

Information Memorandum

Calling out someone with fair comment and justification not defamation

Lodha Developers Limited Vs. Krishnaraj Rao & Ors

Notice Of Motion (L) NO. 152 OF 2019, Order dated 26/04/2019

Ratio:

A Statement is not true merely because it is in print; Not false merely because it is online.

Decision cited :

In the decision at a trial of the suit, *Mitha Rustomji Murzban v Nusserwanji Nowroji Engineer AIR 1941 Bombay 278*, the allegation was that certain female students attending a class would have their future ruined because of one person. The court held that no action lies against a defendant who can prove that the words complained of are a fair and bona fide comment on a matter of public interest. The defendant must show that the subject on which he commented is a matter of public interest, that the statements of fact that he makes are true, and that his comment is fair and bona fide. His criticism must be expressed fairly.

In the decision of single judge in *Shree Maheshwar Hydel Power Corporation Ltd v Chitroopa Palit & Anr AIR 2004 Bom 143*, the matter dealt with an allegation made against a hydroelectric project by certain activists by the Narmada Bachao Andolan. Counsel for the respondent submitted that a mere plea of justification would be sufficient to dislodge any interim injunction application. The case was that the Court is not required at this interim stage to scrutinize the material but only to assess whether it exists, and whether the justification is in fact being pleaded. This was in the context of limited five broad-based allegations for which an injunction was sought. The learned Single Judge granted the injunction referring inter alia to the decision in *Betty Kapadia* and drew a distinction between the law in England and law in India. He pointed out that there, a mere plea of justification is sufficient. However, courts in India are not satisfied with a mere plea. A defendant must show that the statements were bona fide in the public interest, that they have taken reasonable precautions to ascertain the truth, and that the statements were based on sufficient material that can be tested for

**Facts of the case:**

Defendant Krishnaraj is an investigative journalist who has previously written against Lodha criticising the quality of construction in its properties. Between 2011 and 2012, Thard and Jaisingh had purchased two flats on the 31st floor in 'B' wing of Tower 5 of the Dioro building the Appellants project at Wadala, The flats were priced at Rs 2.37 crore and about Rs.3.5 crore. After finding several deficiencies in the construction, Shilpi Thard participated in the public protest before she approached the Defendant to write about it against the Plaintiff, approached the Defendant in September 2018. After inspecting the site, Defendant wrote about the issue in his blog on November 12, 2018, embedding photos and videos of the site. Before the content was posted online the Defendant had sent the entire content in an email to the Plaintiff on November 8, 2018 but received no response. The video went viral wherein a man punching a wall resulted in the cracking of it. The clip was uploaded by Defendant and friend of home owner, Shilpi Thard. On January 17, 2019 Plaintiff filed the defamation suit seeking a gag order against the Defendants.

Interim relief sought by the Plaintiff

Plaintiff had sought interim relief in the case by asking the court for an injunction against the Defendant on the basis of 5 particular statements that he had made. The presiding judge Justice Gautam Patel, individually considered each of the statements and the arguments presented by both parties.

Issue before High Court:

Whether to restrain the Defendant and two flat purchasers from making critical comments against the Plaintiff and whether it comes

veracity.

Statements for injunction relied by the Plaintiff:

The first of these statements which alleged that the planning authority MMRDA had connived with the Developer by granting an Occupation Certificate when the building was not fit for occupation, Court observed that the statement was not defamatory and rejected the injunction sought.

The second statement which alleged fraud in the acquisition of the plot from MMRDA which was originally intended for infrastructure, the court accepted Defendant contention that he would not repeat the statement without the necessary factual basis.

The third statement alleging violations of the National Building Code and the DCR, the court did not accept Plaintiff's contention that it was defamatory per se and refused the request for injunction.

The fourth statement alleging collusion by certain banks are also involved with Lodha regarding the manner in which loans are passed. The court ruled, "On a objective assessment, I find that what Rao has said here is in an opinion, fair comment or argument with some basis in fact. There is no question of an injunction or even of asking if he will volunteer a statement. The statement is not, prima facie, per se defamatory."

In the fifth and final statement alleging that the basement of the project did not have an occupation certificate and neither the fire brigade nor MMRDA has inspected it, the court felt that the Defendant had justification to prima facie support the statement with "contemporaneous documentation" and refused to grant injunction.

under the purview of defamation?

High Court's Verdict:

The High Court made observation as under:

(i) Fair comment to be protected

The Court examined the nature of opinions made by the defendants and observed "Every latitude must be given to opinion and to prejudice, and then we must see whether a fair or reasonable person would make such a comment. That the comment is independent, bold or exaggerated — or even grossly exaggerated — does not make it unfair.

(ii) Merely because statement is made online it is not suspicious

Dealing with the plaintiff's allegations that the defendant journalist had taken recourse to social media and YouTube to make his comments against the builder, the Court stated that a statement is not to be viewed as suspicious only because it is not made in print and is made only online, or using one or more of the available modern communications channels or technologies. That new technology may have made us a noisier society. Further the Court observed that there would be something to be said about the proliferation of what is known as fake news, but that does not mean that everything about the technology is evil or undesirable. It stated that one should not be misled into assuming that every recipient of news or information is completely mindless and will swallow wholeheartedly whatever comes his way. A statement is not true merely because it is in print. It is not false merely because it is online".

(iii) On this premise, the Court declined to pass a take-down order against YouTube with regard to contents posted by Defendant.

Acelegal Analysis :

It is observed in the present case that there is no different standard of law that applies to online journalism or comment. If a statement is made knowing it to be false, without believing it to be true, or in reckless disregard of the truth, the medium in which it is made is entirely irrelevant. The statement is actionable. But a statement is not to be viewed as suspicious only because it is not made in print and is made only online, or using one or more of the available modern communications channels or technologies.

In regards to the plurality of voices it is observed that every online user is bound to the same law and the same standards. Each gender runs the same risks. Voices cannot be silenced because they are online. It demands that we must all learn to be significantly more tolerant of opposing opinions.

On the other hand if there is a greater plurality of voices online this is something to be devoutly wished for and not to be suppressed. If in particular there is online comment and it can be said to be fair comment about any product or offering, then there is no reason as to why it should be forced to be shut down, or why the person who said it should be silenced.

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