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

RESERVED ON: 03.11.2009
PRONOUNCED ON: 27.11.2009

\+ CS (SO) 531/2005

M/S. CROP CARE FEDERATION OF INDIA …… PLAINTIFF

Through : Mr. Rajeev. K. Virmani, Sr. Advocate with Mr. Rajeev. M. Roy, Ms. Sreelekha Sridhar and Ms. Kritika Venugopal, Advocates

Vs.

RAJASTHAN PATRIKA (PVT) LTD. & ORS. ..... DEFENDANTS

Through : Mr. Prashant Bhushan, Mr. Sumeet Sharma and Mr. Somesh Rattan, Advocates.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT

1.	Whether the Reporters of local papers may be allowed to see the judgment?	Yes.
2.	To be referred to Reporter or not?	Yes.
3.	Whether the judgment should be reported in the Digest?	Yes.

MR. JUSTICE S.RAVINDRA BHAT

%

I.A. No. 9019/2005 (Under Order 7 Rule 11)

1. This order will dispose of an application under Order 7, Rule 11 of the Code of Civil Procedure (CPC) filed by the defendants, for rejection of the suit as not disclosing any cause of action, and also barred in law.

2. The plaintiff is a company incorporated by guarantee, and claims to be a non-profit organization. Its members and shareholders are insecticide manufacturers, licensed to produce those goods. The plaintiff submits that its 84 members and shareholders are insecticides manufacturers, in India, whose approximate annual total sales turnover is Rs. 5,500 crores (of which export earnings are Rs.2200 crores, and the balance, Rs. 3300 Crores through domestic sales). The plaintiff claims to be aggrieved by a series of articles published

by the defendants in *"Rajasthan Patrika"* on various dates in February 2004. The plaintiff claims that the articles had the tendency to lower its reputation, and those of its members, and, therefore, claims damages to the extent of Rs. 50 lakhs.

3. The first defendant is the newspaper *Rajasthan Patrika;* the second defendant, its printer and publisher, the third defendant, its editor, fourth defendant, its advisor, and the fifth and sixth and defendants, its reporters. The plaintiff says that the first defendant's articles were taken cognizance of by the Rajasthan High Court, which issued *suo motu* notice, in proceedings registered as DB Civil Writ Petition No. 674/2004, to the State Government. It is contended that despite notice being issued by the Court, the defendants continued their vilification campaign. In the meanwhile, the state filed its report to the High Court, pointing out that the insecticides referred to in the defendants' news item dated 12-2-2004 had been banned long ago. The High Court directed two agricultural universities to prepare year-wise reports for 1991-2003. Of the 914 or more samples taken, it was found that in 49 instances, or 5%, the insecticide levels were more than the permissible limits. The plaintiff says that these results clearly falsified the premise of the articles and news items published by the defendants. The plaintiff says that the High Court permitted it to intervene in the proceedings, after which, the matter was disposed of on 27th September, 2004.

4. The plaintiff says that the articles contain falsehoods about the levels of pesticides used, and the alleged harmful effects they have on plant and animal life. It is contended that they tend to defame all pesticide and insecticide manufacturers, which essentially means the plaintiff's members and shareholders.

5. In their application under Order 7 Rule 11 CPC, dt. 05.11.2005, the defendants contend that the cardinal principle for a suit of defamation to succeed is that the plaintiff should be an individual or a determinate body. The defendant argues that since the plaintiff is an association of various firms/companies/individuals from all over India, it cannot be termed as a determinate body and therefore a suit for defamation is not maintainable. The defendant contends that the plaintiff has failed to show any injury/loss caused due to it, by the publication of the alleged defamatory articles. The third ground urged is that the Court does not possess jurisdiction to entertain the instant suit as all the defendants are in Jaipur. Further, the plaintiff in its suit has failed to show as to who read the said news articles in Delhi for it to be defamed in Delhi. They, thus, contend that the suit is not maintainable.

6. The plaintiff, in reply to the said application, supports its case on the proposition that Order 7 Rule 11 CPC requires disclosure of the cause of action and not actual existence of the cause of action. On the point of jurisdiction, the counsel contends that the impugned articles were available to the world at large, including Delhi where the said newspaper has circulation. It is thus stated that part of the cause of action arose in Delhi and consequently this Court has jurisdiction to try the suit. It is contended, by relying on decided cases that the plaintiff, as a representative body, empowered to carry out certain activities for its members, and co-ordinating their efforts, is within its rights to institute the present suit.

7. The defendants place reliance on the decision of the Kerala High Court in *Raman Namboodiri v. Govind Nair* (1963 (1) Cri. L. J. 535 (Vol. 66, C.N. 164) to say that defamatory matter to be actionable must be such that it contains an imputation concerning some particular person or persons whose identity can be established. The counsel further contends that Press being one of the pillars of democracy, is duty bound to inform the masses of the ill effects of the injudicious use of pesticides, insecticides etc. The counsel states that the publication of newspaper articles, based on scientific studies, affecting public health come under the "fair information on a matter of public interest". For this purpose, reliance has been placed on *Webb v. Times Publishing Co. Ltd.* (1960 (2) Q.B. 535) where it was held as follows:

> *"A communication made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contains criminatory matter, which without this privilege, would be slanderous and actionable"*

The defendant also relies on the decision reported as *Knupffer v. London Express Newspaper Ltd.* [1944] AC 116, where it was held by Lord Atkin that:

> *"...The only relevant rule is that in order to be actionable the defamatory words must be understood to be published of and concerning the plaintiff."*

The position, contend the defendants, was further elaborated by Lord Viscount Simon L.C. in the following words:

> *"In O' Brien v. Eason & Son, Holmes and Cherry L.JJ. ruled that where comments of an alleged defamatory character were made on an association called the Ancient Order of Hibernainans, an individual member of the order,*

who was not named nor in any way referred to, could not maintain an action of libel. They referred to a well known dictum of Willes J., uttered more than fifty years before in Eastwood v. Holmes, that 'if a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there is something to point to the particular individual.' Where the plaintiff is not named, the tests which decided whether the words used refer to him is the question with the plaintiff to believe that he was the person referred to."

8. The defendants say that the plaintiff cannot maintain the suit, as it is only the person, whose reputation is allegedly lowered, who can approach the court. Reliance is placed on the decision reported as *Harsh Mandiratta v. Maharaj Singh & Ors*, 2002 (61) DRJ 123 where the wife had filed a suit for defamation on behalf of her husband without making him a party and the Court categorically held that an action for defamation is maintainable only by the person who is defamed and not by his friends or relatives.

9. The plaintiff refers to the decisions of the Supreme Court to advance the proposition that only the contents of the plaints have to be seen at the time of disposal of an application under Order 7 Rule 11 CPC. On the point that the plaintiff is not a determinate body, the plaintiff states that this is not a ground on which a suit can be dismissed under Order 7 Rule 11. The counsel states that a plaint may be rejected only if it does not disclose a cause of action or if there is a bar in law to the filing of the suit and the said ground that the plaintiff is not a determinate body is not covered under the abovementioned two grounds. It is submitted that at best this can be a ground for defence but in no case can it be urged to attract the provisions of Order 7 Rule 11 CPC.

10. On merits of this point, the counsel refers to the order of the Court dated 05.05.2006 pursuant to which, it filed the complete list of its members. The counsel states that the suit is in fact an action of the apex body of reputed insecticides/pesticide etc. manufacturing companies, which have been defamed by the impugned articles. The counsel refers to the decision of the Hon'ble Supreme Court in *Sahib Singh Mehra v. State of UP,* AIR 1965 SC 1451 where it was held that the prosecuting staff of Aligarh is certainly an identifiable group or collection of persons covered under the Explanation to Section 499, IPC, on whose behalf a prosecution for defamation could be maintained. Further, counsel refers to the decision in *G. Narasimhan v. T.V. Chokkappa*, (1972) 2 SCC 680 and submits that a company, an association, or a collection of persons is fully entitled to sue for defamation as long as the identity of the body of persons is clear. The counsel also submits that with reference to S. 499

IPC, as has been held in the *Narasimhan* case, the law in England cannot be applied when codified provision exists in India.

11. With regard to the contention that the plaintiff has not been referred to by name in the impugned articles and, therefore, a case of indirect defamation is not maintainable, the counsel for the plaintiff cites the decision of the Supreme Court in *John Thomas v. Dr K. Jagadeesan,* (2001) 6 SCC 30. In that case the Court allowed action against defamation to be taken by the Director of a hospital when the alleged defamatory statements were made against the hospital. The Court observed:

> *"13. The collocation of the words 'by some persons aggrieved' in S.199 (CrPC) definitely indicates that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of facts of each case. If a company is described as engaging itself in nefarious activities, its impact would certainly fall on every Director of the company and hence he can legitimately feel the pinch of it."*

12. The plaintiff refers to other judgments of the Supreme Court to hold that the courts have vastly expanded the concept of *locus standi* and even a person indirectly affected can approach the court, seeking relief (Ref. *Bar Council of Maharashtra v. M. V. Dabholkar,* (1975) 2 SCC 702; *Sai Chalchitra v. Commissioner, Meraut Mandal & Ors.,* (2005) 3 SCC 683; *I.D.L. Chemicals v. Union of India,* (1996) 5 SCC 373).

13. The counsel for the defendants states that the plaintiff's reliance upon the judgment of the Supreme Court in *G. Narasimhan* is misplaced. The counsel quotes paragraph 16 of the judgment, which is as under:

> *"16…It is true that where there is an express statutory provision, as in case of S 499, Explanation (2), the rules of the Common Law of England cannot be applied. But there is no difference in principle between the rule laid down in Explanation (2) to Section 499 and the law applied in such cases in England. When, therefore, Explanation (2) to Section 499 talks of a collection of persons as capable of being defamed, such collection of persons must mean a definite and a determinate body."*

14. The Court has considered the arguments of both the parties. The first question is, the issue of jurisdiction of this Court. The decision of this Court *Indian Potash Ltd. v. Media Contents and Communication Services (India) Pvt. Ltd. and Anr,* 159(2009) DLT135 makes the position clear that in cases of "publication" of defamatory matter by books, newspapers

etc., the plaintiff has the choice to sue at any of the places where the book, newspaper etc. is available or at the place where the defendant resides. The Court, therefore, possess jurisdiction to entertain the present suit as the newspaper, *"Rajasthan Patrika"* was, according to the plaintiff, available and in circulation in Delhi. The Court cannot look beyond the pleadings and the documents filed, for ascertaining this, and the averments have to be taken at face value, for the purpose.

15. The next question is whether the defendants are correct in alleging that there is no defamation or libel. For a civil remedy to lie against defamation, the following ingredients need to be fulfilled: (*Kashiram Krishna v. Bhadu Bapuji,* (1870) 7 B. H. C. R (A. C.J.), 17; *Rahim Bakhsh v. Bachcha Lal,* AIR *1929* All. 214; *Sukam Teli* v. *Bipal Teli,* (*1906*) 34 Cal. 48)

1. The statements must be false and defamatory.
2. They must refer to the plaintiff.
3. The statements must be published by the defendant.

16. A brief description of the nature and content of the impugned articles would be pertinent here. The impugned articles are part of a series of articles published in the newspaper, *"Rajasthan Patrika"*. The first article dated 12-02-2004 highlights the harmful effects of pesticides, insecticides etc. on the human health and asserts high contamination of various prohibited chemicals etc. in the various vegetables available in various parts of the state of Rajasthan. The second article dated 13-02-2004, in the beginning, delves into the question as to why the farmers allegedly use such high levels of insecticides/pesticides etc. It attributes the reason to the personal greed of people involved. It further points out the harmful effects on the soil, water etc of the overuse/misuse of insecticides etc. The third article dated 15-02-2004 shifts focus to fruits and makes similar assertions. The article dated 16-02-2004 fixes the responsibility for the crises on various departments including agricultural, pollution control, health and food etc. The article dated 17-02-2004 is a report of the state government's plans to deal with the situation (about use of pesticides) while the next one, dated 22-02-2004 is about the central planning to inquire in the issue. The last of the impugned article describes that hundreds of peasants have resolved not to use insecticides in future.

17. In the present case, it is admitted by both the parties that there is no direct reference to the plaintiff and/or any of its members in the impugned articles. Therefore the second ingredient does not seem to have been fulfilled. The libel sought to be made out is by allusion to an entire class, of manufacturers of pesticides and insecticides. The plaintiff says that the allusion to harmful effects of pesticides is a slur on the reputation of pesticides manufacturers as a class, generically; it tends to lower their reputation in the eyes of the general public, as they are demonised as dealing with harmful substances or adopting practices, which are injurious to the general public. The plaintiff says that such portrayal is incorrect and injures the reputation of such pesticides manufacturers, since they are all licensed to produce specific pesticides and insecticides, after going through a laborious process of testing, and approval by governmental and regulatory agencies. The defendants contend that there is no specific reference to any one, or few pesticide manufacturers, and the drift of the articles is to point out to the harmful effect of overuse of pesticides on plant and human life; as well as the ill effects on their account.

18. For a plaintiff to say that words published or broadcast, about himself, constitute actionable libel, the allusion to him should be in fairly specific terms. The intention of the libeller should appear to point to the plaintiff, and should be sufficiently explicit to tarnish his (the plaintiff's) reputation. The reference to a class, or group of persons, of whom the plaintiff may be a part, should, therefore, in turn be particular so that the allusion to the plaintiff is fairly certain, to a reasonable man. Here, the defendants' reliance on the *Knupffer's* case is correct. A suit for defamation cannot be maintainable if the alleged defamatory statements do no refer to a determinate or definite class or group of persons. *Knupffer* has been followed in other judgments (*David H. Arnott v. College Of Physicians And Surgeons Of Saskatchewan*, [1954] S.C.R. 538 (Supreme Court of Canada); *Ellliot v. Canadian Broadcasting Service*, 108 DLR (4^{th}) 385). *Gatley* (*Libel and Slander*, Tenth Edition, 2004, The Common Law Series) has this to say (Para 7.9, page 191):

> *"There may also be a risk that discussion of matters of public concern may be inhibited if the law is too ready to hold that an individual is identified by an attack on a group. As a practical matter the claimant is more likely to succeed where he is a member of a small group at whom the words are aimed and more likely to fail if he group is a large one; but as a matter of principle the test is not whether the group is "small" or "large". Thus in Knupffer's case Lord Porter said that he "could imagine it being said that each member of a body, however large, was defamed where the libel consisted the assertion that*

> *no one of the members of a community was elected as a member unless he had committed a murder". Words directed at a group are more likely to be understood as referring to individual members if the group is a cohesive and disciplined on with a command structure..."*

The principle behind Explanation (2) to Section 499, IPC is also, in essence, the same. *G. Narasimhan's* case, relied upon by both the parties, is also an authority on this point. Thus, even if it is argued that parts of the impugned articles make an indirect reference to firms/companies/individuals engaged in the manufacture, production, processing and/or distribution of pesticides, insecticides etc., it would still not amount to a reference to a definite or determinate class or group of people as the target of the alleged defamation cannot be identified, in this case.

19. It is a settled position that when it is written that "all lawyers are liars" or "all religious heads are simulators", no particular person occupying that position can sue the writer unless he can establish that the words were pointed at him. (Ref. *Union Benefit Guarantee Company Ltd v. Thakorlal P. Thakor & Ors.*, AIR 1936 Bom 114*; Eastwood v. Holmes*, (1858) 1 F&F 34). On the other hand, if a defamatory statement is made referring to a certain group of people, e.g. tenants of a particular building, then such tenants against whom the statement is made will generally be able to sue. (See *Browne v DC Thomson* (1912) SC 359). The thin line of difference between the two types of cases is that in the latter type the plaintiff can be identified as the target of the alleged defamation, while in the former he cannot be so identified. The present case falls into the first category and thus no action against the defendants lie in favour of the plaintiff.

20. Order 7 Rule 11 CPC requires the cause of action to be disclosed. This means that in the plaint, there must be averments, which disclosure the cause of action. Disclosure of the cause of action would necessarily mean that the ingredients/essentials are satisfied through the averments. Thus for an action of defamation to be maintainable, the plaint must contain averments, which satisfy the essentials for an action of defamation and thereby completely disclose the cause of action. The Supreme Court in *T. Arivanandam v. T. Satyapal,* AIR 1977 SC 2421 held that if on a meaningful-not formal-reading of the plaint it is manifestly found to be vexatious and meritless, in the sense of not disclosing a right to sue, the judge should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. The same principles have been re-iterated in *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal,* AIR 1988 SC 634. in the following terms:

> *"Question is whether a real cause of action has been set out in the Plaint or something purely illusory has been stated with the view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions are not permitted in law and a clear right to sue should be shown in the plaint."*

In light of the above discussions, the plaint, read as a whole cannot be said to have disclosed a cause of action, disclosing any defamation. The plaint is, therefore, liable to be rejected under Order 7 Rule 11 CPC and the suit is not maintainable.

21. As to the other question, whether the plaintiff can sue – in a representative capacity, as it were, for defamation, on behalf of its members. Now, the plaintiff is a non-profit making company, limited by guarantee. Its objects are really to act on behalf of the body of manufacturers, and promote their interests; apparently it also undertakes or conducts some field tests, besides engaging in industry specific activity. Its work is akin to a chamber of commerce, or a co-ordinating body. It is most certainly not a subsidiary of any of its members; it has a separate corporate personality. Maybe, its interests are linked with the industry. Yet, it has a distinct identity, apart from its members. The plaintiff is not saying here in the suit that for the purpose of the alleged defamation the court has to ignore the corporate personality or "lift the veil" as it were. It is suggesting, on the other hand, that the alleged libel is something that hurts its members, and therefore, it can, on their behalf maintain the present suit for damages.

22. The reliance placed by the plaintiff on *John Thomas* in the opinion of the court, is inapt. That was a case of prosecution; the court repelled the contention that a director (of a company) could not move the court, and depose in support of the complaint, stating that a libellous imputation against the company could be said to affect its directors, who had the authority to speak on its behalf, and launch a prosecution. The company there was a closely held one; the director sued on its behalf. Here, the position is different. The plaintiff is a distinct company, having its juristic entity, separate from its members; they in turn are companies, firms etc. The said entities – who manufacture insecticides and pesticides have not chosen to step forward to air their grievances. It is not as if they labour under a disability from suing for the alleged defamation. In these circumstances, the plaintiff cannot assume the role of a *parens patriae* and sue, virtually on their behalf. Perhaps the only mode of legitimately instituting a suit would have been to file an application to sue in representative

capacity, after disclosing all the potential plaintiffs, and following the procedure spelt out in Order I, Rule 8, Code of Civil Procedure. Concededly, that procedure has not been adopted.

23. The present suit contains all the ingredients of a *"Slap suit"*. A strategic lawsuit against public participation (SLAPP) is a lawsuit intended to censor, intimidate and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition. Winning the lawsuit is not necessarily the intent of the person filing the SLAPP. In such instances the plaintiff's goals are accomplished if the defendant succumbs to fear, intimidation, mounting legal costs or simple exhaustion and abandons the criticism. A SLAPP may also intimidate others from participating in the debate. The acronym (SLAPP suit) was coined in the 1980s by University of Denver professors Penelope Canan and George W. Pring. The term was originally defined as

> *"a lawsuit involving communications made to influence a governmental action or outcome, which resulted in a civil complaint or counterclaim filed against nongovernment individuals or organizations on a substantive issue of some public interest or social significance."*

It has since been defined more broadly to include suits about speech on any public issue. The original concept is closely related to freedom of speech and the right to petition. One New York Supreme Court Judge J. Nicholas Colabella, described such civil suits graphically as

> *"Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined."*

A number of jurisdictions have made such suits illegal. The plaintiff's attempt, in the opinion of the Court, by filing the suit here in Delhi, in relation to publications in Rajasthan, on what were matters of public concern, but called for debate, was to muffle the airing of such views. The suit was not brought by a company really aggrieved, as a manufacturer, who alone could have claimed a cause of action, but virtually a trade body, though created as a company limited by guarantee. The attempt was plainly to stifle debate about the use of pesticides and insecticides. Whether such use, or overuse of pesticides over a period of time, affects life, plant or human, could be a matter of discourse, but certainly not one which could be stifled through intimidatory SLAPP litigation.

24. In the words of Walter Lippmann newspapers are "the bible of democracy". Justice Holmes (*Abrams v US*, 250 US 616 (1919)) characterized the discussion of public matters as

essential to see that *"the ultimate good desired is better reached by a free trade in ideas".* More poignantly, one of the principal architects of the American Constitution, James Madison, (1751-1836) stated that:

> *"Nothing could be more irrational than to give the people power, and to withhold from them information without which power is abused. A people who mean to be their own governors must arm themselves with power which knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both."*

25. Free speech and expression is the life blood of democracy. Any action – even civil injunctions, damages, or threat to damages, are bound to chill the exercise of that invaluable right of the people, and the press. By giving such orders, or allowing claims for damages, for perceived injury to reputation, the harm done to freedom of press, which facilitates free flow of ideas is incalculable.

26. In view of the above discussion, it is held that the defendants have been able to establish that the suit does not disclose any triable cause of action, and that the plaintiff, in any event, cannot maintain and file it. I.A. No. 9019/2005 is, therefore, allowed; the suit CS (OS) 531/2005 is therefore, rejected as not disclosing any cause of action.

S. RAVINDRA BHAT
(JUDGE)

NOVEMBER 27, 2009