unless the said fact is established, there can be no claim for defamation inasmuch as without the persons knowing the plaintiff connecting the allegedly defamatory allegations to the plaintiff, even if the allegations are per se defamatory, the plaintiff cannot sue. In this regard, it is immaterial whether the plaintiff understood the libel as referring to him or that the defendants, in fact, intended the libel to be directed to the plaintiff. Publication, i.e. communication to a third party, is the essence of defamation. Without a person other than the plaintiff and the defendant becoming privy to the libel, the same is not actionable.

21. The plaintiff has failed in the present case to examine even a single witness who connected the impugned article even if defamatory, to be directed against the plaintiff. In fact, the testimony of the only witness examined by the plaintiff is also conspicuously quiet on this aspect. The said witness in para 4 of his affidavit by way of examination in chief claims to have come to know of the defamatory article from his friend Shri Manmohan Gulati but does not even state that the said Shri Manmohan Gulati understood the reference in the impugned article to the Delhi based institute as that to the plaintiff. In para 8 of his affidavit, he states that the characteristics of the Delhi based institute referred in the article are of the plaintiff but again does not state that anyone else besides the plaintiff, from the said characteristics understood the said reference as that to the plaintiff. The witness in paras 15 and 16 of his affidavit states that as a direct consequence of the article, a number of prospective candidates, applicants

and other general members of the society carry an impression and belief that the plaintiff is not an honourable organisation and the plaintiff has suffered loss and damage in reputation, image, good will and standing in the society at large. However, no such prospective candidate/applicant or member of the society has been examined and the statement of the witness also is vague and is at best hearsay evidence. Moreover, the witness in the cross examination was forced to admit that the receipts and profits of the plaintiff have been rising and could not point out any fall in revenue, income, receipts after the impugned article.

22. In *Bruce v. Odhams Press Limited* (1936) 1 KB 697 the defendant, in a claim for defamation from an article in which the plaintiff was not named, had sought particulars of the allegation that the words complained of were published of the plaintiff. The court of Appeal held that it is an essential part of the cause of action of a plaintiff in cases of defamation, whether of slander or libel that the words are defamatory of the plaintiff, if they are defamatory of some other person, real or imaginary, they do not provide the plaintiff with any cause of action at all. It was further held:

Defamatory statements which are in the air, as it were, and do not appear by their words to refer to the plaintiff, have got to be made referable to the plaintiff by reason of special facts and circumstances which show that the words can be reasonably construed as relating to the plaintiff. It is not sufficient under the existing rules of practice merely to allege in general terms a cause of action. Such cause of action must be alleged with particularity.

The material facts on which the plaintiff must rely for her claim in the present case seem to me necessarily to include the facts and matters from which it is to be inferred that the words were published of the plaintiff. Without a statement of these facts and matters, it seems to me impossible that the defendants could be in a position to decide how to plead to the statement of claim.

In such a case as the present, the plaintiff, not being actually named in the libel, will have to prove an innuendo identifying her in the minds of some people reasonably reading the libel with the person defamed, for there is no cause of action unless the plaintiff can prove a publication of and concerning her of the libelous matter : see per A.L. Smith M.R., in *Sadgrove v. Hole*.⁽³⁾ And such innuendo, being essential to the plaintiff's case, seems to me to fall within Rule 4 of Order XIX., as being a statement of the material facts on which the party pleading relies, without which no cause of action is disclosed. The earlier cases as to the particularity with which an innuendo must be pleaded were concerned rather with the meaning of the defamatory matter itself in some secondary sense, than with the problem whether the person defamed would be understood to be the plaintiff and in such cases the extraneous facts which made a statement, *ex facie* innocent, defamatory had to be pleaded.

The plaintiff in that case was thus ordered to furnish particulars. This judgment demonstrates the importance of the connection of libel to plaintiff.

23. In *Morgan v. Odhams Press Ltd.* (1971) 1 WLR 1239, which also related to claim of damages for defamation of unnamed plaintiff, six witnesses were examined and who deposed that they thought that the article referred to the plaintiff. The House of Lords held that the fact that a number of honest witnesses formed a certain view was by no means conclusive and is only an item of evidence; it is for the Judge to decide whether on the evidence an ordinary sensible man could draw an inference that the article referred to the plaintiff. Thus I find that on evidence being led by the plaintiff, as in the said case, the court is to evaluate whether the said evidence satisfied the test of reasonable man. However, in the present case, there is no evidence whatsoever, which can be evaluated. The House of Lords in the case (*supra*) held:

It is ordinary plain commonsense that a hurtful statement may be made concerning a person though his name is not given. In the language of the law a plaintiff will have a cause of action, if he proves that there has been publication of and concerning him of words which are defamatory of him.

The real issue was whether the words were published of and concerning the plaintiff. It mattered not what was the intention of the writer. In any event the jury had no means of knowing it. As the defendant did not give evidence the jury could not know whether the defendant had in some unfortunate way been misled or had based himself on some idle gossip: they would perhaps be disposed to give him the credit for not having merely invented a sensational story. But the question was "who was hit" by the words which were published. The issue was - was the plaintiff hit? If the words referred to the plaintiff there was no suggestion that the words were true. The question for the judge at the end of the plaintiff's case was whether there was evidence upon which the jury could (not would) decide in favour of the plaintiff. That in turn raised the question whether the jury could decide that some readers (having knowledge of certain circumstances) would reasonably understand the words as referring to the plaintiff. If no reasonable reader could have understood the words as referring to the plaintiff, then there would be nothing to be left to the jury.

In deciding whether or not the words referred to were reasonably understood as referring to the plaintiff the jury would consider any pieces of evidence which might tend to negative the conclusion that readers reasonably so understood, but if the conclusion were reached that readers did reasonably so understand, then it would be immaterial on this issue whether the readers further believed that the words were true or only partly so believed or declined to believe that they were true.

It was for the jury to assess the witnesses and their reasonableness and to decide whether reasonable people would reasonably understand that the plaintiff was referred to. It could not possibly have been said in this case that all the evidence was so irrational that it could not be accepted by anyone and accordingly did not merit consideration by the jury.

The House of Lords held that extrinsic evidence is admissible to connect the plaintiff with the person referred to in the Article. I find such extrinsic evidence to be wanting in the present case. Lord Donovan in the case (supra) held:

Certain elementary propositions may be stated. It is always for the plaintiff to prove that the defamatory words were published of and concerning him. The onus is firmly upon him, and if he does not discharge it, he has no cause of action (*Sadgrove v. Hole* 190102 K.B. 1,4).

Where, as here, the plaintiff is not named or indicated in the libel, he may call persons to say that in the light of their knowledge of extrinsic facts they understood the publication to be defamatory of him. (*Bourke v. Warren* (1826) 2 C& P 307; *Cassidy v. Daily Mirror Newspaper Ltd.* [1929] 2 K.B. 331; *Hough v. London Express Newspaper Ltd.* [1940]2 K.B. 507

Such witnesses can give their evidence generally, and the grounds on which they formed their opinion be left to be tested by cross examination.

The plaintiff must prove that the words of the article would convey a defamatory meaning concerning himself to a reasonable person possessed of knowledge of the extrinsic facts. This requirement postulates (as the appellant expressly accepted) not merely a reasonable person but also a reasonable conclusion. Mere conjecture is not enough. (*Capital & Counties Bank v. Henty & sons* (1882) 7 AC 741, *Hunt v. Goodtake* (1873) 43 L.J.C.P 54; *Jones v. Skelton* [1963] 1 W.L.R. 1362; *Gatley on Libel and Slander* (1967) 6th ed. paras. 117 and 121-2).

Did the appellant by the evidence above referred to discharge the onus of proving that the defamatory matter in the article was published of and concerning him?

The standard of proof required in a civil action is, of course, less: it is enough if on a balancing of the probabilities the jury consider that such an accusation could be inferred. But it still has to be reasonably inferred: and if it becomes clear from the cross examination of witnesses that their conclusion is mere conjecture or speculation then the scales remain evenly poised, and the plaintiff does not prove his case. In the present case, after cross examination, it was plain that each one of the six witnesses had put two and two together and made it a good deal more than four.

24. In a similar situation in *Cassidy v. Daily Mirror Newspaper Ltd.* (1929) 2 K.B. 331 . of the Court of Appeal held:

In order to succeed in her action the plaintiff was bound to show that, reasonably interpreted, the words used in the newspaper were intended to convey the meaning set out in the innuendo, the intention being judged not by what was in the mind of the writer, but what appears from the words he has used. In my judgment it was not enough for her to show that people who knew her jumped to the conclusion that she was living with Corrigan as his mistress. She was bound to show that, reasonably interpreted, the words of the alleged libel contained an

allegation to that effect. She called as her witnesses three ladies who knew her as the wife of Cassidy and knew that her husband was the man who owned racehorses under the name of Corrigan.

In the present case no witness has been called who knew that the characteristics imputed in the article to Delhi based institute were of the plaintiff and who on reading of the article connected the same to the plaintiff.

25. The counsel for the defendants in this regard also relied upon *Bhartu Vs. Indian Express Newspapers and Others*, and *Fullam v. New Castle Chronicle* (1977) 3 ALL ER 32. I do not find the first of the said judgments of any assistance to the defendants, *Fullam* (supra) holds that the plaintiff in such an action must prove that there were persons to linked the plaintiff to the impugned article.

26. I, therefore, find that the plaintiff has failed to prove the real issue in this case that the libel was understood by anyone as directed against the plaintiff. The latter part of Issue No. 3, "...whether the same was defamatory to the plaintiff's reputation?" is thus decided against the plaintiff and in favour of defendants.

27. Though the suit of the plaintiff is liable to fail on the aforesaid finding but since in accordance with CPC all issues have to be decided, I proceed to answer the first part of issue No. 3, i.e., whether the article was a defamatory article, on the premise (though not proved) that the libel was understood by anybody as referring to the plaintiff.

28. The first part of the article refers to the class of institutions offering training programmes for employment in the aviation industry. It is a settled principle of law that there can be no defamation of a class. See *Knupffer v. London Express Newspapers Ltd.* (1944) 1 All ELR 495. Thus, the first part of the article commenting generally on the institutes offering training programmes cannot be defamatory to any one member of the class and the plaintiff cannot take any action on the same, being one of the dozen institutes referred to in the article. However, the latter part of the article is with respect to an institute in particular. The said part of the article definitely imputes to the institute referred to therein, (i) misrepresentation of the vacancies; (2) false representation as to employment of DGCA approved professionals; (iii) amassing monies to the detriment of gullible students; (iv) breach of ethics; (v) making scapegoat of students for their own profit and goes to the extent of labeling such institute as a quack.

29. The statements aforesaid, culled out, undoubtedly are defamatory. The aforesaid imputations undoubtedly are of disparagement of the business and reputation of the entity referred to therein. It has been held in *Union Benefit Guarantee Co. Ltd. Vs. Thakorlal P. Thakor and Others*, that even a corporation, as the plaintiff herein is, can complain of defamation and in that case an action at the instance of the insurance company was allowed in respect of a libel which

suggested that the company was started and carried on by adventurers who filled their pockets at the costs of ignorant/poor. The Senior counsel for the plaintiff by referring to the text books above quoted has argued that in the case of a libel as compared to a slander, there can be defamation per se and there is no need to examine any person to depose that in his opinion the reputation of the plaintiff fell or was affected. Reliance in this regard is placed on J John Thomas Vs. Dr. K. Jagadeesan, Sadasiba Panda Vs. Bansidhar Sahu, , Cadbury (India) Ltd. Vs. Dr. M.C. Saxena, and Shri Ram Singh Batra Vs. Smt. Sharan Premi, There is merit in the aforesaid submissions of the senior counsel for the plaintiff. I have already found the contents of the article to be libelous and/or defamatory and I hold that the plaintiff was not required to examine any witness in whose esteem the plaintiff may have fallen.

30. The counsel for the defendants urged that the article was written in exercise of the right of freedom of speech and expression and of which, freedom of press was a constituent. It was urged that the press/media has a right to disseminate to the world at large the information available with them. It was further urged that the plaintiff which has claimed to be akin to a public figure, has to be open to media reporting and comments and cannot rush to the courts with actions for defamation curbing the freedom of press and media. He argued that the newspapers and magazines are entitled to express views in public interest and the article was a fair comment and not actionable as libelous on the part of the plaintiff. Truth is an absolute defence to defamation. The defendants made a feeble attempt to justify the libel found above. The defendants filed before the court a letter from the DGCA to the effect that it did not approve any professionals for training. However, the witnesses of the defendants could not justify the truth of the other libelous statements culled out hereinabove.

31. The senior counsel for the plaintiff rightly relied upon Sahib Singh Mehra Vs. State of Uttar Pradesh, Shree Maheshwar Hydel Power Corporation Ltd. Vs. Chitroopa Palit and Another, and Hari Shankar Vs. Kailash Narayan and Others, to contend that the newspapers, magazines, press and media did not enjoy any special status or privilege or rights so as to defeat the claim for defamation if otherwise found so. The reliance by the counsel for defendants on decisions of the U.S. Supreme Court in Curtis Publishing Company v. Wallace Butts & On New York Times v. L.B. Sullivan, is not found apposite to our laws.

32. I, thus, answer issue No. 3 as under:

That the portions of the article culled out above are per se defamatory but the plaintiff has failed to prove that the same are defamatory to the plaintiff's reputation.

Issue No. 4.

33. The senior counsel for the plaintiff has vehemently contended that the article was intended to cause business loss to the plaintiff and illegal enrichment to the defendants inasmuch as the defendants who are the author and publisher of the

article are also carrying on business in the name and style of Institute of Hotel, Cargo and Tourism Management (IHCTM) and themselves offering courses for airline careers. It was argued that the defendants had immediately under the article, on the same page, inserted advertisement of IHCTM with the motive of dissuading the prospective students from joining the institute of the plaintiff and to pull them towards their own institute carrying on the same business.

34. I do not agree with the aforesaid submissions of the senior counsel for the plaintiff. The article has generally commented upon the low rate of vacancies available in the airlines industry. Upon reading the article, the impression which one gets is that it is very difficult to find employment avenues in the airline industry. I do not see any way in which the defendants by placing the advertisements of IHCTM under the article stood to gain. The reader of the article was not to know the connection of the defendants to IHCTM. The article nowhere states that IHCTM or any institute was better than the other and has generally condemned all the institutes. The article goes to the extent of describing the odds of employment after training in such institutes as 1:500 or even more. Thus, it cannot be said that the defendants stood to benefit from inserting the advertisement of IHCTM in close proximity to the article.

35. The counsel for the defendants has sought to justify the article as a warning to young gullible minds desperate to find employment. The article, if had restricted itself to commenting generally upon such institutes, would have been justified. However, nearly half of the article is directed against one institute only. There can be no justification for the same. A reading of the article leaves an impression as if the institute to which approximately half of the article is devoted, is the worst of the dozen odds institutes which the article states are offering training programmes for employment in the airline industry. I do not find any justification for targeting of one institute only, if the article was to serve the purpose claimed.

36. The defendants could have justified the libel by taking the plea of truth. However, the defendants have failed to establish any truth except in relation to DGCA approved professionals. The defendants if writing in public interest, ought to have before going to the press elicited the comments of the institute referred to in particular in the article and ought to have printed the response of the said institute also. The witnesses of the defendants could not name any other Delhi based institute having national presence, other than the plaintiff and the tenor of the evidence of the defendants indicates that the defendants referred to the plaintiff only. However, the defendants in spite of having issue No. 4 framed, the onus of which is on the defendants, failed to discharge such onus. The defendants did not examine any student who claimed to have been made a scapegoat or who claimed to be a victim of misrepresentation by the institute referred to in the article.

37. The society has in the recent times witnessed the havoc which the omnipresent media can cause to the lives and reputation of individuals (and

which will include corporates) in the name of dissemination of news. The media, to fill its expanding growth, in terms of pages, number of publications and hours, is found to be attempting to create rather than report news. While not denying the importance of the press and media, I however find that the press and media, if confined to their role of merely reporting news within the guidelines of the Press Council of India can defend an action for defamation, if they step out, they would be liable in tort, if found so and there is no special defence available to them.

38. I therefore, decide the issue No. 4 in favour of the plaintiff and against the defendants.

Re : Issue No. 5.

39 Owing to the decision on issue No. 3, when the article has been found to be not defamatory to the plaintiff's reputation, the question of the plaintiff being entitled to recover any damages does not arise. I must, however, notice that once defamation has been proved, it is difficult to establish the quantum of damages inasmuch as the reputation of a person is valueless. Reference was placed on Ram Jethmalani Vs. Subramaniam Swamy, where damages of Rs 5 lacs were awarded, Munshi Ram v. Mela Ram Wafa AIR 1936 Lah 23 and Union Benefit Guarantee Co. Ltd. Vs. Thakorlal P. Thakor and Others, However, in view of the findings above I need not address the quantum of damages.

Re : Issue No. 6

40. In view of the findings above, the suit of the plaintiff is dismissed. I, however constrain from awarding any costs to the defendants for the reason that on perusal of the file, I have found the defendants to have conducted lengthy cross examination of the witness of the plaintiff and to most of which cross examination no reference even was made during the hearing. The witness of the plaintiff was called before the Local Commissioner umpteen times. Such practice of excessive, purposeless cross examination, presumably to browbeat, tiring out the witness and to thereby gain an advantage over the other party has to be deprecated specially now when the recording of the evidence has been permitted to be relegated to the Court Commissioners. The Court Commissioners are not empowered to refuse any question and/or limit the cross examination. It becomes the bounden duty in the circumstances to exercise self-restraint. The suit is, therefore, dismissed without, however, any order to costs. The decree sheet be drawn up.