

(1974) 02 BOM CK 0009

In the Bombay High Court

Case No : Appeal from Order No. 44 of 1974 with Civil Application No. 397 of 1974

Miss Simi Garewal

APPELLANT

Vs

T.N. Ramchandran

RESPONDENT

Date of Decision : 28-02-1974

Acts Referred:

Citation : (1976) 78 BOMLR 623

Hon'ble Judges : Kania, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kania, J.—This is an appeal against the order of a learned Judge of the City Civil Court dated February 6, 1974 dismissing the Notice of Motion taken out by the appellant in Suit No. 694 of 1974 in that Court in which she was the plaintiff. By the said Notice of Motion, the appellant sought to restrain the respondent, who was defendant No. 1 and another defendant, who has not been made a party in the appeal, from printing or publishing or circulating her nude or semi-nude photographs in the respondent's magazine entitled " FILM WORLD".

2. Certain facts emerge from the record about which there is no serious dispute. The appellant is a well-known film artiste. She has played the leading female role in the picture "Siddhartha", which was shot in India and which has been released for exhibition in the United States. This film has scenes in which the appellant is shown in nude or semi-nude poses. One of these scenes consists of the appellant, who plays the role of the courtesan Kamala standing in the nude wearing only certain articles of jewellery. The male actor, who is playing opposite her, is shown as kneeling in front of her with folded hands and apparently bowing down before her. A coloured photograph of this particular scene is proposed to be published by the respondent on the cover page of the January-February 1974 issue of his said magazine. This magazine contains an article entitled "Will India be denied the original version of "Siddhartha"?" and the said photograph is

intended to illustrate the said article. I shall revert to this article a little later. It is the publication of this photograph, which is sought to be restrained by the appellant. Certain other facts also can be taken note of at this stage. The film "Siddhartha" is adapted from the novel of the same name written by the well-known German author Herman Hesse in 1922 after a single trip to India in 1903. This novel tells the story of a Brahmin named "Siddhartha", who lived about twenty-five centuries ago, and depicts his search for a meaningful way of life. It shows him becoming a Sadhu or an ascetic and submitting himself to the harsh practices of ascetism. It shows that he is not satisfied with this way of life, and then settles down with a beautiful courtesan, Kamala, and becomes a merchant. This again leaves him dissatisfied and ultimately he leaves this life and becomes a ferryman. The film "Siddhartha" has been produced by an American producer, Conrad Rooks, and has been shown in several cities in the United States. There are some love making scenes in the said picture in which the appellant, in the leading role of Kamala, and the hero appear in semi-nude poses. The very photograph, which is the subject-matter of the present appeal, has been published in the issue of the Illustrated Weekly of India dated October 7, 1973. It is undisputed that this magazine has a much wider circulation than the magazine "FILM WORLD" belonging to the respondent.

3. The case of the appellant in the plaint is that for the story of the picture it became necessary for the appellant to give semi-nude poses in the said picture. It was agreed between the appellant and Conrad Rooks, the producer and director of the said picture that these scenes would not be exhibited or screened in India without her permission. According to the appellant, this agreement was entered into for the reason that the said poses would not be found acceptable to Indian society. The appellant has averred in the plaint that with a view to defame her in the eyes of "the public of the Indian society, which would include the Indian film goers, producers, distributors, exhibitors of the Indian pictures and to harm her reputation as a film artiste in Indian pictures", the respondent is publishing some of the above poses in in his magazine without the appellant's permission. She has gone on to aver that the publishing and printing of the photographs of the appellant in the nude form are likely to damage her reputation and name as a person as well as a film artiste. All that is necessary to note regarding the case of the appellant as set out in the plaint is that, she has not chosen to specify any innuendo or suggestion, which the publication of the impugned photograph would, according to her, convey or to specify in what particular manner the said publication would be derogatory to her reputation and name, but has rested satisfied with a vague allegation that the same would be defamatory to her as a person and as a film artiste. As far as the defence is concerned, it is set out in the affidavit of the respondent in reply. According to him, the magazine "FILM WORLD" is noted for its serious content on cinema as an art form and is a reputable magazine. It is not necessary to go into this question m to whether this claim is correct or not. The affidavit of the respondent, however, does show that the article "Will India be denied the original

version of "Siddhartha"?" has been written by one Dr. Robert Steele, who is the professor of Films at the Boston University, Massachusetts, for the magazine "FILM WORLD". In November 1973 the New York correspondent of the said magazine forwarded to the respondent the said article as well as some black and white pictures representing some of the scenes from the said film. These pictures or prints were shown to me as well as in the trial Court. A black and white photograph containing the very scene, the proposed publication of which is in colour by the respondent is sought to be restrained, is included in these photographs. At the foot of this particular photograph as well as of some others there is a note to the effect that the rights in the photographs belong to the Columbia Pictures Industries Inc. and that permission is granted to newspapers and other periodicals to reproduce the photographs except for certain purposes, which are not relevant for the purposes of this appeal. The front cover of the January-February 1974 issue of the said magazine was advertised in the issue of December 1973 and the selling agents were supplied with advance copies of the printed front cover. The respondent has pointed out that he had given an advertisement in the Advertising Club Annual Ball Souvenir published in the first week of December 1973, in which there is a black and white picture, albeit of very small dimensions, depicting the same scene. It is the contention of the respondent that he is fully entitled to publish the said impugned photograph, that the same was the correct photograph of a scene in the film "Siddhartha" depicting the appellant and her male lead and that it was in no way defamatory of the appellant. In brief, the defence taken up by the respondent is of justification and fair comment. It is contended by the respondent that the said photograph on the front cover and the other pictures in the magazine do not in any way constitute false statements to the discredit of the appellant nor are they disparaging of the appellant and injurious to her reputation. The defence has also been taken up that the appellant has waived her right, to object to the publication of the said picture or has acquiesced in the publication of the same. It is finally contended that the appellant is guilty of serious delay and laches in filing the suit and taking out the said Notice of Motion and both are liable to be dismissed on this ground.

4. Although the matter has been argued by Mr. Jaisinghani, who appeared for the appellant, at some length before me, in my opinion, it can be shortly disposed of.

5. The first question, which I have to consider is, whether the defence of justification pleaded by the respondent is sustainable. In this connection, it may be useful to refer to the definition of the word "defamation" and to the discussion on the subject of justification contained in Winfield and Jolowicz on Tort, ninth edn. At p. 245 of this book it is stated that defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally; or which tends to make them shun or avoid that person. It is pointed out that many writers have defined defamation simple as the publication of a statement which tends to bring a person "into contempt, hatred or ridicule." As pointed out in the said book on p. 273, the plaintiff in an

action for defamation need not prove that the statement is false, for the law presumes that in his favour. But the defendant can plead "justification" (the technical name for truth here), and if he can establish it by evidence he has a good defence. To establish the plea of justification the defendant must prove that the content of the statement was true. It must be true in substance and in fact. It cannot be disputed that once a statement or representation in question is established to be true in substance and in fact, it is utterly irrelevant to consider whether it is defamatory or not. A person has no. right to the protection of reputation to which that person is not entitled. In the present case, it is not disputed that the photograph intended to be published, in fact, correctly depicts a scene between the appellant and the hero in the film "Siddhartha". It is not disputed that the appellant was in the nude except for certain ornaments in this scene. It is not contended before me that the impugned photograph shows the appellant as less attractive or beautiful than she is or is in that matter unfair to her. All that is alleged before me is that this photograph has been torn from the context of the film and shown on the cover page of the said magazine "FILM WORLD", which amounts to a distortion of truth. It was urged by Mr. Jaisinghani that merely because the photograph may be a correct photograph, it does not necessarily mean that it represents the truth. In this connection, he drew my attention to the decision of the House of Lords in *Sutherland v. Stopes* [1924] All. E.R. Rep. 19 where it has been observed in the speech of Lord Shaw as follows (P. 32) :

...In every one of these cases, if the truth of the libel is affirmed by the jury, the case is at an end. There is no room for introducing fair comment... There are two qualifications which must be made upon this absolute rule. In the first place, truth must not be state without being fully stated-that is to say, without context in the case of a libel, and without circumstances in the case of a slander, which would put a different complexion upon matter which is libellous or slanderous standing by itself, and would possibly or probably destroy altogether its character as such.

It is true that one question that has to be considered in the present case is whether the picture on the cover page of the said magazine has been torn out of context so as to make it misleading or to render it a misrepresentation. The material on record shows that in the film "Siddhartha", in which the appellant has acted, there are love scenes in which the appellant has appeared in a state of undress. It is not as if an isolated nude or semi-nude shot of the appellant in the film has been taken and put on the cover page of the said magazine. It is quite clear that there must be a number of such scenes in the film and one of them has been depicted on the cover page of the said magazine. Therefore, it cannot be said that the said photograph has been torn out of context. It may be mentioned that the said issue of the magazine contains the article referred to earlier which appears to have been written by a serious film critic from the United States, and in this article regret is expressed at the possibility that an artistic film like "Siddhartha" will not be shown in India, because of, what the

author considers, rigid and puritanical rules of film censorship in this country. There are also other scenes from the film, which have been used to illustrate the article and against which no complaint has been made. It is also clear that the article is in no way derogatory of the appellant or the film. In fact, the trend of the article is that the appellant is a person of considerable talent and charm, who has given a forthright performance in the film "Siddhartha" and it is a matter of regret that the said performance will not be shown in the same form in this country. The picture on the cover page is directly connected with the article and cannot be said to be irrelevant to the article.

6. It was contended by Mr. Jaisinghani that although the appellant has acted in the nude or semi-nude in some of the scenes in the said film, she has never posed for a still photograph in the same manner and the picture on the cover page would be a misrepresentation in so far as it suggests that the appellant must have posed for a still photograph without her dress. In my view, there is no substance in this contention. It cannot make any difference to the reputation of the appellant whether she has posed in this state either in the film or for a still photograph connected with that film. I may point out that there is no doubt that the photograph is that of a scene in the said film. From the cover page of the said magazine and the article therein, it is quite clear that the said photograph represents a scene in the film "Siddhartha". Although no innuendo has been spelt out in the plaint, the only innuendo which could be drawn from the photograph is that the appellant is a person who would act for some scenes in a film without her dress. If that be the innuendo then it is perfectly true, because she has in fact so acted.

7. It was urged by Mr. Jaisinghani that the letter dated February 3, 1972 shows that it was agreed between the appellant and Conrad Hooks that love scenes and semi-nude scenes in the film "Siddhartha" would be shown outside India only. That, in my view, cannot make any difference. It cannot matter to the reputation of a professional actress whether she has performed in the nude or semi-nude in a film to be exhibited in India or only outside India. In my view, therefore, the defence of justification is, *prima facie*, clearly made out by the respondent and the Notice of Motion is liable to be dismissed on that ground alone.

8. I now propose to consider the matter briefly even on the assumption that the photograph on the cover page of the said magazine does contain a distortion of the truth. Even if this be so, the question still remains as to whether it is defamatory of the appellant, that it is disparaging to her or lowers her reputation or makes other people shun her company or society and is harmful to her in the way of her profession. In this connection, it must be remembered that this very picture was published in the Illustrated Weekly of India, which is a magazine with a much wider circulation, in the issue of October 7, 1973. No affidavit has been filed by the appellant of any person to the effect that the publication of that picture has in any way lowered the appellant in his eyes or tended to make him shun her company or society. Even the appellant herself has not stated that she

has suffered in her profession or personally by reason of this publication of the said picture in the Illustrated Weekly of India. Vague allegations have, no doubt, been made in the affidavit in rejoinder of the appellant that the said picture misrepresents the appellant in the eyes of the average right-thinking man in India and would damage the appellant in her professional capacity. No allegation has however, been made that she has in any way actually suffered since the publication of the said picture in the Illustrated "Weekly of India. It was urged by Mr. Jaisinghani that the question whether the publication of the said picture in the Illustrated Weekly of "India has caused any damage to the reputation of the appellant was irrelevant as far as the present Notice of Motion was concerned. I am unable to accept this submission. It is the same photograph, which has been published in the said magazine. In the Notice of Motion the question to be considered was whether the proposed publication of the said picture on the cover page of the respondent's magazine was likely to cause damage to the reputation of the appellant or damage her professionally. In considering the likelihood of any such damage the question whether the publication of an identical photograph in a magazine with a much wider circulation did or did not cause such damage would be, certainly relevant. Apart from this, the only way in which the publication of this photograph could lower the reputation and esteem in which the appellant is held by the members of the film going public and persons in the film line is that it would suggest that she is a person who acted in nude or semi-nude scenes in a motion picture. In the first place, the film ""Siddhartha" appears to be a serious motion picture based on a well known novel. It is doubtful whether the appearance of the appellant in such a film in certain nude or semi-nude scenes, which are relevant for the development of the story in that film, would necessarily lower the appellant in the estimation of the film going public or persons connected with the film line in India. In my opinion, it would be unsafe, at this stage, to act on the presumption that the publication of such a picture would necessarily lower the appellant in the eyes of the film going public or persons in the film line in India. In this connection reference may be made to the observations of Hidayatnllah J. (as he then was) in *Ranjit D. Udeshi Vs. State of Maharashtra*, which run as follows (p. 887).:

...None has so far attempted a definition of obscenity because the meaning can be laid bate without attempting a definition by describing what must be looked for. It may, however, be said at once that treating with sex and nudity in art and literature cannot be regarded as evidence of obscenity without something more.

In the present ease, there can be no complaint against the said photograph except that it depicts the appellant in the nude or semi-nude form. Apart from this, it cannot be said to be in bad taste or in any manner lewd or suggestive. It is, therefore, difficult to proceed, at this stage on the presumption that the publication of the said photograph would lower the appellant in the estimation of her fellow beings.

9. The last question which has to be considered is whether even assuming that

the impugned photograph might, perhaps, distort the truth and be somewhat defamatory of the appellant, this is a case in which the relief of injunction should be granted. As observed by Lord Esher M.R. in *William Coulson and Sons v. James Coulson and Co.* (1887) 3 T.L.R. 846:

...To justify the Court in granting an interim injunction it must come to a decision upon the question of libel or no libel, before the jury decided whether it was a libel or not. Therefore the jurisdiction was of a delicate nature. It ought only to be exercised in the clearest cases, where any jury would say that the matter complained of was libellous, and where if the jury did not so find the Court would set aside the verdict as unreasonable. (p. 846)

This classic passage has been cited with approval by Lord Coleridge, C.J. in *Bonnard v. Perryman* [1891] All. E.R. Rep. 965. As far as the position in Indian law is concerned, it has been observed in *Pollock and Mulla* in their commentary on Indian Contract and Specific Beliefs Acts, Ninth edn., at p. 943 as follows:

An interlocutory injunction is not granted in regard to a libellous matter where the plea of justification is raised unless it is clear that the plea must fail. Before a Court can grant an interim injunction the plaintiff must make out a prima facie case and that there is a prospect of such immediate and pressing injury which cannot be adequately compensated by damages. But if there is material before the Court that the defendant can prove justification or truth of the statement it will not exercise its jurisdiction to grant an injunction.

In my view, the appellant has clearly failed to make out a prima facie case and is, therefore, not entitled to an injunction, at this stage, in any event. Apart from this, as I have already pointed out, the very picture has been published in the *Illustrated Weekly of India*, which has a much wider circulation. It is curious that the appellant has not taken any steps against this magazine either for damages or restraining it from further circulating the issue containing the said picture. It is clear on the record that the January-February issue of the said magazine "FILM WORLD" is already ready for distribution and circulation. In the circumstances, even the balance of convenience requires that no injunction as sought for by the appellant ought to be granted.

10. There is one other matter which may be noticed. As far as the publication in the *Illustrated Weekly of India* of the same picture is concerned, it is contended by the appellant that she was not aware of its publication at all till her attention was drawn to it by the letter of the respondent dated January 22, 1974. In the first place, it is difficult to accept this statement of the appellant. Even if she did not see the said picture in the *Illustrated Weekly of India* dated October 7, 1973 herself, it is highly unlikely that no one would have informed her about her picture being published in this manner in the said issue of the *Illustrated Weekly of India*. On the other hand, if what she says is correct, it only shows that the publication of this picture, which must have been seen by several of her film fans and friends as well as other persons in the film line did not make them, in any

way, think the lower of her or lead them to shun her company.

11. I may mention that certain other authorities were cited by Mr. Jaisinghani, but, in my opinion, the same have no direct bearing on the case before me and, therefore, I have not referred to them.

12. In the result, the appeal fails and is dismissed with costs.

13. Mr. Jaisinghani applies that the injunction granted at the stage of admission of the appeal should continue for some time to enable him to file a Letters Patent Appeal. Mr. Ashok Desai, for the respondent, opposes this application. In my view, there is no such question of law arising in this matter which requires to be disposed of by a Division Bench of this Court. The application of Mr. Jaisinghani is, therefore, rejected. As far as the Civil Application is concerned, the same does not now survive. Interim injunction dissolved. There will be no order as to costs of the Civil Application.