

(1971) 09 MAD CK 0006
In the Madras High Court

T.V. Ramasubba Iyer, Editor, "Dinamalar" and Another	APPELLANT
Vs	
Am. Ahamad Mohideen	RESPONDENT

Date of Decision : 06-09-1971

Acts Referred:

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

Citation : (1972) 85 LW 400 : (1972) 1 MLJ 508

Hon'ble Judges : M.M. Ismail, J

Bench : Division Bench

Judgement

M.M. Ismail, J.—The defendants in O.S. No. 79 of 1961 on the file of the Court of the Subordinate Judge of Tirunelveli, who failed before

the trial Court as well as the first Appellate Court are the appellants before this Court. The first appellant is the editor and the second appellant is

the owner of a daily styled ""The Dinamalar"" published from Tirunelveli. In the issue of the ""Dinamalar"", dated 18th February, 1961, there was a

news item appearing under date-line ""Dated, Ceylon, February 17"". That news item reported that a person from Tirunelveli District 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 of five

parcels received by him and found them to contain opium concealed therein and he was arrested and had been brought to Madras. The

respondent herein who is a resident of Alakiamanavalapuram near Alwarthirunagari, is a partner of a firm known as Ameer and Sons,

manufacturing scented bathis and exporting the same to Ceylon. They had a

place of business in Colombo, also at a place called Pettah. The father of the respondent and his (respondent's) brothers were partners along with the respondent and the name Ameer 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, their principal defence was that they were not aware of the existence of the respondent himself and they did not intend to publish the news item with reference to the respondent and as a matter of fact the news item did not concern the respondent. In the issue of ""The Dinamalar"", dated 14th May, 1961, the appellants themselves published a correction stating that the news that appeared in the issue of ""The Dinamalar"", dated 18th February, 1961, did not refer to the respondent herein. This has been marked as Exhibit 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 Exhibit B-1 (a) is that before the institution of the suit, the respondent called upon the appellant to publish a correction and apology and pay him compensation. It was only with reference to this, Exhibit B-1 (a) correction was published and reliance was placed thereon. The learned Additional Sub-ordinate 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 18th February, 1961, was understood to concern the respondent herein and therefore it constituted defamation of the respondent. Needless for me to point out that 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 from their correspondent in Ceylon and 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 item 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* L.R. (1910) A.C. 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

the respondent particularly. He has again recorded in paragraph 17 of his judgment that D.W. 1 had sworn that the appellants' firm or the officers

thereof did not even know of the existence of the respondent and that obviously they had published Exhibit 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 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 the House of Lords in *E. Hulton and Co. v. Jones* L.R. (1910) A.C. 20.

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

of Tirunelveli. The learned District Judge on 30th March, 1967, in A.S. No. 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) has 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 Exhibit A-1 (a) that the person is the king of (Agar bathis) belonging to Tirunelveli District.

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 King 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 District. 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 District 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.

2. 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 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 Exhibit A would not be read by an ordinary newspaper 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.

3. 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 *E. Hulton and Co. v. Jones* L.R. (1910) A.C. 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.

4. In *Jones v. E. Hulton and Co.* (1909) 2 K.B. 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 churchwarden 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, of golden cocktails - from any scheme to speed the passing hour..."Whist! 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 her bosom friend's ear. Really, is it

not surprising how certain of our fellow-countrymen behave when they come abroad? Who would suppose, by his goings on, that he was a

churchwarden 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 churchwarden. 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 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.

5. 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:

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 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 show 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 show 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 the 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 recognized 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

the 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

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 intended 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 anyone 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 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 this 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".

6. When the matter went up to the House of Lords, Lord Loreburn, L.C, pointed out in *E. Hulton and Co. v. Jones* L.R. (1910) A.C. 20:

A person charged with libel can* not defend himself by showing 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 nonetheless imputed something disgraceful and has nonetheless 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 was 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 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* (1940) 1 K.B. 377, where it

was held that the principle in *E. Hulton and Co. v. Jones* L.R. (1910) A.C. 20 applies where the statement truly relates to a real person, A and

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, for

otherwise it is no defence. The same principle has been followed in *Cassidy v. Daily Mirror Newspapers Limited* (1929) 2 K.B. 331, in

Youssoupoff v. Metro Goldwyn Mayer Pictures Limited (1934) 50 T.L.R. 581.

7. The ruling in *Cassidy v. Daily Mirror Newspapers Limited* (1929) 2 K.B. 331, is striking illustration of the extended application of the rule in

Hulton and Co. v. Jones L.R. (1910) A.C. 20. In that case the defendant 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 to 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 ₹1½500 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 information 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 was no circumstance 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 rule in *E. Hulton and Co. v. Jones* L.R. (1910) A.C. 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 ill-mannered 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 X.Y. at Eton. Could X.Y.

allege that this was a libel upon him, the writer having been ignorant, 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 G, says next morning to an acquaintance; I

saw B and G 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. Gould A be successfully sued by B for saying he has murdered C? If the case against the present defendants was rightly left to the jury, A could be so 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 *E. Hulton and Co. v. Jones* L.R. (1910) A.C. 20, Sir William Haldane 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* L.R. (1910) A.C. 20, 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

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 App. Cas. 337. But, if an intention to defame,

proved either from the knowledge and intentions 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 C.P.D 539, is correct; for it is the

logical consequences of the principle that an intention to defame is the essence of an action for libel. In one respect, however, as Greer, L.J., has

pointed out⁶ 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.

8. If this is the true ratio decidendi in *Hulton and Co. v. Jones* L.R. (1910) A.C. 20, it would seem that, so far from that case supporting the

decision in *Cassidy v. Daily Mirror Newspapers* (1929) 2 K.B. 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

finance was not made recklessly, for the photographer had it on the authority of Cassidy; whereas in *Hulton and Co. v. Jones* L.R. (1910) A.C. 20, 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 *Hulton and Co. v. Jones* L.R. (1910) A.C. 20, was absent in *Cassidy v. Daily Mirror Newspapers* (1929) 2 K.B. 331. In the second place, the statement in *Hulton and Co. v. Jones* L.R. (1910) A.C. 20, was on its face a defamatory statement, whereas the statement in *Cassidy v. Daily Mirror Newspapers* (1929) 2 K.B. 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 *Cassidy v. Daily Mirror Newspapers* (1929) 2 K.B. 331 was wrongly decided, because the true ratio decidendi of *Hulton and Co. v. Jones* L.R. (1910) A.C. 20, was mistaken. It may perhaps be added that, though it is eminently desirable, on grounds of public policy, to discourage news-papers from making obviously defamatory statements about fictions per--sons which may well be taken to refer to existing persons, by placing upon the newspaper the duty of making it known to all the world 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 L.Q.R.134.

According to Dr. C.K. Allen:

In the peculiar facts of *Hulton v. Jones* L.R. (1910) A.C. 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 L.Q.R. 156.

9. It is in view of these peculiar features and serious consequences that the learned Editor of Salmond's law of Torts - Tenth Edition - (W.T.S.

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

Hulton v. Jones L.R. (1910) A.C. 20, added, to use 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 K.B.

331 Newstead's case (1940) 1 K.B. 379 and Hough's case

(1940) 2 K.B. 507. It is open to the House of Lords to overrule these three decisions, and probably, to put a new interpretation upon Hulton v.

Jones L.R. (1910) A.C. 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.

10. 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.

11. Mr. Vanamamalai, learned Counsel for the appellants, contended that the decision in E. Hulton and Co. v. Jones L.R. (1910) A.C. 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 E.

Hulton and Co. v. Jones L.R. (1910) A.C. 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 its having been reserved. The second feature is, in that case a named individual was mentioned and the plaintiff who instituted the suit was 3,

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 12 years. This has been emphasised by Mr. C.K. Allen also. These features

are brought out in the following foot-note occurring in Salmond on the law of Torts - Fourteenth Edition at page 202 : (Edited by H.F.V. Houston):

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

edition 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 L.R. (1910) A.C. 20, 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 Tenth Edition of Salmond's Law of Torts (Edited by W.L.T. Section Stallybrass) to which reference has been made in the

above note is as follows:

In earlier editions (9th edition, 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 Hulton v. Jones L.R. (1910) A.C. 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 1 editor of the paper in which it appeared had no knowledge

of the plaintiff's existence, and no proceedings were taken against them. Lord Hewart (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 Lords' decision. He presumably directed the jury in accordance

with this view in Canning v. William Collins and Co. (1938) 186 L.T.J. 40. But the Court of Appeal in Newstead v. London Express Newspaper

Limited (1940) 1 K.B. 377, rejected this interpretation, and Greene, M.R., said

(at p. 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.

12. But apart from the abovementioned 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 stated 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.

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 E. Hulton and Co. v. Jones L.R. (1910) A.C. 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 Jones v. E. Houlton and

Co. (1909) 2 K.B. 458, 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 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 E.

Hulton and Co. v. Jones L.R. (1910) A.C. 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 E. Hulton and Co. v. Jones L.R. (1910) A.C. 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 Section Ramaswamy Iyer in his law of Torts - Sixth 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 the 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 *E.*

Hulton and Co. v. Jones L.R. (1910) A.C. 20, and to provide for a remedy to a person whose publication had been unintentional.

13. The relevancy of this provision to the present case is this. As I have pointed out already, by Exhibit 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 appellants 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 items were of the

opinion that it referred to him. Farther, there is the evidence of P.W. 1 who claimed that he had not seen Exhibit B-1 (a) and who has 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 - Third Edition*, at page 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 the 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 *E. Hulton v. Jones L.R.* (1910) A.C. 20 and *Newstead v.*

London Express Newspaper Limited (1940) 1 K.B. 376, the Section could not apply because all reasonable care had 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.

14. 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 *E. Hulton and Co. v. Jones L.R.* (1910) A.C. 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 *Naganatha Sastri v. Subramania Iyer* (1956) *Times*, October 16th 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 rule

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 had 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

E. Hulton and Co. v. Jones L.R. (1910) A.C. 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.

15. Though the amount involved is a small one, since the parties have been fighting to 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 case, it is only proper that the parties should be directed to bear their respective costs throughout.

16. No leave.