
(1911) 01 MAD CK 0006
In the Madras High Court

K.R. Narasinga Row, alias N.R. Karjagi and Others APPELLANT
Vs
S. Kasturiranga Aiyangar RESPONDENT

Date of Decision : 12-01-1911

Acts Referred:

Citation : 9 Ind. Cas. 279

Hon'ble Judges : Arnold White, C.J;Sankaran Nair, J

Bench : Division Bench

Judgement

Arnold White, C.J.—This is an appeal from a judgment of Bakewell, J. dismissing a suit in which the plaintiffs claimed damages for libel. The

alleged libel was contained in a letter published in the ""Hindu"" newspaper. The letter was in the following terms:

A certain picture of Sri Subramaniaswami is being advertised as the handy work of the late Raja Ravi Varma. Its artistic character is not, in my

judgment, in the well-known style of that great man. If I wish to verify my suspicions, will any of your readers be so good as to inform me through

your columns to whom I should write? Chittoor, 18th September 1907. Anti-Humbug.

2. At the time when the letter was inserted in the ""Hindu"", an advertisement was appearing in that paper. The advertisement was in these terms:

"The Hindu", Saturday, September 21st 1907.

* * * * *

Ravi Varma Pictures. Very artistically and specially painted for us by, the famous Raja Ravi Varma.

3. God Subramaniaswami with his consort, 20 by 14 on the peacock vehicle painted on paper. Cost one rupee.

4. Free of postage for orders of six pictures at a time. One picture extra for orders of twelve at a time.

5. Liberal trade discount allowed.

6. Apply to:

7. C.R.A. Narasinga Row, Sole Agent, 21, 22 Davaraja Mudali Street, Madras.

7. The plaintiffs proved an agreement, dated November 16th, 1904, with Messrs. A.K. Joshi & Co., of Bombay, who describe themselves as

agents for the Ravi Varma Litho Works, under which the plaintiffs agreed to purchase 16,000 copies of a picture of Subramaniaswami within two

years, and A.K. Joshi & Co., agree that, if the purchase is completed, they will not print copies of the picture for any one else for ten years.

8. The man, whose name appeared at the foot of the advertisement, is the 1st plaintiff in the suit. The learned Judge has found (1) that the plaintiffs

have not proved that they are referred to by the, alleged libel, (2) that assuming the letter which is said to be libellous refers to the plaintiffs, it is not

defamatory of the plaintiffs, and on these grounds he has dismissed the suit.

9. There is no plea of justification though a good deal of evidence was adduced on behalf of the defendant with the object of showing that the

picture was devoid of artistic merit, and not in the well-known style of the artist Ravi Varma. This evidence, if admissible at all; could, in the

absence of a plea of justification, only have been admissible with reference to the plea of fair comment.

10. I am prepared to find as a fact that the advertisement referred to in the first sentence of the letter is the advertisement to which the 1st plaintiff's

name is appended. I have no difficulty in coming to this conclusion on the admitted facts and on the plaintiff's own evidence and, speaking for

myself, I do not see how the judgments in *Jones v. E. Hulton & Co. Ltd.* (1909) 2 K. 13. 444 : (1910) A.C. 20 : 78 L.J.K.B. 937 : 101 I.T. 33 :

25 T.L.R. 597 have any bearing on the question. The writer in the defendants' newspaper, in writing the letter, intended to refer to the 1st plaintiff

as the party responsible for the advertisement which appeared in the newspaper. He intended to refer to a real and not an imaginary person. The

plaintiff, to use Lord Loreburn's expression, was "hit" in the sense that the writer of the letter intended to refer to him as the man who was

responsible for the advertisement; whether he was "hit" in the sense that he was

defamed is the crux of this case.

11. As a question of law, I am not prepared to say that the words are not capable of the meaning ascribed to them in the innuendo, and if, as in

England, the tribunal for dealing with a suit of this character had been a Judge and Jury, and I had been the Judge, I should have left the question to

the Jury. As it is, we have to decide the question of law whether the words are capable of the meaning ascribed to them and also the question

whether they were in fact so understood.

12. In my opinion, the whole sting of the alleged libel lies in the signature "'Anti-Humbug.'" If these words had not been used, the letter would, as it

seems to me, have amounted to nothing more than a suggestion that the genuineness of the picture from which the lithographs were produced was

open to doubt. But it is clear the words suggest and were intended to suggest that somebody was practising humbug by deceiving the public.

13. Do they in fact suggest that the 1st plaintiff knew the picture which he stated to have been "'very artistically and specially painted for us by the

famous artist Raja Ravi Varma'" was not painted by'" Ravi Varma? In other words, do they impute bad faith to the 1st plaintiff or reflect on his

honesty? The advertisement, no doubt, speaks of painted for us'" whilst in the letter containing the agreement with Joshi and Company to which I

have referred, Joshi and Company state that they will get the original painting drawn by Raja Ravi Varma. The words complained of are, in my

opinion, capable of meaning that the plaintiffs were themselves victims of somebody else's fraud. No witness was called to say that he understood

the words as meaning that plaintiff had been guilty of fraud or humbug, and I am not prepared to say the Judge was wrong in holding that the letter

was not a libel on the plaintiffs.

14. Mr. Adam, on behalf of the plaintiffs, took the point that the Judge was wrong in declining to allow him to give evidence of malice. Malice is an

answer to a plea of fair comment (see the cases cited in "'Odgers on Libel and Slander'"--Edition 4, page 214), but the Judge has ruled against the

plea of fair comment, and if, as the Judge has held, the words published are not a libel on the plaintiff, evidence of malice would not be relevant.

(See Odgers, page 213).

15. The Advocate-General, on behalf of the defendant, conceded that the

plaintiffs were entitled to give evidence of express malice. I am not sure whether this was intended to be limited to the plea of fair comment. But, whether it was or not, we asked Mr. Adam if he desired to have the opportunity of giving such evidence. He said that, at this stage, he did not. Notwithstanding the Advocate-General's concession, I cannot say the Judge was wrong in the view he took of the case in declining to admit evidence of malice.

16. I think the appeal fails and should be dismissed with costs.

Sankaran Nair, J.

17. I agree.