

**(2012) 05 BOM CK 0067**

**In the Bombay High Court**

**Case No : Second Appeal No. 07 of 2005**

Shri Laxman Jairam Malvankar

APPELLANT

Vs

Smt. Reshma Ramesh Narvekar and Editor "Tarun Bharat"  
Daily

RESPONDENT

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**Date of Decision : 23-05-2012**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100

**Citation : (2012) 05 BOM CK 0067**

**Hon'ble Judges : U. V. Bakre, J**

**Bench : Single Bench**

**Advocate :** Sudin Usgaonkar with Ms. A. Shirodkar, for the Appellant; Valmiki Menezes with Ms. M. Conception, Advocate for the respondent No. 1 and None present for respondent No. 2, though duly served, for the Respondent

**Final Decision : Dismissed**

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## **Judgement**

U. V. Bakre, J.—This Second Appeal is directed against the judgment, order and decree dated 23/06/2004 passed by the learned Adhoc Additional District Judge (Fast Track Court), Mapusa (First Appellate Court) in Regular Civil Appeal No. 62 of 2004. The said Regular Civil Appeal No. 62 of 2004 was preferred by the plaintiff of Regular Civil Suit No. 122/2000/C(New) against the judgment, order and decree dated 16/03/2004 passed by the learned Civil Judge, Junior Division, Bicholim (Trial Court).

2. The parties shall be referred to as per their status in the said Regular Civil Suit No. 122/2000/C(New).

3. The plaintiff had filed the said suit against the defendants for recovery of a sum of Rs. 70,000/- as compensation for lodging false complaint and for publication of libel. The defendant No. 1 is the complainant whereas defendant No. 2 is the Editor of the daily news paper "Tarun Bharat". The defendant No. 1 had lodged the complaint at Bicholim Police Station against the plaintiff and others. According to the plaintiff, the defendant No. 1 caused to publish the

contents of the said complaint in the daily Marathi news paper "Tarun Bharat", dated 27/02/1993, published from District Belgaum of Karnataka State, at page No. 7. The plaintiff alleged that defendant No. 2 had published the news item without verifying the truth of the complaint. The plaintiff stated that the said newspaper has circulation in Goa and is circulated in village of Narva and the place of work of the plaintiff, which is Sikeri, Bardez, Goa. The plaintiff stated that he is in service of Ta j Hotel at Sikeri. The plaintiff further alleged that he is a respectable and law abiding citizen and that the defendant No. 1, in order to damage the name and reputation of the plaintiff, lodged the false complaint at Bicholim Police Station alleging that the plaintiff along with some of his family members trespassed her Teashop, assaulted her, snatched her mangalsutra and threatened to kill her and caused to publish the news item in the said news paper. According to the plaintiff, he and his family members suffered mental pain and agony. Hence the suit.

4. The Defendant No. 1, in her written statement, admitted that she lodged the police complaint because the plaintiff had committed certain illegal and criminal acts. She alleged that the complaint is not false. However, she denied that she caused the said news item published in the news paper. She also denied that the plaintiff and his family members suffered mental pain and agony as alleged.

5. The Defendant No. 2, in his written statement, stated that in the normal course of collecting news, the representative of Tarun Bharat had visited Bicholim Police Station and the police informed about the complaint lodged by the defendant No. 1 and that the same was published. The defendant No. 2 also denied that the plaintiff and his family members suffered any mental pain or agony.

6. The plaintiff examined himself as PW-1. He produced the extract of publication as Exhibit PW1/C, the legal notice sent to the defendant No. 1 as Exhibit PW1/A and reply received to that legal notice as Exhibit PW1/B. The plaintiff also examined two employees of Fort Aguada Beach Resort of Taj Group at Sinquerim, where the plaintiff was working in House-Keeping Department. They are Rama A. Joshi as PW-2 and Sitaram Balchandra Naique Dhargalkar as PW-3. The defendant No. 1 examined herself as DW-1 whereas defendant No. 2 examined its power of attorney holder namely Shri Anant Suryaji Salkar as DW-2.

7. Upon consideration of the entire evidence on record, the Trial Court held that it is an admitted fact that the defendant had lodged complaint against the plaintiff at Bicholim Police Station but there is no evidence from the plaintiff to prove that the same was false and fabricated complaint. The Trial Court further held that the defendant No. 1 did not cause to publish the said news item. It is also held that the news which has been published in the news paper is on the basis of the report given by the reporter of the said news paper who in the usual course of collecting the news had visited the Bicholim Police Station and got the contents of the said complaint, from a policeman. Trial Court held that the plaintiff has failed to establish that the publication made in the news paper was

preplanned and with ill-intention. She further held that the plaintiff has failed to establish that he is entitled for compensation of Rs. 70,000/- from the defendants for lodging false complaint and for publishing the same. The suit therefore came to be dismissed.

8. The First Appellate Court, in its turn, has held that the Trial Court did not commit any mistake in holding that the defendant No. 1 had not committed any defamation by giving said police complaint. He also held that it is not proved that defendant No. 1 caused the article to be published in the newspaper. The First Appellate Court further held that the defendant No. 2 had not committed any defamation by publishing the article in the news paper. Thus, First Appeal also came to be dismissed.

9. It is against the judgment and decree of the First Appellate Court that the present Second Appeal has been filed by the plaintiff, which has been admitted on the following substantial questions of law:

(i) Whether the police complaint is a public document and can be made available for publication in press?

(ii) Can a police complaint, containing only allegation unilaterally made, defame the accused if published in press, till the time crime is investigated, tried and the accused is convicted?

10. Mr. Sudin Usgaonkar, learned Advocate for the plaintiff, argued that the plaintiff is proved to be a person having reputation in the village, he being an employee of hotel at Sinquerim and being a Pancha of Narva Gram Panchayat. He contended that the last part of the news item wherein it is alleged that the defendant No. 1 has filed an application with Chief Minister, Shri Ravi Naik and has stated that there is danger to her life since the police have not taken action, is something which can be stated to the police by defendant No. 1 herself and it cannot be told to the defendant No. 2 by anybody else. He further argued that lodging of complaint has not been denied and the contents of the complaint as reported in the newspaper are also not denied. According to him, it is therefore duly proved that the defendant No. 1 has caused to publish the said news in the newspaper. He further argued that whatever that is published is sufficient for defamation and therefore the question of production of the complaint which has been lodged before the police, does not arise. He argued that until the police investigate the case and file charge sheet and the accused is convicted by the Court, the allegations in the complaint, if published in press, can defame the accused and hence could not have been published in the newspaper. It is further contended that even the defendant No. 2 has to be held liable for defamation, since the news has been published without verification of the truth of the same. He therefore urged that both the defendants are liable to pay the said nominal compensation claimed by the plaintiff.

11. On the other hand, Mr. V. Menezes, the learned counsel for the defendant No. 1, argued that there are concurrent findings of the courts below that the

defendant No. 1 has not caused the said news item to be published. He further argued that mere filing of the complaint with the police against someone cannot be defamation of that person. He urged that this Court in Second Appeal should not disturb the concurrent findings of the Lower Courts which are on facts. In this regard he has relied upon following citations :

- (1) Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, ;
- (2) Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board and Others, ;
- (3) "Ramaswamy Kalingaryar Vs. Mathayan Padayachi" [1992 Supp (1) SCC 712].

12. Mr. Menezes, learned counsel for the defendant No. 1, further argued that crux of the matter is not filling of the complaint but publication of the contents of the same in the news paper. He argued that until the time it is proved that the allegation is false, it cannot be said to be defamatory. He therefore urged that no substantial questions of law arise in the matter and therefore the appeal is liable to be dismissed.

13. I have considered the rival submissions made by the learned counsel for the parties and perused the record.

14. In the said Marathi local newspaper "Tarun Bharat" dated 27/02/1993 at page No. 7, extract of which is at Exhibit PW1/C, news item has appeared, which when translated reads as under :

Mrs. Reshma Ramesh Narvekar, daughter-in-law of Shri Anand Narvekar Ex-sarpanch of Narva Panchayat has lodged the complaint at Bicholim Police Station that Shri Laxman Jairam Malvankar, the present pancha of Narva Village Panchayat and others forcibly entered the Tea shop and assaulted her severally and snatched the Mangalsutra from her neck and ran away.

There is dispute between Shri Malvankar and Shri Narvekar for past several years regarding ownership of land containing cashew grove, which dispute is sub-judice. On 23rd February in the afternoon at about 2.30 p.m. Mrs. Reshma Narvekar alongwith her daughter aged three years was working at the tea shop where the Panch Shri Laxman Jairam Malvankar, Kunda Raglo Malvankar, Rekha R. Malvankar, Jairam R. Malgankar, Deelip R. Malvankar, Mahadev R. Malvankar and Bharati R. Malvankar, (all residents of Narva) forcibly entered the shop, assaulted her and threatened to kill her.

With regard to the above incident, Mrs. Narvekar has filed the complaint at Bicholim police station, but since the police have not taken cognizance of the said complaint, Mrs. Narvekar has submitted an application to the Chief Minister, Shri Ravi Naik and has pleaded for mercy.

In the complaint, she has stated that there is danger to her life, since police have not taken any action.

15. Thus, from the above it can be seen that there is no direct imputation published in the newspaper against the plaintiff that he has done the acts as stated in that news item. The publication only narrates some facts as alleged by the defendant No. 1 in the police complaint. The First Appellate Court, in paragraph No. 25 of the impugned judgment, has observed that a reading of the article shows that it is substantially a report of the complaint and also about the fact that the police has not taken any action.

16. In so far as the first substantial question of law is concerned, It is the plaintiff's case that the defendant No. 1 made the said news item available to the defendant No. 2 and caused the same to be published in the said daily Tarun Bharat. The defendant No. 1 who has specifically admitted that she has lodged police complaint against the plaintiff for illegal, criminal acts committed by him, has however denied that she caused to publish the contents of the said complaint lodged by her at Bicholim police station.

17. The Trial Court in the judgment dated 16/03/2004 has found that the plaintiff (PW-1) did not know whether the news item published by defendant No. 2 was supplied by Bicholim police, through the reporter of Defendant No. 2. The Trial Court has further found that the defendant No. 1 (DW-1) was not aware of the publication of the news in the newspaper. The Trial Court also found that, as usual in the course of collecting news, the reporter of defendant No. 2 had visited Bicholim police station where the Bicholim police informed him about the complaint filed by the defendant No. 1 at Bicholim Police station and on the basis of the report given by the said reporter, the said publication was done on 27/02/1993.

18. The First Appellate Court, in the impugned judgment, has specifically framed one of the points for determination as to whether the defendant No. 1 caused the article to be published in the news paper. The First Appellate Court has answered the said point in the negative.

19. Thus, there is concurrent finding of fact by the Courts below to the effect that the defendant No. 1 did not make the contents of her complaint lodged at Bicholim police station, available for publication in press and did not cause it to be published in the said newspaper.

20. The contention of Mr. Sudin Usgaonkar is that the last two paragraphs of the said news item where it is reported that Mrs. Narvekar has submitted an application to the Chief Minister, Shri Ravi Naik and has pleaded for mercy and has stated in the complaint that there is danger to her life, etc. cannot be something which can be published without being informed by the defendant No. 1 herself. I am unable to subscribe to the above contention. The news item nowhere states that Mrs. Narvekar told the police that she has approached the Chief Minister Shri. Ravi Naik and submitted an application to him since police have not taken any action. It is also not stated in the said news item that Mrs. Narvekar stated that there is danger to her life since police have not taken any

action. It is not known as to from where the newspaper got the said information. Therefore, it cannot at all be said that it was the defendant No. 1 only who told the police about the said news item.

21. In so far as the defendant No. 2 is concerned, also, there is concurrent finding, based on the evidence on record, that the representative (reporter) of the defendant No. 2 got the contents of the complaint when he visited Bicholim police station for collection of news and on the basis of the same, the news item was published. The policeman who made the contents of the complaint known to the reporter is not a party to this suit.

22. In view of the above, the first question of law as is framed is not involved in this appeal as it is not proved that the defendants or either of them had made the said contents of the complaint available for publication in the press. It was some policeman from Bicholim police station who made it available to some reporter of the defendant No. 2. The above is the concurrent finding of fact of the Courts below.

23. In the case of "Kondiba Dagadu Kadam" (supra), it is observed by the Apex Court that the appeal is required to be heard on the substantial question of law, formulated, but the respondent at the time of hearing of the appeal has a right to argue that the case in the Court did not involve any substantive question of law. The Apex Court has held that it has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation and being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. It has been held that the concurrent findings of facts, howsoever erroneous, cannot be disturbed by the High Court in exercise of the powers u/s 100 of Civil Procedure Code. In the case of "Municipal Committee, Hoshiarpur" (supra), the Hon'ble Apex Court has held that the proposition that an inference from facts is one of law shall be correct in its application to mixed questions of law and fact, but not to pure questions of fact. Lastly, in the case of "Ramaswamy Kalingaryar" (supra), cited by the learned counsel for the defendant No. 1, the Supreme Court has held that High Court has no jurisdiction either to reassess the evidence or without reassessing as such find any infirmity in it. It has been held that measure of proof is within the domain of the courts of fact and sufficiency of proof can be no ground for the High Court to interfere with the finding of fact.

24. As per the said news item, the complaint is filed by defendant No. 1 against the plaintiff, Kunda Raglo Malvankar, Rekha R. Malvankar, Jairam R. Malgankar, Deelip R. Malvankar, Mahadev R. Malvankar and Bharati R. Malvankar. Thus, the complaint is not only against the plaintiff. The plaintiff has not even examined a single other persons named in the said news item, as involved in the said incident. None of the said other persons named in the news item appears to be aggrieved by the said news item. They are neither plaintiffs nor are they witnesses in this case.

25. The defendant No. 1 has admitted that she has lodged the complaint against the plaintiff for illegal and criminal acts committed by him. Police are the authorities before whom complaints for criminal act against anyone can to be filed. Police have the authority to investigate into the said complaints. Therefore, merely by lodging complaint with police, no one may commit the offence of defamation. Admittedly, there was a civil litigation pending between the plaintiff's brother and the family of the defendant No. 1. The plaintiff has not produced any evidence to prove that the police, after investigation, found that the said complaint was false and fabricated. The plaintiff has not proved that it is the defendant No. 1 who caused to publish the contents of the complaint in the newspaper. The defendant No. 2 has published the news about the complaint which has been admittedly lodged at Bicholim Police Station. The news does not state that the contents of the complaint are true. The plaintiff has also failed to prove that the defendant No. 2 published the news with a view to defame the plaintiff.

26. The second substantial question of law gets answered in the negative. In view of the above, there is no substance in this Second Appeal and the same is dismissed without any order as to costs.