

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.990/2017**

% **Reserved on: 27th November, 2017**
Pronounced on: 30th November, 2017

SURESH KUMAR Appellant

Through: Mr. Dhan Mohan, Advocate
with Ms. Tanu B. Mishra,
Advocate.

versus

CENTRAL SECRETARIAT CLUB Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. Nos.42877/2017 & 42879/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M.s stand disposed of.

C.M. No.42878/2017 (condonation of delay)

2. For the reasons stated in the application, delay of 30 days
in filing the appeal is condoned.

C.M. stands disposed of.

RFA No.990/2017 and C.M. No.42876/2017 (stay)

3. This Regular First Appeal is filed under Section 96 of the
Code of Civil Procedure, 1908 (CPC) impugning the judgment of the

Trial Court dated 29.4.2017 by which the trial court has decreed the suit filed by the respondent/plaintiff for a sum of Rs.3 lacs on account of the damages caused to the respondent/plaintiff by making of a false police complaint by the appellant/defendant alleging that gambling goes on in the respondent/plaintiff/club and also that there is a mafia operating in the respondent/plaintiff/club.

4.(i) The facts of the case are that the respondent/plaintiff/society filed the subject suit pleading that it is the society registered under Societies Registration Act, 1860 running a club for sports activities and recreation facilities for retired and working central government employees. The day to day function of the society is looked after by its office bearers as per the bye-laws of the society. Sh. Harbhajan Singh is the President of the respondent/plaintiff/society and who has been holding different positions in the management of respondent/plaintiff society for the last 48 years and who was also the Director of Kendriya Bhandar having impeccable reputation and respect for his honest and sincere work culture. The services of the appellant/defendant were engaged by the respondent/plaintiff as a helper but his services were terminated by the

respondent/plaintiff/society in around the year 2013 on account of charges of misconduct which were leveled and proved against the appellant/defendant. The appellant/defendant was served with a charge sheet, enquiry was held and it was found that the appellant/defendant's behavior was unbecoming and that there were found false and fabricated complaints by the appellant/defendant against the respondent/plaintiff and its office bearers. The appellant/defendant had made on 8.9.2015 a complaint to the police making the following allegations:-

“i) “Ramanad Sharma ne club ke andar apna ek mafiya bana rakha hai jisme usne club ke President (Harbhajan Singh), Senior President (Ramesh Chandra Batra), General Secretary (Rajkumar Dhingra), Club Staff Deepak Sharma/Sanjay Sharma/Bharat Singh, Canteen Staff Pashupati Nepali Hai”.

ii) “Ramanand Sharma/ Bharat Singh:- In dono ka karya Club ke andar 8.30 baje se lekar 10.30 baje har table se juua naal nikali jaati hai. Jisse ki har roz kai hazaron ruppes naal ke roop mein ikkathhe hote hain. Iske sath-sath Ramanand Sharma Hawala ke karobar se bhi juda hua hai. Wo Nepal, Sri Lanka, Goa ke liye hawala ka karya karta hai Jiske badle mein 10 pratishat commission milta hai. In sab karyon ko Ramanand Sharma Club ke parisar ke andar baithkar karta”.

(ii) As per the plaint the allegations made in the police complaint dated 8.9.2015 were totally false as made by the appellant/defendant and in fact the same were defamatory. Pursuant to the complaint Sub-Inspector Sh. Mantosh Kumar of police station Mandir Marg visited the respondent/plaintiff/club on various dates between 16.9.2015 and

9.10.2015 for holding an enquiry. Finding no substance in the complaint of the appellant/defendant, the police directed the complaint to be filed and which opinion of the Sub-Inspector was accepted by the SHO and the DCP. The respondent/plaintiff pleaded that act of the appellant/defendant in making false allegations has tarnished the image of the respondent/plaintiff/club and its office bearers and employees. Respondent/plaintiff therefore served the appellant/defendant a legal notice dated 5.1.2016 demanding an unconditional apology from the appellant/defendant failing which it was informed that the appellant/defendant will be proceeded against with both by way of a civil suit as also a criminal complaint. No response came forward from the appellant/defendant and therefore the subject suit was filed seeking the following reliefs:-

- a) Grant damages to the plaintiff to the tune of Rs.5,00,000/- (rupees Five Lakhs only) to be paid by the defendant after holding that the defendant has defamed the plaintiff with an intention to harm the reputation of the plaintiff and has caused mental agony, trauma to the plaintiff
- b) direct the defendant to furnish a written apology for the defamatory statements made and written to the plaintiff and circulate the same and publish it in a daily circulated newspaper.
- c) Pass such other or further order(s) as is just and necessary in the facts and circumstances of the case and in the interest of justice.”

5. The appellant/defendant appeared in the suit. In the written statement filed he did not deny that he had made the complaint to the police dated 8.9.2015. The appellant/defendant stated that Sh. Ramanand Sharma is the maternal uncle of the appellant/defendant and it was Sh. Ramanand Sharma who was responsible for gambling in the club in the form of cards as also cricket betting etc. The appellant/defendant further pleaded that his uncle Sh. Ramanand Sharma was annoyed with him because of bringing the facts of the case to the present position. It was also pleaded in the written statement that the respondent/plaintiff/club was serving liquor without licence. The appellant/defendant claimed that his services were terminated illegally by the club. The appellant/defendant therefore prayed for dismissal of the suit pleading that the facts stated in the police complaint dated 8.9.2015 were based on correct facts.

6. After completion of pleadings, the trial court framed the following issues:-

- “(1) Whether the plaintiff is entitled to damages of Rs.5 lakhs on account of defamatory complaint dated 08.09.2015? OPP.
- (2) Whether plaintiff is entitled to written apology qua defamatory statements for the defendant? OPP.
- (3) Relief.”

7. The respondent/plaintiff examined four witnesses. PW-1 was Sh. H.S. Bhogal, member of the respondent/plaintiff who deposed with respect to the contents of the plaint. The second witness of the respondent/plaintiff was Sh. Gautam Tahil as PW-2 and who deposed again on the lines of the suit plaint. Sh. Harbhajan Singh on behalf of the respondent/plaintiff was examined as PW-3 and who again deposed on the basis of the averments in the plaint. The fourth witness examined by the respondent/plaintiff was SI Mantosh as PW-4. The appellant/defendant appeared in the witness box and examined himself as DW-1. The aspect of these depositions are found in paras 14 to 18 of the impugned judgment and which read as under:-

“14. Thereafter, under the protocol designed by this Court u/O 18 rule 4 CPC, the matter was sent for recording of evidence before Ld. Local Commissioner. During the course of evidence, plaintiff examined Sh. H S Bhogal member as PW1. In his affidavit filed by way of evidence Ex.PW1/1, he deposed on the lines of the plaint. He stated that in middle of September 2015, Police visited the club premises and made inquiries from different persons including office bearers, staff members etc. He could not understand the purpose as to why police is coming in the club, however, later on came to know that defendant Suresh Kumar made the complaint against Sh. Harbhajan Singh, President, other office bearers. In his affidavit he reproduced two paragraphs filed by the plaintiff club in the plaint. He stated that the contents of the complaint are false, concocted and defamatory and were made by the defendant only to harm the reputation of the plaintiff Club. In his cross examination he said that he is the member of the club since 1962 and is a regular visitor. He said that he visit the clubs daily and plays Billiards, visit library apart from playing table tennis, rummy and bridge. He expressed unawareness that the money is use as stakes while by the playing game with cards there.

15. Second witness examined by the plaintiff Sh. Gautam Tahil as PW2. In his affidavit Ex.PW2/A, he has deposed on the lines of PW1 and the plaint. In his cross examination he has accepted that while playing cards money stakes from few annas to some rupees are made. He said that he is the member of the club for last 38 years. He expressed unawareness that liquor is illegally available in the club.

16. Next witness is examined by the plaintiff is Sh. Harbhajan Singh as PW3. In his affidavit in chief i.e Ex.PW3/A, he has deposed on the lines of the plaint. In his detailed cross-examination upon being asked he stated that game of rummy is permitted by Hon'ble High Court and Hon'ble Supreme Court legally, even if it is played with stakes.

17. Fourth witness is examined by the plaintiff is SI Manotsh as PW4, PS Mandir Marg by the plaintiff. In his examination in chief, he stated that he visited plaintiff's club about two or three times and also visited defendant in this regard. He accepted that the complaint made by defendant against the plaintiff as Ex.PW4/1. The report of the same filed by the plaintiff as Ex.PW4/2. He stated that he never found any person playing with cards in the club with money. He denied on the suggestions that he never visited the club for inquiry the complaint made by the defendant.

18. In his defence Sh. Suresh examined himself as DW1. In his affidavit in chief as Ex.DW1/A. He deposed on the lines of his WS. In his cross-examination, he stated that he joined the service of the club in the year 1979 and was suspended on 11.01.2013. He accepted that no complaint was made by him between 1979 to 11.01.2013 against the club. He claimed that he is living in this property since his birth and his father is also used to work in this club. He accepted that post removal of his services, he was served a notice to vacate the premises."

8. Trial court by the impugned judgment has held that there is no dispute that the appellant/defendant did in fact make the police complaint dated 8.9.2015. It was also found as a matter of fact that the police found no substance in the complaint and hence the same was filed. Trial court has also observed that on the different visits of the police no evidence was found of any gambling etc and this was specifically stated in the police report for filing of the complaint

proved as Ex.PW4/2. PW-4 SI Mantosh had concluded in the report that the allegations were made by the appellant/defendant against the club only to pressurize the club to take the appellant/defendant back on duty. Trial court therefore in my opinion has rightly held the case of the respondent/plaintiff proved as the onus of proof was on the appellant/defendant to prove as correct the factual statements made in the police complaint dated 8.9.2015 and the appellant/defendant miserably failed in this regard. Trial court in my opinion also has rightly held that merely because a card game of rummy was played in the club premises with small stakes from a few annas to some rupees would not make it gambling as held by the Supreme Court in the judgment in the case of *State of Andhra Pradesh Vs. K. Satyanarayana & Ors. AIR 1968 SC 825*. Trial court also noted that in the police complaint Ex.PW4/1, the appellant/defendant had stated that Sh. Harbhajan Singh was a mafia member but on reply on merits in the written statement it has been conceded by the appellant/defendant that Sh. Harbhajan Singh is a man of impeccable integrity and has served the club honestly for the last 48 years. Some of the relevant paras of the impugned judgment, rightly holding the

appellant/defendant guilty of defamation, are paras 22 to 25 and 29

and these paras read as under:-

“22. Purposive reading of two paragraphs of the complaint admitted by defendant is PW4/1 shows that primarily allegations have been leveled by the defendant against the plaintiff club/its office bearers and Senior Staff member Sh. Ramanand Sharma. First allegation is that a Mafia is being run in the club by Ramanand Sharma which includes Sh. Harbhajan Singh, President, Sh. Ramesh Chandra, Senior President, Sh. Rajkumar Dhingra, General Secretary, Sh. Deepak Sharma, Sh. Sanjay Sharma, Sh. Bharat Singh and Sh. Pashupati Nepali as mafia members. Second, that liquor is being served in the club by the above persons even though there is no patti no license to run a bar. Third, that the club has been reduced into gambling hub whereby 21 high stack cards rummy, cricket match satta are being organized wherein thousands of rupees are collected each there. Fourth is that club premises are for organizing hawala racket of transferring money to countries like Nepal and Srilanka apart from State of Goa.

23. Upon going through the action taken by the local police in this regard, it is found that as far as all the above allegations are concerned, it has categorically come in their report Ex.PW4/2 that no evidence could either be collected by the police in different visits made to the club or produce by the defendant upon being asked. The IO PW4 SI Mantosh stood by his conclusion and as also categorically stated that defendant Sh. Suresh Sharma leveled allegations against the plaintiff club only to pressurize them so that he is taken back on duty.

24. It is observed here that defendant was removed from services after he was served by the charge sheet by the plaintiff club as per his bye laws. On 03.06.2013 after holding the detailed inquiry, his services was terminated and since then the matter is subjudice before the Labour Court. It is pertinent to observe here that after around more than two years and three months thereof that is only September 2015 that the complaint in question Ex.PW4/1 was filed by the police with per se defamatory allegations. The defendant has categorically conceded that since 1979 to 03.06.2013 when his services were terminated, he never saw any illegal activity inside the club. It is relevant to note that after he was dismissed from the service, he decided to make the allegation that after delay more than two years. Upon being asked it is conceded by Id counsel for defendant that after the filing of the complaint made by defendant against the club on account of law of evidence and is acceptance by the local SHO and ACP, defendant did not preferred any criminal complaint before the Criminal Court as u/Sec 156(3) Cr.PC.

25. At this juncture, a plea is raised by Ld counsel for defendant that in there deposition PW2 has accepted in his cross examination that the card game of rummy was played in the club premises and that the stakes is started “from few annas to sum rupees”. With this disclosure, it is argued that once it is accepted that rummy was being played for stakes, the complaint made by the defendant stands substantiated and it becomes a statement of true facts which cannot be said to be Defamatory. In this regard ld counsel for plaintiff relied case titled **“State of Andhra Pradesh Vs. K. Satyanarayana & Ors.”, AIR 1968 SC 825.** In this suit while discussing the **Section 3 and 14 of Public Gambling Act, Hon’ble Supreme Court** ruled as under:-

“We are also not satisfied that the protection of Section 14 is not available in this case. The game of Rummy is not a game entirely of chance like the 'three-card' game mentioned in the Madras case to which we were referred. The 'three card' game which goes under different names such a 'flush', 'brag' etc. is a game of pure chance. Rummy, on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is no skill involved in it. Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes, the offence may be brought home. In this case, these elements are missing and therefore we think that the High Court was right in accepting the reference it did.”

29. Coming to the facts of this case, as detailed supra the allegations contain in the complaint Ex.PW4/1 are per se defamatory. PW1 and PW2 have categorically stated that they found the allegations defamatory to the reputation of the plaintiff club in the eyes as a members. It is further important to observe here that in the complaint Ex.PW4/1, President Sh. Harbhajan Singh is stated to be a mafia member but in reply to the case of the plaintiff on merits, defendant has conceded that Sh. Harbhajan Singh is a man of impeccable integrity and has served the plaintiff club honestly for last 48 years.” (underlining added)

9. I completely agree with the discussion, reasoning and conclusion of the trial court because the complaint Ex.PW4/1 dated 8.9.2015 filed by the appellant/defendant was on account of his frustration of having been removed from the services of the respondent/plaintiff/club and the allegations made by the appellant/defendant were not *bonafidely* made and were made either as a revenge or to pressurize the respondent/plaintiff to take the appellant/defendant back in services with the fact that complaint was made after around two years of the appellant/defendant being removed from his services with the respondent/plaintiff. In fact the appellant/defendant has conceded that since the year 1979 till 3.6.2013 when the appellant's services were terminated, the appellant/defendant never saw any illegal activities in the club and he never made any complaint during the period of service of the alleged illegal activities as stated in the police complaint dated 8.9.2015.

10. Learned counsel for the appellant/defendant argued that since proceedings before labour court instituted by the appellant/defendant were pending hence suit could not be decreed, but this argument has no substance because issues of removal from

services have no connection or bearing on the defamatory factual statements of the police complaint dated 8.9.2015. This argument of the appellant/defendant is therefore dismissed.

11. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

NOVEMBER 30, 2017

VALMIKI J. MEHTA, J

Ne

