

(1971) 09 MAD CK 0008

In the Madras High Court

Case No : Second Appn. No. 1336 of 1967

T.V. Ramasubba Iyer and Another

APPELLANT

Vs

A.M. Ahamed Mohideen

RESPONDENT

Date of Decision : 06-09-1971

Acts Referred:

Central Provinces Laws Act, 1875 — Section 6
Defamation Act, 1952 — Section 4

Citation : AIR 1972 Mad 398

Hon'ble Judges : Ismail, J

Bench : Single Bench

Judgement

1. The defendants in O.S No. 79 of 1961 on the file of the court of the Subordinate Judge, Tirunelveli, who failed before the trial Court as well as

the first appellate court are the appellants before this court. The first appellants is the editor and the second appellant is the owner of a daily styled

The Dhinamalar"" published from Tirunelveli. In the issue of the "Dinmamalar" dated 18-2-1961, there was a news item appearing under the

dateline ""dated, Ceylon, February 17"". That news item reported that a person from the Tirunelveli Dt. who was exporting scented bathis to Ceylon

and who was also called as the King of Agarbathy business had smuggled opium into Ceylon in the form of agarbathis made by him and on

information, the Madras Police went to Ceylon and with the help of the Ceylon police examined three out office parcels received by him and found

them to contain opium concealed therein and he was arrested and had been brought on Madras. The respondent herein who is a resident

Alakiamanayalapuram near Alwarthirunagiri, is a partner of a firm known as Ameer and Sons, manufacturing scented bathis and exporting the

same to Ceylon. They had a place called Pattah. The father of the respondent and his (respondent's) brothers were partners along with the respondent and the name Ammer itself referred to the father of the respondent.

The respondent, alleging that the said publication constituted a defamation of him, since the news item was understood to refer to him, instituted the

suit for damages in a sum of Rs. 5,000/-. Though the appellants contended that the matter published by them was not defamatory, the principal

defence was that they were not aware of the existence of the respondent and as a matter of fact the news item did not concern the respondent. In

the issue of the "Dhinamalar" dated 14-5-1961, the appellants themselves published a correction stating that the news that appeared in the issue

of the "Dhinamalar" dated 18-2-1961, did not refer to the respondent herein, This has been marked as Ex. B-1(a) in these proceedings, The

respondent examined himself as P.W. 6 and examined five other witnesses on his behalf to show that all of them understood the news item to refer

to him. The relevancy of Ex. B-1(a) is that before the institution of the suit the respondent called upon the appellants to publish a correction and

apology and pay him compensation. It was only with reference to this Ex B-1(a) correction was published and reliance was placed thereon. The

learned Additional Subordinate Judge, who tried the suit, relying on the evidence of P.Ws. 1 to 6, came to the conclusion that the matter printed in

the paper on 18-2-1961, was understood to concern the respondent herein and therefore it constituted defamation of the respondent. Needless

for me to point out the contents of the publication will constitute defamation of whoever it referred to, if the news item did not represent the true

facts. No attempt whatever was made to prove the truth of the statement contained in the news item and all that the appellants attempted to do

was to say that they received the news published the same without any knowledge that it would refer to the respondent herein.

The learned Additional Subordinate Judge, having come to the conclusion that the respondent had established that the news items concerned him

and was of him, held that the appellants were liable to pay damages. The argument that was advanced on behalf of the appellants in this behalf was

that since the appellants did not intend to defame the respondent and as a matter of fact, they were not aware of even the existence of the

respondent, they could not be held liable. However, the learned Subordinate Judge relying on the decision of the House of Lords in E. Hulton and

Co. v. Jones, 1910 AC 20, came to the conclusion that the intention was not the test of liability so long as the respondent had actually been

defamed. In paragraph 13 of his judgment, the learned Subordinate Judge recorded, the finding that the respondent himself admitted that he had no

familiarity or acquaintance with the appellants and that naturally the appellants could not have intended to defame he respondent particularly. He

has again recorded in paragraph 17 of his judgment that D.W. 1 had sworn that the appellant's firm or the officers thereof did not even know of

the existence of the respondent and that obviously they had published Ex. A-1(a) only as a sort of sensational news most probably with a view to

attract large sales. therefore the findings of the learned Subordinate Judge can be summarised as follows:--

1. The respondent had established that the news item published by the appellants concerned him and that is how the people who knew him had understood the same.

2. There was no intention on the part of the appellants to defame the respondent and as a matter of fact, the appellants were not aware of the

existence of the respondent himself and consequently there was no malice present, but nonetheless the question of malice was not material.

3. Even though the appellants did not intend to defame the respondent herein, still they were liable to pay damages for defaming the respondent, on

the basis of the judgment of House of Lords in 1910 AC 20.

2. With regard to the quantum of damages, since the respondent himself had stated that he was not interested in obtaining any substantial amount

from the appellants herein and that he was only concerned with maintaining his reputation and that he would be satisfied with any damages the

court may award, the learned Subordinate Judge awarded the respondent a sum of Rs. 10/- by way of damages, in addition to the costs of the

entire suit. As against this judgment and decree of the learned Additional Subordinate Judge, the appellants preferred an appeal to the learned

District Judge. Tirunelveli. The learned District Judge, on 30-3-1967 in A. S. 122 of 1964, dismissed the appeal. The learned District Judge after

referring to the publication as well as the evidence in this behalf, concurred with

the conclusion of the learned Subordinate Judge that the respondent had established that the people who knew the respondent understood the publication only as referring to him. However, with regard to one matter, he appears to disagree with the learned Subordinate Judge. In paragraph 16 of his judgment, the learned District Judge has pointed out--

He (learned Additional Subordinate Judge) had stated that the publication was not made maliciously. But to my mind, it appears that there was some malice. Though the defendants did not know at that time the plaintiff personally, they knew him well by trade and reputation, because they have stated in Ex. A-1 (a) that the person is the kind of (Agarbathis) belonging to Tirunelveli Dt.

I am clearly of the opinion that this finding is utterly unsustainable. As a matter of fact, this finding assumes the very thing that has to be established.

Once it is admitted that the respondent had no connection with the appellants herein and the evidence of the appellants which had been accepted is

that they were not even aware of the existence of the respondent herein, there is no question of the appellants knowing the respondent by trade

and reputation. The learned District Judge has arrived at this conclusion only on the basis that the appellants had used the name Kind of Agarbathis

and thereby they referred to the respondent herein. The very question was whether the reference to the King of Agarbathis was intended to refer

to the respondent herein. Once it is found that the appellants were not even aware of the existence of the respondent, there is no question of the

appellants referring to the respondent by the term ""King of agarbathis"". The language of the publication will clearly show that the person concerned

was known as the King of agarbathis business. The words used were of flourish only and were not intended to refer to the respondent herein.

Therefore I must proceed on the basis that both the courts below have concurrently found that the matter published referred to and concerned the

respondent herein and it was how the persons who knew the respondent understood the same. Secondly, they have come to the conclusion that

there was no intention on the part of the appellants herein to defame the respondent, when they published the relevant news item, since the

appellants were not even aware of the existence of the respondent. This

publication did not refer to any person by name and the only identifying feature is that the person was described to be an exporter of scented bathis to Colombo and he belonged to Tirunelveli Dt. In view of the fact that no attempt whatever was made to prove the truth of the publication, it could have applied to any person who hailed from Tirunelveli Dt. and exported scented bathis to Colombo. The question, therefore, that arises for consideration is, whether under such a situation the appellants can be made liable.

3. The learned counsel for the appellants made some attempt to show that the publication in question could not have been held to refer to the respondent herein at all. I am unable to entertain this argument in the second appeal. In *P.V. Naganatha Sastri Vs. N.P. Subramania Iyer*, , this court held:--

I think the question whether the whole of the writing or any part of that writing would be construed by an ordinary reader to refer to plaintiff is a question of fact which in English Courts would be left to a jury, and where the jury arrives at their verdict on this particular arrives at their verdict on this particular point through a misconstruction of the writing read as a whole or through other circumstances appearing in the case, that verdict is a verdict upon a question of fact. While therefore, I am of opinion that the Subordinate Judge in arriving at his conclusion that the first portion of the letter Ex. A would not be read by an ordinary news paper reader as referring to the plaintiff, did so through a construction of the letter which according to legal canons of construction was wholly unjustified, I am unable to hold that his finding as to the implication that would be put by an ordinary newspaper reader on that portion of the letter A, (that is whether it referred to the plaintiff or not) is not a question of fact but one of law and is therefore open to be questioned in second appeal.

Following this judgment, I must hold that the finding of the courts below that the respondent had established that the writing in question referred to him is a finding on a question of fact which cannot be challenged in second appeal.

4. Only with regard to the other aspect of the matter, elaborate arguments were advanced before me. As I have pointed out already, the courts below relied on the decision of the House of Lords in 1910 AC 20, referred to

already, and the argument of the learned counsel for the appellants

is that that decision ought not to be held to be the law applicable to this country. This contention requires careful examination and now I shall refer

to the facts of that case and what was held in that case by the Court of Appeal as well as the House of Lords.

5. In *Jones v. E. Hulton & co.*, 1909 2 KB 444 C. A., there was an article in the *Sunday Chronicle* written by the Paris correspondent of the

paper, purporting to describe a motor festival at Dieppe. It referred to a particular individual by name Artemus Jones, who was a church warden at

Peckham being present at the festival. The offending passage was:

Upon the terrace marches the world, attracted by the motor races--a world immensely pleased with itself, and minded to draw a wealth of

inspiration--and, incidentally, or golden cocktails--from any scheme to speed the passing hour..... "Whilst", there is Artemus Jones with a

woman who is not his wife, who must be, you know--the other thing! Whispers a fair neighbour of mine excitedly into here bosom friend's ear.

Really, is it not surprising how certain of our fellow-country men behave when they come abroad? Who would suppose by his goings on, that he

was a church warden at Peckham? No one, indeed, would assume that Jones in the atmosphere of London would take on so austere a job as the

duties of a church warden. Here, in the atmosphere of Dieppe, on the French side of the Channel, he is the life and soul of a gay little band that

haunts the Casino and turns night into day, besides betraying a most unholy day, besides betraying a most unholy delight in the society of female

butterflies"".

It is on the basis of the above statement, on the allegation that the statement was defamatory of him, one Artemus Jones, a barrister, instituted the

suit for recovery of damages. The case put forward on behalf of the defendants was that Artemus Jones was really an imaginary or a fictional name

invented for the purpose of the article in question and the name was invented for its unusualness and the writer of the article did not know that there

was a real person by that name in existence. Notwithstanding this contention put forward by the defendants, which was accepted by the counsel

for the plaintiff the jury gave a verdict in favour of the plaintiff and the same was accepted by the court. When the matter was taken up to the court

of appeal, the court of appeal upheld the verdict, Fletcher Moulton, L. J. dissenting. The matter was taken up in appeal to the House of Lords and the House of Lords dismissed the appeal and upheld the verdict already given.

6. The conclusion of Lord Alverstone, C. J. with whom Farwell, L. J. concurred was that once the plaintiff in that suit was hit and his friends and others who knew him understood the writing as referring to him, the fact that the defendants were not aware of the existence of the person and the name was invented purely as an imaginary name was no defence to the claim for damages on the basis of defamation. Lord Alverstone, C. J. said-

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Just in the same way, if the libel speaks of a person by description without mentioning the name in order to establish a right of action the plaintiff

must prove to the satisfaction of a jury that ordinary readers of the paper who knew him would have understood that it referred to him. There is

abundant authority to show that it is not necessary for every one to know to whom the article refers; this would in many cases be an impossibility;

but if, in the opinion of a jury, a substantial number of persons who knew the plaintiff, reading the article, would believe that it refers to him, in my

opinion an action, assuming the language to be defamatory, can be maintained; and it makes no difference whether the writer of the article inserted

the name or description unintentionally, by accident, or believing that no person existed corresponding with the name or answering the description"".

The learned Chief Justice further pointed out that it was beyond dispute that, apart from the question of express malice, the intention or motive with

which the words were used was immaterial, and that, if in fact the article did refer, or would be deemed by reasonable people to refer, to the

plaintiff, the action could be maintained and proof of express malice was wholly unnecessary. According to the learned Chief Justice, what was

passing in the mind of the writer was wholly immaterial or what was his intention, if he had in fact published a libel upon the plaintiff. With this

conclusion. Farwell, L. J. concurred, though it would appear that he himself was of the view that the intention would play some part. According to

him,

"An action for defamation differs from other actions, such as for instance as trespass, in that it is of the essence of defamation that the plaintiff

should be aimed at or intended by the defendant..... But it is not enough for a plaintiff in libel to shew that the defendant has made a libellous

statement, and that the plaintiff's friends and acquaintances understand it to be written of him; he must also shew that the defendant printed and

published it of him; for if the defendant can prove that it was written truly of another person the plaintiff would fail,

He further pointed out:--

So the intention to libel that plaintiff may be proved not only when the defendant knows and intends to injure the individuals, but also when he has

made a statement concerning a man by a description by which the plaintiff is recognised by his associates, if the description is made recklessly,

careless whether it hold up the plaintiff to contempt and ridicule or not. In such a case, it is no answer for the defendant to say that he did not

intend that plaintiff, because he had never heard of him; he intended to describe some living person; he can suggest no one else; and the plaintiff

proves that he is believed by his acquaintances and friends to be the person aimed at, and has suffered damage thereby. The element of intention,

which is an essential to an action of defamation as to an action of deceit, can be proved in the same way in both actions. The issue of fact is

whether the plaintiff is the person intended by the libeller; but sufficient evidence to prove it may be given, although the defendant had no intention

of injuring the plaintiff and had never heard of his existence"".

On the other hand, Fletcher Moulton, L. J. took an entirely different view. According to Fletcher Moulton, L. J., it was settled law that a defendant

is not guilty of libel unless he wrote and published the defamatory words ""of and concerning the plaintiff""--in other words, unless he intends them to

refer to the plaintiff. The rationale behind this conclusion of Fletcher Moulton, L. J. can be found from the following passage occurring at pages

467-468:--

It constitutes the protection of the innocent individual from being held guilty of defaming others of whom he has never intended to speak, and also

from being himself defamed. On the one hand to hold a person responsible for every application that his words may bear in the minds of persons

who either possess knowledge that he does not possess or are ignorant of that which he knows would be to put on him a burden too heavy to be

borne. But on the other hand it constitutes the protection of the individual from being defamed, because it nullifies all attempts to libel by language

which as a matter of construction cannot refer to the plaintiff, but which persons reading between the lines would understand to refer to him by

reason of the surrounding circumstances. This is one of the most common forms of libel. No name is mentioned, or some name other than that of

the person really meant is substituted. The surrounding circumstances are intentionally misdescribed. The reader, in order to discover the person

referred to, must reject or alter part of that which is written. But all these devices are in vain to shelter a libeller, because the issue is not whether

the language is, as a matter of construction applicable to the plaintiff, but whether the writer intended it to refer to the plaintiff, and if he did so he is

responsible if any one can discover his intention, however much in words he may have striven to conceal it. This great and beneficial amplitude of

the remedy is, however, only possible because the law makes the intention to refer to the plaintiff the critical issue. If a man is to be liable for the

interpretation put by any person on his words, he must be entitled to require that it should be an interpretation of his words as they stand. He

cannot be held responsible for what people may think to be his meaning after rejecting such portion of his words as may not agree with their

interpretation. If a man who, judged by the language actually used by him, has not referred to the plaintiff may have such portion of that language as

they may think fit rejected as being a mere blind by each set of readers, and the rest alone used for the purposes of identification, and is to be held

liable according to the result of his process, then we have actually attained in our system of legal procedure to the absurdity expressed in the well-

known farce where the magistrate solemnly warns the prisoners. Any statement you may make will be taken down, altered, and used against you".

When the matter went up to the House of Lords, Lord Loreburn, L. C. pointed out. 1910 AC 20

A person charged with libel cannot defend himself by shewing that he intended in his own breast not to defame, or that he intended not to defame

the plaintiff, if in fact he did both. He has none the less imputed something disgraceful and has none the less injured the plaintiff. A man in good faith

may publish a libel believing it to be true, and it may be found by the jury that he acted in good faith believing it to be true, and reasonably believing

it to be true, but that in fact the statement was false. Under those circumstances, he has no defence to the action, however excellent his intention".

The result of his judgment is to make the liability in the case of defamation as a strict liability. Not only is the intention of the writer immaterial in

considering whether the meaning of the statement is defamatory, but it is equally irrelevant that he did not mean to refer to the plaintiff at all and the

question is not who aimed at, but who was hit. In other words, the question whether the defamatory words referred to the plaintiff is determined by

an objective test and the liability arises if the words are in fact defamatory of the plaintiff, whether or not there has been an intention to refer to the

plaintiff or negligence in relation to the reference to the plaintiff. The law laid down by the majority of the court of appeal as well as the House of

Lords in this particular case has been extended by the court of appeal, in *Newstead v. London Express Newspapers*, 1940 1 KB 377, where it

was held that the principle in 1910 AC 20 applies where the statement truly relates to a real person, A. and is mistakenly but reasonably thought to

refer to another real person, B; and the absence of negligence on the defendant's part is relevant only in the sense that it may be considered by the

jury in determining whether reasonable people would regard the statement as referring to the plaintiff; or otherwise it is no defence. The same

principle has been followed in *Cassidy v. Daily Mirror Newspapers Ltd.*, 1929 2 KB 331 and in *Yousoupoff v. Metro-Goldwyn-Mayer Pictures*

Ltd., 1934 50 TLR 581 (CA).

7. The ruling in 1929 2 KB 331 is striking illustration of the extended application of the rule in 1910 AC 20. In that case the defendants published

a photograph with an inscription "Mr. M. Corrigan, the race horse owner, and Miss X, whose engagement has been announced". The information

on which the inscription was published was derived from Mr. Corrigan alone. The defendants did not make any effort verify the same from any

other source. Mrs. Corrigan sued the defendants for libel, the innuendo being that Mr. Corrigan was not her husband but lived with her in immoral

cohabitation. According to her, the paper was read by her female acquaintances and they understood from it that the lady was not married to Mr.

Corrigan and had no legal right to take in his name and they formed a bad opinion of her in consequence. The jury returned a verdict in favour of

the plaintiff and 500 were awarded as damages. This was upheld by the majority of the Court of Appeal (Scrutton, L. J. and Russell. L. J., Greer,

L. J. dissenting). It will be seen that the inscription was completely innocent. As the information was given by Mr. Corrigan himself, the defendants

had no room to suspect the correctness of the same and there were no circumstances compelling them to make an enquiry and verify the

correctness of the statement. Notwithstanding this feature, the defendants were held liable on the application of the rules in 1910 AC 20. In his

dissenting judgment. Greer, L. J. pointed out:--

If extrinsic facts are relied upon for the purpose of converting that which would otherwise be an innocent statement of fact into a defamatory libel,

the extrinsic facts must be known both to the person who framed the alleged libel and to the persons to whom it was published.

At page 348 Greer, L.J. gives a few striking results which flow from the acceptance of the case of the plaintiff thus:

One or two illustrations may be given which indicate the danger of carrying the law of libel as far as it is argued in this case it should be carried. It

is written of A. B. that he is illmannered and uneducated. It turns out, though the writer did not know it that A. B. was in fact brought up by his

uncle. Could it be said that the uncle could succeed in an action alleging that the words meant that he had badly brought up and educated A. B.? A

writer might state that A. B. is an ignoramus. Unknown to the writer, A. B. may have spent five years under the tuition of XY at Eton. Could XY

allege that this was a libel upon him the writer having been ignored and having no reason to suppose, that A. B. had been at Eton? Take another

case. A being under the mistaken impression that he saw Mr. B. walking away from a theatre with Miss C. says next morning to an acquaintance: I

saw B and C leaving the theatre together last night, Unknown to A, but to the knowledge of his acquaintance. C had been murdered by the man

with whom she left the theatre. Could A be successfully sued by B for saying he had murdered C? If the case against the present defendants was

rightly left to the jury. A could be sued. To me it seems quite certain that it would be the duty of the Judge to rule that the words were incapable of

being so interpreted".

Even with regard to the decision of the House of Lords in 1910 AC 20. Sir,

William Holdsworth takes the view that intention of the defendant to defame the plaintiff is necessary to render him liable in damages. He states--

The ratio decidendi of *Hulton and Co. v. Jones* as explained by Farwell, L. J. whose judgment was expressly approved by Lords Atkinson and Gorell, by no means gives the go-by to intention as the basis of liability in an action for libel". (1930) 46 LQR 134.

After quoting the passage from the judgment of Farwell, L. J. which I have extracted already, he proceeds to state:--

It seems to follow that the admission that the reckless publication of a defamatory statement may give rise to an action for libel, no more negatives the necessity for the existence of an intent to defame, than the admission that an untrue statement made recklessly may give rise to an action for deceit, negatives the necessity for the existence of an intent to deceive (*Derry v. Peek*, 1889 14 AC 337). But, if an intention to defame, proved either from the knowledge and intention of the defendant or from the reckless character of his statements, is a necessary ingredient in an action for defamation, it follows that the dictum of Brett, L. J. in *Capital and Counties Bank v. Henty*, 1880 5 CPD 539 is correct; for it is the logical consequence of the principle that an intent to defame is the essence of an action for libel. In one respect, however, Greer, L. J. has pointed out

1929 2 KB at 347 the statement of Brett, L. J. may need modification. The publisher's want of knowledge of the facts must not be due to negligence on his part. If this is the true ratio decidendi in 1910 AC 20 it would seem that, so far from that case supporting the decision in (1929) 2 KB 331 it is in reality adverse to it. The latter case is distinguishable from the former in two vital points. In the first place, the statement that Miss X was Cassidy's fiance, was not made recklessly, for the photographer had it on the authority of Cassidy; whereas in *Hulton and Co. v. Jones* the writer of the paragraph was reckless, for he neither knew nor cared whether there was such a person as Artemus Jones. The element of recklessness, from which the element of intention was inferred in 1910 AC 20 was absent in (1929) 2 KB 331. In the second place, the statement in 1910 AC 20 was on its face a defamatory statement, whereas the statement in (1929) 2 KB 331 was not on its face a defamatory statement, and was not known to the paper to be defamatory. On these grounds, I submit

that the case of (1929) 2 KB 331 was wrongly decided, because the true ratio decidendi of 1910 AC 20 was mistaken. It may perhaps be added that, though it is eminently desirable, on grounds of public policy to discourage newspapers from making obviously defamatory statements about fictitious persons, which may well be taken to refer to existing persons, by placing upon the newspaper the duty of making it known to all the worlds that these statements are fiction and not news; yet it would seem to place an impossible burden upon them if, before publishing an apparently innocent statement, they were obliged to satisfy themselves that there is no one in the whole world who can put a defamatory meaning upon it". (1930) 46 LQR 134).

According to Dr. C. K. Allan:--

In the peculiar facts of 1910 AC 20 facts which at several points show that the defendants certainly ought to have known of the existence of the real Artemus Jones the decision was no doubt sound justice, apart from its soundness in law, which it is not open to us to question". 1930 46 LQR 156.

It is in view of these peculiar features and serious consequences that the learned Editor of Salmond's Law of Torts, 10th Edn. (W. T. S.

Stallybrass) stated the position as follows: (at pp. 386-387):

Hulton v. Jones added to use to the words of Goddard, L. J. "a terror to authorship" That terror has been intensified many times by the decisions of the court of appeal in Cassidy's case, (1929) 2 KB 331; Newstead's case. (1940) 1 KB 377 and Hough's case. It is open to the House of Lords to overrule these three decisions, and probably, to put a new interpretation upon 1910 AC 20. It is important that the law should not encourage or throw a shield over irresponsible journalism, but as the authorities stand today, the path is indeed hard for writers of fiction and for the editors and proprietors of newspapers. The present state of the law undoubtedly provides a temptation to speculative and "gold-digging" litigation".

8. Very naturally the principles laid down in these cases were considered by the academic as well as practising lawyers and the editors, printers and publishers of newspapers and other journals and fiction-writers as unjust. That led to the constitution of a Committee to "consider the Law of

Defamation and to report on the changes in the existing law, practice and procedure relating to the matter which are desirable""', and the Committee

submitted its report in 1948. Some of the recommendations of that Committee headed by Lord Porter have been implemented in the Defamation

Act of 1952.

9. Mr. Vanamamalai, learned counsel for the appellants, contended that the decision in 1910 AC 20 cannot be applied to Indian conditions and it

has been so held by this court in P.V. Naganatha Sastri Vs. N.P. Subramania Iyer, referred to by me already. Before I refer to the same. I would

like to draw attention to three special features with regard to the decision of the House of Lords in 1910 AC 20. The first feature is, the judgment

of the House of Lords was an unreserved one, said to be a rare thing today for the House of Lords. Whether a judgment is an unreserved one or

reserved and subsequently delivered may not have much relevancy or significance with regard to the law it lays down, but nonetheless, some text

book writers and authors in England have taken the view that the decision of the House of Lords in that case being an unreserved one will not

carry the same weight as a judgment which has been delivered after it having been reserved. The second feature is, in that case a named individual

was mentioned and the plaintiff who instituted the suit was a person bearing that name. Thirdly, in that case even though the writer of the article as

well as the editor of the newspaper were under the impression that Artemus Jones was an imaginary name, the plaintiff who was having the name

Artemus Jones was known to the publishers of the newspaper, he having contributed to their paper for nearly a period of twelve years. This has

been emphasised by Mr. C. K. Allen also. These features are brought out in the following footnote occurring in Salmond on the Law of Torts. 14th

Edn. at page 202--edited by R. F. V. Henston:--

There is some evidence that the decision may have been based on the recklessness or even spite of the defendants. Stallybrass always said that

this was the opinion of Lord Hewart, who was counsel for the plaintiff at all three stages of the trial. The plaintiff had been a contributor to the

defendants' paper for twelve years and his name was well known in their office, although not to the actual writer of the article. The managing

director admitted in cross-examination that he had read the article in proof and

though at first reading that it referred to the plaintiff. See 10th Ed.

page 377 n (x) and letters to the Spectator of November 5 and 12, 1948, from Lady Artemus Jones and Dr. C. K. Allen. Lord Uthwatt told the

present editor that after Hulton v. Jones the House of Lords had made it a rule of practice never to deliver an unreserved judgment--though there is

at least one reported exception to this"".

The passage in the 10th Edition of Salmond's Law of Torts, (edited by W. T. S. Stallybrass) to which reference has been made in the above note

is as follows:

In earlier editions (9th Edn.) Section 106 (3), it was submitted that the true ratio decidendi of this case was that the defendant is liable if he has

been reckless in publishing the defamatory statement. In 1910 AC 20, the plaintiff was in fact well known in the office of the defendants and had

done work for them. The actual writer of the article and the editor of the paper in which it appeared had no knowledge of the plaintiff's existence,

and no proceedings were taken against them. Lord Heward (who was counsel for the plaintiff at all three stages of the trial) often told the editor of

this book that this was the foundation of the House of Lord's decision. He presumably directed the jury in accordance with this view in Canning v.

Willaim Collins and Co., 1938 186 LT J 40. But the court of appeal in 1940 1 KB 377 rejected this interpretation, and Greene M. R. said (at

page 388) that the law was well settled and could only be altered by legislation. But it is submitted that it is still open to the House of Lords to

adopt the less severe interpretation of the decision in question.

These features may, in one sense, confine the decision of the House of Lords to the facts of that case.

10. But apart from the above-mentioned special features, there is a very real and weighty reason why that decision should not be applied to the

circumstances and conditions in this country. The law of defamation as part of the law of torts as applied and enforced under the common law of

England is applied to this country only on the basis of justice, equity and good conscience. There is no statutory law compelling the courts of this

country to apply the English principles and decisions on these matters and those principles and decisions are followed only so far as they are found

to be in accordance with justice, equity and good conscience. In AIR 1937 354

(Nagpur) Pollock, J. pointed out:--

It is to be noted that Section 6 Central Provinces Laws Act of 1875 prescribes that the Court should act according to justice, equity and good

conscience, not that it should act according to the rules of English law; it is also to be noted that the Privy Council has merely states that the courts

in this country should ordinarily be guided by the rules of English law if applicable to Indian society and circumstances; their Lordships did not state

that the rules of English law must be invariably applied"".

11. In P.V. Naganatha Sastri Vs. N.P. Subramania Iyer, already referred to, Sadasiva Aiyar, J. after referring to the decision of the House of

Lords in 1910 AC 20 stated:--

Supposing that the English law as developed by English precedents is to that effect, I do not see why the Indian law should follow suit unless the

doctrine is in consonance with justice, equity and good conscience, I am strongly of opinion that the dissenting opinion of Lord Justice Fletcher

moulton on the question (an opinion which was expressed in the same case when it was before the Court of appeal) (see 1909 2 KB 444) is much

more in consonance with justice and equity than the law, as now settled in England on this point"".

This is an authority for holding, at any rate as far as this Court is concerned, that the dissenting opinion of Fletcher Moulton, L. J. is more in

accordance with justice, equity and good conscience than the rule as laid down by the majority the rule as laid down by the majority in the court of

appeal and by the House of Lords. Therefore, I am clearly of the opinion that the courts below erred in coming to the conclusion that the rule laid

down by the House of Lords in 1910 AC 20 is strictly applicable to this country and they are entitled to follow the same, on the ground that it is in

accordance with justice, equity and good conscience. Apart from this aspect of the matter, there is one other consideration which is more

conclusive in this behalf. As I have pointed out already, the decisions of the courts following 1910 AC 20 gave rise to certain criticism that that

decision interfered with the freedom of the press and freedom of fiction writers and imposed an unbearable burden on them and that led to the

constitution of a Committee to suggest modifications with regard to the law of defamation and having regard to the recommendations of Lord

Porter's Committee the Defamation Act, 1952 was enacted. Section 4 of that Act deals with unintentional defamation. The provisions of this

section have been summarised thus by S. Ramaswami Iyer in his Law of Torts--6th Edition at page 210:--

A publisher of words alleged to be defamatory of another cannot be sued if he published them "innocently" and if he follows the prescribed

procedure. Words shall be treated as having been published "innocently", if either of two conditions are satisfied, first, he did not intend to publish

them of and concerning the party aggrieved and did not know of circumstances by virtue of which they might be understood to refer to him or

second, the words are not defamatory on the face of them and he did not know of circumstances by virtue of which they might be understood to

be defamatory of that person" and in either case, the publisher exercised all reasonable care in relation to the publication. The word "publisher"

includes his servant or agent who was concerned with the contents of the publication. If the words were published "innocently" the publisher may

make an offer of amends accompanied by an affidavit specifying the facts which show that the words were so published. The offer would be to

publish or join in the publication of a suitable correction to the words complained of, and a suitable apology to the party aggrieved and when

copies of a document or record containing the words have been distributed by or with the knowledge of the person making the offer, to take such

steps as are reasonably practicable on his part for notifying persons to whom copies have been distributed that the words are alleged to be

defamatory of the party aggrieved. The High Court is given power to determine any question in dispute regarding the steps to be taken in fulfilment

of the offer as accepted and to order the person making the offer to pay to the party aggrieved costs on an indemnity basis and any expenses

reasonably incurred in consequence of the publication. If the offer is not accepted by the party aggrieved, then it shall be a defence in any

proceedings by him that the words were published innocently and an offer was made as soon as practicable after notice of the words being

defamatory, and if the publication of the words of which the defendant was not author, they were written by the author without malice".

It is clear that Section 4 of the Defamation Act. 1952, was intended to override the rigour of the law as laid down by the House of Lords in 1910

AC 20 and to provide for a remedy to a person whose publication had been unintentional.

12. The relevancy of this provision to the present case is this. As I have pointed out already, by Ex. B-1 (a), the appellants have published a

correction stating that the news item did not refer to the respondent herein. During the course of his evidence, the respondent stated that no

apology was tendered to him. In my opinion, the question of apology is not material in this particular case, since the appellant did not refer to the

respondent at all in the news item and according to the respondent only the friends who knew him and who have read the news item were of the

opinion that it referred to him. Further, there is the evidence of P. W. 1 who claimed that he had not seen Ex. B-1 (a) and who had stated that had

Dinamalar published that the news item did not relate to the plaintiff, he would have believed that it did not relate to the plaintiff and it referred to

somebody else. This is a very relevant circumstance for considering the question whether the appellants are liable at all. It is in view of this

provision contained in Section 4 of the Defamation Act. 1952. Harry Street, on the Law of Torts 3rd Edn. at p. 307 has stated:--

Has Section 4 of the Defamation Act. 1952. now overridden these cases? That section certainly covers instances where the statements were not

known to be defamatory, or where "the publisher did not intend to publish them of and concerning that other person, and did not know of

circumstances by virtue of which they might be understood to refer to him". It will be recalled, however, that the section applies only where the

defendant proves that neither he nor his servants or agents have failed to take all reasonable care. Thus, failure by novelist Antonia White to consult

"Spotlight" deprived her of the defence when she included an actress named June Sylvaine (the plaintiff's stage name) in her book. (Ross v.

Hopkinson 1956 Times October 16th). It is submitted that on facts like those of O Hulton v. Jones and Newsstead v. London Express

Newspapers Ltd., the section could not apply because all reasonable care had not been taken. The position, therefore, is that there is no binding

authority at common law for the proposition that a publisher, who could not possibly have known that the statement referred to the plaintiff, is

answerable--in any event, in such circumstances the Act affords a defence of offer of amends"".

13. Against the background of this legal position, the question for consideration is, whether the courts below were right in awarding damages in

favour of the respondent herein, relying upon the decision of the House of Lords in 1910 AC 20. For two reasons, in my opinion, the courts below

were in error in holding the respondent liable for the damages. In the first place, as I have pointed out already, as far as this court is concerned, it

has taken the view in P.V. Naganatha Sastri Vs. N.P. Subramania Iyer, that the dissenting opinion of Fletcher Moulton, L. J. in the court of appeal

was in accordance with justice, equity and good conscience and not the rules laid down by the majority of the Court of appeal and the House of

Lords on appeal. The second reason is, even assuming that the English principle of law, as it is in existence, is automatically applicable to the Indian

conditions, still by the time this case came to be decided, even the English law has been altered by Section 4 of the Defamation Act, 1952, and

therefore on this basis, it is the law as it stood after modification by Section 4 of the Defamation Act, 1952 that should have been applied to the

present case and not the law as laid down by the House of Lords in 1910 AC 20. As I have pointed out already, the trial court came to the

conclusion that the appellants did not know of the existence of the respondent herein and the respondent as P. W. 6 admitted that he had no

connection with the appellants. The explanation of the appellants was that they published the news item as they got it from the correspondent in

Ceylon by name Thambithorai. Even though they have failed to prove the truth of the news item with reference to any particular individual, the case

of the appellants that they published the news on the basis of a communication received by them from their correspondent in Colombo was not

disbelieved by either of the courts below. Under these circumstances, I am clearly of the opinion that this is a case in which, looked at from any

point of view, the appellants should not have been made liable in damages at all.

14. Though the amount involved is small one, since the parties have been fighting the establish their respective positions, in view of the conclusion I

have come to, I have no other alternative but to allow the second appeal and dismiss the suit instituted by the respondent herein. Having regard to

the circumstances of this cases, it is only proper that the parties should be directed to bear their respective costs throughout. No leave.

Appeal allowed.