CHAPTER 19

Newspapers and the Criminal Law of Defamation

1. The General Approach

IT IS proposed now to deal with some points of special interest to the press in the context of the liability of editors, printers and publishers of newspapers and journals for defamation as an offence. The general position, of course, is well-accepted, that a newspaper stands in no higher position than an individual in regard to the law of defamation.[1] In fact, many of the important points laid down in the case law wherein editors or publishers of newspapers happened to figure as the accused parties are relevant for citizens generally, and *vice versa*. Still, there is scope for, and utility in, focussing attention on a few points of special interest to newspapers.

Special Responsibility of Editor

Recognising that the press wields a tremendous power over the public mind, courts have sought to emphasise the heavy responsibility of the editor for publishing offending matter. Thus, it has been held[2] that an editor should be most watchful not to publish defamatory attacks upon individuals, unless he first takes reasonable pains to ascertain that there are strong and cogent grounds for believing the information which is sent to him to be true.

The Allahabad High Court[3] has held that the accused must prove that he used "due care and attention". It is certainly not using due care and attention to publish defamatory statements about a person and also to publish his denial and let the public take their choice. The judgment stresses the duty of an editor not to publish clearly defamatory matter without taking steps to have an inquiry made and without sufficient evidence.

Newspapers and Fair Comment

It is in this context that the courts have had occasion to point out that the editor who relies on the defence of fair comment must make proper inquiries as to the truth of the statements made to him. A plea of "fair comment"

1. See *supra* ch. 16.
2. *Mohammad Nazir* v. *Emperor*, A.I.R. 1928 All. 321, 324; *Balasubrahmania* v. *Rajagopalachariar*, A.I.R. 1944 Mad. 484.
3. *Emperor* v. *J.M. Chatterji*, A.I.R. 1933 All. 434, 435. (Papers *Garhwali* and *Indian States Reformer*).

cannot, therefore, be entertained, if there have been misrepresentations or mis-statements of facts which the editor could have discovered if he had made proper inquiries. A Sind case[4] of particular importance to newspapers deals elaborately with the distinction between (*i*) fair comment based on well-known or admitted facts; and (*ii*) the assertion (for the purpose of comment) of unsubstantiated facts. Where comment is made on allegations of facts which do not exist, the very foundation of the plea disappears. In this case, the editor of a Karachi newspaper, *The Alwahid* was convicted of defamation. The libel was against one Abdul Kadir and the allegation was that he had told the shipping companies not to sell tickets to one *Moulvi*. The allegations were found to be totally false. In the circumstances, the ninth exception to section 499 was held not to apply.

This does not, however, mean that the public duty performed by the press has gone totally unnoticed by the court. The courts have often tried to give the benefit of doubt to newspapers. A Madras case[5] which holds that where a newspaper article is capable of two interpretations, one of which would make it defamatory while the other would render it innocent, the article should be interpreted in favour of the accused, and the more sinister interpretation should not be placed upon it.[6]

Good faith of the Editor with reference to the Third Exception

A similar liberal approach is to be found in a Punjab case,[7] relating to an article published in a newspaper pertaining to the conduct of a public servant. It was held that if the evidence reveals that the editor had material to support the allegations made against the public servant, and published it after due care and attention, and expressed his opinion on the conduct of the public servant on a question of public importance, the case falls within the third exception to section 499 of the Indian Penal Code and there was no criminal liability, in the circumstances.

Position of the Press

The privilege of the press is not an absolute one, but is qualified, and is circumscribed within the limits of the provisions enjoined in the statutes. It was so held in a Calcutta case.[8] It also holds that a newspaper publishing a report alleged to be defamatory cannot be brought within section 499 unless

4. *Mir Allahbukkhan* v. *Emperor*, A.I.R. 1929 Sind 90, 91 (reviews English cases).
5. *C. Karunakara Menon* v. *T.M. Nair*, A.I.R. 1914 Mad. 141 (1). (Editor of the *Indian Patriot*, Madras).
6. See *infra* p. 105.
7. *Girdhari Lal* v. *State*, (1969) Cri. L.J. 1318, 1322. (Editor of Urdu weekly *Naya Bharat*, published from Pathankot).
8. *N.J. Nanporia* v. *Brojendra Bhowmick*, 79 C.W.N. 531, 535 (1974-75) (N.C. Talukdar and A.K. De, JJ.).

there is proof of express malice. In that case, a newspaper, in the usual course of reporting, reported under a headline "alleged wagon-breaker shot dead", that one person "alleged to be a wagon breaker and wanted in connection with a number of police cases" was shot at by the police when he and his associates were "alleged to have attacked the police with daggers and swords" and had died. It was held that the publication was guarded enough, mentioning clearly and referring to the sources "as alleged to be" and was published without express malice and, therefore, did not come within the bounds of section 499 of the Indian Penal Code.

With respect, it is difficult to accept the position that every case in which there is absence of express malice is protected. It is submitted that a case must be brought within one or the other of the exceptions to section 499.

II. The Various Persons Engaged in the Production of Newspapers

Liability of Various Persons

At this stage, it may be useful to consider one aspect which is of peculiar importance to the press. In an ordinary libel, the author is generally the single person liable and there does not arise a need to consider the liability of several persons. Newspapers, however, involve the joint efforts of so many persons. In the production and distribution of a newspaper, a number of persons play their part—financial, technical, managerial, intellectual and ministerial. The question how far each of them is liable for actionable or punishable matter published in the newspaper must naturally arise from time to time. Anticipating such questions, the Indian Penal Code deals, in three sections (500, 501 and 502), with the liability of some of them. The Press Act[9] also contains a provision under which there is a presumption that a certain person is the printer or publisher of every portion of every copy of a newspaper conforming to the requirements envisaged by the Act, or (as the case may be) is the editor of 'every portion' of a newspaper carrying his name as editor. The statutory provision in the Press Act is, of course, an omnibus one, embracing all types of civil and criminal liability. The provision is not confined to defamation or any other specific crime or tort. Besides this, the case law shows that attempts are sometimes made to launch criminal prosecutions against certain other persons who are directly or indirectly concerned with the production of newspapers. It seems useful to refer to some of the important legal propositions that emerge out of the provisions of the Indian Penal Code as supplemented by the case law.

The points so emerging relate mostly to the editors and printers. However, before dealing with them, the position on the subject of the liability of a few other persons may be disposed of. Take, first, the director of a company.

9. S. 7, Press and Registration of Books Act, 1867. See *infra* p. 106.

In a Calcutta case,[10] the question arose whether *the director of a company* owning a press in which a Bengali weekly containing defamatory matter was printed was criminally responsible. The High Court held that such a person is neither the maker nor the publisher of the imputation and is not, therefore, liable to prosecution for the defamatory matter so published.

In another case—also from Calcutta[11]—the question arose as to the liability of the owner of a journal which had carried matter alleged to be defamatory. The owner had appointed an editor of the journal and the question fell to be considered as to who was liable for defamatory matter. The propositions laid down by the High Court may be thus stated :

(*a*) The owner of a journal, by appointing an editor for editing it, vests him with the responsibility for running the paper, and also for carrying out his policy in that matter. If, in carrying out that responsibility, the editor does anything illegal, that illegality should not be attributed to the owner merely by virtue of his being the owner of the journal.

(*b*) But liability of the owner of the journal will be attracted, if it can be shown that he was responsible for publication with necessary intent, knowledge or reasonable belief in the matter.

III. The Editor's Liability

Such cases involving the directors or owners of press establishments may be comparatively rare. But the editors of newspapers often figure as accused persons in prosecutions for defamation. It may be mentioned that section 500 of the Indian Penal Code punishes a person who "defames" another. By section 499 of the code, a person who "makes or publishes" a defamatory imputation is said to defame another. An editor has been held to fall under section 500.[12] Thus, where an editor wrote an article that incited communal feelings and made Hindus and Muslims lose faith in the complainant, the editor was held criminally liable for defamation.[13] The libel in this case was found to be gross and scandalous, published maliciously with intent to injure the complainant's reputation. In another case, an editor was held guilty for publishing against the Governor of Orissa an imputation which was untrue and published without verification.[14]

10. *Sunilakhya* v. *H.M. Jadwet*, A.I.R. 1968 Cal. 266, 271, para 11;
11. *Bhagat Singh Akali* v. *Lachman Singh Akali*, A.I.R. 1969 Cal. 296, 298; (1968) Cri. L.J 759, 760, para 6, 7 (following *State of Maharashtra* v. *R.B. Chowdhury*, A.I.R. 1968 S.C. 110).
12. *Gour Chandra* v. *Public Prosecutor*, A.I.R. 1962 Orissa; 197, 202; (Oriya newspaper *Matribhumi* from Cuttack.
13. *Aziz Ahmad* v. *Emperor*, A.I.R. 1928 Lah. 865, 867, (Urdu newspaper *Muballigh*, from Delhi.)
14. *Gour Chandra* v. *Public Prosecutor*, *supra* note 12.

There have also been instances where the editor of a *newspaper himself wrote* the defamatory article. Obviously, in such cases, the editor would be liable personally, not only as one who "published" the offending matter, but also as one who "made" the offending imputation.[15]

Cases where the person whose name appears as editor is temporarily out of station or otherwise absent, may create problems.[16] According to the High Court of Travancore Cochin where the editor on leave entrusts the duties to a responsible person he (the person entrusting) is not criminally liable. These questions, however, also involve scope and interpretation of the Press Act,[17] and belong properly to a study of the provisions of that Act which, incidentally, is not confined to defamatory statements.

Re-publication

It should be noted that he who re-publishes matters heard from others is equally liable. Thus, if a current "rumour" heard from others is published in a newspaper, the editor is responsible, as if he had originally printed it. It is no defence that he heard the rumour from others and believed it to be true.[18] Evidence of the accused's being convinced as to the veracity of rumours is not sufficient to stave off the injurious consequences of an assault on reputation committed by the accused.[19]

IV. The Printer's Liability

So much as regards the liability of editors of newspapers. The liability of the printer of defamatory matter depends primarily on section 501 of the Indian Penal Code, which says "whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment "for a term which, may extend to two years or with fine or with both."

It may be pointed out that section 501 expressly requires the *mens rea* mentioned in the section (*i.e.* the requisite knowledge of, or reason for, believing certain facts). There is an interesting Kerala case[20] illustrating the importance of this requirement pertaining to the requisite mental element. It holds that if the printed matter is plainly defamatory, it is a "good reason" for the printer to know that it is defamatory. But the accused in this case was unable to read Malayalam (the language in which the alleged defamatory matter was printed). It could not, therefore, be said that the accused under-

15. *U. PO. Hnyin* v. *U. Tun Than*, A.I.R. 1940 Rang. 21, 22. (Newspaper *The Sun*, Rangoon)
16. *State* v. *Packiaraj*, A.I.R. 1951 Tra-Coch. 105: 52 Cri. L.J. 623.
17. S. 7, Press and Registration of Books Act, 1867.
18. *Mohammad Nazir* v. *Emperor*, *supra* note 2.
19. *Harbhajan Singh* v. *State of Punjab*, A.I.R. 1961 Punj. 215, 225, 226.
20. *Sankaran* v. *Ramakrishna*, A.I.R. 1960 Ker. 141:

stood the nature of the matter printed.

Where the printer is also the publisher, his liability would arise not only under section 501 of the Indian Penal Code (printer), but also under section 500 (publisher),[21] of the Code.

In regard to the printer and publisher, the statutory presumption in the Press Act[22] would render him *prima facie* liable even though he had entrusted the selection of news items to the editor.[23]

Plea of Want of Knowledge

A Punjab case decides an important point concerning the personal liability of the accused, who was the printer and publisher of an Urdu daily. He took the defence that the item in question had been published without his knowledge, because he had entrusted the selection of the news to the editor. Rejecting this contention, the High Court held that since the accused had filed the declaration under section 5 of the Press and Registration of News Act, 1867 (25 of 1867), *prima facie* he was responsible. The following observations in the judgment are of importance in this context :

> Section 7 of that Act, *inter alia*, provides that the production in any legal proceeding of an attested copy of such declaration shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration that the said person was the printer or publisher of every portion of the newspaper in question. As the accused was the printer and publisher of the Hind Samachar at the relevant time and had filed the declaration to that effect, it shall be presumed that the accused was aware of what was printed and published in the issue of the Hind Samachar.
>
> The declaration is prima facie evidence of the publication by the accused of all the news items in the Hind Samachar and I have not been referred, at the hearing of the appeal, to any cogent material to show that the presumption about the accused being the publisher of the news item in question has been rebutted. The mere fact that, according to the accused, in daily routine he had asked the Editor to select the news item, would not absolve the accused for the publication of the news item in question.[24]

V. The Seller of Defamatory Matter

The sale of defamatory matter is dealt with in section 502 of the Indian Penal Code, which reads as under :

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21 *Ramesh Chander* v. *The State*, A.I.R. 1966 Punj. 93, 95.
22 S 7, Press and Registration of Books Act, 1867.
23 *Ramesh Chander* v. *The State*, *supra* note 21.
24. *Id.* at 96.

> Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine or with both.

It has been held by the Chief Court of Punjab[25] that for a conviction under section 502, while it must be proved that the seller knew the substance sold to contain defamatory matter, it is not necessary also to prove that he knew the matter to be defamatory. The court, in this context, contrasted the more specific wording of section 501, which punishes the printer, and requires that he (the printer) should know, or, have good reason to believe, that the matter printed is defamatory of any person.[26]

It is, no doubt, necessary, in order to substantiate a charge under section 502, to prove that the seller of a printed substance knew its contents, (which imparts proof that he understood the language used) and also to prove that its contents are defamatory; but if the contents are defamatory there is no need to prove further that he knew them to be defamatory. A person who conducts business in the course of which he is liable to sell books or papers or the like, which may contain matter which is injurious to the reputation of another person, and may be, in fact, defamatory as defined in the Indian Penal Code, is bound, by reason of the penalty imposed by this section, if not otherwise, to abstain from selling any book or the like which to his knowledge contains matter which is defamatory. If he sells in ignorance of the contents, he is not guilty of an offence under this section. If he sells, *notwithstanding knowledge of the contents and if the contents are defamatory*, he is guilty.[27]

VI. Quantum of Punishment

In general, courts, while determining the question of quantum of punishment for the offence of defamation by newspapers, have taken a balanced view of the matter. While awarding punishment, attention has been properly paid to all the relevant factors that may aggravate or mitigate the guilt. Amongst the *principal aggravating factors* that have figured in the case law relating to defamation by newspapers may be mentioned the failure to express regret, though called upon to do so by the complainant.[28]

More numerous illustrations of the *mitigating factors* that are taken into account in sentencing for defamation are to be found in the case law. Amongst the principal mitigating factors that have been taken into account while awarding punishment, are the following :

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25. *Sardar Dayal Singh* v. *Queen Empress*, (1891) Punj. Rec. (Cri.) No. 8, p. 19.
26. See *supra* p. 105 as to the printers liability.
27. *Supra* note 25 at 26.
28. *Muhammad Nazir* v. *Emperor*, *supra* note 2 at 326.

(*a*) The fact that the editor of the newspaper is a mere tool in the hands of its proprietor;[29]

(*b*) the fact that the accused had not been shown to be a habitual blackmailer and had tendered a written apology, though a qualified one;[30]

(*c*) the fact that the paper had a poor circulation and was a weekly one;[31]

(*d*) prompt publication of contradiction, coupled with absence of malice or ill-will, want of proof of wanton carelessness.[32]

Even in revision, the High Courts are generally reluctant to enhance the sentence awarded by the lower courts for defamation. A Punjab case[33] illustrates the general approach. The case involved a printer and the publisher of the *Hind Samachar*, an Urdu daily of Jullundur. In 1957, he had published matter which was highly defamatory of the then minister for forests in the state government, containing serious allegations of nepotism. Since the allegations were published without due care and inquiry, the ninth exception to section 499 was held to be inapplicable. It was pointed out that a bare assertion by the accused that he believed the allegation to be true could not exculpate him unless he showed that he had acted with due care and attention. The sessions judge had sentenced the accused to pay a fine of Rs. 300, or in default, to undergo simple imprisonment upto three months and the High Court found the sentence "not so manifestly inadequate as to justify enhancement in revision.[34]

VII. Jurisdiction and the Question of Publication

It is an accepted proposition[35] that publication is necessary to constitute a libel. The proposition is of as much importance in criminal law, as in the law of civil liability. Apart from its relevance to liability, the question of publication may be of relevance in regard to venue also. It is in this context that reference needs to be made to the Allahabad ruling,[36] concerned with criminal liability for a libel published in a newspaper. It holds that the delivery of a copy of a newspaper in a particular area is enough to constitute publication. It is not necessary that the copy should have been actually read by someone residing in that area.

29. *Aziz Ahmad* v. *Emperor*, A.I.R. 1928 Lah. 865, 867.
30. *T.G. Goswami* v. *The State*, A.I.R. 1952 Pepsu 165, 168.
31. *Ibid.*
32. *Thakur Dongar Singh* v. *Krishna Kant*, A.I.R. 1958 M.P. 216, 218. (Newspaper, *Nai Duniya*, from Indore).
33. *Ramesh Chander* v. *The State*, *supra* note 21 at 99.
34. *Ibid.*
35. *Nemichand* v. *Khemrai*, A.I.R. 1973 Raj. 240.
36. *Emperor* v. *Jhabbar Mal*, A.I.R. 1928 All. 222, 228.

VIII. Limitation

A complaint under section 500 of the Indian Penal Code, for defamation will be barred if filed three years after the commission of the offence.[37] Where, in a complaint under section 500, it is alleged that the defamatory matter was contained in a complaint under sections 406 and 420 of the Indian Penal Code, against the person now complaining of libel, the period of limitation for filing a complaint under section 500 of the code, would commence from the date of the complaint under sections 406 and 420 of the code and not from the date the complainant was finally acquitted of offences under sections 406 and 420. Section 469(1) of the Code of Criminal Procedure, 1973 specifically provides that the period of limitation prescribed in section 468, in relation to an offender, shall commence, *inter alia*, on the date of the offence. The exclusion of time for computing the period of limitation could not also be claimed under section 470 (1) of the Code of Criminal Procedure as it could not be said that the complainant was "prosecuting another prosecution."[38]

37. Ss. 469-470, Code of Criminal Procedure, 1973.
38. *Surinder Mohan Vikal* v. *Ascharj Lal Chopra*, A.I.R. 1978 S.C. 986.