

CHAPTER 20

Newspapers and the Civil Law of Defamation

Introduction

RECENT CASES involving newspapers in the context of *civil* liability for defamation are not numerous. In such cases as have been reported, the publication of false, inaccurate or incomplete information has figured. In regard to civil liability for defamation, truth is a complete defence, unlike the position as regards criminal liability, where the accused must show not only that the information published was true, but also that its publication was for the public benefit.¹ Thus, many types of defamatory publication which were motivated by gain or published from malice or to satisfy curiosity, could not probably be justified in criminal law, but would escape civil liability if their truth can be established.

Position of Newspapers and Defences Available to Them

In cases where civil liability does arise (*i.e.*, where the allegations published are false, inaccurate or incomplete), the general principles of liability for defamation apply as much to newspapers as to others. Under these principles, the publication of a statement likely to harm the reputation of another attracts civil liability in damages, subject to specified defences. Truth, as stated above, is a complete defence for the purposes of civil liability. Besides this, the defences of absolute privilege, qualified privilege and fair comment on a matter of public interest are also available. The facts bringing a particular defence into existence have to be proved by the defendant.

Truth

The essential elements of various defences have been already dealt with under each head and it is not necessary to travel the same ground again. While discussing the position of newspapers in regard to truth, it is enough to state a few features of special importance for newspapers. In the first place, mere belief in the truth of an allegation is not enough.² This is so, even if the newspaper has published information collected from usually reliable sources. Even

1. S. 499, 1st exception of the Indian Penal Code. Compare s. 6 of the Libel Act, 1843 (U.K.).

2. See also *supra*, ch. 12.

an express statement (accompanying the publication of defamatory matter) that the report is based upon information derived from reliable sources does not give immunity, if the statement is untrue. This is because of the principle that the re-publication of libel is itself a tort. It is no defence that the libel originated elsewhere.

Secondly, if truth is pleaded as a defence, every material part of the statement must be proved to be true. This is the rule of common law, and presumably it would continue to apply in India, even though it has been partially modified in the United Kingdom by section 5 of the Defamation Act, 1952.

Reports of Judicial Proceedings

As to the situations covered by the defences of absolute privilege and qualified privilege, it is pertinent to mention here one aspect which is of special interest to newspapers. In India for the purpose of civil liability, the publication in a newspaper of a substantially true account of judicial proceedings enjoys only a qualified privilege, and not an absolute privilege, so that malice would take away the privilege. In the United Kingdom by statute³ absolute privilege has been granted to newspaper reports of judicial proceedings. The point, of course, does not have much practical importance. Generally, in regard to newspaper reports of such proceedings, malice does not exist. Nor are there many reported Indian decisions where malice was alleged in this context.

Fair Comment

In the case of newspapers, the defence that becomes most relevant is that of fair comment. There is no tortious liability for publishing a fair comment on a matter of public interest. Originally, the right was recognised in cases of criticism of works of literature and arts.⁴ But, in the middle of the last century, it has undergone great expansion.⁵ What is, and what is not "fair", cannot be defined. In the case of any legal distinction, it is possible to find, on either side of the line of demarcation, cases so similar as to make it appear unjust to attempt to distinguish between them. But usually in such cases the question is not whether to draw the line, but where to draw it.

The word "fair", of course, does not here mean "justified or true". The comment made need not be the only or inevitable conclusion or inference to be drawn from the facts.⁶ So long as it is a *comment*, (and not an allegation of fact), and is relevant to the subject matter commented upon and is honest, it is

3. The Law of Libel Amendment Act, 1888, as expanded by the Defamation Act, 1952.

4. *Dibdin v. Swan*, (1793) 1 Esp. 28 : 170 E.R. 269.

5. *Wason v. Walter*, (1869) L.R. 4 Q.B. 73, 93.

6. *Surajmal v. Horniman*, 20 Bom. L.R. 185, 196 (1918).

protected. It is unnecessary to discuss the decisions in detail, but a few typical Indian cases⁷ show that the defence has been administered liberally by the courts in India.

Fact and Comment

Comment must be based on fact. This implies that the facts alleged must be true. It follows that any allegation of fact imputing an act of misconduct remains unprotected by the defence of fair comment, although, plea of truth can be taken if it can be proved to be true.⁸ This is illustrated by a Calcutta case,⁹ which held that imputing to a person the commission of a criminal offence does not fall within the range of "fair comment".

The comment, of course, must be relevant to the subject matter commented upon.¹⁰ The epithet "fair" embraces the meaning of honest, and also the aspect of relevance. The view expressed must be honest and must be such as can fairly be called criticism.¹¹ Mere honesty of purpose would be of no avail if the words exceed the proper limits.¹²

Public Interest

The comment must relate to matters of public interest. In the very nature of things, there can be no definition of "matter of public interest". Such matters are numerous, and usually grouped under certain heads; but, generally speaking, they are matters which invite public attention, and which are open to public discussion or criticism.¹³ The following instances, collected by Iyer¹⁴ and based mostly on case law would be helpful for understanding the wide scope of "matters of public interest" :

- (i) proceedings of public bodies;
- (ii) proceedings of courts (subject to the law of contempt of court);
- (iii) administration of government departments;
- (iv) administration of public charities;
- (v) administration of public companies;
- (vi) proceedings of public meetings or local authorities;
- (vii) published works;

7. *Nadirshaw v. Pirojshaw*, 15 Bom. L.R. 130 (1913); *Surajmal v. Horniman*, *ibid.*; *Union Benefit Guarantee Co. v. Thakorlal*, A.I.R. 1936 Bom. 114; *Lajpat Rai v. The Englishman*, I.L.R. 36 Cal. 883 (1909); *Subhash Chandra Bose v. R. Knight & Sons* A.I.R. 1929 Cal. 69; *Tushar Kanti Ghose v. Bina Bhowmik*, 57 Cal. W. N. 378 (1952-53).

8. *Nadirshaw v. Pirojshaw*, *id.*, at 169.

9. *Barrow v. Lahiri*, I.L.R. 3 Cal. 495 (1908).

10. See Iyer, *Torts* 246, para 41 (1975).

11. *McQuire v. Western Morning News*, (1903) 2 K.B. 100, 109, 110 (Collins, M.R.).

12. *Union Benefit Guarantee Co. v. Thakorlal*, *supra* note 7 at 124.

13. *Mitha Rustomji v. Nusserwanji*, A.I.R. 1941 Bom. 278, 282.

14. *Supra* note 10 at 245-246, para 40.

- (viii) advertisement of a new company, scheme or charity;
- (ix) controversy carried on in the public press;
- (x) character and qualifications—even the private life—of persons seeking a public office or position.

Of course, there is no definition in the books as to what is a matter of public interest. To quote Lord Denning's observations as to the scope of public interest :

Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on ; or what may happen to them or others ; then it is a matter of public interest on which everyone is entitled to make fair comment.¹⁶

In theory, newspapers are subject to the same rules as other critics, and have no special right or privilege as such. But, in practice, they do enjoy considerable latitude so far as the defence of fair comment is concerned—a fact noted in a perceptive passage by Iyer.¹⁷ This had been also noticed earlier by Lord Haldane in an *obiter dictum*.¹⁸ In theory, the journalist's right to comment on matters of public interest is the same as that of an ordinary citizen, so that writers in newspapers have no special privilege of making unfair imputations or comments.¹⁹ But, in practice, so far as allegations made against public men are concerned, the courts tend to be liberal and they seem to tolerate very strong attacks. "You cannot meet a whirlwind with a zephyr"—an observation of Darling, J.,²⁰ whose approach seems to have been followed in India also.²¹ A Madras case²² on the subject is usually cited on the point. The newspaper involved was the *Madras Times*. It had described the secretary of an association of railway workmen as "a mischievous agitator with overweening egotism misleading the men and fomenting a strike for selfish objects." The criticism was held to be within the limits of fair comment.

Apology

One more point to be noted is, that in India, only the common law defences are recognized, if one keeps aside the immunity conferred by specific constitutional or statutory provisions applicable for special purposes. There are no general defences created by statute as regards civil liability for defamation. For example, it is not a defence that the newspaper, on learning about

15. *Lyle-Samuel v. Odhams Ltd.*, (1920) 1 K.B. 135, 146 (Scrutton, L.J.).

16. *London Artists Ltd. v. Littler*, (1969) 2 All E.R. 193, 198 (C.A.).

17. *Supra* note 10 at 247, para 42.

18. *John Leng v. Langlands*, (1916) 114 L.T. 665, 667, referred to by Iyer, *ibid.*

19. *R.K. Karanjia v. K.M.D. Thackersey*, A.I.R. 1970 Bom. 424.

20. *Crossland v. Farrow Times*, Feb. 7, 1905. See Iyer, *supra* note 10 at 248, f.n. 12.

21. *Narayanan v. Mahendra Singh*, A.I.R. 1957 Nag. 19.

22. *Madras Times Ltd. v. Rogers*, 30 M.L.J. 294.

the fact that the statement is defamatory, subsequently published an apology. Publication of an apology may be a ground in mitigation of damages, but does not confer any immunity from liability as such. The position in the United Kingdom in this regard is somewhat different. By the Libel Act, 1843, the defence of *apology* was introduced for a libel contained in a *public newspaper* or other periodical publication. The scope of this protection was extended to *any mode of publication* by the Defamation Act, 1952, whereunder any person may make an offer of amends if he claims that the alleged defamatory words were published by him innocently. It is needless to repeat that in the absence of such legislation in India, apology is not a defence as such.²³

Criminal and Civil Remedy

The fact that a person has accepted an apology and withdrawn a criminal prosecution for defamation does not bar a civil suit by that person for defamation.²⁴

Damage

Certain points relevant to the assessment of damages for defamation may now be mentioned. Broadly speaking, the amount of damages to be awarded for defamation will depend on—

- (a) the nature of the imputation,
- (b) rank and social position of the parties,
- (c) circumstances of publication,
- (d) language in which the imputation is couched,
- (e) form and manner of publication,
- (f) conduct of the parties before litigation,
- (g) conduct during litigation.

Figures of Damages : Case Law of the Twenties

Of all these circumstances, one that needs special mention in the context of newspapers is the form and manner of publication. Excessive publication may take away a privilege otherwise available. This, of course, is a general principle. What is material right now is the issue whether the fact that the publication is *in a newspaper* is itself an aggravating factor in assessing damages. In theory,²⁵ a libel in a newspaper, especially one with a very large circulation, is ordinarily a greater wrong than a libel published to a few

23. *Narayanan v. Mahendra Singh*, *supra* note 21.

24. *Govinda Charyulu v. Seshagiri Rao*, A.I.R. 1941 Mad. 860; *Narayanan v. Mahendra Singh*, *ibid.*

25. *Madras Times v. Rogers*, *supra* note 22.

persons.²⁶ And, in some of the earlier Indian libel cases, the figures of damages awarded against newspapers seem to be by no means substantial. Some sample figures taken from reported decisions of the twenties of the present century may be mentioned here :

- (a) Rs. 200, in a Bombay case ;²⁷
- (b) Rs. 1,500, in a Calcutta case ;²⁸
- (c) Rs. 1,000, in another Calcutta case ;²⁹
- (d) Rs. 2,000, in another Calcutta case ;³⁰
- (e) Rs. 6,000, in a Madras case. ³¹

Figures of Damages in Later Cases

When one comes to the case law in the thirties to the fifties of the present century, the sums awarded as damages against newspapers become still lower looking to the fall in the value of the rupee. Here are a few cases selected at random :

- (a) Rs. 2,250, awarded in a Lahore case.³² (The High Court described this sum as "substantial").
- (b) Rs. 1,000 in a Nagpur case.³³ (It is not clear if it was a newspaper case). [The libel charged a sub-inspector of police with the rape of a girl in his custody].
- (c) Rs. 100 awarded in a Madras case.³⁴ (The person libelled was a lawyer, and a popular member of society).

At this stage, it would be of interest to refer to a Bombay case that was decided in 1970 and attracted much attention.³⁵ The person libelled by the newspaper was a prominent businessman and industrialist. He claimed Rs. 3,00,000 as damages, but was ultimately awarded Rs. 1,50,000.

Conclusion as to Damages

On the whole, it seems that damages awarded against newspapers in recent years have been even more conservative than the amount awarded in the twenties and the thirties. The case mentioned in the preceding paragraph may be regarded as explained.

26. *Gathercole v. Miall*, (1846) 15 M & W 319, 324 : 153 E.R. 872, 874.

27. *Nadirshaw v. Pirojshaw*, *supra* note 7.

28. *The Englishman v. Lajpat Rai*, 1.L.R. 37 Cal. 760 (1910).

29. *Subhash Chandra Bose v. Knight & Sons*, *supra* note 7.

30. *Irwin v. Reid*, 1.L.R. 48 Cal. 304 (1921).

31. *Subramania v. Hitchcock*, A.I.R. 1925 Mad. 950.

32. *Munshi Ram v. Mela Ram*, A.I.R. 1936 Lah. 23, 36.

33. *Narayanan v. Mahendra Singh*, *supra* note 21.

34. *Narayanan v. Narayana*, A.I.R. 1961 Mad. 254.

35. *R.K. Karanjia v. K.M.D. Thackersey*, *supra* note 19.