

**SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra (Suit No. 1279/2001, District Court of Delhi)**

**Court:** District Court of Delhi

**Decided On:** 12/02/2014

**Bench:** Shri. D. K. Malhotra, J.

**Relevant Sections/Articles:** Section 65B (1) of the Indian Evidence Act, 1872

**FACTS OF THE CASE<sup>1</sup>:**

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 dated 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 dated 2.4.2001. Investigations further revealed that the concerned email had been originated from Dishnet Cybercafé, Connaught 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 Cybercafé 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 hard work 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

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<sup>1</sup> [SMC Pneumatics \(India\) Pvt. Ltd. v. Jogesh Kwatra \(Suit No. 1279/2001 Delhi District Court\)](#)

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.

### **ISSUES RAISED:**

- 1. Whether the plaintiffs are entitled to relief of perpetual injunctions as prayed in the prayer clause of the plaintiff?*

Onus to prove this question was on the complainant. No.1 and 2 examining numerous witnesses to prove the existence of cause of action. As far as a person's legal right is

concerned, it cannot rely on a person's status especially when no claims for damages are made. 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.

*2. Whether the plaintiffs have not come to the court with clean hands?*

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 are 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 intense 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.

*3. Relief*

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.

## **RULE OF LAW WHICH APPLIES:**

*Section 65B - Admissibility of electronic records<sup>2</sup> -*

*(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

## **STATING THE APPLICATION OF RULE OF LAW WHICH APPLIES:**

On behalf of the plaintiffs it was contended that the emails sent by the defendant were distinctly obscene, vulgar, abusive, intimidating, humiliating and defamatory in nature.

Counsel further argued that the aim of sending the said emails was to malign the high reputation of the plaintiffs all over India and the world. He further contended that the acts of the defendant in sending the emails had resulted in invasion of legal rights of the plaintiffs. Further the defendant is under a duty not to send the aforesaid emails. It is pertinent to note that after the plaintiff company discovered the said employee could be indulging in the matter of sending abusive emails, the plaintiff terminated the services of the defendant.

After hearing detailed arguments of Counsel for Plaintiff, Hon'ble Judge of the Delhi High Court passed an *ex parte* ad interim injunction observing that a prima facie case had been made out by the plaintiff. Consequently, the Delhi High Court restrained the defendant from sending derogatory, defamatory, obscene, vulgar, humiliating and abusive emails either to the plaintiffs or to its sister subsidiaries all over the world including their Managing Directors and their Sales and Marketing departments. Further, Hon'ble Judge also restrained the defendant from publishing, transmitting or causing to be published any information in the actual world as also in cyberspace which is derogatory or defamatory or abusive of the plaintiffs.

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<sup>2</sup> [Section 65B of the Indian Evidence Act, 1872](#)

**CONCLUSION:**

In some cases, cyber defamation can have far-reaching effects on the organizations in the corporate world. However, laws are in place to deal with cyber defamation and electronic records admissibility as evidence has been eased. If the plaintiff may claim defamation has happened, then it is the defendant's duty to claim he was innocent. Further there are also Cyber Crime Investigation Cells to deal with Cyber Crimes in India.



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