

Delhi District Court

Smc Pneumatics (India) Pvt. Ltd vs Shri Jogesh Kwatra on 12 February, 2014

Author: Sh. D.K. Malhotra

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IN THE COURT OF SHRI D.K.MALHOTRA; ADDL. DISTRICT JUDGE; CENTRAL-14; DELHI.

Original Suit No. 1279 of 2001 New Suit No.
65/14

1.

SMC Pneumatics (India) Pvt. Ltd.

2. Shri R.K.Malhotra, S/o Sh. D.R.Malhotra, Managing Director, SMC Pneumatics (India) Pvt. Ltd.

Both C/o 1/9501 Lane No.6, Weat Rohtas Nagar, Shahdra, DELHI-110032.

.....Plaintiffs Vs.

Shri Jogesh Kwatra S/o Shri B.R.Kwatra M-33/B, Malviya Nagar, New DELHI-110017.

.....Defendants Date of Institution: 22.06.2001 Date of Decision: 12.02.2014 SUIT FOR PERPETUAL INJUNCTION JUDGMENT;

1 This is the suit for perpetual injunction filed by the plaintiff NO.1 & 2 against the defendant.

2 Plaintiff No. 1 company has filed a suit alongwith plaintiff NO.2 its Managing Director giving the history of the company and the business of the company. It is the case of the plaintiff that during the last one year from the date of filing of plaint, plaintiff has been receiving various emails, received from different email addresses, have purportedly been sent by the same person. The choronological list of emails sent to plaintiff NO.2 on different dates as per Annexure A.

S. No.	Date of Email	Sender Name & Address
1.	26.3.2000	Kamikura Tani <kamikura_tani@hotmail.com>
2.	3.4.2000	Kamikura Tani <kamikura_tani@hotmail.com>
3.	9.4.2000	Kamikura Tani <kamikura_tani@hotmail.com>
4.	23.4.2000	Employee <smcemployee@indiatimes.com>
5.	7.5.2000	CHODUGA-NAHI <choduga_nahi@indiatimes.com>
6.	8.5.2000	Employee <smcemployee@indiaimes.com>
7.	30.5.2000	Lodra chut <chutlodra@indiatimes.com>
8.	13.9.2000	Sidana Chutia<truly_yoursin@yahoo.com>
9.	14.9.2000	Sidana Chutia<truly_yoursin@yahoo.com>
10.	19.10.2000	Deftry Juty <empsmc@yahoo.com>
11.	24.12.2000	Erby Uyge <smcemp@yahoo.com>
12.	2.4.2001	Erby Uyge <smcemp@yahoo.com>

A perusal of the said emails show that they are distinctly obscene, vulgar, filthy, abusive, intimidating, embarrassing, humiliating and defamatory. A complaint was made regarding the obscene email dt. 7.5.2000 and 30.5.2000 on checking these emails Indiatimes.com blocked the email addresses of the person who had sent the emails in question but looking into the nature of emails being received which are defamatory plaintiff took the help of a private computer expert and could trace one of the email dt. 2.4.2001. Investigations further revealed that the concerned email had been originated from Dishnet Cybercafe, Connought Circus, New Delhi and as per the report of the expert and during enquiries by the expert after seeing the group photograph having the photograph of defendant. The defendant was identified by the Cybercafe Attendant that he was the same person who has send the email in question. It is submitted that plaintiff NO.2 is a very respectable and educated man and he has arisen the ladder of his professional carrier because of his ability qualifications and hardwork and was finally appointed as Managing Director and his tenure has brought laurel to the company of which plaintiff. NO.2 WAS made Managing Director. He is income tax payee and honest citizen of India. The emails resulted into defamation of the plaintiff in the eyes of people who hold him in high esteem. Primarily the area of circulation involves the higher officials of the different subsidiaries of SMC worldwide located in different countries and they have been sent through sales department specially to Australia to defame him among the person where he was known as he has worked there and from there forwarded to the Managing Director. The aim and clear intention and mens-rea to defame the plaintiffs especially the plaintiff NO.2 to malign his impeccable reputation in the eyes of these very important people who hold him in high regard as these emails have been sent to group companies Managing Directors only through the Group Companies Managing Directors and these have been sent to poison the mind of all those who take decisions on behalf of the company international subsidiaries of same companies in meetings once in year or once by yearly being the core members of international body which take all vital decisions of plaintiff NO.1 and its interest worldwide. All these people are deliberately and malafidely sent copies of email to poison their mind and to destroy professional career opportunities and to destabilize the plaintiff. Plaintiff has come to acquire copy of all these emails since these have been forwarded to the plaintiff by the receiver mentioned above. All these emails have been generated from defendant who despite effort to see the reason did not improve. Regarding the same a police complaint was filed on 11.5.2001 WHICH is pending proceeding under the criminal jurisdiction to which it pertains. On 11.5.2001 the plaintiff terminated the services of defendant on account of his act and violation of his appointment letter and on account of sending the emails as mentioned above and thereafter he become very vengeful and trying to settle scores by sending emails to harm the reputation of plaintiff no. 1 and 2 and to defame them besides the other consequences. Hence present suit has been filed seeking perpetual injunction against the defendant.

3 Written statement was filed in which it was submitted that the plaintiffs have not come to this court with clean hands and that the allegations levelled by the plaintiffs against the defendant are false and fabricated as is evident from the fact that the plaintiffs have miserably failed to furnish the server from which each of the emails originated, the time of origin of each of the alleged emails, the details of the Internet connection of the author of emails such as the user name, the telephone number used to connect to the originating server and the telephone number dialed for connecting to

the originating server or in case the author sender of emails has used a leased line, then complete details of such leased line. The path followed by each of the emails from the originating sewer to the destinations service, the information provided by the plaintiff regarding three of the emails is incomplete. In the absence of all above, pertaining to the source of alleged emails, there is nothing to connect the defendant with the alleged emails. The allegations levelled by the plaintiffs are categorically denied by the defendant and prayed for the dismissal of the present suit.

4 Replication was filed by the plaintiffs wherein they rejected the allegations of the written statement made by the defendant and reiterated and reaffirmed the contents of the plaint.

5 On the basis of the pleadings of the parties, issues were framed on 10.2.2004 and corrected on 24.4.2008 because what was corrected was the clerical mistake and issues remained the same which are as under:

Issues:

1. Whether the plaintiffs are entitled to relief of perpetual injunctions as prayed in the prayer clause of the plaint ? OPP
2. Whether the plaintiffs have not come t the court with clean hands ? OPD
3. Relief.

6 In support of its case, plaintiff examined six witnesses:

PW1 is Mrs. Anju Sharma, she is the secretary to plaintiff NO.2 and employee of plaintiff NO.1.

PW2 is Sh. R.K.Malhotra, plaintiff NO.2 himself. He tendered his evidence by way of affidavit Ex.P1.

PW3 is Sh.D.C.Sidana, is Director Operations in the plaintiff NO.1 company and PW4 is Shk. Rajesh Channa, Dy. Divisional Manager (Accounts & Admn) in the plaintiff NO.1 company, they both are also the employee of plaintiff company and tendered their evidence by way of affidavits.

PW5 is Sh. Roopendra Kumar, he is the Computer expert. He tendered his evidence by way of affidavit and proved his report as Ex.PW5/1, Ex.PW5/2 and Ex.PW5/3.

PW6 is Sh. V.C.Mishra, Forensic Expert/Handwriting Expert, he also tendered his evidence by way of affidavit. Thereafter PE was closed.

Defendant in support of its defence examined himself as DW1. He tendered his evidence by way of affidavit. Thereafter DW was also closed. 7 I have heard the arguments of both counsels besides going through the record carefully. My findings are as under;-

8 Firstly the issue relating to grant of injunction is to be decided on two points.

Finding on Issue NO.2 :

9 It is submitted that since even if the plaintiff has a legal right and has been in a position to establish on record the cause of action by producing the facts alleging and producing the facts giving rise to violation of his legal right but if he has not come to the court with clean hands he is not entitled to injunction so the injunction remedy has become the statutory remedy under the Specific Relief Act but still a remedy which cannot be availed even if the legal right and the cause of action has been proved if the party claiming the same is guilty of not coming to the court with clean hands. Pleading to that effect are not there except a general objection that the plaintiffs has not come to the court with clean hands. Mr. Manish Gandhi, Adv. presently representing the defendant has very fairly conceded that there is no specific pleadings as to why the defendant is saying that the plaintiff has not come to the court with clean hands except the general objection based on factors which will determine whether the plaintiff has any cause of action or not. The only reason it can be said to be having the interse battle between the corporate manager and ex-employee to teach him the lesson but no such allegations are there though orally stated on record. Hence this issue is decided as having become infructus.

Finding on Issue NO.1.

10 Onus of proving of this issue was on the plaintiff. NO.1 and 2 WHO examined many witnesses to prove the existence of cause of action. As far as the legal right of a person is concerned, it cannot be dependent upon the status of a person specially when no damages are claimed for. Status of a person in a suit for defamation will determine the quantum of damages but as far as the existence of right is concerned, status of person is immaterial if the damages are not asked for, since it may help to determine the quantum of damages. As far as existence of legal right is concerned it is available to one and all to live a life of honorable person and no other person, irrespective of his relations or otherwise has the right to defame others either by raising allegations which are slanderous or defamatory per-se before the facts relating to cause of action pertaining to defamation are enumerated, it is required that the defamatory facts allegations be circulated and brought to the public domain.

11 It is a remedy against defamation in public by circulation either through electronic media, print media or other printed material or otherwise. Whatever material has been placed on record by the plaintiff through the witnesses are emails and there is no dispute about it of various dates of which only one attempt was made by the plaintiff to trace through a private computer expert, which accounting to the report of private expert the email could be connected to a Cybercafe in which the identity of a Cybercafe was used for sending the email and not of the person sending the email. Somehow they are trying to say that one attendant of Cyber Cafe Mr. Rajiv Pandey identified the defendant from a group photograph of some social function, that is, picnic in this case that was with the plaintiffs but obviously admittedly that photograph has not been placed on record.

12 Another discrepancy pointed out by the counsel for the defendant is that as per the report, the entry which is purported to have been inquired into pertains to the entry at 8.25 AM whereas as per the report the email has been sent at 8.25 AM but in reply to the information supplied to the

defendant by the plaintiff in response to the application Under Order 6 rule 5 of CPC time of the sending of said email has been mentioned as 7.19 PM having a gap of around 10-11 hours. Very fairly it has been admitted by the counsel for plaintiff that all the emails except the two which were received directly by the plaintiff no. 2 are forwarded emails. Email addresses of those two emails could not be located but in their complaint that site was blocked by the server Indiatimes, but no information was sought or provided as to the sender. All other emails were received from the person purported to have been received from the email address of a person who has received them, need not necessarily be as pointed out by counsel for defendant Sh. Manish Gandhi, Adv. being the original unedited version of the email and no attempt was made on the part of the plaintiff to trace the original of the same. Very fairly the counsel for plaintiff Sh. Sameer Vashist, Adv. Counsel for plaintiffs has conceded this. His argument is not that he is claiming these emails have been traced to the defendant ID but his argument is that since the contents of the emails were such that shows the grieving party to the defendant who was raising all these issues orally with the management especially with plaintiff NO.2. It is alleged that he declined a social offer of marriage by the Managing Director which he could not accept though he has not come in the witness box to make statement on oath. According to him that not accepting that proposal landed him in trouble. It is not his case that raising of those issues brought him in the trouble but it is his case that all these issues which he raised were raked up to dismissal on these allegations that he is sending the emails veracity of which and connectivity of same to the defendant is only a inference admittedly by the plaintiff if regarding the circumstances of the case.

Further the Counsel for plaintiff has argued that after the interim injunction was passed such email stopped appearing except once so naturally according to him because he was the person who was doing and he was enjoined so he stopped it so that the consequences for not obeying the court direction may not fall on him. The witness produced by the plaintiffs are narrating what the defendant is admitting except that these emails could not be connected to the defendant directly or indirectly by leading cogent evidence and the counsel for the plaintiffs want to rely upon the circumstances of the case and not the circumstantial evidence including the incorporation of these facts in the letter of termination for his so-called activities of sending defamatory and mischievous emails and it is contended by Sh. Sameer Vashist, Adv. Counsel for plaintiffs that since no challenge has been raised against this dismissal, it be presumed that the reasons mentioned for dismissal are the reasons which were genuine, though particulars of same has not been mentioned in the letter itself and these are only the general observations in the letter of termination of service of defendant, but since the termination was not challenged the reason for termination as mentioned in the termination letter stood accepted by the defendant.

13 I am constrained to say this may or may not be necessary be the case in the absence of any circumstances and facts to the contrary brought before the court because the allegations are too general in nature and the defendant was in a private service, there generally rule of hire and fire are followed and it may be conscious or unconscious decision to follow on the part of defendant because it would have resulted in his position been in a hiatus, neither here nor there, he would not have been in a position to take alternative job or his circumstances may have not justified to take on the employer who are no more willing to accept the defendant as this employee for the reasons with which he may not agree or may agree, and a saying i.e. 'Boss is always right', point challenging the

boss opinion when it will lead to nowhere he says 'ok', since unlike in government service, in pvt. Service specially at the level of employment at which he was that is not statutory protected workman within the definition of workman and in the Managerial cadre where not only the company is private company keep the person according to whims and wishes, even the employees keep on shifting employment depending upon the avenues available to them. So it is both ways not considered appropriate to remain dug at the same point, Mobility is what gives money to the person which he requires to feed him and his family to take care of his day to day needs. The inference Sh. Sameer Vashist, Adv. Counsel for plaintiffs wants me to draw under the circumstances though the law presume that dismissal has become final if not challenged he is not saying reinstate me, he is not challenging dismissal on any point because he may want to move on and perhaps he has not expected that his concern to move on may be one side of affair only and he may have to be pegged down to that situation which existed when he was removed from service by way of termination letter proved on record, giving certain reasons which are too general, want of particulars and in the nature of value judgment on the part of the management i.e. employer. His most difficult innocuous act for his superior to his employees want to raise his voice but in most innocuous act of the employee may be felt as the most severe act of indiscipline on the part of the employer, it depends upon the person who is seeing it and whose opinion matters, and generally it is the opinion of the employer which matters and not that of the employee. You cannot fight with your employer, having money at his disposal which has no limit because, i.e the public money of the company which they have collected in the company or in the private limited company but he has to spend money from his own pocket after he has been shown the door and having nothing to tent for no income to support for day to day needs and if he or she having a family to take care of the every day needs. To be fair to the counsel for the plaintiff Sh. Sameer Vashist, Adv. who has joined the proceedings of this case at a subsequent stage there was very little which could have done under the circumstances on the basis of available material on record but to raise a argument which is generally used in criminal proceedings since the civil cases are to be disposed of on balance of probabilities and the balance of probabilities are to be looked on the basis of evidence which is brought on record not the inference which could be brought on record in the absence of any specific inference based on the facts for using the criminal law analog which points only and only towards one direction. Mr. Sameer Vashist, Adv. counsel for plaintiffs has worked hard and raised the strongest possible argument in favour of his client under the circumstances. In the absence of nothing being available on record at the stage when he joined the proceedings. It was not only not pleaded, no attempt was made for reasons best known to the plaintiff to connect the emails with the defendant, no attempt was even made to find out the origin of IDs from which the emails were sent which the plaintiff received after have been forwarded by the people to whom they were sent and there being no guarantee that the entire text unedited has been forwarded. They could not even produce the attendant who has linked the Cyber email to the defendant by looking at a photograph which has not been placed on record and admittedly it was a group photograph of a picnic on the basis of which he identified the person to whom he saw only once for around ten fifteen minutes and he can correctly identified in a group photograph that too of a picnic where the circumstances are different, the photograph and the mood of a person in the photograph is different than the normal mood as per the general circumstances.

14 Under the circumstances, the court is not going into the aspect whether the so called email which has been brought on record and exhibited have been duly proved on record being electronic

evidence unaccompanied by certificate U/s. 65B of Evidence Act, since it has been submitted by counsel Sh Sameer Vashist, Adv. for plaintiffs at bar that Hon'ble Supreme Court has observed in a judgment of the year 2012 that too much insistent should not be placed on compliance of Section 65B of Evidence Act in cases which are civil in nature. Without commenting upon the judgment which has not been submitted surely in this case the only evidence produced on behalf of plaintiff, the crucial evidence on behalf of the plaintiff was the emails which are basically electronic evidence and not the supportive evidence being electronic evidence.

15 Since in any case even without going into the technicalities of emails being electronic evidence and not having been proved in terms of provisions of Evidence Act pertaining to proof of electronic evidence i.e production of certificate of Section 65B of Evidence Act, for the reasons mentioned above, I am constrained to say that this court is no in a position to accept the strongest argument on behalf of plaintiff under the circumstances in the absence of direct evidence to infer that it was the defendant in particular who was a person sending these emails. As per the standard of proof is required to prove a case in a civil matter i.e. on the basis of balance of probabilities arising on the basis of evidence which is legally admissible evidence brought on record by the plaintiff. The test of balance of probabilities is to be applied to the evidence available on record and not to the inferences. This issue is accordingly decided against the plaintiffs and in favour of the defendant.

Relief.

16 In view of my above discussions, keeping in view the facts and circumstances of the case, the suit of the plaintiff is dismissed. No order as to costs. Decree sheet be prepared.

File be consigned to RR.

Announced in the Open Court
on 12.02.2014

(D.K.Malhotra)
Addl. District Judge
Central:Delhi

CS No. 65/14 12.2.2014

Pr. Sh. Sameer Vashist, Adv. counsel for the plaintiffs. Sh. Manish Gandhi, Adv., counsel for defendant.

Final arguments heard.

Vide separate judgment dictated and announced in the open court, the suit of the plaintiff is dismissed. Court expresses a sincere gratitude to counsels for both the parties who have done a valiant effort to assist the court taking into consideration the minute details of the case and worked hard specially Mr. Sameer Vashist since he has come out from Viral Fever and still managed to stay at on the directions of the court to stay despite personal emergency. Decree sheet be prepared.

File be consigned to RR.

Announced in the Open Court
on 12.02.2014

(D.K.Malhotra)
Addl. District Judge
Central:Delhi