

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
AT PANAJI

FIRST APPEAL NO. 192 OF 2004

1. Mr. Umar Abid Khan, )  
Residing at H. No.18-B, )  
Behind Civil Court, )  
Massordem Village, Sattari Taluka, )  
Valpoi, Goa. )
  2. Mrs. Noorjahan Bi Khan, )  
major, wife of Shri Umar Abid Khan, )
  3. Master Shikandar Khan, )  
Son of Shri Umar Abid Khan, )
  4. Miss Shaheen Khan, )  
Minor, through her natural )  
guardian and )  
father Shri Umar Abid Khan, )
  5. Mr. Liyakat Ali Khan, )  
alias Liyakat Shikandar Khan, )  
Major. )
  6. Mrs. Shamshad Bi, )  
Major, wife of Mr. Liyakat Ali Khan, )
  7. Miss Zeba Khan, )  
Minor, through her natural, )  
guardian and father Shri Liyakat )  
Ali Khan, all r/o. Valpoi, )  
Sattari – Goa. )..
- Appellants/  
Plaintiffs



CORAM : SWATANTER KUMAR, C.J. &  
N.A. BRITTO, J

JUDGMENT RESERVED ON : 16TH JULY, 2009

JUDGMENT PRONOUNCED ON : 3<sup>rd</sup> November, 2009.

JUDGMENT : ( PER SWATANTER KUMAR, CHIEF JUSTICE )

Marathi daily "Gomantak" in its Issue dated 17<sup>th</sup> May,  
1996 published following news item -

**"THREAT TO HURL BOMB ON THE  
HOUSE WITH THE AID OF DAWOOD IBRAHIM  
COMPLAINT OF GONSALVES OF VALPOI**

Liyakat Ali Khan resident of Valpoi and presently working in Dubai threatened that bomb will be hurled on the house of Vincy Gonsalves of Valpoi with the help of goon of Dubai Dawood Ibrahim.

Shri Gonsalves recently lodged the complaint at Valpoi Police Station and also filed written complaint before Chief Minister, Shri Pratapsingh Rane and Central Bureau Investigation (Bombay). There is also news that C.B.I. Asked for investigation report from Valpoi Police.

Shri Gonsalves said in his complaint that in the year 1977, he purchased 1500 sq. mts. Of land surveyed under No.64/1. In 1985 he built

house utilising half of the area of purchased land and in 1991, the remaining half of the area one Umar Abid Khan of Valpoi built his own house illegally. Several time Shri Gonsalves brought to the notice of Municipality of Valpoi and Mamlatdar, Shri Dalvi about the illegal construction being carried out by Khan by using financial, political and muscular powers. Once or twice Municipality stopped the work but with the support of some Municipality Councillor Khan completed the work of the house. Now Khan has requested Chief Officer Manohar vast of Valpoi Municipality to register the said house by issuing house number.

But Shri Gonsalves has strongly objected for this. Liyakat Khan brother of Umar Khan working in Dubai has recently visited Goa, Shri Gonsalves said in his complaint while returning to Dubai he threatened Shri Gonsalves that he will hurl bomb on his house with the help of Dawood Ibrahim. He further said in his complaint that his family receiving threatening phone calls from Dubai.

In the meanwhile, upon failure on the part of Valpoi Police Station to take proper steps in the matter, he lodged complaint before Inspector General of Police Shri Brar.

Complaint has turned into a subject of discussion in the Valpoi locality and several topsy survey counteracting/comments are taking place amongst the police regarding the relation of Liyakat Khan with Dawood the enemy of the Country.”

2. Plaintiff No.1 felt that the news item caused immense defamation of himself, his brother Liyakat Ali and members of their

family ( who later on were joined as Co-Plaintiffs). The Plaintiffs felt that the publication in widely circulated news paper lowered down their moral and intellectual character besides lowering, their credit in their circle, relations among kith and kin and in society at large. The Plaintiffs, therefore, filed Special Civil Suit No.34 of 1996/A before the Civil Judge, Senior Division, Bicholim, Goa, for seeking following damages.

- |  |                 |
|--|-----------------|
| 1. Loss of reputation, image, status, stature and credit worthiness in the local, neighbouring States and in the Gulf countries, inclusive of Dubai. | Rs.1,00 crores  |
| 2. Mental agony, tension, torture, humiliation and sufferings to the Plaintiff, his brother and other family members;                                | Rs. 25,00 lakhs |
| 3. Loss of career prospects of the Plaintiff, his brother Mr. Liyakat Ali Khan, their children, namely   |                 |
| i) Master Sikander Khan, son   |                 |
| ii) Miss Shaeen Khan, daughter   |                 |
| iii) Miss Zeba Khan, daughter of Mr. Liyakat Ali Khan.   | Rs. 25,00 lakhs |
| -----  |                 |

Rs.1,50 crores  
-----

(Rupees One Crore and Fifty Lakhs Only )

3. Defendant No.1 Vincy Gonsalves, disputed the suit claim by filing written statement at Exh.4. Defendant No.1 who denied knowledge about the news item, however, has contended that the language of the news item contains some true statement and cannot be characterized as absolutely false. According to defendant No.1 the facts stated in the news item were known to public much earlier to 31<sup>st</sup> March, 1996 and the news item dated 17<sup>th</sup> May, 1996 has given real picture of vindictive nature of Plaintiff. It is the specific defence of Defendant No.1 that the comments in the news item are based on real, true and existing facts and amount to fair comment made with attention and care.

4. Defendant No.3 was the Executive Editor of Daily Gomantak and Defendant No.4 is the publishing company. A suit against Defendant No.2, Chandrakant Ghorpade, the Group Editor of "Gomantak", was dismissed being abated as per Order dated 1<sup>st</sup> July, 1999.

5. Defendant Nos.3 and 4 challenged the suit claim by written statement Exhibit-8. According to them, the news report has been published as per report made by their Valpoi Reporter which was based upon complaints made by Defendant No.1 to Valpoi Police Station and they had no intention of defaming Plaintiff. As per the Defendants, in the issue dated 22<sup>nd</sup> August, 1996 of Gomantak they have published the clarification given by Plaintiff in which he had stated that the allegations made by Defendant No.1 were false and there was a court case in Bicholim about disputed land.

6. The Defendants denied the claim of damages made by the Plaintiffs.

7. The learned trial Judge framed issues and after recording and appreciating the evidence led by both sides, dismissed the suit by a Judgment and Order dated 30<sup>th</sup> April, 2004 recording following issues and findings.

#### ISSUES

#### FINDINGS

1. Whether the Plaintiff proves that defendant

- No.1 intentionally with ulterior motives and ill-designs has lodged a false report with Defendant Nos.2, 3 and 4 in order to defame him, his brother and his other family members by getting the same published in collusion with Defendant Nos.2, 3 and 4 ? No.
2. Whether the Plaintiff proves that the publication of news item published on 17.5.1996 has caused immense defamation and/or damage to him, his brother Mr. Liyakat Ali Khan and his other family members as they have been subjected to shame in their circle, relations, among kith and kins and in the society at large so also in the neighbouring area and gulf countries inclusive of Dubai where the said publication has had its circulation ? No.
3. Whether the Plaintiff proves that he, his brother Liyakat Ali Khan and his other family members are entitled for the damages to the tune of Rs.1.50 crores due to the defamation caused by publication dated 17.5.1996 in the daily Gomantak Marathi issue as per the break down shown in para 9 of the plaint ? No.
4. Whether the Defendants prove that the suit deserves to be dismissed since the prayers therein have been made for claiming damages to Shri Liyakat Ali Khan and their children who are not the plaintiffs in this suit ?  
( deleted on 30.4.04.)
8. Being aggrieved by the said Judgment and Order dated

30<sup>th</sup> April, 2004, the Plaintiffs have filed the present First Appeal mainly on the ground that the evidence on record has not been properly appreciated and law in the matter has not been properly applied.

**9.** On the pleadings of the parties and the issues decided by the trial Court, the question which needs to be examined by the Court would be :-

- (a) Whether the news item in question is defamatory and whether it has lowered the reputation and image of the Appellant in the eye of right thinking members of the society ?
- (b) If this answer is in the affirmative, the next question the Court will have to consider is whether it was obligatory on the part of the Defendants/Respondents to verify the contents of the news item before publishing it ?

- (c) What damages, if any, the Appellant is entitled to receive ?

**10.** Every person has a legal right to preserve his reputation inviolate. In law it has been accepted as personal property and it is *jus in rem* a right good against all the world. A man's reputation is property and degree of suffering occasioned by the loss of reputation as compared to that occasioned by loss of property is greater. The Court therefore must draw a balance between freedom of speech and protecting the reputation of an individual. *Libel* is a publication of a false and defamatory statement tending to injure the reputation of another person without lawful justification or excuse. For an actionable claim, the statement must be expressed in some permanent form e.g. writing, printing, pictures, etc.

11. Actionable tort takes in its ambit all of such proceedings relatable to defamation provided they satisfy the basic ingredient. Newspapers are subject to the same rules as other critics, and have no special right or privilege, and in spite of the latitude allowed to them, they have no special right to make unfair comments, or to make imputations upon a person's character, or imputations upon

or in respect of a person's profession or calling. The range of a journalist's criticism or comments is as wide as that of any other subject, and no wider. Even if in a sense newspapers owe a duty to their readers to publish any and every item of news that may interest them, this is not such a duty as makes every communication in the paper relating to a matter of public interest a privileged one. Just because something interests the public, it is not necessarily in public interest to publish it. ( Ref : *Mitha Rustomji Murzban v. Nusserwanji Engineer*, (1941)43 Bom LR 631- referred in ( Ratanlal & Dhirajlal ), the Law of Torts (by Ratanlal & Dhirajlal, 25<sup>th</sup> Edition 2006.)

12. Equally investigative journalism does not enjoy any special protection. Therefore, when newspapers publish accusation of criminal guilt against a person as a result of their investigation, they do so at their own risk and they do not enjoy unqualified privilege. The shelter of public interest cannot be abused to lower down the reputation of any person in any manner. On the contrary, the law appears to indicate that the newspaper owes and implies obligation that the article published by it particularly with reference to an individual involving his reputation should be

verified, in any case, it cannot be based on lies or incorrect information. The extent of onus has been a subject of controversy now for a considerable time. Even where repetition is claimed as a defence, it can hardly stand the scrutiny of law and may not be a plausible defence to say that the publication was a mere repetition or hearsay as every repetition of defamatory words is a new publication and a distinct cause of action. The originator will be liable for the damage resulting from repetition. - (1) where the originator authorized or intended the repetition, or (2) where the repetition was the natural and probable consequence of his act; or (3) where there was a moral obligation on the person in whose presence the slander was uttered to repeat it.

13. Unlike repetition, the truth of defamatory words is a complete defence to an action for libel or slander. This will be in a civil action and may not be so in a criminal trial. The truth normally is taken as an answer to the action to show that the Plaintiff is not entitled to recover damages. A Journalist or Reporter does not transgress the limits of fair comment if all material facts are truly stated in the article, though it may be that there are one or two small deviations from absolute accuracy on

minor points which have no influence on the conclusions, and the conclusions are such as ought to be drawn from the premises by a critic bringing to his work the amount of care, reason and judgment. ( *Ref: Law of Torts by Ratanlal & Dhirajlal* )

14. In *R.K. Karanjia v. Thackersey*, AIR 1970 Bom 424, the Court took the view that even newspapers cannot claim protection of qualified privilege simply by showing that they gave information on a matter of public interest; to claim the privilege it must further be shown that there was a duty in giving out that that information to the public.

15. The Plaintiff in defamation action is entitled to recover as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, loyalty and the core attributes of

his personality, the more serious it is likely to be. The extent of publication is also very relevant; a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation particularly when it is not based on truth. This principle has been laid down in *John v. MGN Ltd.*, (1996) 2 ALL ER 35 (CA).

16. The amount of damages awarded in respect of vindication and injury to reputation and feelings depends on a number of factors. These factors are not exhaustive and are based on facts of different cases still sufficiently indicate the principles that will cover :

- “1. The gravity of the allegation.
2. The size and influence of the circulation.
3. The effect of the publication.
4. The extent and nature of the claimant’s reputation.
5. The behaviour of the defendant.
6. The behaviour of the claimant.”

17. In *H.K. Hales, M.P. v. H. Smiles and Others*, AIR 1937 Rangoon 105 (at p.109), a matter where the Plaintiff had brought a suit complaining of a libelous article published by the newspapers the Court specified the criteria and effect of awarding of such damages as under:-

“Defamation arises out of the act of publishing matter defamatory of the plaintiff in the sense that it tends to bring him into hatred, ridicule or contempt and, while it may have some bearing upon the question of damage, the state of mind or of credulity of the newspaper which publishes a defamatory statement, whether its own or someone else’s, is, I think, immaterial. A newspaper is in no different position from an individual and it cannot give currency to a defamatory statement and escape upon the ground itself that, it showed that it did not believe that which it had published.”

18. The above principles emerge from the common law. The English Courts have applied these principles largely to the cases relating to claim of damages for defamation. The guidelines stated above have equally been applied by Indian Courts now for a considerable time. A Full Bench of Allahabad High Court in the case of *Chunni Lal v Naringh Das*, **1917 Vol. XL Indian Laws Reports Allahabad Series 342**, while dealing with the case of defamation based on a libel in respect of statement made in

Petition before Criminal Court and privilege claimed by the Defendant, held it not to be actionable libel. While discussing applicability of English law, the Court held as under :-

“There is no Statute in India dealing with civil liability for defamation. We have, therefore, to apply the rule of equity, justice and good conscience. This has been interpreted by the Privy Council in *Waghela Rajsanji v Shekh Masluddin* (1) to mean the rules of English Law if found applicable to India society and circumstances.”

19. Reference can also be made to the case of *T.V. Ramasubba Iyer and another v A.M. Ahamed Mohideen*, **AIR 1972 MADRAS 398**, where the Court stated the principle as follows :

“.... 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 god 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....”

20. In light of the above stated principles, now we may refer to the pleadings of the parties and the evidence recorded during the

trial. There is really not much dispute to the facts as stated in the Plaintiff. According to the Plaintiff, the publication in Gomantak Marathi Daily dated 17<sup>th</sup> May 1996 was false, baseless, frivolous, without verification and caused humiliation, tremendous loss of reputation, image and character and integrity of the Plaintiff-Appellant. The newspaper is stated to have wide circulation in the State of Goa and, therefore, it has further adversely affected the reputation and social status of the Plaintiff. The basis of the publication was the complaint dated 4<sup>th</sup> April 1996 made to the Police Sub Inspector, Valpoi wherein it was said that Liyakat Ali Khan came to the place of business of Defendant No.1 and had threatened him.

21. Exhibit PW1/E is the complaint made to the police on 31<sup>st</sup> March 1996 which was entered in the police diary and the Case No.117/96 under Sections 352 and 504 read with Section 34 I.P.C. On 4<sup>th</sup> April 1996 it appears to have been registered. In this complaint, it was averred that at about 11.15 hours on 31<sup>st</sup> March 1996, the son of the complainant and two small children went into the property to pluck the cashew apples and when they were plucking the cashew apples, Liyakat Ali Khan (Plaintiff No.5) came

there and threatened the son of the complainant ( Defendant No.1 ) by saying that “I will kill you by pressing your neck” and also gave filthy abuses. Even his brother Umer Abid Khan (Plaintiff No.1) and his wife gave filthy words and threatened him. It was also said that Liyakat Ali Khan was a person with money and can arrange goondas to attack the complainant (Defendant No.1) and his family. In this complaint, complainant (Defendant No.1) prayed for an action to be taken. Thereafter, Defendant No.1 made another complaint dated 10<sup>th</sup> April 1996 (Exhibit PW1/G) to the Director, Vigilance Office, Secretariat, Panaji-Goa saying that he had filed the complaint on 31<sup>st</sup> March 1996 but on 4<sup>th</sup> April 1996 Liyakat Ali Khan had come to his shop saying that he has got good contacts with Dawood Ibrahim and his persons can be arranged to murder the complainant and to blast his residential house. He has also stated that he was a poor family person and action needs to be taken due to serious threats.

22. The Editor of the Defendant No.4 newspaper published the news on 17<sup>th</sup> May 1996 Exhibit PW1/C which we have already reproduced above.

23. The Appellant-Plaintiff examined himself as PW1 (Umar Abid Khan) and also examined PW-2 (Krishna J. Dukle) who stated that the Plaintiff was working as an Accountant in the Urban Co-operative Bank from where he had taken voluntary retirement as he could not get promotion like other employees of the Bank as a result of police complaint. Another witness from the same Bank PW3 (Zikariya Hussan Khan) stated that he had read the news relating to the Plaintiff in the newspaper and thereafter he made inquiries with the Plaintiff who said that it was all false. He has also stated in the affidavit by way of examination-in-chief that he was informed by the Plaintiff that Defendant Nos.3 and 4 had fabricated the false news. He specifically stated that this publication had affected the Plaintiff and his family members' image, character, integrity and reputation. PW4 (Shaikh Safdar Shakoli) had also filed his affidavit (Exhibit 49) wherein he has stated that while he was working in the Gulf he had received the packet of the newspaper and had read the article in question. Upon reading this, he was surprised and he checked with other friends in Goa whether they had read the news article. Due to the news, people started making inquiries which had spoiled the image of the Plaintiffs. Upon inquiries from the Plaintiff, he was informed that

this was false. The Plaintiff, of course, stated his case as well as proved the other documents on record.

24. Defendant No.1 (Vincent Gonsalves-DW1) examined himself as the sole witness for himself and Defendant No.2 Editor of the newspaper also examined himself as the sole witness.

25. Defendant No.1 had filed his affidavit by way of examination-in-chief in which he stated that he had not published the infringing article and the Suit filed by the Plaintiff against him was false, frivolous and intended to harass his family. According to him, the Plaintiff had also filed number of false criminal complaints against him wherein he was acquitted by the Judicial Magistrate First Class of Sattari at Valpoi and that the Plaintiff was harassing them unnecessarily. In his cross-examination he had stated that he had filed a police complaint on 31<sup>st</sup> March 1996 and the police had not taken action on the basis of said complaint and that he had not filed any private complaint. He also stated that he had filed N.C. complaint dated 4.4.1996. He denied the suggestion that the contents thereof were false. The following extract from his cross-examination can be usefully noticed at this stage :

“..... I am not aware about the whereabouts of Dawood Ibrahim. I say that since Liyakat Ali Khan has used his name therefore I mentioned the name of Dawood Ibrahim in my complaint dated 10.04.96. It is true that the complaint dated 04.04.96. It is true that the name of Dawood Ibrahim is not mentioned. I say that since Liyakat Ali Khan had taken the name of Dawood Ibrahim therefore, only I had mentioned his name on the complaint dated 10.04.96. ....”

XXXXX      XXXXX      XXXXX

“..... I say that the contents of the news item that Shri Gonsalves said in his complaint that in the year 1977, he purchased 1,500 sqm. Of land survey under 64/1 is false. I say that the contents of news item that in 1985 the house of the area half of the area purchased land in 1991, the remaining half of the area on Umar Abit Khan build his own house in the valley is false.....”

XXXXX      XXXXX      XXXXX

“..... I say that the contents of the news item that is further said in his complaint that he receiving threatening phone calls from Dubai is false. I say that the contents of the news item that in the mean while upon the failure on part of Valpoi police station to take proper steps in the matter he lodges the complaint before Inspector General of Police Shri Braz is false....”

26. As far as DW2 is concerned, in his affidavit it is stated that the publication was based on the complaint made by Defendant No.1 in the police station and there was no intention to

harm or cause mental agony or torture to the Plaintiff. Reference was made to the complaint filed to the Director of Vigilance on 10<sup>th</sup> April 1996. In his cross-examination, he has further stated that the averments made in paragraph 5 of the affidavit were based on the information given by Defendant No.1 at the time of publication. This witness states that the news item dated 17<sup>th</sup> May 1996 was not published without confirming the truthfulness, veracity and authenticity of the police complaint dated 31<sup>st</sup> March 1996. The said witness also stated as under :-

“I deny the suggestion that the news published in the news item dt. 17.5.96 without confirming the truthfulness, veracity and authenticity of the contents of police complaint dt. 31.3.96. I say that contents of para 6 of my affidavit that the defendant no.1 has filed another complaint on 4.4.96 wherein he had said that Liyakat Ali Khan come to the place while defendant no.1 is working threatened the defendant no.1, saying that he would blast the residential house at any time as he has having good contact with Dawood Ibrahim or he can arrange person for murder of defendant no.1 is based upon information given by defendant no.1. It is not true to sugg. That defendant no.1 has not given information contained in para 5 of my affidavit at any point of time. ....”

XXXXX      XXXXX      XXXXX

“..... I say that I am not aware contents of complaint dt. 4.4.96 at Exh. DW1/F in cross. I am not aware on 4.4.96 plaintiff no.1 had also filed NC complaint against the defendant no.1 at Valpoi

Police Station. I am not aware whether on 31.3.96 plaintiff no.1 has filed police complaint against the defendant no.1. Police has not recorded my statement complaint dt. 4.4.96. I say that the contents in para 6 of my affidavit are not verified by me and therefore cannot say anything that whether it is true or false. I say that the contents of my affidavit that on 10.4.96 defendant no.1 also filed a complaint before Directorate of Vigilance Office, Pasnaji stating that Liyakat Ali Khan on 31.3.96 and on 4.4.96 came to his agricultural land and gave threats to kill defendant no.1 and his son Dicsan Gonsalves stating that he will bring goondas from Bombay and elsewhere and also that he is having good contact with Dawood Ibrahim and persons can be arranged to any person murder of defendant no.1 or blast his residence is based upon the information given by defendant no.1. I say that I had verified the complaint dt. 10.4.96 to the Directorate of Vigilance at Panaji. We had not made any inquiry on the basis of complaint dt. 10.4.96. I say that my statement was not recorded by the police. I say that we have not verified the contents of complaint dt. 10.4.96 with the plaintiff. I say that we had also not verified the contents of complaint dt.10.4.96 it is very difficult to say whether the contents are true or false. I say that since we have not verified the contents of complaint dt. 31.3.96, 4.4.96 it is very difficult to say whether the contents of both the complaints are true or false. I say that before publication of new item dt. 17.5.96 we have not contacted at any point of time to plaintiff no.1 and plaintiff no.5. I say that before publication of the news item of complaint dt. 31.3.96, 4.4.96 and 10.4.96 we had not verified the contents of the said complaint with plaintiff no.1 and plaintiff no.5.....”

27. When this witness was being cross-examined by the

learned Counsel appearing for the Plaintiff, he has admitted that what has been reported by newspaper and what has been mentioned in the complaint at Exhibit PW1/G was not exactly the same but relevant part of the complaint was published. He has also stated that generally they do confirm and they have to confirm the authenticity of the complaint, but in some cases looking at the seriousness, it is published without confirming with the other party, due to lack of sufficient time.

28. Defendant No.2, the Editor of the newspaper, also took up a clear stand in his affidavit by was of examination-in-chief that two complaints which were made by Defendant No.1, one was made to the police station on 31<sup>st</sup> March 1996 while other being dated 4<sup>th</sup> April 1996 and both being referred to in the complaint dated 10<sup>th</sup> April 1996 made to the Director, Vigilance Office, Secretariat, Panaji-Goa formed basis of the news report. The impugned publication had referred to the contents of these two complaints and mostly it was a reproduction of the allegations made in those complaints. Once the publication was referable and was by and large mere reproduction of the complaints made by Defendant No.1 to the police and the enforcement authorities,

Defendant No.2 can hardly be held responsible for the same. In fact, it is a conceded position before us that contents of the publication are normally verified by the newspaper and if the contents are mere reproduction of the complaint with some preface which by itself is not offending, it may not give rise to liability. Thus, the questioned publication was stated to be a reproduction of complaint given to police and Vigilance Authority which per se may not render Defendant No.2 liable for the claim of damages. In fact, the Plaintiff-Appellant has also not made any attempt to decipher the contents of the news report to show that a particular statement was not mentioned in the complaints filed by Defendant No.1. Definite and specific evidence has hardly been led by the Plaintiff. There is clear lack of pleading and evidence on the point as to which specific part of news report amounted to defamation.

29. As far as liability of Defendant No.1 is concerned, it is the settled principle of law that where a complaint is made to a Court or investigating agency empowered under law to investigate *per se* will not justify a claim for damages for defamation unless and until those investigations are concluded and the complaint is found to be false and incorrect. In the present case, the complaints

were made to the police and the Director, Vigilance office with reference to the threats given and alleged links with Dawood Ibrahim. The complaints made to an authority with an object of they being investigated in accordance with law cannot at the stage of investigation be made foundation for an action for defamation.

30. In *Satish Chandra Mullick v Jagat Chandra Dutta and others*, **AIR 1974 CALCUTTA 266**, the Court took the view that information lodged with the police or letters sent to them to facilitate the investigation should be at least a qualified privilege and the language of the privileged communication should not be scrutinized strictly and it is for the Plaintiff to prove that the Defendants were actuated by mala fides in publishing the statements contained in the letter.

31. Similar view was also taken in the case of *Bira Gareri v Dalhin Somaria and others*, **AIR 1962 PATNA 229**, where the Court observed that in India giving information to the police of a cognisable offence with the object of setting the law in motion for the police to investigate and institute the case to be tried in a Court of law is a necessary step to be taken in the conduct of a legal

proceeding and statements made in such an information must be absolutely privileged. The mere fact that a final report was submitted in the case would not make any difference.

32. A Full Bench of the Kerala High Court in the case of *Thekkittil Gopalankutty Nair v Melapurath Sankunni Ezhuthaseah*, **AIR 1971 KERALA 280**, reiterated the view that Petition to Executive Magistrate for taking necessary action against Defendant to maintain peace and a copy thereof simultaneously forwarded to Police Sub-Inspector for taking executive action and the statements therein were absolutely privileged and essentially a step towards the judicial proceeding and was also privileged.

33. A Full Bench of the Allahabad High Court in the case of *Majju and another v Lachman Prasad and another*, 1924 Indian Law Reports (Vol. XLVI) Allahabad Series 671), stated the principle behind the concept of privilege being, persons should be free to take part and recourse to the machinery for administration of criminal justice and public policy demand that people should not be terrorised by the prospect of an action for damages for defamation arising out of reports made by them to the police as

making of a false report was protected and consequences of lodging of a false report were duly provided under Sections 182 and 211 I.P.C.

34. In the case of *Taylor and others v Serious Fraud Office and others*, [1998] 4 All ER 801, the Court elaborated the concept of immunity from Suit observing that it was necessary in the interests of the administration of justice that potential witnesses in criminal proceedings and those investigating a crime or possible crime or assisting a criminal inquiry were protected by absolute immunity from suit, since the public interest required that all persons involved in a criminal investigation should be able to communicate freely without being inhibited by the threat of defamation proceedings.

35. It is necessary now to refer to the evidence of the Plaintiff-Appellant who, as already noticed, had examined himself and other witnesses. The other witnesses made a very generalised statement and did not even specifically aver that the complaints were to their knowledge false or that the event did not occur. They have only referred that and stated that they were shocked and

surprised to read the news item. As already noticed, the news item was a reproduction of the complaints made to the investigating agencies by DW1. According to DW1, incidents had occurred on 31<sup>st</sup> March 1996 and 4<sup>th</sup> April 1996. He admits having made the complaints dated 31<sup>st</sup> March 1996 and 10<sup>th</sup> April 1996 making such averments. They being subject matter of investigating, there is hardly any substantial evidence on record which will bring the case of the Appellant - Plaintiff within the parameters which would justify the claim for damages on account of alleged defamation.

36. In order to show that there were efforts to publish rival version, the newspaper had even published the clarification provided to them by the Plaintiff-Appellant. In other words, whatever clarification the Appellant wanted the Defendants to publish was published and such clarification at the behest of the Plaintiff-Appellant was not without prejudice to their rights. Firstly, there is no mala fides or malice alleged or proved by the Plaintiff-Appellant in accordance with law and, secondly, the subsequent event of publishing of clarification further shows the bona fides of Defendant No.2.

37. For these reasons, we are unable to find any merit in the present Appeal and are of the considered view that the judgment of the learned trial Court does not suffer from any infirmity regarding appreciation of evidence or on the point of law.

38. Appeal dismissed. No order as to costs.

CHIEF JUSTICE

N.A.BRITTO, J