

(2012) 10 GAU CK 0011
In the Gauhati High Court
Case No : FAO No. 17 of 2012

Rupjyoti Kalita

APPELLANT

Vs

Rajib Hazarika and Others

RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1
Constitution of India, 1950 — Article 104, 105, 19, 19(1)(a)

Citation : (2013) 1 GLD 416 : (2013) 2 GLT 395

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : B.C. Das, for the Appellant; P.N. Goswami, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Agarwal, J.—The Order dated 13.8.2012 passed by the learned Civil Judge, No. 2, Kamrup, Guwahati in Misc. (J) Case No. 34 of 2012 is under challenge in this appeal, filed under Order 43 Rule 1 ? of the Code of Civil Procedure, 1908. By the impugned order, the learned trial judge has rejected the prayer for temporary injunction. Being aggrieved with this order, the plaintiff has preferred this appeal. Heard Mr. BC Das, learned Senior Counsel for the petitioner as well as Mr. PN Goswami, learned counsel for the respondents. I have also gone through the impugned Order and the documents annexed with the memo of appeal.

2. The petitioner herein has filed the Title Suit No. 140 of 2012 praying for a decree of declaration that the complaints made by the defendants before various authorities on different dates are defamatory in nature and, as such, damages to the tune of Rs. One crore should be granted to the plaintiff and in addition to that an order of permanent injunction should also be passed restraining the defendants from lodging any such complaints in future, which may defame and damage the reputation of the plaintiff in public. Alongwith the suit an application

for temporary injunction under Order 39 Rule 1 and 2 of the CPC was also filed and upon hearing both the parties the impugned order has been passed.

3. Mr. Das, learned counsel for the appellant submitted that the complaints were lodged by the defendants on the basis of surmises and assumptions and without any concrete evidence of misappropriation of public money and the defendants/respondents repeatedly filed complaints on as many as four occasions. In view of the repeated complaints without materials the trial court ought to have held that there is a prima-facie case for temporary injunction. Mr. Das further submitted that defaming a person in public cannot be measured in terms of money and as such, the appellant/plaintiff had a good case to seek for temporary injunction, since plaintiff will suffer irreparable loss.

4. The learned senior counsel for the appellant also relied upon a judgment of the Bombay High Court, rendered in the case of Shree Maheshwar Hydel Power Corporation Ltd. Vs. Chitroopa Palit and Another, to contend that mere plea of justification in publishing defamatory news or article is not enough but some concrete materials should also be produced before Court for its scrutiny to object the prayer of temporary injunction. The learned counsel also cited the authority of Hon''ble Supreme Court in the case of Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., , wherein the Apex Court has observed that the object of interlocutory injunction is to protect the plaintiff against the injury for violation of plaintiffs right for which he cannot be adequately compensated in terms of damages.

5. On the other hand, Mr. Goswami, learned counsel for the respondents submitted that adequate material facts and particulars were already revealed in the complaints, submitted to various authorities of the State of Assam, and as such it cannot be presumed that the complaints have been lodged on assumptions and surmises. To reinforce his submission, the learned counsel took me to the contents of the complaints. Mr. Goswami further submitted that in the case of Parmajit Bhasin and Others Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court has declared that if commercial vehicles are found transporting goods beyond the permissible weight as prescribed in the MV Act, 1988, the competent authority should unload the excess quantity of goods and the trucks cannot be allowed to carry excess load at any condition. However, even after 5 years of passing of the judgment the plaintiff and other officers were violating the direction of the Apex court for illegal gain. Mr. Goswami also submitted that the allegation of misappropriation of public money has been made on the basis of various newspaper reporting, reply of Hon''ble Minister of Transport in the State Assembly and also on feedback received by the respondents from the field and as such it cannot be said that the complaints are absolutely vexatious in nature.

6. The learned counsel also submitted that if respondents are restrained from filing complaints against the plaintiff or any other person it would amount to infringement of the fundamental rights guaranteed under Article 19(1)(a) of the

Constitution of India.

7. It is the settled position of law that plaintiff has to establish at least three ingredients to obtain an order of injunction; viz. that the plaintiff has a prima-facie case: that the plaintiff would suffer irreparable loss and injury if interim injunction is not granted and that the balance of convenience is also in favour of the plaintiff. In my considered opinion, while examining the aforesaid mandatory requirements of law for granting or refusing temporary injunction the Court has also to take into consideration the plea put up by the defendant(s) and the materials placed before the court by both the parties. In other words, it cannot be only one way traffic.

8. The learned counsel for the respondents also cited the judgment of R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others, . In this case, their Lordships have differentiated the rights of a person for infringement of his or her privacy vis-a-vis allegations relating to public office. The relevant observation of Hon"ble Supreme Court is quoted below:

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

(1) *****

(2) *****

(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 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 was 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 and 104 respectively of the Constitution of India, represent exceptions to this rule.

9. In the case before me, the respondents are virtually whistle blowers. They have taken up a public cause at their own risk. There does not appear to be any case of defaming the appellant to resolve any personal vendetta.

10. During the course of hearing, Mr. Das, learned senior counsel for the appellant did not advance any argument that the complaints by defendants/

respondents before the State authorities were submitted with any malafide intention or to wreck vengeance for any previous grudge. In other words, there is no pleading that there was any previous animosity between the plaintiff and the defendants. Only argument that was advanced before me was that the complaints have been lodged without any materials. However, after going through the contents of the complaints, I do not agree with the learned counsel for the appellant that the complaints are absolutely baseless or without any foundation. Hence, I hold that the learned trial judge has rightly held that the plaintiff do not have a prima facie case for grant of temporary injunction.

11. With regard to the other requirements of law, I agree with the learned Civil Judge that if injunction is granted it would amount to encroaching upon the legal rights of the defendants. In my considered opinion, not only it is a legal right but a citizen of India has a fundamental right to express his opinion and more particularly to lodge complaints before competent authorities to expose corruption in public field, provided such person has some materials of misappropriation of public money. I have already noted earlier that the complaints of the defendants disclose that the complaints have been lodged on the basis of certain feedback and not with any ulterior motive. Under such circumstances, if temporary injunction is granted it would offend the fundamental right of the respondents guaranteed under Article 19 of the Constitution of India.

12. The above apart, I am of the view that if there is any further publication of report by the defendants in future, offending the dignity and character of the plaintiff, he will certainly have a legal right to proceed against the defendants in accordance with law.

13. In the case of Best Sellers Retail (India) Pvt. Ltd. Vs. Aditya Birla Nuvo Ltd. and Others, , the Hon"ble Supreme Court has held that if a plaintiff can be suitably compensated in terms of damages, prayer for temporary injunction can be legitimately refused. In this regard, Mr. Das, learned senior counsel for the appellant submitted that the injury in the nature of defamation cannot be measured in terms of money. However, in the instant case, the plaintiff himself has measured the amount of damages to Rs. One crore. It is true that the amount of damages, if at all granted at the end of the suit, is ordinarily assessed on some guesswork and based on hypothetical calculation, albeit with the application of judicial mind. Still the plaintiff would be compensated. Even otherwise, the plaintiff is also entitled to file criminal complaint against the defendants and if the suit is ultimately allowed the dignity of the plaintiff will be restored. The Judgment of the Hon"ble Bombay High court can be understood to have been answered since I have held that there were materials before the respondents to lodge the complaints. The truth of the allegations and the assertion of the defendants/respondents that the allegations have been made bonafide and in larger public interest would be tested during the course of trial and this is not the stage of comment upon the allegations.

For the foregoing reasons, the appeal stands dismissed.