CHAPTER 14

# Jurisdiction, Procedure, Limitation, Pleadings and Evidence

## Jurisdiction

IT IS desirable to discuss, at this stage the question of the forum for defamation actions. The Press Commission considered a plea raised by certain newspaper organisations that filing of complaints against newspapers in remote places (for defamation) seriously inconvenienced them, leading to the harassment of newspapers and journalists. The Press Commission, however, did not accept this plea and expressed the view that the present position on the subject should continue. It stated :

> We do not agree with the view that proceedings for defamation against newspapers and periodicals should be initiated in the first instance in a court, civil or criminal, in the State from where the newspaper is published, as it will be discriminatory. It might well be asked why the Press should get a favour not available to other persons. Moreover, it is open to a defendant or accused to move the High Court for transfer of the case to a different court.[1]

However, continuing its consideration of the subject, the Press Commission did recommend an amendment of section 205(1) of the Code of Criminal Procedure, 1973, regarding personal appearance of the accused.

## Procedure—Appearance

Addressing itself to the question of appearance of the accused in a prosecution for defamation, the Press Commission recommended as under :

> [U]nless there is a *prima facie* case of malice, the Magistrate should dispense with personal appearance of the accused. Clause (1) of section 205 of the Criminal Procedure Code, 1973, may be suitably amended, to provide that in criminal complaints for defamation, unless there is a *prima facie* case of malice, the Magistrate shall dispense with the personal attendance of the accused wherever summons is issued and permit him to appear by a pleader; but the Magistrate may not dispense with the personal attendance of the accused, where the accused is an editor, publisher or proprietor of a newspaper or periodical, if he is satisfied that the accused has unreasonably refused to publish, within a reasonable time, a reply of the complaint to the alleged defamatory publication. However, we are not proposing

1. *Report of the Second Press Commission* vol. I, p. 47, para 80 (1982).

any interference with the wide discretion of the Magistrate conferred by section 205 (2) to direct personal appearance of the accused at any subsequent stage of the proceedings.[2]

The above recommendation is worth implementing.

**Limitation**

Another question worth consideration relates to a shortened limitation period for the prosecution of journalists. (This question, of course, is not confined to the sphere of defamation). It is understood that in West Germany the shortened prescription on prosecution provided for press offences constitutes an important improvement in the legal position of journalists.[3] It would be useful to quote from the Hamburg Press Law:

23(1) Time limits for the prosecution of offences—

1. Committed by the publication or distribution of printed works containing offending matter; or

2. Which are otherwise penalised under this law, expire in the case of felonies after one year, and in the case of misdemeanours after six months.

3. Prescription for the prosecution of the infringements named in paragraph 21 is three months.

4. Prescription begins at the publication or distribution of the work. If the work is published or distributed in sections or re-issued, the time begins to run from the publication or distribution of the latest section or edition.[4]

The question whether India should have a similar provision is worth discussion. Under section 468 of the Code of Criminal Procedure, 1973, the limitation period is three years for a prosecution for defamation, in case of all printed works.

**Pleadings**

The actual words used, on which the suit for defamation is based, should be clearly set out in the plaint.[5] The plaint ought to allege not only the publication or set out not only the words but that these words were published or spoken to some named individuals at a particular time and place.[6] Where the words are *per se* or *prima facie* defamatory, only the words need be set out.

2. *Ibid.*
3. Urs Schwarz, *Press Laws for Our Times* 66 (1966, International Press Institute, Zurich).
4. Hamburg Press Law, paragraph 23 (29 January, 1965); see Urs Schwarz, *Id. at* 111.
5. *Brijlal Prasad* v. *Mahant Laldas*, A.I.R. 1940 Nag. 125; following *Nannu Mal* v. *Ram Prasad*, A.I.R. 1926 All. 672; see *Krishnarao* v. *Radhakisan*, A.I.R. 1956 Nag. 264.
6. *Krishnarao* v. *Radhakisan, ibid*; *Nannu Mal* v. *Ram Prasad, ibid.*

Where, however, the defamatory sense is not apparent on the face of the words, the defamatory meaning or (as it is technically known in law) the innuendo must also be set out in clear and specific terms. Where again, the offending words would be defamatory only in the particular context in which they were used, uttered or published, it is necessary also to set out in the plaint, and to state or aver further that this particular context or the circumstances constituting the same were known to the persons to whom the words were published, or, at least that they understood the words in the defamatory sense. In the absence of these necessary averments, the plaint would be liable to be rejected on the ground that it does not disclose any cause of action.[7]

However, the law that the plaintiff in the suit must set out the exact words by the defamer or quote the very words used by him is restricted only to the plaintiff, and cannot be extended to his witnesses. The law sets out the restriction for the plaintiff, merely for the reason that the court may be enabled to decide whether the words used are of a defamatory meaning. Once these words are precisely set down in the plaint or quoted precisely by the plaintiff in the witness-box, that would enable the court to draw out their exact meaning, and for that reason the suit will not fail merely because the witnesses have given only the gist of those words or that some of them do not remember the exact words used by the opposite party,[8]

In a criminal case of oral defamation under section 500 of the Indian Penal Code, it has been held that it is sufficient for the purpose of proving this offence, if the witnesses are agreed in a substantial measure on the words of imputation uttered as it is hardly possible, even for the most honest witnesses to reproduce every such word or expression.[9] All the same, when the question arises as to whether the words alleged to be defamatory as used were intended to harm or had the effect of harming the reputation, the court must be put in possession not only of the words used, but also of the context in which they were used, in order to find the intention and the effect of the words. If the court instead of going into the words and the context, accepts the "impression" (of the words used and of the general conversation), "left on the minds of the witnesses", it will be yielding its own duty to witnesses, with the result that the accused person will have no benefit of the opinion of the court itself[10]

There is no universal rule that accused cannot be convicted of defamation unless actual words are proved. The exact words are not material where a sufficiently clear account of the defamatory remarks are enough to find the

7. *W. Hay* v. *Aswini Kumar*, A.I.R. 1958 Cal. 269.
8. *Purshottam Lal* v. *Prem Shankar*, A.I.R. 1966 All. 377.
9. *Namjundaiah* v. *Thippanna*, A.I.R. 1952 *Mys.* 123; 1952 Cr. L.J. 1933; *Dhruba Charan* v *Dinabandhu*, A.I.R. 1966 Orissa 15.
10. *Bhola Nath* v. *Emperor*, A.I.R. 1929 All. 1; *P. Ramaswami* v. *M. Karunanidhi*, 1970 L.W. (Cr.) 245; *Ramesh Chander* v. *The State*, A.I.R. 1966 Punj. 93.

accused guilty.

**Evidence**

Some questions of evidence may now be dealt with. In the United Kingdom by a statutory provision of 1981, sources of information contained in publications are protected to a limited extent. Section 10 of the Contempt of Courts Act, 1981 reads as under :

> 10. No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of informaiion contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime.

Section 2(1) of the same Act defines the expression "publication" as under :

> 2(1) . . . "publication" includes any speech, writing, broadcast or other communication in whatever form, which is addressed to the public at large or any section of the public.

By section 19 of the same Act, "court" is defined as including any person or body exercising the judicial power of the state.

Even before the passing of the Contempt of Courts Act, 1981, it was settled in the United Kingdom, that in interlocutory proceedings (*i.e.* proceedings preparatory to the hearing of a civil action), an interrogatory could not generally be served requiring a newspaper, when sued for libel, to reveal the source of information. Thus, it has been held[11] that in an action for libel, a newspaper could not be required to reveal its source where fair comment was pleaded as a defence. Again, the Court of Appeal would not allow a sports writer to be required to reveal his source, where "justification" was pleaded in an action for damages for libel.[12]

These judicial decisions on interrogatories in libel actions are now embodied in the Rules of the Supreme Court. The relevant rule is as follows :

> In an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matters of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed.[13]

11. *Lyon* v. *Daily Telegraph*, (1943) 1 K.B. 476: (1943) 2 All E.R. 516 (C.A ).
12. *Lawson* v. *Odhama Press, Ltd.*, (1949) 1 K.B. 129: (1948) 2 All E.R. 717 (C.A.); For extensive references, see Gatley, *Libel and Slander*, para 1216 (1981).
13. 0.82 R. 6, R S C. (Eng ).

In libel suits, courts in the United States have also refused (on First Amendment grounds) to order the disclosure of a defendant's confidential news sources, except in the unusual circumstances in which (*a*) the plaintiff has demonstrated a substantial likelihood that disclosure will lead to persuasive evidence on the issue of liability, and (*b*) alternative sources have been exhausted.

The Eighth Circuit,[14] for example, has held that the reporter of *Life* did not have to reveal the confidential source of allegedly libellous statements about the organized crime connections of a mayor. In the above case the mayor was suing *Life* for libel. The Supreme Court declined to review this case and the decision of the Eighth Circuit was allowed to stand.[15]

Only one federal appellate court in the United States has ordered a libel defendant to disclose the identity of a confidential news source. That case arose out of a Jack Anderson column reporting on the United Mine Workers and its general counsel, Edward Carey.[16] The court emphasised that it was not establishing a general rule applicable to all libel defendants, but rather was limiting its decision to order disclosure to the extraordinary circumstances before it. The court ordered disclosure because the statement alleged to be libellous was based *entirely* on confidential sources and the plaintiff had no way of proving either falsity or recklessness without knowledge of the identity of those sources. The court stressed its agreement with the rule applied by the Eighth Circuit in *Cervantes* case,[17] that a libel defendant may not be constitutionally required to disclose the identity of confidential news sources, except when the information obtained from the source is the sole basis for the allegedly libellous statements. The U.S. Supreme Court never had to consider this case, because the source released Anderson aide Brit Hume from his pledge of confidentiality.

These sophistications need not be borrowed in India.

14. *Cervantes* v. *Time Inc.*, 464 F. 2d 986 (8th Circuit 1972), *Certiorari* denied. 409 U.S. 1122. (1973).

15. See also Howard Simmons and Joseph A Califano, Jr. (ed ), *the Media and the Law* 16 (1976). For other developments, see Martin E. Lindberg, Source Protection in Libel Suits After *Herbert* v. *Londo*, 81 *Columbia Law Rev*, 338-365. (1981)

16. *Carey* v. *Hume*, 492 F. 2d 631 (D.C. Cir. 1974). *Certiorari* dismissed, 417 U.S. 938 (1974).

17. *Cervantes* v. *Time Inc.*, *supra* note 14.