

PRESENTED ON : 05.11.2008
REGISTERED ON : 05.11.2008
DECIDED ON : 26.04.2011
DURATION : Yrs. Ms. D.

IN THE COURT OF 6 TH JT. CIVIL JUDGE SENIOR DIVISION PUNE

AT PUNE.

(Before Smt.V.K. Deshmukh.)

Special Civil Suit No. 1984/2008

Exh.

Mr. Parshuram Babaram Sawant

Age 79 Yrs. Occ:Retired

R/o A-6, Paradise Towers,

Opposite Sapphire Chambers,

Baner Road, Pune 411 045

Through his Constituted Attorney

Mr. Manoj Shankar Wad

Age 45 Yrs. Occ:Legal Practitioner,

R/o H2/401,Success Heritage,

Panchawati, Pashan Pune 411 008

.. **Plaintiff**

Vs.

1. Times Global Broadcasting Co.Ltd.

“Times Now”

Trade House, 1st Floor,

Senapati Bapat Marg, Lower Parel,

Mumbai 400 013.

2. Mr. Arnab Goswami

Editor-in-chief

“Times Now”

Trade House,1st Floor,

Senapati Bapat March,Lower Parel.

Mumbai 400 013.

.. **Defendants**

SUIT FOR DAMAGES AND COMPENSATION

Appearance :

Adv. Shri. Vijay Nahar, Adv. Shri. Gautam Karnik for plaintiff.

Adv. S.N. Yande, Adv. C.V. Wakankar for defendants..

JUDGMENT

(Decided on 26th day of April 2011)

Present suit is filed by the plaintiff for damages and compensation.

2. The plaintiff has stated that, he is the former chairman of the Press Council of India, the former president of the World Association of Press Councils.

The plaintiff has an impeccable reputation amongst the world and in the legal fraternity in particular.

3. The defendant no. 1 is a duly incorporated company in the business of news reporting and broadcasting. It belongs to well known "Times Group". It runs a news channel by the name "Times Now". It is a leading 24 hours English News channel having an extreme viewership in India and abroad. The defendant no. 2 is the employee of defendant no. 1 and is the Editor in chief of the said News Channel and as such responsible for all its publication.

4. The plaintiff has further submitted that sometime in the month of June /July 2008 the infamous provident fund scam of Gaziabad District Court started

surfacing. This scam became sensational as number of judges were involved, comprising higher judiciary. The public at large and the legal fraternity across the world watched the scam. The defendant no. 1 i.e. Times Now Channel started reporting all the developments relating to PF scam. Amongst the judges, allegedly involved was Justice P.K. Samantha(Retd) Judge of the Calcutta High Court. On 10.9.2008, while the News relating to this scam was being telecast by the said channel, a photograph of the plaintiff was flashed as that of Justice P.K. Samantha. The said flashing of photograph created false impression amongst all the viewers in India and abroad that plaintiff was involved in PF Scam which is per se highly defamatory. Though the said channel stopped publishing the photograph of the plaintiff when the mistake was brought to their notice, no corrective or remedial steps to undo the damage caused to the reputation of the plaintiff were taken by the defendants on their own. This tortious act of the defendants has enormously and irreparably damaged the reputation of the plaintiff.

5. The plaintiff by his letter dt. 15.9.2008 calling upon the defendant no. 1 to apologize publicly with damages of Rs. 50 crores. By its reply dt. 25.9.2008 the defendant no. 1 tendered an apology informing that channel had published a corrigendum on 23.9.2008. It was also informed that showing the photograph of the

plaintiff as an accused in PF scam was an unintentional error. But the reply was completely silent about the damages demanded by the plaintiff. Thus the defendant had taken a belated action which can not undo the wrong admittedly committed. The plaintiff therefore by his letter dt. 27.9.2008 communicated to the defendant no. 1 that his apology or corrective action was neither earliest nor sincere. Hence, the plaintiff demanded enhanced compensation of Rs. 100 crores. However, the defendant no. 1 sought a meeting with the plaintiff but failed to communicate him.

6. The plaintiff has stated that having a tremendous potential to the said channel can ruin the reputation of a person. The defendants have failed to exercise such care and caution. The tortious acts commissions of the defendants have caused mental anguish to the plaintiff. The acts have also damaged the reputation. Therefore, the defendant no. 2 being the Editor in chief is liable to compensate the plaintiff. Hence, the plaintiff has claimed Rs. 100 crores towards damages for causing loss and injury to the reputation.

7. The defendants have filed their w.s. at Exh. 16. It is contended that they have not defamed the plaintiff in any manner, in relation to the news telecast on its channel. Showing of the photograph of the plaintiff in place of justice P.K. Samantha was an unintentional and inadvertant error and the defendants at no point

of time had any intention of defaming the plaintiff. The suit is not maintainable as it is filed through a power of attorney holder. As the letter concerning alleged defamation was issued after five days which is an after thought and was issued with ulterior motive. According to the defendants photograph of the plaintiff was only flashed only once for a short duration. It was without malice and without any intention. The defendants have corrected the mistake by withdrawing it from all subsequent news on the channel. Therefore, the act of the defendants was quick and therefore denied carrying any defamation. The defendants have submitted that they have not received any queries from the public. The claim with regard to compensation is baseless and therefore is liable to be dismissed.

8. On rival contentions of the parties following issues have been framed at Exh. 18. I have recorded my findings against each of them for the reasons to follow.

Issues	Findings
(1). Was the telecast per se defamatory of the plaintiff?	.. Yes.
(2). Whether intention or mens rea is essential for the tort of defamation?	.. Yes
(3). Whether the suit is maintainable?	.. Yes.
(4). Does the plaintiff prove the said telecast caused damage to the reputation of the plaintiff?	.. Yes.
(5). Whether the plaintiff is entitled to damages? If yes,	

- to what extent? .. As per final order.
 (6). What order and decree ? .. As per final order.

R e a s o n s

9. **As to point no. 1 :**

Heard counsels. Both the counsels have also supplied written notes of arguments vide Exh.65 and Exh.66

10. Before discussing issues one by one it is pertinent to mention the facts which are no longer in dispute are that, the plaintiff is the retired Judge of the Supreme Court of India. He was also the Chairman of the Press Council of India and the President of World Association of the Press Councils. He also held many posts as Chairman to enquire into matters relating to issues like corruption. The defendants have also admitted about his high esteem in India's Judiciary. At the same time, it is not disputed that the defendant no. 1 is a duly incorporated company in the business of News Reporting and Broadcasting. It runs a news channel by name "Times Now" having extreme viewership in India and abroad. The defendant no. 2 is a employee at defendant no. 1 and is the Editor-in-chief at the said news channel.

11. It is also not disputed that on 10.9.2008 the defendant no. 1 published

and broadcast the photograph of plaintiff as that of justice P.K. Samantha(Retired) of Calcutta High Court who was allegedly involved in Provident Fund scam of Gaziabad District Court. In the light of broadcasting of photo of the plaintiff, according to him, the act of the plaintiff is nothing but a tort for which the plaintiff was defamed in the society and thus prayed for damages to the tune of Rs. 100 Crores.

12. Now to constitute a tort there must be a wrongful act. The word "act" in this context is used in wide sense to include both positive and negative acts i.e. acts and omissions. Every man has a right to have his reputation preserved inviolate. This right of reputation is acknowledged as an inherent personal right of every person. It is a *jus in rem*. So if by the wrongful act is found to be committed, the person who feels it is affecting his reputation, it amounts to defamation for which he becomes entitled for damages. *A defamatory statement is a statement calculated to expose a person to hatred contempt or ridicule or to injure him in his trade, business, profession, calling or office or to cause him to be shunned or avoided in the society.* In an action for defamation the plaintiff must show that the defamatory statement refers to him. The plaintiff has examined PW1, Shrinivasa Kammath R. at Exh. 20,

PW2, Manoj Wad at Exh. 29. The defendant has examined DW1 Vasudev Rao at Exh.45,DW2,Bhadresh Shah at Exh. 52 and DW3, Mr. Shashankh Sharma at Exh. 54 and DW4, Hector Kenneth at Exh 55.

13. **As to issue no. 1 :**

In view of abovesaid admission and to constitute a tort for causing defamation, the plaintiff has pleaded that telecasting his photograph in place of Justice P.K. Samantha is *per se* defamatory. With this, an argument is advanced that as defined in Black Law's dictionary the term *per se* means “*by itself*” or “*standing alone*” or without any reference to additional facts Libel per se means, Libel that is defamatory on its fact. In order to found an action for Libel it must be proved that the statement complained of is false, in writing, defamatory published.

14. Here it is pertinent to note that plaintiff himself did not step into witness box. He did not view the said news in which he photograph was wrongly shown. To be that of Justice P.K. Samantha. It is an admitted fact. But at the same time a fact can not be overlooked that, flashing of photograph is not at all disputed fact. So it is only to prove that the wrongful act of defendant is a libel, for which he is liable. It is further submitted by the defendants that no one who had seen said news was

examined and therefore nobody would say as to what was the duration for which the photograph was shown.

15. The plaintiff has examined PW1, Shrinivas Kamatha at Exh. 20, who served as PA to the Hon. Justice P.B. Sawant i.e. whose photograph has been flashed on News Channel. He is the person who noticed photograph of Justice P.B. Sawant, commenting that the photographs was of the Judge who was involved in provident fund scam. Accordingly, he informed to Justice P.B.Savant, who in turn asked the PW1 to ask the said News Channel to stop broadcasting of photograph. After conducting enquiry PW1, has asked the channel to withdraw the photograph. Therefore, there is no force in the submission of defendant that the plaintiff failed to examine the person who watched the news. His cross examination is not useful as nothing adverse has been stated by PW1 and he found to be stick up to his evidence through out. Therefore, as per the plaintiff telecasting a photograph created a false impression that plaintiff was involved in the said PF scam. However, according to the counsel for defendant has submitted that, it has no force at all when the photograph was itself withdrawn within 15 seconds. In the light of this submission, the counsel for the plaintiff has placed his reliance on the ruling reported in *Bala*

Ram Vs. Sukh Sampat Lal AIR 1975 Raj. 40, wherein it has been observed that, when on the face of them the words used by the defendant clearly must have injured the plaintiff's reputation, they are said to be actionable per se. Another citation which was relied upon is *AIR 1962 Orissa 115 Sadasiba Vs. Bansidhar* in a case of libel, it was not necessary to prove the actual loss of reputation and it was sufficient to establish that the defamatory statement made would damage one's reputation.

16. If evidence of PW1 Shrinivas Kamath is read then, it can be gathered that a photograph of justice P.B. Savant was withdrawn but at the same time it is also stated by him that, he does not know for how long the photograph was flashed. According to the defendants flashing of photograph was unintentional as it was flashed due to similarity in the names of Justice P.B. Savanta and Justice P.K. Samantha. In this regard, it has also been submitted that it is a technology which has creped an error which is hardly noticeable by the viewers. So, in this regard evidence of the witnesses of the defendants is material.

17. DW2, Bhadresh Shah, is working in IT Broadcast Department. He maintains and supports IT system and applications used for airing news content on the News channel. This system is based on automated application which allows

delivery of content including photographs, text etc. At the same time data base of the channel contains numerous photographs, images, videos etc. and the required content is picked up on the basis of the tags associated with each component of the database. These graphics or images associated with any particular story is picked up from the data base and fired on output at the predefined time by the automation application. Therefore, in the present case due to similarity in the names of the plaintiff and similarity in the nature of their description and the tags associated with each component of the database the automated application picked up the plaintiff's photograph instead of Justice P.K. Samantha. His evidence appears to say that the system is based on automated application which allows delivery of content including photographs images, videos etc. on-air. It is not a process where a sudden action was taken to relay photograph. DW4 Hector Kenneth has stated that since the News relating to PF scam was breaking news, by taking a quick search, of photograph of Justice P.K. Samantha was made from existing database and the matching string for Justice P.B. Sawant instead of Justice P.K. Samantha, under the tag judges was inadvertently displayed. As per the evidence of DW2, the story is picked up from data base of a predefined time wherein data is already stored under the tag judges. It is the contention of the plaintiff that photo of Justice P.B. Sawant was flashed

alongwith name, which is denied by the defendant. However, the evidence of witnesses of defendant shows that the channel has already created a data base wherein an information regarding the judges under the tag Judges is stored. An inference can be drawn that, the related database must be with names. Even otherwise how the defendants have displayed the photograph without name as that of plaintiff is not explained, by them. Moreover, the photograph was brought to the notice by PW1 Shrinivas Kamath. Therefore, according to the defendants, the act of the defendants was an error which was corrected as soon as it was brought to the notice. The plaintiff has denied this fact in toto.

18. Admittedly, a photograph was flashed on channel on 10.9.2008. According to the defendants discontinuation of photograph is a corrective and remedial step. In this regard it is a fact that, the plaintiff issued a notice to the defendant on 15.9.2008 vide Exh. 31, calling upon the defendant to tender public apology and also damages of Rs. Fifty Crores within three weeks. To this notice a reply dt. 26.9.2008, vide Exh.32 was given wherein the defendants have stated that, the error which was immediately noticed and not repeated on the channel. At the same time, a corrigendum was published on 23.9.2008 by a text which reads as :-

19. On the 10th September 2008 TIMES NOW erroneously showed Justice

P.B. Sawant as an accused in the PF Scam case, Justice Sawant is a man of high regard and esteem.”

20. Now a dictionary meaning of *corrigendum* is, *a thing to be corrected*.

So the defendants by the abovesaid text have made correction of a showing of photograph of the plaintiff in PF scam case. Further, the channel apologized for a thing which was shown erroneously. From this text, there is nothing to show that the channel has made written apology of Justice P.B. Sawant in person, though it has shown a high regard and esteem towards Justice P.B. Sawant. It is also pertinent to note that the abovesaid corrigendum was scrolled on a channel only after receiving a Notice from Justice P.B.Sawant. The part of Public apology was not performed meaning thereby a corrective step was not taken by the defendants immediately. This fact was brought to the notice of the defendant vide Notice at Exh. 33 dt. 27.9.2008. Suffice it would be to say that, the viewers of the defendant channel was believed at least for two weeks that the plaintiff was accused in P.F. Scam case. As such this belief in the public is nothing but an injury to the reputation of the plaintiff.

21. In the light of this the defendants contention is that, the case of the plaintiff at the most can be said to be based on negligence in publishing a News item as a result of which wrong photograph came to be shown on account of similarity in

the initials and surname. It is further stated that, perhaps the person operating computer, while giving the command to computer wrongly typed the surname of the plaintiff in place of Justice P.K. Samantha and due to such wrong entry in the computer wrong photograph was automatically picked up in the system and it was shown. However, this fact is discussed in the light of evidence of DW2 and DW3. Further, there can not be perhaps when a satisfactory evidence is required to be seen.

22. According to the defendant, due to delay in scrolling of corrigendum it amounts to defamation and therefore plaintiff did not accept apology. However, this case is not made out. In this regard it can be said that, it was necessary to discuss documents i.e. notices issued by either parties as it is the case of the plaintiffs that defendants have failed to take immediate steps i.e. corrective steps, even after bringing to the notice of flashing photograph by PW1, Shrinivas.

23. It is also a fact that, the plaintiff demanded a damages of Rs. 50 crores vide Exh. 31. However, nothing is replied either in affirmative or in denial. It is a principle assailed in law of defamation, as to remedies a suit for damages be brought. Thus, the plaintiff has submitted that, neither a corrective or remedial approaches are observed by the defendant. It is to note that, as the defendant failed to comply the notice vide Exh. 31 in respect of damages, a notice vide Exh. 33 came to be issued

whenever the plaintiff has made an enhanced demand of Rs. 100 crores. This notice is not replied but the defendant himself asked the plaintiff for a meeting with him vide Exh. 34 which was duly considered vide Exh.35. The defendant failed to make with it showing his regrets vide Exh. 36. So it is the defendants who themselves had failed to cope up with the matter to resolve it by taking corrective as well as remedial measures.

24. The defendants have raised an issue circumscribing that to decide the cause for defamation **Mens rea** is an essential ingredient. It is for the reason that the defendants have not flashed photograph of the plaintiff intentionally, but it was unintentional keeping this in mind the plaintiff's counsel has submitted that mens rea is basically essential in Law of Crimes and not law of Torts. Whilst coining the maxim *actus non facit return nisi men sit nea* did not intending application to any civil law. Even if it is assumed that mental element is essential it is settled principle of law that malice is presumed in Libel. It is observed in ruling reported in **AIR 1970 Bom 424 R.K. Karanjia Vs. K.M.D.Thackersey** that if false hood is proved, malice is presumed in defamation. Malice in the popular sense means *spite or ill will*.

25. As against this the submission of defendants counsel is that, in cross examination, the DW1 Mr. Vasudeo Rao has admitted that publication without intention does not amount to tort or defamation. This admission need not be proved as contemplated u/s 58 of Evidence Act. However, a thing which is required to be considered that, if malice is not during the flashing of photograph, then why the same was only withdrawn on the say of PW1 Shrinivas Kamath. Even if it is considered no intention was there, then why there was no public apology except scrolling of corrigendum, which of course does not amount to apology and other aspects are not considered. Therefore, even if it is considered that mens rea is an essential part of tort for defamation, there was no immediate action followed by the defendants. In a ruling cited by the defendants, reported in *AIR 1970 Bom.424 R.K.Karanjia Vs. KMD Thackaresey* wherein it is observed that malice in law which is presumed in every false and defamatory statement, the burden of proving the actual malice is always on the plaintiff. If proving of part of malice is considered, then actual ill will of the defendants does not come into picture. But the defendants have tried to blame technology, which picked up the picture of Justice P.B. Sawant instead of Justice P.K. Samantha. However, techniques are handled only

by a man which was only cured by bringing the fact into notice by PW1.

26. Further point is of maintainability of a suit wherein the defendants have agitated that the power of attorney holder of plaintiff resides at Pune. The defendants are shown residing at Mumbai, plaintiff did not come with a case that he or his power of attorney holder saw the news at Pune . PW1 is also residing at Delhi. Therefore, cause of action did not arise within the territorial jurisdiction of this Court. u/s 19 of CPC, suits for compensation for wrongs to person or movables are to be instituted at the option of the plaintiff either in a court where a wrong was done or in a court defendant carried on business. Therefore, neither the plaintiff nor his power of attorney holder who filed a suit had seen the news item in Pune. For that a reliance has been placed on a ruling reported in *1986 MH.L.J.596 Rekhabei Vs. Dattatraya* . On going through the ruling it appears that Jurisdiction of a court is considered as per code of criminal procedure i.e. where the place of trial could be. In the circumstance, this ruling is not applicable for a present case, as the present suit is filed claiming reliefs under the law of torts. It is rightly brought to the notice of this court by the plaintiff that matter i.e. photograph of plaintiff was published nationwide on news channel "Times Now" including district of Pune. Further, the

plaintiff has for the first issued a notice vide Exh.31 on 15.9.2008 from the residential address at Pune, stating therein a commission of wrongful act. The notice was also duly received on a address of plaintiff, finding a place of corrigendum in a notice. Therefore, they confer jurisdiction on this court to entertain the suit.

27. **As to issue no. 4**

This issue casts a burden on the plaintiff to prove that said telecast damaged to the reputation of the plaintiff. From the discussion in foregoing issues it has been proved that telecast is per se defamatory. It is an admitted fact that the plaintiff is having impeccable reputation across the world and in the legal fraternity in particular being a retired judge of Supreme Court of India. His integrity was never questioned. Therefore, by a ratio laid down in **AIR 1962 Orissa 115, Sadosiba Panda Vs. Bansidhar Sadhu**, proof of actual loss of reputation is not necessary. It is sufficient to establish that the defamatory statement made would damage one's reputation.

28. In order to comprehend whether damage is caused to the reputation of the plaintiff, it is important to consider the interpretation of the word reputation. In **Kiran Bedi and Jinder Singh Vs. Committee of Inquiry AIR 1989 SC 714** it was

held as under

The following words of caution uttered by the Lord of Arjun in Bhagwad Gita with regard to dishonour or loss of reputation may usefully be quoted:

Akirtinchapi Bhutani Kathaishyanti te-avyayam, Sambhavitasya Chakirtir Maranadatirichyate

(Men will recount thy perpetual dishonour and to one highly esteemed dishonour exceed death)

29. In Blackone's Commentary of the Laws of England Vol.1 IV th Edition it has been stated at page 101 that the right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation.

30. It is stated in the definition of Person 70 CJS p., 688 note 66 that legally the term 'person includes not only the physical body and members, but also every bodily sense and personal attribute among which is the reputation a man has acquired. Blackstone in his Commentaries classified and distinguishes those rights which are annexed to the person *jura personaum* and acquired rights in external objects *jura rerum*.

31. The idea expressed is that a man's reputation is a part of himself, as his body and limbs are and reputation is a sort of right to enjoy the good opinion of others, and it is capable of growth and real existence as an arm or leg.

32. Detraction from man's reputation is an inquiry to his personality, and thus an injury to reputation is a personal injury, that is an injury to an absolute personal right.”

33. Thus, it is clear that right to reputation is an absolute personal right. The latin maxim which is a well established principle of laws says “**Ubi Jus Ibi Remedium**” which means 'where there is a right, there exists a remedy.' Since right to reputation is an absolute personal right, the remedy to protect and preserve the same has to exist.

34. Further in R.K.Karanjia Vs.K.M.D.Thackersay(AIR 1970 Bombay 424(V.57 C73) It has been observed that diminution in esteem and extent of mental distress to be considered.

35. On the other hand it has been urged by the defendants that, not a single witness is examined by the plaintiff to prove that on account of telecast, in the mind of even a single person, the image of plaintiff was tarnished or that the plaintiff was

lowered amongst the right thinking members of society. In the light of this argument it is pertinent to note that, PW1 Shrinivas Kamath is the first person who brought to the knowledge of telecasting photograph of Justice P.B. Sawant on News Channel in P.F.scam of Gaziabad District Court. It is also pertinent to note that on his message only the photograph was withdrawn. So if evidence of PW1 is considered, he was shocked to see the photograph of Justice P.B. Sawant in the society and in legal fraternity. Therefore, certainly by showing a photograph, reputation is bound to damage obviously PW2 Manoj Wad is not the person who had actually seen the news, but at first point of time, he filed his affidavit as power of attorney holder and then showed himself as a witness of plaintiff. It is pertinent to note that an order passed below Exh. 27 by this court remained unchallenged. Therefore, evidence of both PW1 and PW2 is believable to the extent of telecasting a photograph of Justice P.B. Sawant, who has a highly esteemed reputation. It appears that, the PW1 was though cross examined at length, nothing helpful had come from it to throw light on the fact that the telecasting was not per se defamatory. In this situation, the deposition of witnesses of the defendants are only helpful or showing iota of evidence to the fact that it was a fault of the record to show that, defendants were even interested to take corrective and remedial action. It shows a falsehood on the

part of the defendants which certainly amounts to malice which is an actionable claim.

36. As in the arguments the defendants themselves have submitted that, they have not made any claim of qualified privilege. Therefore, these terminology are not considered.

37. **As to Issue no. 5**

In view of a finding on issue no. 4, it has been held that, telecast caused damaged to the reputation of the plaintiff. Now from the exchange of notices it is a proved fact that, the defendants failed to utter a word about damage. It is argued on behalf of the defendants that the case of the Plaintiff, at the most can be said to be based on negligence at the hands of the Defendants in publishing the news item as a result of which wrong photograph came to be shown that too, on account of similarities in the initials and surname. Within one hour from the time given photographs was published, it was removed, when the said error came to the notice of the Defendant is also an admitted fact. The point therefore needs to be considered is whether there was any enmity or any reason for the Defendants intentionally or deliberately for showing the photographs of the plaintiff with a view to cause

damage to him or with a view to defame him. Answer is to be given in negative.

38. It is the case tried to be made out by the Plaintiff that claim of damages is not denied. In fact plaintiff has not given any particulars of claim which is mandatory and in the absence of basic pleadings cannot blame the defendant that defendant did not deny the claim of damages.

39. While deciding quantum of damages, according to the plaintiff status and financial ability of the defendant needs to be seen. The said proposition is contrary to the decided case, particularly it is consistently held by the series of judgment by the Hon'ble High Court and Supreme Court that damages should not be punitive and therefore because defendant is financially sound cannot be a ground to justify the claim of the Plaintiff of Rs. 100 Crores, that has been made by the plaintiff. It is tried to be suggested by the plaintiff that claim of Rs. 100 crores made by the plaintiff is not refuted or controverted in the written statement. Attention is drawn to Para no. 11 of Written Statement where claim and quantum tried to be made by the present plaintiff is categorically denied. Therefore, once the defamation is proved the defendants are made liable to pay damages. It is argued that the measure of compensatory damages can be drawn by comparing the facts of the present case to the facts of the case in RK Karnjia & Anr. V.K.M.D. Thackersey

and ors. The plaintiff in the present case is a former judge of the Supreme Court of India and thereafter for six years the Chairman of the Press Council of India. He was also the president of the International Press Council for six years.

40. The newspaper concerned in that case was a paper called Blitz which had weekly publication. The channel Times Now owned by the defendant no. 1 has admittedly international viewers and the highest TRP in India.

41. The defamatory article in Karanjia's case was published in 1960 whereas in the present case, the defamatory news item was telecast on TV in 2008. The awareness of the public at large of the current affairs in the year 1960 can not be compared with the awareness in 2008.

42. 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.

43. 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)**.

44. The amount of damages awarded in respect of vindication and inquiry 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. The facts for awarding damages are elaborated in ruling in First Appeal No. 192 of 2004 decided on 3.11.2009 by the Hon.Bombay High Court at Panaji(Equivalent Citation 2010(1)ALL MR 74. That 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.*

45. The gravity of the allegation can not be overstated as the plaintiff is the former judge of the Supreme Court of India and thereafter for six years the Chairman of the Press Council of India.

46. The defendants have in paragraph 10 of their written statement clearly

admitted that the news channel Times Now is a 24X7 news and current affairs channel which caters to viewers by bringing from where the news can be viewed.

47. Considering the facts stated hereinabove regarding the size and influence of the circulation, the effect of the publication is extremely damaging to the reputation of the plaintiff without the need to prove anything further.

48. The behaviour of the defendants as admitted by the defendants in their letter dt. 25.09.2008 (Annexure 2 at Exh.3) the defamatory news item was telecast on 10.09.2008 and the plaintiff had written the first letter to the Defendants on 15.09.2008 which was admittedly received by the defendants on 18.09.2008. It is further clearly admitted by the defendants that the scroll of apology was circulated only on 23.09.2008. The defendants have claimed that they took the corrective action on their own and not on any prompting of the plaintiff or because of the phone call made by Mr. Kamath. Therefore, clearly the defendants have allowed the defamatory news to remain uncorrected for a period of thirteen days i.e. from 10.9.2008 to 23.09.2008 and in any case for a period of five days after the receipt of the first letter of the plaintiff. This clearly shows that the attitude of the defendants was extremely casual, callous and cavalier. It is clear from the sequence of correspondence between the plaintiff and the defendants that the defendants had no

intention of arriving at a compromise with the plaintiff and all the defendants wanted was the plaintiff to chase the defendants.

49. The plaintiff had instructed his expersonal secretary Mr. Kamath to call the office of the defendant no. 1 which he did on the same day, although it has been denied by the defendants. Thereafter, the plaintiff patiently granted sufficient time, however, no remedial corrective steps were taken. So plaintiff wrote a strong letter on 15.09.2008 in which he demanded a written public apology and compensatory damages of Rs. 50 crores from the defendants. Observing the casual and callous attitude of the defendant no. 2 the plaintiff by his letter dt. 27.09.2008 demanded an enhanced sum of Rs. 100 crores.

50. Under the circumstances, from the evidence documents and citations relied upon by both the parties, the plaintiff is entitled to damage for Rs.100 Crores. Plaintiff has also claimed interest @ 12% p.a. on the damages awarded. However, plaintiff has not shown as to how he is entitled for interest, more so for the interest @12% p.a. Hence, prayer of the plaintiff about the interest can not be granted.

51. I have carefully gone through the rulings relied upon by the plaintiff and defendants. During the course of arguments plaintiff has relied upon the following judgments

Channel Seven Adelaide Pty Ltd. V. Man ock(2007)HCA 60 (13 December 2007, AIR 1962 Orissa 115,AIR 1989 Supreme Court 714, (1998)2 Supreme Court Cases 192, AIR 1957 Supreme Court 857,AIR 1975 Rajasthan 40, Mr. Umnar Abid Khan Vs. Vincy Gonsalves,Mr. Chandrakant Ghorpade,etc. 2010(1)ALL MR 74, AIR 1970 Bombay 424. The defendant has also relied on the rulings reported in AIR 1972 Madras 398, 1969-EQ Bom-041, 1984 EQ SC-0-370,1986 EQ BoM-O-146,1984-EQ BOM-O-211,AIR 1918 Madras 700,AIR 1937 Nagpur 354

52. In view of above discussions and my findings on the aforementioned issues, I hold that the plaintiff is entitled to the damages alongwith the costs of the suit, as prayed for. Hence, I answer the issue accordingly and proceed to pass

following order.

Order

- (1). The suit is decreed with costs, as under.
- (2). The defendants jointly and severally shall pay to the plaintiff Rs.100,00,00,000/-(Rs. Hundred Crores only) as and by way of damages for the tortious acts,omissions and commissions.
- (3). Decree be drawn accordingly.

Date **26.04.2011**

(Smt.V.K. Deshmukh)
6th Jt. Civil Judge,S.D.,Pune

“ I affirm that the contents of this P. D. F . File Judgment are same word for word as per original Judgment ”

Name of Steno : Bavare M.M.

Court Name : V.K. Deshmukh 6th Jt. C. J. S. D. Pune.

Date : 26.04.2011

