



DEFAMATION AND SUING OF THE COMPANY

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DEFAMATION

Abstract:

As we are living in a corporate world, we need to face every day challenges in this field. So in order to protect the interest and economic stability of the company, the company must show its creditability to its consumers. Defamation is the main aspect which tends to lower the status of the corporate entity. We can easily compare defamation with coronavirus since coronavirus spreads easily likewise the defamed statement also spreads easily and it may affect the huge profits of the company or results in the closing of the company. Hence, the law is there to protect the individual reputation from false defamatory actions. And this paper going to deal with the defamation and suing of company. We also compared the English law and the Indian law about defamation and differentiated libel and slander and also differentiated civil defamation and criminal defamation. Nowadays, defamatory posts in social media became very common and it is one of the biggest problems, we also discussed these issues. There are many contradictory views available which confuse the person or the corporate to sue or getting sued for defamation. This paper concerns about the corporate and individual relationship with defamation. There is a debatable issue that whether the company is liable for criminal

defamation? And if the company is liable for criminal defamation, whether the company is sentenced to jail? We gave a full stop to these issues and gave a clear conclusion¹.

Introduction:

The word defamation is derived from the Latin term 'Diffamare'. It means 'spreading evil report about someone'. Defamation is the false statement by one about another. It may be an oral or written statement. It is a statement that made to injures someone's reputation. It harms the plaintiff's reputation, reduces the respect, regard or confidence of the plaintiff and it induces disparaging, hostile and disagreeable opinion about the plaintiff among the people. It was made to create a bad opinion among the people about a person. In other words, defamation was easily defined as it is the statement that tends to lower a person in the estimation of the right-thinking person or the society. Everyone is entitled to have his reputation and self-esteem. Reputation helps the person to hold in high esteem and honour in the society. That reputation about that person mainly depends on opinions made by others. A good opinion about a person makes his move freely among society. Thus, every person has the right to keep a good reputation about him among others. Defamation will spoil the reputation of a person. So, defamation was considered as an offence in Indian law. It was either a civil wrong or a criminal wrong. Not only individual can sue a case for defamation, but also companies can sue a case for defamation. For a company, reputation is a valuable asset. If the reputation of a company was damaged there was a chance in the closing of the company.

¹ KEYWORDS

1.Civil and criminal defamation 2.Suing against company 3.Online defamation



If a company makes false statements about another company, the offender company is liable for defamation. Thus, the company can sue a case for defamation and can also be liable for defamation. The true statement about a person, harms his reputation is not considered as defamation. The defamation should be a false statement which reduces the reputation of that person. The republication of someone else's defamatory statement is also considered as defamation.

Comparison of English law and Indian law:

English law:

In English law, the action for defamation is divided into Libel and Slander. Slander is the statement that was made by an oral e.g speaking. Libel is the statement that was made in a permanent form by writing, printing and pictures. In a film, not only the photographic part is considered as a libel and also the speech which was synchronized with the photographic art is considered as slander. In **yousoup vs M.G.M pictures Ltd**². In a film, the princess, Natasha was shown as raped by a man, Rasputin. The photographic part which was permanent and seen by the eyes is libel. The speech, heard by ears that were synchronized with the photographic part is slander.

Reasons for the distinction between libel and slander:

1. In criminal law, only libel is considered an offence but the slander is not an offence.
2. In civil law, the libel is actionable per se i.e the plaintiff doesn't have to prove that he was suffered some

damages but the slander is not actionable per se.

Exceptional cases where slander is also actionable per se:

1. Imputation of a criminal offence to the plaintiff
2. Imputation of a contagious or infectious disease to the plaintiff.
3. The imputation that a person is incompetent, dishonest or unfit to the office or profession or trade or business carried on by him.
4. Imputation of unchastity or adultery to any woman or girl

Indian law:

In Indian law, both libel and slander are criminal offences under sec. 499 of IPC. Defamation is either civil or criminal in Indian law. Under Indian law, the remedy for a civil defamation is monetary and for criminal defamation is sentenced to jail or fine or with both. This is highly unusual since defamation is a crime in most of the countries. Civil defamation comes under the Law of Torts, it is not codified as legislation and depends on only judge-made law. Criminal defamation comes under IPC. Sec.499 to 502 of IPC speaks about defamation. In a civil action, the plaintiff needs to prove that the statements injured the person's reputation. Then, it is the duty of the defendant to prove that the statement is true or fair comment or uttered or qualified privileges under parliamentary or judicial proceedings. In a criminal action, the plaintiff needs to prove that the defendant has an evil intention to defame him. If the defendant proved that his statement comes under the ten exceptional cases provided under Sec.499 of IPC, then he was not liable. The freedom of

² Yousoup Vs. .G.M pictures Ltd, 50 T.L.R 581



speech and expression is a fundamental right provided under Art.19(1)(a) of the Indian Constitution and is subject to reasonable restrictions for defamation.

Subramanian Swamy Vs. Union of India³:

In this case, the plaintiff argued the punishment for criminal defamation was against the right to speech and expression. The Supreme Court held that the criminal offence of defamation is a reasonable restriction on the right to speech and expression. So, it was not unconstitutional.

Difference between Libel and Slander:

Libel:

Libel is a false statement in written form or a published defamatory statement. It was found in printed media such as newspaper, magazines, on blogs, social media, websites etc. Libel is both civil and criminal offence. The publisher is also held liable. It is actionable per se i.e., the plaintiff needn't prove that he suffered any damages so as to possess an explanation for the action. The punishment for Libel is fine but the punishment for seditious libel is imprisonment.'

Slander:

Slander is a false statement by spoken words or gesture tending to injure the reputation of another. It is found in television, programmes, varied public gathering places, face-to-face, phone call, voicemail etc. Slander is an only civil wrong and in English law, slander is not an offence. It is actionable per se i.e., the plaintiff has to prove some

special damages. The publisher is not liable. The punishment for slander may vary according to country. General punishment includes civil lawsuit and financial damages.

Difference between civil defamation and criminal defamation:

Civil defamation:

The defamed person can claim damages in the form of monetary compensation. It comes under the Law of Torts. The mala fide (bad) intention of the accused is not necessary under the Law of Torts. The defamation is the publication of a statement which tends to lower a person in the estimation of the right-thinking member of the society.

For civil defamation, the following condition has to be satisfied:

1. The statement must be defamatory
2. The statement must be referred to as the plaintiff
3. The statement must be published

Defences:

1. Justification or truth:

If the said statement is true or justified, then the person is not liable.

2. Fair comment:

The fair comment on matters of publishing interest is a defence for defamation. For the defence, the following conditions should be satisfied.

1. It must be a comment
2. The comment must be fair
3. The matter commented upon must be a matter of public interest

³ Subramanian Swamy Vs. Union of India, 2003 (69) DRJ 202



Criminal defamation:

Sec. 499 to 502 of I.P.C deals with defamation. Under Sec. 500 of I.P.C, the accused person was sent to jail for two years (or) to pay the fine (or) with both. The offence is bailable, non-cognizable and compoundable offence i.e., no police can register a case and start an investigation without the court's permission. The mala fide (bad) intention of the accused is necessary for criminal defamation.

Defences:

The punishment for defamation is provided under Sec.500 of IPC but Sec.499 also provided ten exceptional cases for defamation. If a defamatory statement was made without any bad intention or in good faith, then it is not defamation. The good faith refers to the lack of a desire to fraud any person or contempt of any person. Good faith should have these characteristics:

- Decency
- Being fair
- Being reasonable

The ten exceptional cases provided under Sec.499 of IPC:

1. Imputation of truth with the public good, it is not defamation if a statement is true about that person and published for the public good. If it is not for public good then it is a question of fact.
2. Public conduct of public servants, it is not defamation if a statement made in good faith that conducts a public servant.
3. Conduct of any person touching any public questions, it is not defamation if a statement expressed in good faith that opinion whatever respecting the conduct of any person touching any public question.

4. Publication of report of proceedings of courts, it is not defamation to the public the true report of the proceedings of the court.
5. Merits of the case decided in court (or) conduct of witnesses, it is not defamation that the opinion made in good faith, respecting the merits of the case which decided by the court or the conduct of witnesses or agent.
6. Merits of public performance, it is not defamation that the opinion in good faith respecting the merits of performance made by an author.
7. Censure passed in good faith by a person having lawful authorities over another, it is not defamation in a person having any authority over another, either conferred by law or those by a lawful contract and passed a censure in good faith that conducts that person.
8. Accusation preferred in good faith to the authorized person, it is not defamation if the accusation, in good faith against any person to any of those who have lawful authority over that person
9. Imputation made in good faith by a person for the protection of his (or) other's interest; it is not defamation to make an imputation against another. The imputation was made in good faith for the protection of the interest of other person or the public welfare.
10. Caution intended for good of a person to whom conveyed (or) for the public good, it is not defamation to convey a caution that is in good faith, to one person against another.

A defamatory statement must refer to Plaintiff:

The defamatory statement must refer to the plaintiff. It is not necessary that the plaintiff should have been described by his own name.



It is sufficient if the plaintiff is described by an initial letter of his name or even by a fictitious name, the plaintiff should satisfy the court that he was the person referred to. If a statement refers to a group or a class of people, then no member of that group or class can sue a case unless he can prove that the statement refers to him.

E.g: If a man wrote that, 'All lawyers were liars'. Here the statement refers to a group of people. Hence no particular lawyer could sue him for defamation unless there was something to point to the particular person.

Innuendo:

The word innuendo is derived from a Latin word 'innuere' which means 'to hint' or 'to insinuate'. It is an indirect contempt of an individual. It's generally critical, disparaging or salacious in nature. Innuendo is a statement doesn't refer to the plaintiff directly, the doctrine of innuendo may be pressed into service. The word prima facie innocent are not actionable unless their secondary or latent meaning is proved by the plaintiff. Innuendo is the word which is not defamatory in their ordinary sense, but may nevertheless convey a defamatory meaning owing to the circumstances.

E.g:

'A' made a statement about 'B' that, "B' never stole my watch". It is an innuendo.

Social media and online defamation:

Internet and social media pave the way to interact with people worldwide. It has brought the world as a 'small village' to everyman who has access to it. It provides

enormous information that a common man could not easily access. It has also given new dimensions to the trade, business, and profession. A common man can easily promote his product or creativity via the medium of the internet and social media and easily made the product to sale. Internet and social media play a major role in our day-to-day life. There are many advantages to the internet and social media but at the same time, there are many disadvantages to the internet. The internet and social media have also given a new face to the crime and a new medium to the bad elements to commit the crime. With the use of the internet and social media can some time causing damages to the companies' business due to the message passed on the internet about the companies because it's easily spread than a physical medium.

Swami Ramdev & Anr. Vs. Facebook Inc & Ors⁴:

Swami Ramdev, the plaintiff, is a well-known person and yoga guru. Many defamatory posts were posted about him on Facebook. The court ordered Facebook to remove all defamatory content posted online against Ramdev.

Online defamation against the company:

Not only individuals are affected by online defamation even companies are also affected by these. A company is defamed if any false negative statement about that company was made and that would tend to negatively impact its standing in the business. The defamatory statement about a company will

⁴Swami Ramdev & Anr. Vs. Facebook Inc & Ors (2001) 8 SCC 344



reduce the company's financial status and its reputation among the people.

Tata Sons Ltd. Vs. Green peace International and others⁵:

In this case, the Delhi High Court made the subsequent statement, It is true that in the modern era defamatory material could be communicated broadly and rapidly via other media also. The international distribution of newspapers, syndicated wire services, radio and satellite television broadcasting are some examples. Internet defamation is distinguished from the physical deformation, the internet defamation can easily damage the reputation of individuals and corporations, by the features described above, especially by its interactive nature, its potential for being taken at face value, and its absolute and immediate trending and accessibility. The mode and extent of publication is, therefore, a significant consideration in assessing damages in Internet defamation cases.

Civil defamation against companies by an individual:

Not only a person can sue another person if there was any damage to his reputation. A person can also sue a company if his reputation was damaged by the company. This right is acknowledged as a personal right and is a jus in rem i.e., a right against all persons in the world. There are many cases that a person sues a company for civil defamation and get the remedy in monetary form.

1. Chris Cairns vs Lalit Modi⁶:

⁵ Tata Sons Ltd. Vs. Green peace International and others, 14 (1988) 3 SCC 319

⁶ Chris Cairns Vs. Lalit Modi, [2012] EWHC 756 (QB)

Chris

Cairns, the former New Zealand cricketer. He filed a defamatory case against former IPL chairman, Lalit Modi for posted a defamatory statement in the Twitter. In that Modi referred to Cairns' alleged involvement in match-fixing as the reason for barring him from the IPL auction. So, he filed a case against Modi and the court ordered the defendant to pay \$142,000.

2. Subhas Chandra Bose Vs. R. Knight and Sons and Anr⁷:

The plaintiff Subhas Chandra Bose is a well-known person and also a freedom fighter. The defendant is an editor. He sued the defendant for the defamatory statement made in an article against him. The court held that the defendant was held liable and the plaintiff got the remedy in monetary form.

3. Narayanan Vs. Naryana⁸:

The defendant is an editor and a publisher of a Tamil journal. There was an article in his journal which defames the plaintiff. So, the plaintiff sued a case against the defendant for compensation. The court ordered the defendant to pay Rs.100 as compensation.

Criminal defamation against the company by an individual:

Even though the company is an artificial person, it is a billion-dollar question of whether a company was sentenced to jail for criminal defamation? In the case of companies, imprisonment cannot be imposed even for serious offences mentioned under the IPC. In

⁷ Subhas Chandra Bose Vs. R. Knight and sons and Anr, AIR 1929 Cal 69

⁸ Naryanan Vs. Naryana A .I R. 1961 Mad. 254



many cases, P.V.Pai Vs. R.L.Rinawma⁹, Kusum products Ltd. Vs. S.K.Sinha¹⁰ and Modi industries Industries Ltd. Vs. B.C.Goel¹¹, the court held that it is better to impose only fine upon the companies even in the cases where there is a punishment for imprisonment since a company has no soul and body to imprisonment. The legal difficulty was noticed by the Law Commission and in its 41st Report, the Law Commission suggested an amendment to Sec. 62 of IPC by adding the following sentence, "If the offender is a company or a corporate or an association of individuals, it shall be competent to the court to sentence to only fine instead of a sentence to jail". The parliament has understood the problem and decided to amend in IPC by imposing fine instead of imprisonment where companies are involved in 1972. But the bill was not passed and lapsed. But the judgement of **Standard Chartered Bank and Ors, etc. Vs. Directorate of Enforcement and Ors**¹², make it clear. In this case, the Supreme Court held that the legal position, as it obtains today is that prosecution can be initiated against a Company and fine can be imposed where the imprisonment is given as mandatory punishment with fine. But if the custodial sentence is the only punishment prescribed for the offence, the Company cannot be prosecuted for that offence.

Sunilakhya Chowdhury v. H.M.J.H. Jadwet¹³:

⁹P.V.Pai Vs. R.L.Rinawma, ILR 1993 KAR 709

¹⁰ Kusum products Ltd. Vs. S.K.Sinha, 1980 126 ITR 804 Cal

¹¹ Modi industries Industries Ltd. Vs. B.C.Goel, 1983 144 ITR 496 All

¹² Chartered Bank and Ors, etc. Vs. Directorate of Enforcement and Ors, (2006) 4 SCC 278

A Juristic person or an artificial person or a Juristic entity is incapable of having any mind or soul and hence any state of mind cannot arise. It was, therefore, concluded such an artificial person cannot commit an offence of defamation of which malice is one among the essential ingredients though the managing directors and other officers of that company may be liable for committing such an offence in certain circumstances.

Anath Bandhu v. Corporation of Calcutta¹⁴:

A company cannot be prosecuted for an offence since mens rea is an important ingredient. It may be possible for a company to prosecute for an offence which does not require mens rea or a particular state of mind to be one of the important ingredients of the offence. But, If the statute requires that mens rea is an important ingredient of the offence, then a company can't be prosecuted for such an offence as such company is incapable of getting a mind or intention or mens rea.

Kalpnaath Rai v. State¹⁵:

The Hon'ble Supreme Court has laid down that unless the statute excludes mens rea in the commission of an offence, the same must be treated as an essential ingredient of the criminal act to become punishable. A company cannot be said to have requisite mens rea to harbour a terrorist if any terrorist was allowed to occupy the room in its hotel.

¹³ Sunilakhya Chowdhury v. H.M.J.H. Jadwet, AIR 1968 CAL 266

¹⁴ Anath Bandhu v. Corporation of Calcutta, AIR 1952 CAL 759

¹⁵ Kalpnaath Rai v. State, (1997) 8 SCC 732



The doctrine of attribution:

For many years, the companies in India were not held liable for a criminal offence because malice is the essential ingredient for committing a criminal offence and the inability to award imprisonment to the company. But also a company can be convicted of offences involving mens rea by applying the 'doctrine of attribution'. By applying this doctrine, the company also be held liable for a criminal offence. The doctrine of attribution says that the directors and managers were held liable for the offence committed by the company. Thus, the criminal intention of the company's directors or officials can make the company be liable.

Sunil Bharti Mittal Vs. Central Bureau of Investigation¹⁶:

In this case, the question arises whether the officials of the company can be held responsible for acts of the company? The court held that an individual who has perpetrated the commission of an offence on behalf of the company was held liable, along with the company. It is not mean that the person who occupies the position of a chairman or managing director was only liable for the offence committed by the company. It is not necessary only a director of a company is in charge of every day. A person who fulfils the 'legal requirement' of being a person is responsible to the company or the person in charge of and responsible at the time of the offence, liable for the offence along with the company. Unless the person

¹⁶ Sunil Bharti Mittal Vs. Central Bureau of Investigation, AIR 2015 SC 923

¹⁷ Indian Express newspaper Vs. Jagmohan Mundhara and others, AIR 1985 Bom 229

proves that the offence was committed without his knowledge or hat he makes an effort to stop such an offence. If it was proved that the offence was committed with the consent of the director, manager, secretary or any other official of the company may also be held liable.

Can companies sue for defamation?

A company can also sue for defamation against an individual or any other companies when a false statement was made about their business or reputations. Sec. 499 of IPC, explanation 2 gives the right to companies to sue defamation. Generally, company defamation suits must have three requirements

- The statement must be false.
- It must come to the knowledge of a third person in written or verbal form.
- It must cause the company damage.

Indian Express newspaper Vs. Jagmohan Mundhara and others¹⁷:

The defendant made a film called 'Kamla' that contempt an article which was published in Indian Express newspaper. The court held that innuendo is made clear and the respondent was held liable.

Dabur India Ltd. Vs. Emami Ltd.¹⁸:

The plaintiff is the manufacturer of pharmaceutical products and ayurvedic products in the name of 'Dabur'. The defendant also manufactures many ayurvedic products. The advertisement of the defendant

¹⁸ Dabur India Ltd. Vs. Emami Ltd., 2004 (29) PTC 1 (Del)



in television, contempt the plaintiff's product. The court passed an injunction restraining the defendant, its agents and distributors on its behalf from telecasting the advertisement.

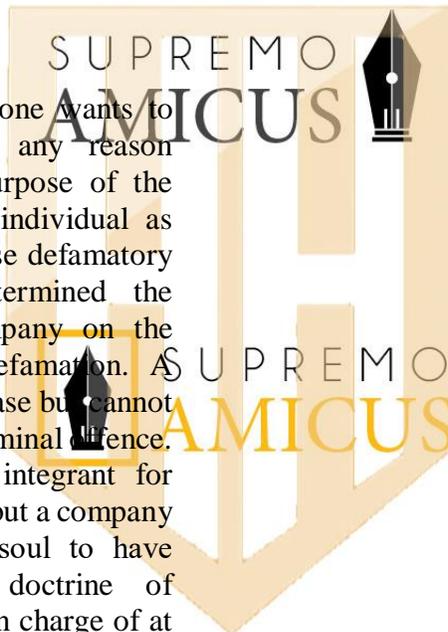
Hindustan Unilever Ltd. Vs. Reckitt Benckiser (India) Ltd.¹⁹:

The plaintiff manufactures a soap called 'Lifebuoy'. The defendant also manufactures a soap called 'Dettol'. The defendant made an advertisement that stated, 'Dettol is described as 10 times more effective than Lifebuoy'. The court passed an injunction to remove that advertisement.

awarded by the court i.e., the company is only liable to pay the fine.

Conclusion:

In the world, no one wants to bend their head down for any reason including defamation. The purpose of the defamation is to protect the individual as same as a company from a false defamatory action. And this paper determined the criminal liability of the company on the ongoing issue of criminal defamation. A company can sue defamation case but cannot send to imprisonment for its criminal offence. Still, malice is an essential integrant for committing a criminal offence but a company couldn't have any mind or soul to have malice. By applying the doctrine of attribution, the person who is in charge of at the time of the offence committed, held liable along with the company and the person will be sentenced to jail. Unless he proved that the offence was committed without his knowledge or he takes steps to stop the offence. If cannot find any individual person as liable then monetary benefits can be



¹⁹ Hindustan Unilever Ltd. Vs. Reckitt Benckiser (India) Ltd, 2014 (57) PTC 78 (Cal)