
(1960) 08 CAL CK 0017
In the Calcutta High Court
Case No : Suit No. 837 of 1960

National Sugar Mills Ltd.

APPELLANT

Vs

Ashutosh Mukherjee

RESPONDENT

Date of Decision : 25-08-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Specific Relief Act, 1877 — Section 54, 55

Citation : AIR 1962 Cal 27

Hon'ble Judges : G.K. Mitter, J

Bench : Single Bench

Advocate : Advocate General and S. Chatterjee, for the Appellant; S. Mukherji and Rebati Sarkar, for the Respondent

Judgement

G.K. Mitter, J.—This is an application for an interim injunction pending the determination of the suit to restrain the defendant, his servants and agents from publishing the words mentioned in paragraph 4 of the petition or any of them or any similar words or words to the like effect which are defamatory of the plaintiff.

2. This suit was filed on June 13, 1960, by the plaintiff, a company incorporated under the Indian Companies Act and having its registered office at No. 15, Chittaranjan Avenue, Calcutta, within the jurisdiction, of this Court. The defendant is described in the plaint as the printer, publisher and editor of a Bengali weekly newspaper called "Mayurakshi" having circulation among other places in Calcutta within the jurisdiction of this Court and in the district of Birbhum. The full text of the publication, a good portion whereof is in Bengali, is contained in Annexure "A" to the plaint. It refers to the way in which the plaintiff company carries on business and there can be no two opinions on the point that the publication is clearly libellous. On translation of the Bengali portion into English the whole as shown in the said annexure reads as follows:

"This age is very dangerous. Beneficial advice out of good motive is not heeded to. Ahmedpur Sugar Factory is a National Concern. Forgers or Cheats should

have no place there. Accounts, receipt, cash Memo, should be absolutely correct every one expects it to be so.

Sugar of this Mill is sold at the rate of Rs. 52/-per maund but pash memos are issued at the rate of Rs. 45/-. If any shopkeeper or trader does the same every one calls him a cheat, or a swindler. The Sugar mill--though a national concern, has earned such bad reputation.

Sir Mihir Lal Chatterjee informed the Legislative Assembly of West Bengal of the story of realising Rs. 52/- on granting receipts at the rate of Rs. 45/- in connection with discussion of Budget on 26th March. The Chief Minister admitted it in his reply. But what the Chief Minister said is irrelevant and misleading. Issue of receipts at Rs. 45/- realising a price at Rs. 52/- per maund and concealment of the said additional sum of Rs. 7/- by falsification of accounts is nothing but an attempt at theft in the eyes of accountants. If a national concern issues receipts for Rs. 45/- after taking sums of Rs. 52/-and does not issue receipts for Rs. 7/- why ordinary merchants would not follow suit. The irrelevant, meaningless, illogical answer of the Chief Minister is set out below:

"As regards the price, I may tell my friends here that in spite of writing to the Central Government about the price at which sugar from the West Bengal Mills can be sold, they have refused to give us any ceiling price. I take it therefore that the intention is that it can be sold at any price that they chose to give according to the market rate. I have also heard what Shri Chatterji has said about there being little variation in the price rate. I have made enquiries and I have found that although the ordinary price is Rs. 45/-a maund, which is allowed by the Government of India, they have sold in some cases at Rs. 52/-per maund. They have kept Rs. 7/- in the accounts separately in case the Government of India allows that extra money to be utilised for that fund--in that case it will be merged in the general accounts, otherwise it will be shown as reappropriation for sale. There is no question of any price. The money that has been realised on the sale of sugar is shown partially as sale price and partially under a separate head. In case the Government of India says "you can charge up to Rs. 52/- it will be merged in the general account."

So there are no ways to deny that receipts are being issued for Rs. 45/- and secretly Rs. 52/-are being realised. That is Rs. 7/- per each maund are being taken without receipt. The same has been admitted by Dr. Bidhan Roy, Receipts would be issued for a figure but different figures would be accepted secretly, that is called cheating. Dr. Bidhan Roy has informed in this connection that One lakh maunds of sugar has been manufactured in this mill. So in fact 7 lakhs of rupees have been realised without receipts and kept concealed. Neither the mill authorities nor the Government would have admitted unless Mihir Babu disclosed about the fact of those 7 lakhs in the legislative assembly. The same would have vanished in invisible manner.

The West Bengal Government (in this state aided mill) by affording mis-

appropriation through cash memos has allowed pollution of morals. The mill by this dishonest device has put in its own pocket Rupees 7 lakhs from the customers of sugar.

An intelligent reader will be dumbfounded with astonishment after reading the statement of Dr. Bidhan Roy carefully. Has any one heard about such types of accounts, receipts and account books? What else may be called cheating?"

3. It is not disputed that the issue of Mayurakshi on the 7th of April, 1960, contained the defamatory matter complained of. The plaintiff complains that by the said words and publication the defendant meant and was understood to mean that the plaintiff had sold sugar produced by it at a price over the controlled rate and that by its method of trade and business it had made a profit of Rs. 7,00,000/- which had not been accounted for and which had been or would be misappropriation by the plaintiff and its management and that the plaintiff was carrying on business dishonestly with a view to defraud and was defrauding its customers and shareholders alike and that its books of account and documents and papers were not kept in the proper way so as to allow the misappropriation of a portion of the sale proceeds of its products. The plaintiff has claimed Rs. 5,00,000/- as and by way of damages for the injury to its credit and reputation and has further prayed that the defendant be restrained perpetually from continuing to publish the charge contained in the said newspaper of the 7th April, 1960, or similar charges against the plaintiff in the future issues of the said newspaper. In paragraph 8 of the plaint it is stated that the publication was made at amongst other places, Calcutta within the jurisdiction of this Court. The reliefs prayed for are :

1. A decree for Rs. 5,00,000/- as damages;
2. Perpetual injunction restraining the defendant, its servants and agents from the publication of the said words or words to the like effect
4. Immediately after the issue of the 7th April 1960 the plaintiff's solicitors wrote a letter to the defendant that the charges contained in the said publication about misappropriation of a portion of the profits was wholly without foundation and that as a matter of fact the procedure adopted by the plaintiff was to draw two bills on the buyers because of the reason that there were rumours in the market that the Central Government might control Ex. Mills price of sugar in West Bengal at Rs. 45/-per maund and consequently the Mill decided to draw supplementary bills for the balance price charged by it over Rs. 45/- per maund so that in the event of the Central Government controlling the Ex. Mill price of sugar at Rs. 45/- per maund, the funds would remain separate and a statement of the excess price realised by the Mills would be available immediately. It was further pointed out that a detailed statement of the entire sale proceeds of the sugar at the prices at which it was being actually sold had been sent to the State Government as also to the District Magistrate, Birhhum, by the plaintiff on April 5, 1960. It Was further pointed out that the Mill had crushed 1 lakh maunds of

sugarcane and thereby produced a little over 8000 maunds of sugar and the price charged over and above Rs. 45/- per maund did not come to Rs. 7,00,000/- but only Rs. 47,095/- and the entire amount was deposited in the company's cash and entered in, its books of account. The solicitors went on to add that the defendant had never attempted to apprise himself of the correct state of affairs from the plaintiff and had published other defamatory and untrue allegations in the issue of the said newspaper of June 11, 1959. The solicitors, therefore, called upon the defendant to tender an unqualified apology in writing for publishing the defamatory statements and to publish a substance of the apology in a prominent place in the defendant's newspaper in three successive issues in default whereof threats of legal proceedings were held out. This was replied to by the defendant on April 26, 1960; the defendant tried to justify the charges levelled by it on the basis of the discussions which had taken place in the Assembly during the Budget Session on March 26, 1960. In one of the paragraphs the defendant wrote.

"It is true that we did not make any enquiries of your clients. But after the Chief Minister's statement which was made after enquiry, any enquiry on our part of your clients was not considered necessary. But I assure you that we made enquiries of several buyers and had reason to be satisfied that receipts were granted for amounts calculated at Rs. 45/- per maund only. In course of these enquiries we learnt that a reputed dealer in sugar (amongst other things) wrote to your clients requesting to be informed of their trade terms; but your client did not for reasons known to them give any reply. This reticence on the part of your clients created an impression that enquiries would be useless and would fail to elicit relevant information."

Finally, the writer went on to say that publications like the one of the 7th of April, 1960, contained fair and bona fide comments made in good faith in public interest and without malice and, therefore, there was no question of any apology.

5. In the petition in support of the application the plaintiff states in paragraph 8 that since the publication of the libellous remarks in the issues of the newspaper Mayurakshi dated 7th of April, 1960, the defendant falsely and maliciously and with a view to injure the plaintiff in the way of its trade and business, published further defamatory statements in several issues of the said newspaper, inter alia, on 12th of April 1960, 5th of May 1960, and 26th of May, 1960, and by the persistent wrongful and malicious conduct of the defendant in publishing and/or in continuing to publish such defamatory and false allegations about the plaintiff and the plaintiff's trade or business, the plaintiff has suffered and was suffering serious loss and damage and its business had been seriously affected by such wrongful acts of the defendant and, unless restrained by injunction, the defendant threatened and intended to go on publishing other defamatory words or words of the like nature with a view to cause further loss, damage and prejudice to the plaintiff.

6. It is not disputed for a moment by learned counsel for the defendant that the publication was and is libellous, one cannot call a man, far less an institution, a

forger or a cheat with impunity; neither will the law allow a person to make imputations that Rs. 7/- per maund of sugar sold was being misappropriated by falsification of accounts. There was a definite charge by the defendant that the plaintiff was issuing receipts for Rs. 45/- only after taking a sum of Rs. 52/- and that the company never issued receipts for the balance of Rs. 7/- which any merchant would ordinarily be expected to do.

7. Three affidavits in opposition have been filed herein, the first by the defendant Ashutosh Mukherjee himself. In this he reiterates what took place in the Assembly on the 26th of March, 1960 and also in March, 1959. Particular stress is laid on the fact that when the discussions were taking place on the floor of the house, Mr. Sankardas Banerjee, a Director of the plaintiff company, and one Bimalananda Taikatirtha, another Director who happened to be present in the Assembly, did not protest or contradict the statement made by Mihir Lal Chatterji about monies of the company being misappropriated in the way suggested. It is said that the reply given by the Chief Minister did not clear up the position at all and it is further suggested that the Chief Minister practically admitted that receipts were being made out for the sale of sugar at Rs. 45/- per maund only while a much larger amount was being received by the Company. The justification of the charge is contained in paragraph 5 of the affidavit wherein the deponent states:

"Thereafter I made enquiries from Shri Mihirlal Chatterjee who is a member of the Legislative Assembly as also one Suganchand Anchlia who happened to be the Secretary of the Merchant Association of Sainthia. They gave me receipted bills granted to the purchasers from the plaintiff company. Copies of the said receipted bills one in the official printed form granted to Shampat Raj Jain and another in unofficial typed form granted to Sukdeodas Gajanan, are annexed herewith in a bundle marked with the letter "A". x x x x It was further represented to me that while payments were received @ Rs. 52/- per maund only one receipt for Rs. 45/- was being granted and it was incorrect to state that any separate receipts for Rs. 7/- were being granted."

8. It is significant to note that the deponent did not himself contact any of the persons who had purchased sugar from the Mill directly but his charge was based on two receipts which had been made over to him by Suganchand Anchlia. The paragraph above quoted does not show who it was who had represented to the deponent that while payments were being received at Rs. 52/- per maund, receipts for Rs. 45/- only per maund were being granted.

9. In second affidavit used in opposition to the application is that of Suganchand Anchlia who describes himself as the Secretary of the Sainthia Merchants Association. In paragraph 1 of his affidavit he says:

"I heard a lot of complaints from general dealers and consumers that the plaintiff company were selling sugar at Rs. 52/- per maund and were granting receipts for Rs. 45/- only, I made enquiries and came to know the said fact. As a matter

of fact I received several complaints to this effect. I also received certain bills and/or receipts granted by the plaintiff company. The said bills and receipts have been granted and/or are in such manner that they can come in for good deal of criticism. I gave the said bills and/or receipts to the Editor of Mayurakshi Sri Ashutosh Mukherjee and requested him to bring the said facts to the notice of the public."

This affidavit suffers from the same complaint as mentioned with regard to the affidavit of Ashutosh Mukherjee, Suganchand Anchlia, though professing to be the Secretary of a Merchants Association, has not the temerity to name any person from whom he had made enquiries or who had given him the bills and receipts which he had handed over to Ashutosh Mukherjee to be used for the Purpose of public vilification.

10. The last affidavit is that of Mihir Lal Chatterji, a Member of the West Bengal Legislative Assembly. He is a man from Birbhum but all he can say is that:

"I heard reports from various merchants and traders that while this company was selling sugar at Rs. 52/- per maund, receipted bills were being granted at Rs. 45/- per maund. In view of such criticism I made enquiries from various merchants and traders and was confirmed in the said report. I made criticism to this effect on the floor of the West Bengal Legislature to bring it to the notice of the Members in the presence of Sri Sankardas Banerji and Shri Bimalananda Tarkatirtha who are the Directors of the plaintiff company. No contradiction was made to the criticism by the said two directors. Dr. B. C. Roy, while replying to the debate referred to my criticism and admitted the criticism that receipts were granted at Rs. 45/- per maund and offered certain explanation for that."

It is needless to add that the plea of justification is sought to be based on hearsay of the worst type. No one has come forward to say that he got a receipt for Rs. 45/- while he had to pay at the rate of Rs. 52/-, and although Ashutosh Mukherjee and Mihir Lal Chatterjee both hail from Birbhum, they have not been able to get anybody to affirm an affidavit to the effect that this is what was being done by the mill and the deponents had suffered the consequence thereof.

11. In the affidavit in reply, the Superintendent of the plaintiff company states in paragraph 9 that by looking at the records of the plaintiff company he was in a position to say that Sampatraj Jain had been granted two receipts, one for sales at the rate of Rs. 45/- per maund and the other for the balance price at the rate of Rs. 5/- per maund. Similarly two receipts had been granted by the plaintiff company to Sukhdeodas Gajanan referred to in the opposition. According to the Superintendent the entire sale proceeds have been credited in the books of the plaintiff company and he craved leave to refer to them and produce the said books at the time of the hearing of the application. He charged that the defendant had wrongfully and mala fide suppressed the supplementary bills issued by the plaintiff company to the said buyers. He further added that it was significant that neither Sampatraj Jain nor Sukhdeodas Gajanan had come

forward to make any accusation against the plaintiff.

12. In order to put matters beyond any doubt, I called for the production of the accounts books of the plaintiff company and the books which contained carbon copies of the receipts made out for sale of sugar. The two counterfoil books produced show that two receipts were made out in favour of Sampatraj Jain on the 23rd of February 1960, one for Rs. 5940/- at the rate of Rs. 45/- per maund and the other for Rs. 660/- at the rate of Rs. 5/- per maund.

13. So far as Sukhdeodas Gajanan is concerned, duplicates of two bills were handed over to me to show that the first bill made out on February 12, 1960 was at the rate of Rs. 45/- per maund for 50 bags, the total price coming to Rs. 6187.50 and the second bill described as supplementary bill in favour of the very same buyer was made out for Rs. 687.50 bearing the same date. The original cash book No. 2 of the company was also brought in showing that on February 12, 1960, two sums of Rs. 6187.50 and Rs. 687.50 had been realised by the sale of sugar to Sukhdeodas Gajanan covered by bill No. 00 dated 12-2-1960 and another described as a supplementary bill No. 00 bearing the same date.

14. Similar entries are to be found with respect to the sale of sugar to Sampat Raj Jain on February 23, 1960.

15. Prima facie, therefore, it appears that the plea of justification which the learned counsel for the defendant wanted to rely on is without any foundation. If, in spite of the plaintiff company producing its books of account and the copies of the bills, the defendant had produced an affidavit from some one who had actually brought sugar from the mill and stated that he had paid at the rate of Rs. 52/- and obtained a bill showing payment at the rate of Rs. 45/- only, then one might possibly take the view that there was some basis for the defendant's plea of justification.

16. Mr. Mukherji, learned counsel for the defendant, argued that when there is a plea of justification taken by the defendant in the case of a libel, the Court ought not to grant an interlocutory injunction pending the hearing of the suit because that would be pre-judging the issue, and that the Court should not deny to a litigant the freedom of speech and his right to ventilate grievances especially with regard to the affairs of a public concern unless it was satisfied that the plea could not be justified. In support of this Mr. Mukherji relied on *Bonnard v. Perryman* 1891 2 Ch. 269. In this case North, J. had granted an interim injunction on an interlocutory application. This was, however, upset on appeal by the Division Bench where Lord Coleridge with whom Lord Esher, M. R., and Lindley, Bowen and Lopes, L.JJ. concurred and held that although the Court had jurisdiction to grant such relief on, an interlocutory application, it would be very slow to exercise such jurisdiction. It is necessary to refer in brief to the facts of this case.

17. The plaintiffs were Gustava Richard Bonnard and Arthur Henry Deakin, trading as the Mercantile and General Trust at Broad Street Avenue. The

defendants Were Charles W. Perryman, the publisher, proprietor and editor of a weekly newspaper called the Financial Observer and Mining Herald. The article complained of in the defendants' paper contained, inter alia, the following passage:

"In 1889 offices were taken at 143, Cannon Street, by a couple of Jews, named Gustave Richard Bonnard and Arthur H. Deakin; who styled themselves the Mercantile and General Trust. How they got into the Offices we cannot understand, for they had not a sixpence in the world; the furniture was obtained on the hire system, and they often had to beg a lunch. They were, however, of a very enterprising nature, although young, and they were lucky enough to ingratiate themselves with the great Harry Hananel Marks by offering him inducements to puff the Sykes Brewery, which had by some means come into their hands There was some very shady work in this business. The plunder amounted to no less than ?58,000, and an action is now pending over a commission note for ?3000 given by Arthur H. Deakin, which he is endeavouring to repudiate."

18. North, J. Observed that no one could read that article without seeing that the imputations were of a very serious character, which directly affected and probably would affect the business of the plaintiffs and that it contained allegations which unless justified at the trial of the action would be one in which a jury would give the plaintiffs substantial damages.

19. The majority of the Judges of the Court of Appeal observed as follows:

"The subject-matter of an action for defamation ,is so special as to require exceptional caution in exercising the jurisdiction, to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel, Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions.

xxxxx 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."

"In the particular case before us, indeed, the libellous character of the publication is beyond dispute but the effect of it upon the defendant can be finally disposed of only by a jury, and we can not feel sure that the defence of justification is one which, on the facts which may be before them, the jury may find to be wholly unfounded; nor can we tell what may be the damages

recoverable. Moreover, the decision at the hearing may turn upon the question of the general character of the plain tiffs; and this is a point which can rarely be investigated satisfactorily upon affidavit before the trial,--on which further it is not desirable that the Court should express an opinion before the trial. xxxxx Upon the whole, we think, with great deference to Mr. Justice North, that it is wiser in this case, as it generally and in all but exceptional cases must be, to abstain from interference until the trial and determination of the plea of justification."

20. It should be noted that the learned Judges of. the Court of Appeal in England were influenced by the following considerations;

(a) The determination of the question of fact as to whether the libellous matter was true or not was a question which was within the province of the Jury to decide and the Judge would only set aside a verdict of the jury if he came to the conclusion that it was palpably and wholly unreasonable.

(b) The decision at the hearing might turn, upon the question of the general character of the plaintiffs--a point which could hardly be investigated upon affidavits before the trial, and lastly,

(c) The right of free speech was one which should not be disturbed unless there was a very clear case.

21. This decision came up for consideration very soon afterwards in the case of *Monson v. Tussauds Ltd.* reported in 1894 1 QB 671. In this case the plaintiff had been tried upon a charge of having murdered a youngman by shooting him with a gun at a place called Ardlamont. The defence to the charge was that the death of the youngman took place by the accidental discharge of the gun. The jury returned a verdict of "Not proven." Shortly after the trial the defendants who were the proprietors of an exhibition in London consisting mainly of wax figures of celebrated and notorious personages placed in their exhibition a portrait model of the plaintiff, bearing his name with a gun. in close proximity thereto described as his gun. This figure was exhibited in a room called the Napoleon Room, No. 2, within a turnstile, at which an extra six pence was charged for admission. In this room there were four other figures. Of these one was a figure of Emperor Napoleon I, another that of a Mrs. Maybrick, who had been convicted of murder, a third of one Pigott, a witness before the Parnell Commission, who had committed suicide to avoid arrest, and the fourth that of a man named Scott, who was charged with having been concerned in the alleged murder with which the plaintiff was charged, but who could not be found.

22. Mathew, J. who heard the interlocutory application issued an injunction. In the Court of Appeal further affidavits were filed on both sides. Those by the defendants were to the effect that shortly after the figure of the plaintiff was first exhibited by the defendants a person named Tottenham had called on the defendant company at their offices and stated that he knew the plaintiff well and came on his behalf, and had entered into an agreement for the sale to the

defendants of a suit of shooting clothes, stated to have been worn by the plaintiff at Ardlamot on the day of the alleged murder and the gun used by the plaintiff on that day; that Tottenham subsequently handed over the gun and the suit of clothes to the defendants and received a cheque for ?50, but he afterwards wrote returning the cheque and stating that the plaintiff refused to confirm the arrangement he had made. Counter affidavits were filed by the plaintiff. One of these was from Tottenham to the effect that the plaintiff had left at his office a portmanteau containing the clothes and the gun; that he had, hoping to obtain the sanction of the plaintiff, seeing that the plaintiff was in his debt at the time, offered the clothes and the gun to the defendants for ?50 on the understanding that if the plaintiff did not acquiesce in what he had done they should be returned and the money repaid; and that he did this entirely on his own responsibility and without previous communication to the plaintiff.

23. On the facts of the case Lord Halsbury took the view that it was a clear case for the prompt interference of the Court to restrain it until the trial of the action, but the other learned Judges of the Court of Appeal took a different view. Lopes L. J. Observed:

"Suffice it to say that there is such conflict of evidence with regard to Monson's conduct, one side saying he consented to the exhibition of his figure and the other in a not very satisfactory way denying any consent as to render it imperative that the facts should be investigated by a jury before any injunction is granted."

24. Referring to the further affidavits, Davey, L. J. Observed:

"Of course, these affidavits fall far short of proving such a case against the plaintiff, but they certainly suggest it in a manner and with circumstances which show that there is a case for consideration by a jury, and one on which I decline to speculate or express any opinion what their verdict ought to be when they have complete evidence by examination and cross-examination of the witnesses before them. I may observe that in 1891-2 Ch. 269 though the libellous character of the publication was, in the language of the Lord Chief Justice, beyond dispute, the Court refused to grant an injunction on a mere suggestion by affidavit, without any particulars, of a case of justification. I ought to add that I see no logical distinction for this purpose between a case of libel affecting trade or property and one affecting character only.

x x x x x Whether the exhibition of Mr. Monson's effigy under the circumstances in the place and with the surroundings mentioned in the affidavits suggests such innuendo as may be alleged in the pleadings is a question which will have to be decided by the jury on the trial of the action."

25. In *Quartz Hill Consolidated Gold Mining Co. v. Beall*, reported in 1882 20 Ch. D. 501, a solicitor, acting for some share-holders in a company, printed and circulated only among the shareholders, a circular containing very strong reflections on the mode in which the company had been brought out, and on the

conduct of the promoters and directors, and proposing a meeting of shareholders to take steps to protect their interests. The company launched an action and made an interlocutory application to restrain the publication of the libel. Vice-Chancellor Bacon granted an interlocutory injunction asked for by the plaintiff. This was, however, dissolved on appeal. Jessel M. R. (at page 508) observed as follows:

"It is a jurisdiction which must be very carefully exercised. No doubt there are cases in which it would be quite proper to exercise it, as, for instance, the case of an atrocious libel wholly unjustified and inflicting the most serious injury on the plaintiff. But, on the other hand, where there is a case to try, and no immediate injury to be expected from the further publication of the libel it would be very dangerous to restrain it by an interlocutory injunction, xxxxx As a general rule, the plaintiff who applies for an interlocutory injunction must shew the statement to be untrue. Now, in this instance, the only witness for the plaintiffs is their secretary, who says not that the circular is untrue, but that the statements in the circular are to the best of his knowledge, information and belief utterly untrue. He does not shew that he has any knowledge at all on the subject of these statements. He probably as secretary has some knowledge about them, but he does not shew it; and where an affidavit is made upon information and belief the rules of the Court require that the deponent should state what are the grounds of his information and belief, and that he does not do, he only says that they are untrue to the best of his knowledge, information and belief, not saying what the best of his knowledge is and it may be nothing at all."

Lindley, L. J. Observed:

"As to the question of jurisdiction, I am satisfied from the cases of *Thomas v. Williams* (1880) 14 Ch. D. 864 and *Beddow v. Beddow* (1878) 9 Ch D 89 that there is jurisdiction to grant injunctions to restrain libels, and it is very important that this should be done. I do not doubt that it is right, when the evidence and the facts warrant it, to exercise that jurisdiction even upon an interlocutory application, because prevention is better than cure, and an injunction to stop the publication of a libel is a great deal better than an action for damages in consequence of its publication."

26. This judgment was delivered about ten years before *Bonnard's* case 1891 2 Ch. 269. Chitty, J. had to hear a similar application in the case of *Collard v. Marshall* 1892 1 Ch 571. In this Case the defendant had published and circulated a notice, placard and circular to the effect that a strike of workmen had occurred or was pending in connection with the trade or business of pianoforte-makers carried on by the plaintiffs and that the business of the plaintiffs was carried on improperly or inefficiently. The placard contained the following words:

"To french-polishers. A strike is now on at Collard and Collard's against cheap labour and the sweating system of contract work."

Chitty, J. Observed at p. 577:

"The Court always acts with the greatest caution, and is keenly alive to the difficulty, which varies greatly with the circumstances of each case, in framing an injunction which will protect the plaintiff without unduly restricting the right of free speech. In 1891 2 Ch 269 the Court of Appeal had before it the case of a libel affecting the plaintiff's general character, and a libel of the kind which could not be satisfactorily disposed of upon affidavit, and which was peculiarly fit to be submitted to the decision of a jury. The Court did not purport to overrule any previous decisions as to trade libels. I can find nothing in the judgment which precludes my acting on the opinion I have formed of the facts in this case, or my granting an injunction in a carefully limited form."

27. His Lordship granted an injunction to restrain the defendant until judgment or further order, from further publishing or causing to be published the placard or any other placard to the effect that a strike was on at the plaintiffs' works and that the sweating system was practised there. :

28. These English decisions have been carefully summarised in Halsbury's Laws of England, 3rd Edition, Vol. 24 at page 123, Article 229 where the learned commentators thus express themselves:

"The jurisdiction, however, to grant an interlocutory injunction before trial in any case in which it appears to the court to be just or convenient is a most delicate jurisdiction to exercise since it involves a decision by the court on the question of libel or no libel before a jury has been given an opportunity to determine that issue; the remedy ought accordingly to be granted only in the clearest cases where any jury would say that the matter complained of was libellous, and where if they did not so find the verdict would be set aside by the court as unreasonable. xxxxx

Where the defendant swears that he will be able to justify the words complained of, and the court is not satisfied that he may not be able to do so, an injunction will not be granted. x x x

Before granting an interlocutory injunction the court must be satisfied that an actionable wrong has been committed and that the defendant threatens or intends to continue or repeat the publication of the offending words, and that there is a prospect of such immediate and pressing injury to a person or to property by the defendant's proceedings as to make it desirable that the court should interfere. The court will not interfere by way of injunction if the injury to the plaintiff can be adequately compensated by damages or if the plaintiff has disintitled himself to equitable relief, for example, by delay or laches, or by acquiescence."

29. The result of the English authorities is that before the Court can be called upon to exercise its jurisdiction on an interlocutory application to grant the injunction, it must be satisfied that the plaintiff has made out a prima facie case that the libel is untrue. If the Court has materials before it to take the view that the defendant may be able to prove the truth of the libellous statement at the

trial, it ought not to exercise the jurisdiction. In England, the position is further complicated by reason of the fact that the determination of the question--libel or no libel--rests with the jury and not with the Court. The Court can only set aside the verdict of the jury if it is palpably unreasonable. Secondly, where the question turns upon the plaintiff's character, then no satisfactory conclusion can be arrived at on the affidavits and the parties must wait until the trial takes place before an injunction can be granted.

30. The decisions of the English Courts of Appeal though not binding on me are entitled to great respect and I should not depart from the principles laid down repeatedly by learned Judges of the Court of Appeal in England unless satisfied that our law was clearly otherwise. In India we have no system of trial of questions of fact by the jury. The Judge has to decide the facts and to take the law into consideration while so doing. On the facts before me and specially in, view of the books of account and the documents produced before me, I have no hesitation in coming to the conclusion that prima facie when the plaintiff charged more than Rs. 45/- per maund for sale of a quantity of sugar, it issued a supplementary bill to cover the difference between the price, actually charged and that of Rs. 45/- per maund. What took place on the floor of the Assembly on March 26, 1960 is a matter of no consideration before me. I can only go by the facts which have been brought out in the affidavits and by the documents disclosed. No suggestion was made that the documents relied on by the plaintiff are forged and indeed it would be difficult to conclude that the plaintiff's cash book produced in court or the counterfoils of the receipt books disclosed are forgeries. As I have already stated, if a single purchaser had come and affirmed an affidavit to the effect that he had been charged at a rate exceeding Rs. 45/- and was given only one receipted bill showing payment at that rate, I might have doubted the veracity of the plaintiffs secretary.

31. I am not impressed by the argument of the learned counsel for the defendant that as in a suit for defamation the court does not allow interrogatories to be administered to disclose the names of persons who might possibly be subpoenaed as witnesses at the trial, it ought not to expect affidavits from person who would be likely to figure at the trial in support of the defendant's plea of justification. Such interrogatories are not allowed for the simple reason that witnesses whose names are disclosed might be won over. But here the bills disclosed give the names and although two persons of Birbhum have come to affirm affidavits to show that they have heard from others about charges being made exceeding Rs. 45/- per maund and bills being made out for only Rs. 45/- no one has come to this Court to say that he has been the victim of such a malpractice. The difference between the law of England on this point and that in India has been noted by Woodroffe in his Law Relating to Injunctions, 5th Edition, at page 303. The learned author says:

"The exception also to the general rule has again in view the anticipated verdict of a jury. There does not therefore appear to be in this country so much, if any,

reason for the limited exercise of the jurisdiction. In the case of every application for a temporary injunction the Court has no doubt to act with caution, but it is submitted that there is no ground in reason why the Courts should be more cautious in restraining the commission of an alleged libel than in restraining any other alleged tort. And this is the more so, inasmuch as a tort to reputation is of a grave, if not of a graver character than torts to property only, which in a large number of cases are remediable by money compensation."

32. The learned author also refers to Section 55 of the Specific Relief Act and in particular to Illustration (e) thereto.

33. Mr. Mukherji next; contended that the petition does not show that unless injunction is granted, the plaintiff will suffer irreparable prejudice which cannot be compensated for by award of damages. It is true that the petition does not contain an averment to that effect but the suit is one not only for recovery of damages but for perpetual injunction restraining the defendant from publishing words of a defamatory character of the nature mentioned in the plaint and in aid of that the plaintiff can certainly ask for protection of his reputation by temporary injunction if the facts of the case justify it.

34. Lastly, Mr. Mukherji contended that his client had denied that there had been any publication within the jurisdiction of this Court of the libellous matter complained of and therefore the Court will in all probability hold at the hearing of the suit that it is incompetent to try it and in that view of the matter, no interim injunction ought to be granted. In this connection it is sufficient to note that the case made in the petition is that the defendant is the editor of a newspaper which has circulation in Calcutta and that a copy of the issue of the newspaper of the 7th April 1960 was received by the plaintiff in Calcutta. The publication is in the form of a newspaper and if it reaches the office of the plaintiff it is more than likely that it will be seen by many persons before it attracts the attention of the directors of the plaintiff company.

35. Prima facie in my view publication has been established and on the facts and circumstances of this case there ought to be an injunction restraining the defendant, his servants and agents from publishing the words mentioned in paragraph 4 of the petition or any of them or any similar words or any words to the like effect which are defamatory of the petitioner. Costs in the cause.