
(1987) 07 BOM CK 0042

In the Bombay High Court

Case No : Chamber Summons No. 370 of 1987 in Suit No. 918 of 1987

Javed Akhtar

APPELLANT

Vs

Lana Publishing Company Private Limited and Others

RESPONDENT

Date of Decision : 14-07-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 1
Evidence Act, 1872 — Section 126

Citation : AIR 1987 Bom 339 : (1987) MhLj 689

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : Anand Grover and Indira Jaising, for the Appellant; V.V. Tulzapurkar, Desai and S.K. Jain, for the Respondent

Judgement

1. The plaintiff is a well know film script writer. In the issue of a magazine called "Star Dust" for the month April 1987 an article has been published by defendants 1 to 4 on the plaintiff and his wife who is a well-known film star. The article makes comments on the plaintiff and his wife which, according to the plaintiff , are highly defamatory. The plaintiff has claimed damages of Rs. 25 lakhs for defamation. A substantial part of the article consists of "reporting" of comments made by various parties on the life style of the plaintiff and his wife. The persons who are alleged to have made these comments is referred to by name in the article. He is jointed in the suit as defendant 5. In the present chamber Summons the plaintiff wants defendant 3, Nishi Prem, who is the author of this article to disclose an affidavit the names of these persons referred to as "Starwife" Industrywalla," "Industrywalls" and "Unitwall" of the film unit of Mr. India." Whose comments are said to have been reproduced in the article.

2. Order XI rule 1 of the Civil P.C. deals with discovery by interrogatories. Every party is entitled to administer interrogatories to know the facts which constitute the opponent's case. But he cannot obtain disclosure of evidence by which the opponent hopes to prove his case. He cannot ask for the names of the

opponent's witnesses .A party is also not entitled to administer interrogatories for obtaining discovery of facts which constitute exclusively the evidence of his adversary's case. Interrogatories are permissible in connection with one's own case, for example, for obtaining admission or they may be aimed at impeaching or destroying the adversary's case.

3. A party also cannot ask for any confidential communications between the opponent and his legal adviser. And lastly the court may not permit disclosures injurious to public interest. (Vide Mulla's Code of Civil Procedure, 14th Edition, Vol. II page 1151).

4. The plaintiff is seeking the names of persons referred to in the article who are supposed to have made comments which are supposed to have made comments which are reproduced in the article. The names of these persons who feature in the article itself cannot be considered merely as names of witness of the defendants. Their comments are the subject matter of the article itself and they have been used by the author for the purpose of lending an air of authenticity to the statements which are made in that article. Hence the names of these persons form a material part of the subject matter which is said to be defamatory.

5. The suit is for libel where the defence is a rolled up plea of justification cum fair comment. The question whether in fact such comments were made or not and if made by whom, is directly relevant. Disclosure of these names is also relevant for established malice. In fact, it is the contention of the plaintiff that such comments were never made by anybody. In support he points out that the comments attributed in the article to defendant 5 are denied by defendant 5 in an affidavit which he has made for the Motion No. 835 of 1987 in the present suit. The disclosure of these names is therefore directly relevant for the establishment of the plaintiff's case.

6. In his affidavit in support of this Chamber Summons the plaintiff has given the following grounds for obtaining this discovery. (I) it is to enable the plaintiff to make the proceedings more effective and complete; (ii) to substantiate his case and (iii) to sue these persons by adding them as defendants to the suit. The third reason is not germane to discovery. The plaintiff has a complete cause of action against the present defendants. It is necessary for the plaintiff to join these other persons in order to succeed in the present suit. The first two reasons however, are material. The plaintiff is therefore entitled to obtain the disclosure of the names of these persons from defendant 3.

7. It is however, submitted on behalf of defendant No. 3 that such a discovery should not be ordered because a journalist should not be directed to disclose his source of information. In England there has been what is commonly called the "Newspaper Rule" under which, in an action for libel or slander, a newspaper cannot be asked to disclose the source of its information at an interlocutory stage. This rule was accepted as well established as far back as 1888 in the case of *Hennesey v. Write* (No. 2 (1888) 24 QBD 455). In the case of *Edmondson v.*

Birth & Co. Limited reported in 1905 2 KB 523, the plaintiff sought to administer to the defendants, in an action for libel, an interrogatory inquiring (inter alia) from whom the defendants received the information. The Court held that this interrogatory was not for the purpose of the pending action, but in order to enable the plaintiff to bring an action against a person or persons from whom the information was derived. This interrogatory was disallowed. Romer L.J. observed that though the court has jurisdiction to allow an interrogatory asking from whom such information was obtained, undoubtedly an interrogatory of thank kind is one which ought to be regarded with some caution and for it might, in some cases, be made an engine of great oppression.

8. In a later case of Lyle-Samual v. Odhms Limited reported in (1920) 1 KB 135, a weekly newspaper called "The National News" published statements said to be defamatory. Against a candidate standing for election to the House of Commons. The defence was of fair comment. The plaintiff sought to administer interrogatories to ascertain what information the defendants had upon which they founded their comment and the source from which that information was obtained. The court referred to the settled practice in the case of newspapers not to allow interrogatories as to the source of information at an interlocutory stage. It pointed out that the exact reasons for the rule were not clear and that the rule was subject to exceptions in special circumstances. Court felt that it was a rule from which the court was not at liberty to depart. Secretion L. J. observed, "Whatever I may personally think of the desirability or undesirability of such a rule, I do not think I am at liberty to depart from a rule of practice which has been acted upon for over 30 years and recognised in three judgments of this Court. I could have wished that the learned Judges in the Plymouth case 1906 1 KB 403 , who stated the rule, and who said that special circumstances might justify an exception from it, had given a little information as to what kind of special circumstances they thought might justify a departure." The court held that there were no special circumstances in that case which would justify a departure from the rule.

9. In the case of Georjius v. Vice-Chancellor and Delegates of the Press of Oxford University reported in (1949) 1 KB 720 the action was for damages from an alleged libel Crockford's Clerical Directory which was an annual publication. The defence was that of fair comment and justification. The plaintiff applied for leave to administer the following interrogatory to the defendants: "from whom did you obtain the information?" The trial Judge refused leave to administer this interrogatory. The appeal court held that it saw no reason to interfere with the discretion exercised by the trial Judge. Denning L.J. in the the course of his judgment observed that if the objection in administering such an interrogatory was to find out the name of the informant in order to sue him, it was not necessary to administer such an interrogatory because the remedy against the publisher would be sufficient.

10. Another reason which has been advanced in support of the Newspaper Rule

is that it is in public interest to protect the newspapers' source of information. Hence early disclosure of the source of information would not be desirable. The Rule does not prevent questions being asked in cross-examination at the trial regarding the source of information.

11. In the case of *British Steel Corpn. V. Ganada Television Ltd.* reported in (1981) 1 All ER 417 the judges of the Chancery Division, the Court of Appeal and the House of Lords referred to this Newspaper rule although this case was not a case of libel but a case based on breach of confidence.

12. Since 1949 the Newspaper Rule in England is made applicable to all categories of defendants in a libel action in certain circumstances. Now under O. 82, R 6 of the Supreme Court Practice in an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest, or where published on a privileged occasion, no interrogatories as to the defendant's source of information shall be allowed. The comments complained of must be on a matter of public interest or be made on a privileged occasion, to invite this rule.

13. We do not have any specific rule of this nature. No special privilege is granted to a newspaper or journal under the Evidence Act, protecting a newspaper's source of information. I have not been shown any case in which in our country, this Newspaper rule has been directly applied. Even assuming that the principles embodied in O. 82, R. 6 of the Supreme court Practice should be applied in public interest the present case is not a case which would be covered by the principles laid down in O. 82, R. 6. The article here deals entirely with the private life of a film script writer and his actress wife, and their relationship with another couple in the "film world". Such an article cannot be considered as an article on a matter of public interest. Private life of a film script writer and his actress wife may cater to the curiosity of a certain kind of reader. But what is interesting to the public is not necessarily of public interest. In *Gatley on Libel and Slander*, 8th Edition at Para 742 it is stated, the private life and character of an author or artist "unconnected with the work he has given to the public is not a matter of public interest. Whatever is fair and can be reasonably said of the works of authors or themselves, as connected with their works, is not actionable, unless it appears that under the pretext of criticizing the works, the defendant takes an opportunity of attacking the character of the author and it will be libel." The article here has no connection with the work of the plaintiff and his star wife.

14. It is undoubtedly true that a disclosure of a newspaper's source of information should not be ordered if such disclosure would be injurious to public interest. Freedom of the media to investigate and report on matters which are of public interest is essential to a free society. As a result, information which would otherwise not be available is made available to the public. If the name of a person who gives confidential information to a newspaper is required to be disclosed by the newspaper, it is possible that a newspaper's sources of information may dry up and the public would not have the benefit of disclosure of

matter which are of public importance. But this protection can be extended only when the information or material published is of public importance, as for example, if the information relates to malpractices in a government organisation. Even information relating to the private life of a public figure may be of public importance if such information has a bearing on the manner in which the public figure discharges his duties or if such information reflects on the suitability of such a public figure to hold the office that he occupies. But, unless it can be shown that the information is such as needs disclosure and publicity in public interest, there is no reason for extending any special protection to the source of everything which may be published in a newspaper, periodical, journal or any other publication.

15. In the case of *British Steel Corpn. v. Granada Television Ltd.* 1981 1 All ER 417, referred to above the plaintiffs instituted an action to discover the name of the informant who sent various confidential papers pertaining to British Steel Corpn. to Granada Television. This information and the confidential papers were made use of by Granada Television in one of its broadcasts. The House of Lords held that the person who betrayed the confidentiality reposed in him by his employer was certainly a wrong doer. The Court had to weigh the public interest in bringing the wrong-doer to book as against the public interest in not having the source of information disclosed. It held that the public interest in bringing the wrong doer to book outweighed other public interests. Lord Denning, while dealing with this case at the stage of the court of Appeal, referred to various cases in the United States of America on this subject. Among them we referred to the case of *Branzburg v. Hayes* which was before the supreme Court of U.S. in (1972) 408 US 665 where a newspaper reporter who had obtained special information on the Black Panther Party was asked to disclose the names of his informants before a grand jury in a federal investigation of the Panthers. The court weighed the public interest of prosecuting a criminal against public interest of protecting a newspapers source of information. It held that the former outweighed the latter and directed the journalist give evidence for which he had been subpoenaed. In each case therefore even when protection can legitimately be extended to a newspaper or journalist, there may be other vital constitutional and social interests which may have to be balanced, depending on the facts of each case. There can be no hard and fast rule as to when a newspaper may be asked to disclose and when not to disclose its source of information. It will depend on the balancing of various public interests which may be involved.

16. In a U.S. case which comes close to the present case, *Garland v. Torre*, in (1958) 250 F 545 refer to by Denning LJ in *British Steel Corpn. v. Granada Television* (1981) 1 All ER 417 The New York Herald Tribune published an article which was highly defamatory of a film actress. The article was published by a columnist who said that she had got the information from an executive of a broadcasting net work. The court ordered the columnist to disclose the name of the informant.

17. In the present case the article does not disclose any information which can be said to be of public importance or public interest. The article merely comments on the private life of a film script writer and his actress wife. It has no bearing on any matter of public importance. The disclosure of names asked for is directly material to the plaintiff's case. It is not a case where any special protection needs to be given to the third defendant. There is no investigative journalism involved here, which may be of value to an open and free society. It is merely muchraking.

18. The Chamber Summons is therefore made absolute in terms of prayer (a). The disclosure to be made within a period of 4 weeks from today.

19. Order accordingly.