

(2012) 07 MAD CK 0031

In the Madras High Court

Case No : O.S.A. No. 181 of 2011 and M.P. No. 1 of 2011

K.S. Sundaram

APPELLANT

Vs

S. Viswanathan and Economist Communications Ltd., Printer
and Publisher : The Industrial Economist, S- 15, Industrial
Estate, Guindy, Chennai - 600032

RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Constitution of India, 1950 — Article 104, 105, 19(2), 21

Citation : (2012) 4 CTC 361 : (2012) 5 LW 936

Hon'ble Judges : P. Jyothimani, J;M. Duraiswamy, J

Bench : Division Bench

**Advocate : Ravi for Gupta and Ravi, for the Appellant; C. Ramakrishna for
Surana and Surana, for the Respondent**

Final Decision : Dismissed

Judgement

M. Duraiswamy, J.—Challenging the judgment and decree of the learned Single Judge made in C.S. No. 157 of 2001 on the file of this

Court the Plaintiff has filed the above Appeal. The Respondents were the Defendants in the Suit. The Plaintiff filed the Suit in C.S. No. 157 of

2001 for claiming damages of Rs. 10,00,001/- and for permanent injunction restraining the Defendants from repeating or publishing further libel

against the Plaintiff.

2. The brief case of the Plaintiff is as follows:

(i) According to the Plaintiff, the Second Defendant is a publication said to be focussing on business and economics and the first Defendant is the

Editor of the Second Defendant; that in the issue for the period from 30.8.2000 to 14.9.2000, the First Defendant falsely and maliciously printed

and published about the Plaintiff, his family and his profession. According to the Plaintiff, the said article purporting to be a comment on the affairs

of the Company viz., M/s. Addisons Paints & Chemicals Limited, but, in substance it defamed the Plaintiff and his family members and it had

injured and lowered his reputation and the members of his family. On 29.9.2000, the Plaintiff had sent a letter calling upon the Defendants to

publish the said letter, but there was no response. Therefore, the Plaintiff issued a lawyer's notice dated 3.11.2000 calling upon the Defendants to

tender unconditional apology for the defamatory allegations published in the edition for the period from 30.8.2000 to 14.9.2000 and also to

publish the letter.

(ii) According to the Plaintiff, the Defendants had made further defamatory allegations against the Plaintiff in the issue dated 3.11.2000 for which

the Plaintiff sent a rejoinder reiterating that the allegations made against the Plaintiff are defamatory in nature. Further, according to the Plaintiff, the

intention of the Defendants is not to make any fair comment on the performance of the Company, but a deliberate attempt to injure the reputation

of the Plaintiff and his family members and the Defendants are aware that the article would not only lower the esteem and reputation of the Plaintiff

among the general public, particularly, the people in the corporate sector, but also would cause anguish and mental suffering to him. In these

circumstances, the Plaintiff filed the Suit claiming for damages and for permanent injunction.

3. The brief case of the Defendants are as follows:

(i) According to the Defendants, there is no cause of action for filing the Suit; that the Plaintiff failed to clarify as to which part of the article was

defamatory or injured his reputation. Further, according to the Defendants, the Plaintiff had not objected as to what the Defendants has stated in

the article, but his grievance was that the comment ought to have been made against the Board of Directors.

(ii) According to the Defendants, they never attacked the Plaintiff personally or caused injury to him and that the said article is a fair comment on

the poor performance of a 50 years old reputed Company that pioneered the production of paints in the country. The said article was published

only after thorough investigation made by the Defendants. The said article did

not attack the capacity or the character of the Plaintiff and it only

pointed to the management the lacunae that resulted in poor growth of M/s. Addisons Paints & Chemicals Limited and there was no malicious

intention to publish the article. In these circumstances, the Defendants prayed for dismissal of the Suit.

4. In the Suit, on the side of the Plaintiff, he was examined as P.W. 1 and 5 documents Exs. P-1 to P-5 were marked and on the side of the

Defendants, First Defendant was examined as D.W. 1 and one S. Nagarajan was examined as D.W. 2 and 10 documents Exs. D-1 to D-10 were

marked.

5. The learned Single Judge, after taking into consideration the oral and documentary evidences of both sides, dismissed the Suit. Aggrieved over

the judgment and decree passed in C.S. No. 157 of 2001, the Plaintiff has filed the above Appeal.

6. Heard Mr. Ravi learned Counsel appearing for the Appellant and Mr. C. Ramakrishna, learned Counsel appearing for the Respondents.

7. On a careful consideration of the materials available on record and the submissions made by both the counsels, the points that emerge for

consideration in this Appeal are whether the publication effected by the Defendants on 30.8.2000 and 30.11.2000 amount to libel or it is a fair

comment that are true in substance and in fact, the opinion or comment expressed regarding the performance of the companies was done in good

faith based on facts and the information received and believed to be true and there was no intention to harm the reputation of the Plaintiff and that it

is a fair comment made by the Defendants to serve the public interest. Since the points that arose for consideration in this Appeal are based on the

publication effected by the Defendants on 30.8.2000 and 30.11.2000, it is relevant to extract the publication (as extracted in the Plaint), which

reads as follows:

The publication effected on 30.8.2000 reads as follows:

There are other headaches for Sivasailam and his family. These relate to the legal battle waged by a section of shareholders of the Amalgamation

Group - the progeny of Sivasailam's sister Kalyani Sundaram.

Shankar Sundaram, nephew of Sivasailam, worked for a few years as Executive Assistant to Sivasailam. His father K.S. Sundaram, brother-in-

law of Sivasailam, was given the charge of Addisons Paints & Chemicals Ltd. (APC), one of the earliest manufacturing units of the Amalgamations

Group that celebrated its golden jubilee in 1998. Sundram and his family members have been managing APC and having not been associated with

the other unit companies, several of which have been growing rapidly. Both Shanker and his sister Lakshmi, have had the benefit of good

education but have not been utilized effectively by Sundaram in expanding APC. In the Fifties and the Sixties, the Spartan brand of paints

produced by APC was on the top. APC had enjoyed excellent custom among Industrial and Domestic Consumers of paints, ahead of Asian Paints

and even ICI. While other paint companies grew by leaps and bounds improving on technology, introducing new products and focusing on high

quality management, APC just languished. Imagine a 50 year old Company which had all the advantages of the first comer and a good brand

image, not even building a turnover of Rs. 50 crore over 50 years! Poor attention was paid to technology and marketing. Inbreeding was also

witnessed by Sundaram setting paint manufacturing units on his own.

Reichhold Chemicals was imaginatively conceived by founder Anantharamakrishnan as a unit allied to APC that would produce resins. It was

expected to build strengths in the field of chemicals, but became a drag and was sold off to the Mallayas in the Eighties.

The Sundarams are staking a claim for a higher share in the management and control of the Amalgamations Group. But corporate, like other

democratic institutions, are governed by the 50 plus 0.1 per cent control that is crucial determinant. With the other principal share-holders of the

family, Sivasailam, Krishnamoorthy and Seetha Venkataramani remaining together, the Sundarams have to be content with the dividends on their

share of holdings. And this is not inconsiderable, looking at the flourish of most of the unit companies.

The publication effected on 30.11.2000 reads as follows:

We commented on the poor performance of Addison's paints and Chemicals (Spartan non-shine, IE 30 August 2000) and concluded that a

demoralized workforce, a listless dealer network and poor public relations did not win for the Sundarams much support from vital quarters.

We forget to include in this another vital factor: in different or even hostile media

relations. K.S. Sundaram, who has been functioning as the Chief Operating Officer of APC, has helped us correct this omissions.

Sundaram has been known for his penchant for litigation. He has been merrily instituting proceedings against all the sundry, including the Chairman of the Holding Company, Amalgamations!

A Yen for vituperation and litigation.

A landlord - turned businessman, Sundaram also has a yen for vituperation. In a rejoinder to our comments, he has bad-mouthed not just us it is an occupational hazard that a Newspaper is subjected to and so nothing unusual but also illiberally the Board of Directors and the Chairman of the Company of which APC is a part.

He blames the Board for non-performance.

Sundaram has been employed by APC for over four decades; he had been the director and General Manager during 1970-90 and has been the

Chief Operating Officer since, entrusted with the responsibilities of managing the Company. Yet he disclaims any responsibility for the dismal

performance of the Company under his charge for three decades!

We do admit that a Board is responsible for direction, supervision and control of operations; but we also believe that a fabulously paid Chief

Executive who has enjoyed handsome salaries, perks and other privileges associated with the Post of a Chief Executive of a corporate unit (which

we gather, include paid holidays in India and abroad for himself and his family). Cannot so glibly wash his hands off the responsibility for results.

When the accomplished Chief executive of Tata Chemicals, D. Manu Seth, led the Company into much reduced levels of performance, he had no

alternative to quitting. This, despite the esteem earned by his father Darbari Seth who took the Company to great heights in his long tenure.

But blood is thicker than water. It should be the only explanation for Chairman Sivasailam to have permitted Sundaram to continue to hold office,

despite the dismal record.

Look at the performance, after 50 long years. APC reached a turnover of Rs. 38 crore with meagre profits, poor public image and dismal

customer orientation. In spite of being the neighbor to Tractors and Farm Equipment (TAFE) another unit Company of the same group, TAFE has

not been a regular customer of APC. Quite significantly, the large cluster of automobile manufactures in Tamil Nadu do not use APC paints for their original finish.

Look at Asian Paints, Goolass Nerolac...

For what real growth can be, look at APC's contemporary. Asian Paints: Sales for 1999-2000 Rs. 1342 crore after tax profit Rs. 97.34 Crore

net worth Rs. 357.40 crore. Over a dozen units operate overseas. Employer remuneration and benefits extended during the year were close to Rs.

60 crore.

Or look at the other paint major, Goolass Nerolac Paints, which has sales of Rs. 605 Crore for 1999-2000 on which it earned Rs. 30 crore as

after tax profit. Employee remuneration and benefits were close to Rs. 35 crore or nearly the total turnover of APC. Noteworthy was at Rs. 186

crore. The gearing was low with loan funds accounting for just Rs. 54 Crore.

Sundaram lists various successes, despite severe constrains.

¶½ From 1970 onwards, the group was ravaged by violent and disruptive labour unrest by which a highly competitive Company like Addison's

paints could to retain the share of the market for more than a decade, he states.

While strained industrial relations did affect performance in the early Seventies, the group has been free from disruption to work from IR problems

for over 25 years. And other units of the group like TAFE Simpsons, India Pistons... bound by common IR Policies had recorded spectacular

growth during this period.

¶½ That Sundaram and his team have been actively engaged in this period of inactivity in computerisation of the systems. Sundaram claims that

even today the extent to which computer applications had been made productive in APC is unparalleled with any other Company in the group!

But such wonderful work done doesn't seem to be reflected in the performance of the Company?

Sundaram should share this success story, a well kept secret, for the benefit of the units of the group and the industry.

¶½ From 835 employees at the time Sundaram took as Director and General Manger, the workforce has been reduced steadily to 385 at present.

Proposals were given to cut this down further to 93 without impairing the

productive capacity but would ensure substantial profits.

Downsizing has been the inexorable accompaniment of the pressures of productivity increases. The reduction in employee strength has been

massive in other unit companies like Simpsons, India Pistons as indeed at other engineering units in India and abroad. Done for sheer survival.

Sundaram did make his own contribution by way of making the life miserable for some of the senior managing a few to his own units.

½ Sundaram claims: Asian paints achieved 1.7447 time funds employed for sales achieved. Whereas Addisons Paints achieved 2.3765 time

funds employed for the turnover reached. Sundaram should ask Omkar Goswami, who recently made a brilliant analysis in the Business Standard

on the performance of the top four companies in the paint industry. Of course, APC was nowhere in reckoning.

Sundram resents even the comparison with TAFE. He accuses Sivasailam of abusing his position as Chairman of the group to plough several

crores into TAFE but spending only a small fraction on APC. Of course, TAFE is a vehicle manufacturer and the sales and profits earned by it

bear no comparison to the less sophisticated low technology units of the APC.

A ludicrous claim...

Sundaram also makes the ludicrous claim that the wages paid by Addisons Paints has been kept almost more than twice those of Asian Paints in

any year. We do not know of any senior management professional at the helm at APC receiving fat salaries. But the annual report of Asian Paints

for 1999-2000 lists 131 names who were in receipt of remuneration of not less than Rs. 6,00,000 per year (or Rs. 50,000 per month).

Sundaram has no compunction in decrying some of his senior managers: "the expertise available from chief chemist P. K. S. Mani (who was a

respected manager for years), was not sufficient; export of paint products made to a Yugoslavian Tractor Company had to be taken back at a

considerable loss as the product failed to meet the specification.

Business from Hindustan Motors came to a grinding halt, due to imperfection of goods supplied. The formulation for synthetic washable distemper

met with a total failure", states Sundaram.

Do you have many instances of a Chief Executive so facilely blaming his lieutenants for his Company's failures?

Of course Sundaram also points to the "few silver-linings such as the appreciation received on the quality of paint supplied to the Ford truck

project". He points with pride: "'our paint products that are not complained off even today!

Sundaram know the chequered history of the Ford truck project of Simpsons.

For one, it was again a captive custom, provided courtesy Sivasailam. Secondly, the order was too meagre to attract competition: 3000 trucks

assembled and sold over a decade. We had the parallel in Standard Motors assembling Gazel cars in the late seventies: after making advance from

a couple of dozen clients, the Company would go about buying parts and paints from the market. The volume was too small to source directly

from a large manufacturer.

... and he is so modest

Sundarm also gives himself kudos for the glittering export performance in 1999-2000 the Company earned Rs. 19.82 lakhs from exports on a

turnover of Rs. 38 crore. He didn't mention the expenditure incurred on winning such handsome custom built over 50 years of leadership. And the

several foreign trips made to win such large custom.

Sundaram also refers to the constraints under which his son Shankar had to perform. Significantly, the unit put under the charge of Shanker

Madras Hi-tech Circuits for the production of printed circuit boards for exports, at MEPZ was sick right at birth and remains closed. Reichhold

Chemicals that pioneered production of synthetic resins in the State, was put under the charge of Shankar. It did not flourish and was later sold off

to UBPP.

Sundaram did set up other units on his own. Tamarabarani Surface Coating (TSC) was set up in Pondicherry to produce paints. The infrastructure

of APC was liberally used for technology, market support and even finance. It remains closed. Another unit Aditya Paints, was set up by the family

and of course, (sic) competes with APC:

When he had full control...

Sundaram's family had bigger ambitions. Tamarabarani Dies and Tools Ltd. (TDT) was founded as a Company to make fine cutting tools. An

investment of around Rs. 5 crore was made.

The unit was set up with Japanese plant and machinery. IDBI was the principal lender. The equipment suppliers also liberally sold tools and dies

estimated to be required for the first 10 years. The capacity created is stated to be much more than total requirements of India! The Company had

not been able to produce tools and dies to quality and at costs that are competitive. Suppliers from Ludhiana have been able to win customer at much lower prices.

Admittedly the technology is sophisticated. Wafer thin, hard diamond tools must have fine holes to rigid specifications that would permit the

drawing of wires to strict standards. Applications such as production of filaments, demand micron-finish profiles. The failure to make the tools and

dies to such rigid specifications has burdened the Company with dozens of such dies and tools as idle inventory.

The Company tried to develop export markets in Germany. But the Germans found the quality poor. Left with no alternative to use the capacity

the Company offered to supply semi-finished tools and dies. But the German importers liberally deducted the German cost of finishing these from

the rock bottom prices quoted! This effectively meant the Company not recovering even the cost.

Desperate to keep production going, the Company accepted the low prices. Obviously, the specifications were highly technical and tight and the

management was not equal to dealing with the importer with expertise and global experience.

This experience is common for several industrial units putting money in manufacturing capabilities without employing quality manpower to tackle

technical issues and not having adequate resources to invent continuously in technology.

Today, TDT is sick and remains closed and has been brought before the BIFR. The Board, after detailed enquiries, has directed the winding up of

TDT.

The management has filed a Petition before the Appellate Tribunal requesting for a Revision of the order. The promoters have extended personal

guarantees. With the threat of financial institutions revoking the personal guarantees, the promoters have been desperately trying to claim insurance

reliars.

... but it failed in every aspect.

TDT failed in every aspect; of bad project preparation, machinery, quality, pricing and marketing.

Amalgamations did set up a unit, L.M. Van

Moppes Diamond Tools India Ltd., for the manufacture of diamond cutting tools. The group also runs Addison and Company that manufactures

twist drills and other cutting tools. Neither of these units has been flourishing on a sustained basis, like most of the other units of the group. These

have been modest-sized operations meeting some specific orders. Sundarams should have known the limitations of the industry and the level of

sophistication demanded. How strange they should have rushed into an industry where others with better resource, both financial and technical,

feat to tread!

After all Sundarams had similar experience in regard to Madras Hi-tech Circuits going to the BIFR for the same mistakes - equipment

inadequacies, lack of familiarity with technology and poor marketing capabilities.

Surely the Sundarams had all the freedom to perform with no constraints of an unhelpful board.

When leadership is thrust on family members...

Unfortunately, in many family owned-businesses, there is so much of overlapping of ownership and management functions. Plum posts are routinely

thrust on scions of the family or close relatives, often without concern for managerial or leadership capabilities. In a controlled economy, with

limited production capacities and limited competition and a big leeway for pricing, there has not been much of a demand for high professional

calibre. There was place in any sector for the big, the efficient, the small and even the inefficient ones. Look at a Dyanora or a Solidaire which

could survive and even flourish for some 15 years with nothing more than a screw driver technology!

8. As per the article dated 30.8.2000, M/s. Addisons Paints & Chemicals Limited ("APC") which is wholly owned subsidiary of the

Amalgamations Limited, which was started by late Shri Anantha C. Ramakrishna is one of the earliest manufacturing units of the Amalgamations

Group that celebrated golden jubilee in the year 1999 and that it was managed by the Appellant/Plaintiff and his family members. It is commented

that in spite of good education, they have not been utilized effectively by the Appellant/Plaintiff in expanding "APC". According to the author, the reason for the poor performance of the Company is lack of attention to technology and marketing and inbreeding, as the Appellant/Plaintiff had set up a separate paint manufacturing units of his own. Further, it is commented that the other principal shareholders of the family viz., A. Sivasailam, brother-in-law of the Appellant/Plaintiff, Krishnamurthy and Seetha Venkataraman had remained together and the Appellant/Plaintiff had to content with the dividends on their share holdings. It is also stated that the Indian Companies, operating in a controlled environment, especially in the south, never had a customer orientation and refers to the narration of experience purported to have been made by a prominent dealer of paints who had said that they never had an occasion to meet the top brass of Addisons Paints and the dealer meets are rare. Further, it is commented that demoralized work force, listless dealer network and poor public relations are the reasons for the poor performance of "APC". According to the Appellant/Plaintiff, the entire article published on 30.8.2000 is defamatory.

9. Mr. Ravi, learned Counsel appearing for the Appellant/Plaintiff further submitted that the personal allegations made against the Appellant/Plaintiff are defamatory and the alleged comments on the performance of the Company does not reflect the fair comment and only touches upon the character and capacity of the Plaintiff as Managing Director and his family members.

10. After the publication on 30.8.2000, the Appellant/Plaintiff sent Ex. P-2 reply dated 29.9.2000 calling upon the Respondents/Defendants to publish the same. The reply sent by the Appellant/Plaintiff was not published and further, there was no response on the side of the Respondents/Defendants. Since there was no response from the Respondents, the Appellant sent a legal notice dated 3.11.2000 calling upon the Respondents/Defendants to tender unconditional apology. In spite of the said notice, the Respondents/Defendants published another article marked as Ex. P-4 on 30.11.2000, which is extracted above. According to the Appellant, by publishing both the articles it would clearly show that the Respondents were bent upon in attacking the Appellant/Plaintiff personally, thus, causing injury to him.

11. The learned Counsel appearing for the Appellant/Plaintiff contended that by the publication of the articles, the estimation in the mind of the people about the Plaintiff has lowered. The learned Counsel appearing for the Appellant in support of his contention, relied upon the following judgments:

(i) *The Englishman Ltd v. Lajpat Rai*, 1910 ILR 37 Cal. 760, wherein a Division Bench of Calcutta High Court in paragraph Nos. 16 & 21 held as follows:

16. In my opinion, if a person takes upon himself to publish on his own authority in a news paper to the world at large that another has committed a Criminal offence, he will be liable in damages unless he is able to prove at the trial that what he published is true in substance and in fact.

21. No doubt the fair and accurate report of a speech made in Parliament is privileged, even though it contains facts defamatory to the Plaintiff. But no authority has been cited for the proposition that a person is entitled to republish those defamatory statements, not as a report of what has been said in Parliament but as a statement of his own.

(ii) *Sahib Singh Mehra Vs. State of Uttar Pradesh*, wherein the Hon''ble Supreme Court held that the Press has great power in impressing the minds of the people and it is essential that persons responsible for publishing anything in newspapers should take good care before publishing anything which tends to harm the reputation of a person. Reckless comments are to be avoided. Further, Hon''ble Apex Court held that when one is proved to have made defamatory comments with an ulterior motive and without the least justification motivated by self-interest, he deserves a deterrent sentence.

(iii) *Dr. P.H. Daniel and Another Vs. K.N. Krishna Iyer*, wherein a Division Bench of Kerala High Court held as follows:

7. Every statement which is defamatory gives rise to a presumption of malice. This is the legal malice which is the foundation of an action for defamation. But such presumption of malice is rebutted if the Defendant proves that the occasion on which the words were published was privileged. Once the Defendant has succeeded in rebutting the presumption of malice, the Plaintiffs action must necessarily fail, unless he establishes that the Defendant was actuated by express malice which is malice in fact.

(iv) Thornton v. Telegraph Media Group Ltd., 2011 (1) WLR 1985. In this judgment the Queen's Bench Division held that there were two

varieties of each of the torts of libel and slander, viz., personal defamation, which involved imputations as to the character or attributes of an

individual, and business or professional defamation, which involved imputations as to an attribute of an individual, a corporation, a trade union, a

charity, or some other similar body which imputation was as to the way that profession or business was conducted. Further, the Bench held that in

order to give effect to the threshold of seriousness, they preferred definition of a "defamatory" publication was one which affected in an adverse

manner the attitudes of people towards the claimant, or had a tendency so to do.

(v) In Lajpat Rai v. The Englishman Ltd., 1909 ILR 36 Cal. 1883, it has been held that a necessary part of a plea of fair comment to show that

there has been no mis-statement of facts in the statement of the materials upon which the comment was based. In order to give room for the plea of

fair comment the facts must be truly stated. If the facts, upon which the comment purports to be made, do not exist, the foundation of the plea fails.

12. The learned Counsel appearing for the Appellant/Plaintiff also submitted that the Respondents/Defendants has not pleaded in the Written

Statement with regard to the fair comment or the truth of the article published in the newspaper. Therefore, the learned Counsel submitted that in

the absence of any specific plea with regard to the fair comment and truth of the article published, the Suit ought to have been decreed.

13. Countering the submissions made by the learned Counsel appearing for the Appellant, Mr. C. Ramakrishna, learned Counsel appearing on

behalf of the Respondents submitted that the article published by the Respondents/Defendants in the newspaper on 30.8.2000 and 30.11.2000 are

fair comment in the sense that they are made by genuine desire to serve the public interest and not by any intention to harm the Appellant/Plaintiff.

The learned Counsel further submitted that the comments made in the impugned articles are true in substance and in fact, the opinion or comment

expressed regarding the performance of the Company was done in good faith based on facts and the information received and believed to be true

and there was no intention to harm the reputation of the Appellant/Plaintiff. The learned Counsel also submitted that the publication effected by the

Respondents/Defendants would not amount to libel. The learned Counsel appearing for the Respondents, in support of his contention, relied upon the following judgments:

(i) Dr. P.H. Daniel and Another Vs. K.N. Krishna Iyer, wherein a Division Bench of Kerala High Court held as follows:

77. The statement must be made fairly. An unfair statement lacking in bona fides, although made in the purported discharge of some duty or

furtherance of an interest, will not be worthy of protection. The maker of the statement must bona fide believe in the truth of the statement which he

makes although the statement itself may not be true. What is important is his honest belief in the truth. He must further bona fide believe that the

persons to whom the statement is made have an interest which justifies the communication. Per Lord Parker of Paddington in London Association

for Protection of Trade v. Greenlands Limited, 1916 (2) A.C. 15 at 42, But the burden to prove lack of bona fides or show express malice is, as

we shall presently see, upon the Plaintiff.

(ii) Mr. Umar Abid Khan and Others Vs. Vincy Gonsalves Alias Vincent Gonsalves, Mr. Chandrakant Ghorpade, Group Editor of ""Gomantak

Marathi Daily, Mr. Jayant Sambhaji, Executive Editor of ""Gomantak"" Marathi Daily and Gomantak (Pvt.) Ltd., wherein a Division Bench of

Bombay High Court held that the truth of defamatory words is a complete defence to an action for libel or slander. This will be in a Civil action and

may not be so in a Criminal trial. The truth normally is taken as an answer to the action to show that the Plaintiff is not entitled to recover damages.

(iii) Vishan Sarup Vs. Nardeo Shastri and Another, wherein a Division Bench of Allahabad High Court held as follows:

15. The Doctrine of Fair Comment is based on the hypothesis that the publication in question is one which, broadly speaking, is true in fact, and is

not made to satisfy a personal vendetta; and further that the facts stated therein are such as would go to serve the public interest. In England the

law of fair comment has been stated thus:

The defence of fair comment requires that the material fact or facts on which the comment or criticism is based should be rule stated and be a

matter of public interest, the comment on fact or facts should be fair within the wide limits which the law allows;... A statement of fact though

reflecting on another may be justified.... the comment must not misstate facts; because a comment cannot be fair which is built upon facts not truly

stated and if Defendant cannot show that his criticism contains no, or no material mis-statement of facts, he will fail in his defence of fair comment.

A material mis-statement of any of the facts on which comment is made, negatives the possibility of the comment being fair." (Halsbury, III Edition, Vol. 24, pp. 70 to 74).

16. A journalist possesses no higher right than an ordinary citizen has in respect of the freedom of speech. At the same time, by virtue of the special

character of his profession the journalist owes certain duties to the public, the most important of which is the dissemination of news and views fully

and truly expressed on matters affecting the public good. In so far as he does that he serves a social purpose for by exposing the evils of the

community or its servants to the public gaze he seeks to create a climate of opinion for their eradication. A newspaper editor, therefore acts within

his legitimate sphere when he offers criticism of what he considers and bona fide believes to be before the good of the community.

(iv) R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others, wherein the Hon'ble Supreme court held as follows:

28. We may now summarise the broad principles flowing from the above discussion:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone".

A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other

matters. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or

critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position

may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The Rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such

publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the

right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the rule in (1) above - indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the Defendant) with reckless disregard for truth. In such a case, it would be enough for the Defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the Defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of Court and Parliament and legislatures protected as their privileges are by Articles 105 & 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a Suit for damages for defaming them.

(5) Rules 3 & 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media.

(v) Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI), wherein the

Hon"ble Supreme court held as follows:

30. In *Express Newspapers (Private) Ltd. and Anr. v. The Union of India*, this Court has laid down that while there is no immunity to the press

from the operation of the general laws it would not be legitimate to subject the press to laws which take away or abridge the freedom of speech

and expression or adopt measures calculated and intended to curtail circulation and thereby narrow the scope of dissemination of information or

fetter its freedom to choose its means of exercising the right or would undermine its independence by driving it to seek Government aid. This Court

further pointed out that a law which lays upon the press excessive and prohibitive burdens which would restrict the circulation of a newspaper

would not be saved by Article 19(2) of the Constitution.

(vi) *Brij Bhushan and Another Vs. The State of Delhi*, wherein the Hon"ble Supreme court held that freedom of speech and expression is one of

the most valuable rights guaranteed to a citizen by the Constitution and should be jealously guarded by the Courts. Further, the Apex Court held

that the tendency of modern jurists is to deprecate censorship though they all agree that "liberty of the press" is not to be confused with its

"licentiousness". But the Constitution itself has prescribed certain limits for the exercise of the freedom of speech and expression and this Court is

only called upon to see whether a particular case comes within these limits.

(vii) *R. Rajagopal @ R.R. Gopal @ Nakkheeran Gopal, Editor, Printer and Publisher of Nakkheeran (Bi-weekly), Nakkheeran Publications,*

Nakkheeran Printers and Binders and A. Kamaraj, Associate Editor, Nakkheeran (Bi-weekly), Nakkheeran Publications Vs. J. Jayalalitha and

Mrs. N. Sassikala, wherein a Division Bench of this Court extracted a passage reported in 1969 (1) A.E.R. 8 (*Fraser v. Evans*) where Lord

Denning has observed as follows:

The Court will not restrain the publication of an article, even though it is defamatory, when the Defendant says that he intends to justify it or to

make fair comment on a matter of public interest. That has been established for many years since *Bonnard v. Fryer*. The reason sometimes

given is that the defences of justification and fair comment are for the jury, which is the Constitutional Tribunal and not for a Judge; but a better

reason is the importance in the public interest the truth should be out.

(viii) Indirect Tax Practitioners Association Vs. R.K. Jain, , wherein the Hon''ble Supreme Court held that fair criticism of system of administration

of justice or functioning of institutions or authorities entrusted with the task of deciding rights of the parties gives an opportunity to the operators of

the system/institutions to remedy the wrong and also bring about improvements.

(ix) Ralph D. Abernathy v. L.B. Sullivan, U.S. Supreme Court Reports 11 L ed 2d. In this case the U.S. Supreme Court while dealing with the

question of libel held as follows:

Head Note 9. The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled

by our decisions. The Constitutional safeguard, we have said, ""was fashioned to assure unfettered interchange of ideas for the bringing about a of

political and social changes desired by the people.

Head Note 14.... In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem

the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration to

vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in

the light of history, that in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and

right conduct on the part of the citizens of a democracy.

Head Note. 35. This proposition has disquieting implications for criticism of Governmental conduct. For good reason, ""no court of last resort in

this country has ever held, or even suggested, that prosecutions for libel on Government have any place in the American system of jurisprudence.

14. Learned Counsel appearing on behalf of the Respondents/Defendants also submitted that the Plaint filed by the Appellant/Plaintiff is bereft of

particulars and no specific instance of libel has even been alleged and hence is liable to be rejected under Order 7, Rule 11, C.P.C. Further, the

learned Counsel also submitted that there is no cause of action for filing the Suit. For this proposition, the learned Counsel relied upon the following

judgments:

(i) Ramprasad Chimanlal Vs. Hazarimull Lalchand,

(ii) Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another,

(iii) T. Arivandandam v. T.V. Satyapal and Anr., AIR 1977 (4) SCC 467;

(iv) Ranjeet Mal Vs. Poonam Chand and Another,

(v) I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others,

The above referred judgments relied upon by the learned Counsel appearing for the Respondents are pertaining to the rejection of Plaint under

Order 7, Rule 11 of C.P.C. It is pertinent to note that the Respondents/Defendants had not filed any separate application under Order 7, Rule 11

of CPC to reject the Plaint. The said point was not raised before the learned Single Judge at the time of deciding the Suit. In fact, the said

contention now raised by the learned Counsel for the Respondents is being raised for the first time before this Bench. Therefore, the contention

raised by the learned Counsel for the Respondents that the Plaint is liable to be rejected under Order 7, Rule 11 cannot be sustained. Therefore,

the same is rejected.

15. According to the Respondents/Defendants, Industrial Economist a fortnightly business magazine is published and focussed on dozens of

southern corporates through special issues analysing and reporting the performance of corporate entities in the south. In the written statement the

Respondents/Defendants claimed that the public has a right to know as to how effectively corporates make use of the slender resources especially

of a developing country like India. Further, according to the Defendants, the Industrial Economist, a responsible Magazine is concerned with the

inconsistent performance of the corporate. Therefore, according to the Respondents, they only pointed to the management the lacunae, therefore,

the articles published cannot be construed as libel.

16. One S. Nagarajan, who was working as Assistant Secretary of Addisons Paints & Chemicals Limited, was examined as D.W. 2. He deposed

that he joined the Company in the year 1962 as a Trainee Chemist and worked in all the departments of the Company and retired in the year

2002. D.W. 2 has stated that the Appellant took over as Managing Director of the Company in the year 1968 and he exhibited undue hostility

towards the employees and that various incidents had crept in, which resulted in passing of an award by the Labour Court in favour of the

employees. D.W. 2 further stated that only after 1968 the Company was in a deterioration mode due to the poor management. Further, most of

the senior technical staff, who were back bone of the unit, left the Company, during his tenure.

17. According to D.W. 2, the Company Law Board objected the contention of the Company for the Appellant's re-appointment as Managing

Director after 1990 holding that he has failed to pass the growth performance test and that he was not a fit and proper person to hold the post in

public interest, however, just before the receipt of the order, the Appellant/Plaintiff got himself appointed as President of the Company and since

then there has been no Managing Director. D.W. 2 had also stated that the Company rated as one among the top three units in the country in the

1960s and the Company had gradually deteriorated under the leadership of the Appellant and the article published by the Respondents/Defendants

had brought about the real facts about the Appellant/Plaintiff.

18. According to the Respondents, the articles published in the magazine are fair and bona fide comment in the interest of the public. Though the

Appellant had extracted the publication made by the Defendants in the magazine on 30.8.2000 and 30.11.2000 in the Plaint, he has not pointed

out any particular passage or word that is said to be defamatory. In fact, he had admitted in the Proof Affidavit that the article published by the

Respondents is a comment made by them on the affairs of the Company. In the text book Gatley on Libel and Slander, the words libel and slander

are stated as follows:

Libel and Slander: Defamation is committed when the Defendant publishes to a third person words or matter containing an untrue imputation

against the reputation of the claimant. Broadly speaking, if the publication is made in a permanent form or is broadcast or is part of theatrical

performance, it is libel; if in some transient form, it is slander. The most important distinction between the two is that libel is actionable per se the

law presumes that some damage will flow from it; for the publication of a slander to be actionable, on the other hand, some special damage must

be proved to flow from it, unless it falls within certain specified categories.

In Halsbury's Law of England, Simonds Edn., Vol. 24, page 8 in sub-section (3) of the Section "" Libel and Slander, "" it is observed that if the

occasion was a privileged one, express or actual malice might have to be proved. The precise form in which this is put is:

If the occasion is such that there was either a duty or right to make the publication, it is said that the occasion rebuts the presumption of malice, but the malice (which here means malice in fact, or as it is technically called, express or actual malice) may be proved.

19. On a reading of the above passage it is clear that if the publication is made in a permanent form or is broadcast or is part of theatrical

performance, it is libel; if in some transient form, it is slander. The distinction between libel and slander is that libel is actionable per se the law

presumes that some damage will flow from it; for the publication of a slander to be actionable, on the other hand, some special damage must be

proved to flow from it, unless it falls within certain specified categories.

20. It is also pertinent to note that on the side of the Appellant/Plaintiff, except his own evidence, he has not examined any other independent

witness to prove his case. In the reply sent by the Appellant on 29.9.2000 to the First Respondent, the Appellant has not specifically denied about

the poor performance of the Company. Further, he had stated that the performance of the Company cannot be linked to an individual, but to the

Board of Directors. He has also stated many things about the Board of Directors and the President. It is not in dispute that the Appellant's

brother-in-law viz., A. Sivasailam was the Chairman of the Company. According to the Appellant, there was family dispute between him and the

Chairman of the Company viz., A. Sivasailam. Further, in the said reply, the Appellant had personally attacked A. Sivasailam on many aspects. On

a reading of the reply sent by the Appellant on 29.9.2000, one could understand that the Appellant had only tried to settle his personal scores with

A. Sivasailam. When the publication made by the Respondents are with regard to the performance of the Company and its poor management

which resulted in deterioration of the Company, the Appellant had made personal allegations against the Chairman of the Company viz., A.

Sivasailam which according to us, was not in good taste. Further, the Appellant had called upon the Respondents/Defendants to publish the reply

notice in their magazine which was not done by the Respondents.

21. The judgments relied upon by the learned Counsel appearing on behalf of the

Appellant relate to defamatory and libel articles. As already stated, the Appellant has not pleaded specifically in the Complaint that a particular portion published by the Respondents are defamatory. Further, in order to establish that the articles published by the Respondents are defamatory, the Appellant ought to have pleaded and proved that the articles published by the Respondents are defamatory and libel. On a reading of the articles published by the Respondents, it is clear that the Respondents have made comments with regard to the poor performance of the Company, which the Appellant had not denied in his reply dated 29.9.2000. The poor management by the Appellant is also evident from the letter dated 21.6.1990 from the Ministry of Department of Company Affairs to the Appellant/Plaintiff rejecting the proposal to re-appoint the Appellant as Managing Director holding that he is not a fit and proper person for reappointment. Aggrieved over the order passed by the Ministry of Department of Company Affairs, the Appellant preferred a Writ Petition in W.P. No. 13455 of 1990 before this Court and the same was dismissed. As against the order in the said Writ Petition, the Appellant has preferred an Appeal in W.A. No. 503 of 1999 and a Division Bench of this Court also dismissed the Writ Appeal and confirmed the order of the learned Single Judge thereby confirming the order passed on 21.6.1990 by the Ministry of Department of Company Affairs. Therefore, it is proved that the Appellant was not appointed as Managing Director of the Company after 1990 since it was found that he is not a fit and proper person. By examining D.W. 2, the Respondents established that the Company was in a deterioration mode after the Appellant became the Managing Director in the year 1968. The Appellant being the Plaintiff failed to establish his case that the contents of the articles published by the Respondents are false and that the Company was performing well during his tenure as Managing Director. In the reply dated 29.9.2000, the Appellant not only made several unwarranted personal attacks against A. Sivasailam but also made some damaging remarks against the Magazine stating that when the Appellant wanted to get a copy of the edition carrying the article, none was available in any stationery mart or in leading Magazine vendor and that finally, a copy was traced with a waste paper merchant, who was carrying on his business for recycling paper from the trash purchased by him

periodically from the lot discarded by people as useless, waste and thrown into the garbage to be ridden quickly. However, the said contention of

the Appellant that a copy of the Magazine was obtained only from the waste paper merchant was not established by any means.

22. In the article published on 30.11.2000, the Respondents based on analysis conducted with regard to the Company gave a elaborate details

with regard to the performance of the Company. If the comments made by the Respondents in the Magazine are personal, one can understand that

the article would defame the reputation of that particular individual. In the present case, the articles published by the Respondents relates only to

the performance of the Company and its deterioration in the performance by the poor management of the Appellant. Therefore, the article

published by the Respondents cannot be termed as defamatory against the Appellant.

23. In the Judgment relied upon by the learned Counsel appearing on behalf of the Respondents in U.S. Supreme Court Reports 11 Led 2d

(referred supra), the U.S. Supreme Court clearly held that the proposition has disquieting implications for criticism of Governmental conduct and

for good reason, no Court of last resort in that country has ever held, or even suggested, that prosecutions for libel on Government have any place

in the American system of jurisprudence. In the present case, the Respondents have only criticized the poor management of the Company and not

the individual in their articles published in their Magazine. The fair criticism of system of administration of justice or functioning of institutions or

authorities entrusted with the task of deciding rights of the parties gives an opportunity to the operators of the system/institutions to remedy the

wrong and also bring about improvements. The articles published by the Respondents are only for the interest of the public and for improving the

performance of the Company. Therefore, we are of the considered view that the publication of the articles by the Respondents are only fair

comments on a matter of public interest. When the Respondents justified the contents of the articles by establishing that the contents are fair

comments on a matter of public interest, the articles published by them cannot be termed as defamatory against the Appellant. It is needless to say

that with regard to the liberty of the Press and fundamental right to freedom of speech, the right is protected under Article 19(2) of the Constitution

of India. However, the Constitution itself has prescribed certain limits for the exercise of the freedom of speech and expression and this Court is

only called upon to see whether a particular case comes within these limits. The said point does not arise in this case since we are of the view that

the articles published by the Respondents are fair comments made by them in the interest of the public.

24. Since the articles published by the Respondents are only the comments with regard to the performance of the Company, there cannot be any

libel. Further, there is no motive for the Respondents for publishing the articles as against the Appellant. If the impugned articles complained of are

justified as comment and the words also contain allegations of facts, the Respondents are required to prove that such allegations of facts are true

and it is not sufficient for him to plead that they bonafidely believed them to be true. The distinction between comment and allegation of fact must

always be borne in mind in determining that the plea of fair comment can be sustained.

25. Further, in the present case, the facts do not establish a personal animus for the writer to write the impugned articles against the Appellant. In

the absence of any proof regarding the animus, we are of the view that the articles contain only the fair comment on the performance of the

Company and not any defamatory statement as against the Appellant personally.

26. The judgments relied upon by the learned Counsel appearing on behalf of the Appellant mainly relate to the alleged defamatory articles

published by the Respondents/Defendants. Since we are of the considered view that the articles contains only fair comment made by the

Respondents with regard to the performance of the Company, the judgments relied upon by the learned Counsel appearing on behalf of the

Appellant are not applicable to the facts and circumstances of the present case.

27. In the case on hand, after the receipt of the reply dated 29.9.2000, the Respondents published another article on 30.11.2000 in answer to the

notice given by the Appellant seeking unconditional apology from them for the remarks made in the first article dated 30.8.2000. The second

article was published on a privileged occasion for the reason that the Respondents were justifying their earlier comments made on 30.8.2000.

Therefore, the second article was made by the Respondents justifying their

earlier comments made by them with regard to the poor performance of the Company. The Appellant/Plaintiff failed to establish that the second article was made dishonestly or with any motive as against him. In the absence of any proof with regard to the same, the article published on 30.11.2000 was made by the Respondents and the same can constitute qualified privilege.

28. The contents of the second article dated 30.11.2000 is justified by the language used by the Appellant/Plaintiff in his letter dated 29.09.2000.

The malice in law which is presumed in every false and defamatory statements stands rebutted by a privileged occasion. Further, it was not proved by the Appellant that there was misunderstanding or strained relationship between him and the Respondents. In the absence of any proof, with regard to the strained relationship or ill feeling between the Appellant and the Respondents, no ulterior motive can be attributed for the publications made by the Respondents. The Appellant also miserably failed to establish his case by adducing any acceptable evidence.

29. It is also settled principle of law that the word "malice" is used in the sense of an improper motive and that the burden of proof lies only on the

Appellant/Plaintiff. Here also, in the absence of any proof, no "malice" can be attributed for the articles published by the Respondents. The learned

Single Judge, after taking into consideration the oral and documentary evidences of both side, has rightly come to the conclusion that the impugned

articles dated 30.8.2000 and 30.11.2000 does not amount to libel and they are only fair comments on the performance of the Company. The

learned Single Judge has rightly dismissed the Suit. In these circumstances, we find no ground to interfere with the judgment and decree of the

learned Single Judge made in C.S. No. 157 of 2001. The Appeal is liable to be dismissed. Accordingly, the Original Side Appeal is dismissed.

Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.