

**IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]
CIVIL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Supratim Bhattacharya

SA 7 of 2024

Smti. A

vs.

Sri R

For the Appellant : Mr. KMB Jayapal

For the Respondents: Mrs. Anjili Nag, Sr. Adv
Mr. Ajay Majhi

Judgement Delivered On : 11.04.2025

Supratim Bhattacharya, J.:

1. The present appeal has been preferred by the appellant/defendant/wife being aggrieved by and dissatisfied with the judgment and decree passed by the Ld. Additional District Judge Andaman and Nicobar Islands, Port Blair on 24.02.2020 in Other Appeal No. 30 of 2014.
2. The aforementioned appeal was preferred by Sri R/husband being aggrieved by the judgment passed by the Ld. Joint Civil Judge (Sr. Divn.) at Port Blair on 27.11.2014 in Other Suit 01 of 2009 renumbered as Other Suit 33 of 2012.
3. The appellant herein was the defendant No. 1 in the Trial Court that is in the Other Suit and respondent No.1 in the court of first appeal that is the Other Appeal.

4. Facts of the instant lis

The husband namely R is working as Assistant Engineer (Electrical) in the Port Blair Municipal Council while the defendant No.1/ wife is working as Draughtssman, APWD department under Andaman & Nicobar Administration, Port Blair. The Marriage between Sri R and Smti A took place on 02.03.1994 and as a result of the said wedlock a male child has taken birth on 24.01.1996.

Thereafter the matrimonial tie got gradually slacken and ultimately a Matrimonial Suit being No. 27 of 2005 was instituted by the husband namely R against his wife namely Smti A on the ground of cruelty and desertion. The said matrimonial suit was decreed by the Trial Court against which the wife preferred an appeal being FA 03 of 2008 which was allowed by an Hon'ble Division Bench of this Court by setting aside the judgment and decree of dissolution of marriage passed by the Trial Court. During this period that is after the first appeal in respect of the matrimonial proceeding being allowed, as a result of which there being subsistence of marriage the wife published a notice, in a daily newspaper namely "The Daily Telegram" which is circulated in the said island, on two days that is on 03.12.2008 and 05.12.2008. The said notice which was published on the aforesaid two dates was as follows:

“

NOTICE

Under instruction from my client Smti A, W/o Shri R, it is brought to the notice of general public my client's husband Shri R, S/o Late Line who is presently holding the post of Assistant Engineer under the Port Blair Municipal Council, Port Blair filed a matrimonial suit being MAT Suit No. 27 of 2005 before the Court of District Judge, Port Blair praying for decree of divorce against my said client on the alleged ground of cruelty and desertion. On 14.07.2008 the Ld. District Judge, Port Blair allowed the divorce petition of Shri R thereby dissolving the marriage tie between Rand my said Client Smti A. Challenging the said Judgment / Decree dated 14.07.2008, my said client preferred first appeal being FA No.003 of 2008 before the Hon'ble Division Bench of the High Court at Calcutta, Circuit Bench at Port Blair which ultimately was allowed on 24.11.2008 whereby the Hon'ble Court was pleased to allow the appeal of my said client and thereby set aside the impugned Judgment / Decree and dismissed the suit filed by the said. R before the Ld. District Judge, Port Blair. It has now been learnt from: reliable source by Smit A that her said husband (R) is trying to marry another girl in contrary to law by which both my client and the said R are governed. Such marriage if conducted shall be illegal in the eye of law and the marriage if any conducted shall be not valid and will not confer legal status to the girl.

KMB JAYAPAL

Advocate ”

The husband has preferred the suit for defamation on the basis of the notice which were published on the aforementioned two dates. Against the order of the Hon'ble Division Bench allowing the appeal the husband preferred civil appeal being Civil Appeal No. 3483 of 2011. Ultimately the Hon'ble Apex Court has been pleased not to grant decree of divorce.

The Trial Court had been pleased to dismiss the suit for damages and compensation filed by the husband. The First Appellate Court has been pleased to pass a decree on damages. As a consequence of which present appeal being Second Appeal has been preferred by the wife.

5. Facts before the Trial Court

The husband namely R instituted the lis against his wife namely Smti A and the editor of the Daily newspaper “The Daily Telegram” namely Ashim Poddar for damages and compensation amounting Rs. 50,00,000/- (Rupees Fifty Lakhs), for publishing the defamatory statement against him. The defendants contested the suit by filing their respective written statement. On the basis of the pleadings of the parties the following issues were framed:

- “1. Is the present suit maintainable or not?*
- 2. Is the plaintiff has any cause of action to file this suit?*
- 3. Is the suit barred by law of limitation?*
- 4. Is the suit barred by the Principles of estoppels, waiver and acquiescence?*
- 5. Is the suit bad for non-joinder and misjoinder of necessary parties.*
- 6. Is the plaintiff entitled to get decree as prayed for?*
- 7. To what other relief or reliefs, the plaintiff is entitled?”*

On behalf of the plaintiff/husband evidence was adduced. The witnesses being

PW1- Ramachander,

PW2- Stenly James,

PW3 - Md. Rafi.

The defendant No. 1 that is the wife also adduced evidence who are as follows:

DW1- Smti A herself,

DW2- Naga Maheshwar Rao

DW3-Saswati Ray.

The Trial Court after considering oral and documentary evidences ultimately dismissed the suit on contest without any cost.

6. Facts before the First Appellate Court

Being dissatisfied by the judgement passed by the Trial Court the husband preferred the First Appeal against his wife and the editor of the said daily newspaper. The First Appellate Court ultimately allowed the appeal by passing the following order:

*“The Other Appeal is allowed.
In the result it is accordingly,
ordered
that the Other Appeal being No. 30 of 2014 be and the same is allowed on contest without cost.
The respondent No.1 is hereby directed to pay Rs. 2,00,000/- (Rupees Two Lakhs) towards damages to the appellant herein along with simple interest of 6% per annum from 01.01.2009 till realization of the amount within 90 days.”*

- 7.** Being aggrieved by and dissatisfied with the order passed by the Ld. First Appellate Court the wife namely A has preferred the present appeal. At the time of admission of the present appeal the following substantial questions of law have been framed:

“(i) Whether a publication that the appellant is a legally wedded wife and no lady should contract the marriage with the respondent amounts to stigmatize the reputation and prestige of the respondents before the general public?”

(ii) Whether the Court of Appeal below was justified in quantifying the damages in a suit for libel without there being any material justifying such damages to be awarded against the respondents? ”

8. Ld. Counsel Mr. KMB Jayapal representing the appellant submitted that

i) The appellant wife had only tried to intimate and make aware through the said notice that there was subsistence of marriage between herself and her husband namely Ramachander.

ii) The appellant had only tried to aware everybody that as Ramachander is married with her and there is a subsistence of the marriage so any further marriage by the said Ramachander could only give rise to the second marriage of Ramachander which is not acceptable in the eye of law.

iii) He further submitted that the appellant did not have any intention to defame anybody and she did not have any ill-motive.

iv) He further submitted that the notice was published not to malign anybody.

v) He also submitted that the notice was published for the good of the society.

vi) The Ld. Counsel further submitted that there being no mala fide intention on behalf of the appellant, the appellant is not to be saddled with huge amount of money as damages.

vii) He further submitted that the present appeal be allowed setting aside the judgment passed in the first appeal.

9. The Ld. Counsel Mrs. Anjili Nag and Mr. Ajay Majhi representing the respondent/husband submitted the following:

i) That the appellant has not been able to prove the source of the information on the basis of which notice were published on two dates.

ii) She has further submitted that aspersion of touching the character of an individual certainly amounts to defamation and in this instant lis publishing of notice of marrying for the second time without divorce of the first marriage is not only illegal but also a social stigma, as such mentioning that the respondent No.1 is trying to marry another girl surely tarnishes the image before the public.

iii) In the written statement the name of one Devi has been mentioned but the same has not been corroborated by the wife in her evidence. This shows that the appellant had no knowledge about the facts which have been published.

iv) The Ld. Counsel has further submitted that neither the appellant has been able to establish the fact of attempt of marriage was true nor has been able to establish the source of such information.

v) The Ld. Counsel also submitted that the Respondent No. 1 is a respectable person in the society and is holding the post of Assistant Engineer in Sri Vijaya Puram Municipal Council.

vi) She has further submitted that the sentence “ ... *that her said husband R is trying to marry another girl ...*” itself is

defamatory as the fact is false and the statement is not correct. As the appellant defendant No 1 has been unable to prove the reality of the contents published in the newspaper and also the source of such information, the appellant defendant No.1 is guilty of publishing defamatory article.

vii) The Ld. Counsel has further submitted that the witnesses have deposed that the image of Ramachander has suffered a setback because of the said two notices published.

viii) The ld. Counsel in support of her contention has referred to a judgment published in (1994) 6 SCC 632.

ix) The Ld. Counsel has submitted that the judgment passed by the Ld. First Appellate Court is the correct judgment which is acceptable in the eye of law and prayed for dismissing the present appeal.

10. Discussion with reasons

From the substantial question of law framed and the submission of the Ld. Counsels it is apparent that the moot point for consideration is as to whether the notices dated 03.12.2008 and 05.12.2008 published in the daily newspaper namely "The Daily Telegram" which is circulated in Port Blair amounts to defamation of the husband namely Ramachander, by his wife namely A or not.

According to law of Torts, defamation is injury to the reputation of a person. If a person injures the reputation of another he does so at his own risk, as in the case of an interference with the property.

A man's reputation is his property and in certain cases, more valuable, than other properties.

The essentials of defamation are

- i. The statement must be defamatory;
- ii. The said statement must refer to the plaintiff;
- iii. The statement must be published.

The statement must be defamatory :

Defamatory statement is one which tends to injure the reputation of the plaintiff. Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of society generally, or which tends to make them shun or avoid that person. An imputation which exposes one to disgrace and humiliation, ridicule or contempt is defamatory. Whether a statement is defamatory or not depends upon how the right thinking members of the society are likely to take it. The standard to be applied is that of a right-minded citizen, a man of fair average intelligence and not that of a special class of persons whose values are not shared or approved by the fair minded members of the society generally. If the likely effect of the statement is the injury to the plaintiff's reputation, it is no defence to say that it was not intended to be defamatory. When the statement causes anyone to be regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem it is defamatory. The essence of defamation is injury to a person's character or reputation. In this context the judgment

published in AIR 1997 RAJ 170 is referred to. In Paragraph-18 of the said judgment the following has been stated:

“Mainly, damages can be said to be of two kinds, general and special. Under the Indian Law, general damages will only be presumed when the words are actionable per se but in cases where the words are not actionable per se, the proof of special damages is necessary”

In the present case, the allegation of going to marry for the second time during the subsistence of the first marriage amounts to general damages and is actionable per se.

The statement must refer to the plaintiff: In an action for defamation the plaintiff has to prove that the statement of which he complains, has been referred to him. It is immaterial that the defendant did not intend to defame the plaintiff. If from the statement published it can be reasonably inferred that the statement refers to the plaintiff, the defendant is nevertheless liable.

The statement must be published: Publication means making the defamatory matter known to some person other than the person defamed, and unless that is done, no civil action for defamation lies. Communication to the plaintiff himself is not enough because defamation is injury to the reputation and reputation consists of the estimation in which others hold him and not a man's own opinion of himself.

In this present case the fulcrum are the two notices which are the same, published in the same daily newspaper on two different

dates. On going through the notice it reveals that in the notice it has been stated that 'it has now been learned from reliable source by Smti A that her said husband (Ramachander) is trying to marry another girl in contrary to law ...', reveals that from reliable source the said A has been able to obtain the information that Shri R is trying to marry another girl in contrary to law.

From the evidence on record it reveals that the wife namely A has deposed that on her instruction the Id. Advocate has published notice in "the Daily Telegram" newspaper on 03.12.2008 and 05.12.2008 on the basis of the information which she has gathered from her friends, that the plaintiff /R was trying to contract second marriage during the subsistence of the first marriage with her. She has also stated that it is not a fact that without any basis such publication has been made in the newspaper by her. She has further deposed that it is also not a fact that she has told that the plaintiff/R is having illicit relationship with one lady of Port Blair Municipal council and that the plaintiff possess a bad character. During her examination- in-chief she has time and again asserted the fact that it is not a fact that with a view to humiliate and/or defame the plaintiff, publication has been made in the newspaper by which the reputation of the plaintiff has been tarnished. During her cross-examination she has admitted the fact that she did not prove the allegation of illicit relationship of her husband and has also stated

that she does not know the name of the lady whom her husband was going to marry and she made endeavour to collect particulars of that lady but could not succeed even though she made paper publication. She has also admitted that she has not mentioned the name of the person from whom she was informed that her husband was going to marry. Thus, from the evidence of the wife it transpires that she has neither been able to disclose the name of the informant nor she has been able to name the alleged girl whom her husband is going to marry.

Thus Smti A has neither revealed the source of obtaining the information nor she has been able to name the girl with whom she has implicated her husband (R). Defamation means the action of damaging the good reputation of someone. From the aforementioned discussion it transpires that the notices were referred to the plaintiff that is R and the statements were published in a daily newspaper which is circulated in the Andaman and Nicobar Islands. Through the notices it is clear that the appellant/wife has admitted the fact that the notices were published targeting her husband that is R and from the notices it also transpires that therein allegations were made as regards to second marriage by R in spite of having subsistence of first marriage. This according to a prudent man is nothing but a statement degrading the goodwill or reputation of a person. Witnesses have deposed stating that in their view the

reputation of R has degraded. Thus, there is ample proof of defamation.

As regards to the second substantial question of law, this Court is of the view that damages to reputation through libel is hard to quantify but the other side of the coin is also fact that each and every citizen of this country as per the provision laid down under Article 21 of the Constitution of India has the fundamental right to live with dignity. In this present case, the wife has published a notice not only once but on two dates in a daily newspaper which is circulated in the said island which according to herself has been published without having the knowledge of the informant and in addition in spite of her diligent efforts she has not been able to gather the information as regards to the name of the girl with whom she has entangled her husband that is R. This according to a person of prudent thinking causes emotional distress to the person involving whom such news is circulated having no basis. Law of Torts does not have the power to put a person in incarceration but it has been empowered to award damages. To deter any person from spreading any baseless news defaming another person damages have been incorporated under the Law of Torts. Quantifying such amount of damages acts as a deterrent factor and nothing more than that and it is imposed to keep the society intact.

In this context this Court refers to the judgment passed by the Hon'ble Apex Court in the case between ***Bhim Singh Vs. State of***

Jammu and Kashmir reported in **AIR 1986 SC 494**, wherein Rs. 50,000/- was imposed as damages.

This Court is of the view that imposition of amount of Rs. 1,00,000/- (Rupees One Lakh) as damages upon the appellant A for defaming her husband R is not an exorbitant amount considering the fact that she is a working woman, working as a Draughtsman in the APWD department under Andaman and Nicobar Island, Port Blair.

The respondent No.2 namely Sri Asheem Poddar being the editor of the newspaper "The Daily Telegram", government press, Port Blair has no role to play in the defamation of the said R as because the notices have been published in the daily newspaper subject to payment of cost wherein the editor has no responsibility to check and verify each and every notice. As such, the said respondent is not liable for the defamation of the said R.

Thus, from the discussions made above this Court is of the view that there being defamation of the husband namely R by the wife namely A the impugned order requires certain modification which is to the extent that the **appellant/wife /A has to Pay Rs.1,00,000/- (Rupees One Lakh) to the Respondent/ Husband/R within three (3) months** from this date.

11. The present appeal being No. **S.A. 7 of 2024** is **allowed**.

12. The judgment of the First Appellate Court is modified to the extent as mentioned above.
13. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.
14. Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)