
**1ST SURANA & SURANA AND RAMAIAH COLLEGE OF NATIONAL
TORT LAW MOOT COURT COMPETITION 2018
9TH MARCH TO 11TH MARCH, 2018**

**BEFORE
THE HON'BLE HIGH COURT OF JUDICATURE AT MUMBAI**

DISPUTE RELATING TO
NEGLIGENCE AND DEFAMATION

CIVIL CASE NO.____/2017

[Under Order 7 Rule 1 and 2 r/w section 26 and section 19 of Civil Procedure Code, 1908]

In the matter of

MR. HEISENBERG..... PLAINTIFF

V.

TRAVEL SOLUTIONS PVT. LTD.....DEFENDANT

MEMORIAL *for* DEFENDANT

TRAVEL SOLUTIONS PRIVATE LIMITED

TABLE OF CONTENTS

LIST OF ABBREVIATIONS..... 1

INDEX OF AUTHORITIES.....3

STATEMENT OF JURISDICTION.....8

STATEMENT OF FACTS.....9

STATEMENT OF ISSUES.....10

SUMMARY OF ARGUMENTS.....11

ARGUMENTS ADVANCED.....12

**ISSUE 1: WHETHER THE DEFENDANT IS LIABLE FOR NEGLIGENCE AND THE
PLAINTIFF ENTITLED TO DAMAGES.....12**

 (A): The negligence was contributory..... 12

ISSUE 2: WHETHER THE PLAINTIFF IS LIABLE FOR DEFAMATION.....16

 (A): The statement made was defamatory.....16

 (B): The statement referred to the defendant.....19

 (C): The statement was published.....20

THE PRAYER23

LIST OF ABBREVIATIONS

S. NO.	ABBREVIATION	FULL FORM
1.	AIR	All India Report
2.	Punj	Punjab
3.	Ker	Kerala
4.	SCC	Supreme Court Cases
5.	MPLJ	Madhya Pradesh Law Journal
6.	ALT	Andhra Law Times
7.	Cal	Calcutta
8.	CWN	Calcutta Weekly Notes
9.	Cr LC	Criminal Law Cases
10.	KarLJ	Karnataka Law Journal
11.	ILR	Indian Law Reports
12.	MLJ	Maharashtra Law Journal
13.	Ker LT	Kerala Law Times
14.	Co.	Company
15.	Ltd.	Limited
16.	Pvt.	Private
17.	Moo	Moody's Crown Cases Reserved, 1824-1844
18.	PC	Privy Council
19.	QBD	Queen's Bench Division
20.	KB	King's Bench
21.	M&W	Meeson & Welby
22.	LR	Law Reports
23.	AC	Appeal Cases
24.	TLR	Times Law Report
25.	F	Federal Reporter
26.	Bing	Bingham's Reports
27.	Eq	Equity
28.	B&C	Barnwell & Creswell
29.	B&Ad	Barnwell & Adolphus
30.	All ER	All England Law Reports
31.	HLC	House of Lord Cases by Clark
32.	Ind Cas	Indian Cases
33.	WLR	Weekly Law Reporter
34.	F&F	Foster & Finlayson
35.	LW (Cr)	Law Weekly Criminal
36.	CB (NS)	Common Bench, New Series

37.	PLT	Patna Law Times
38.	HL	House of Lords
39.	EWHC	England & Wales High Court
40.	Bom LR	Bombay Law Reporter
41.	Camp	Campbell's Reports
42.	Para	Paragraph
43.	BLT	Burma Law Times
44.	p.	Page
45.	Hob	Hobarts' Reports
46.	i.e.	That is
47.	LT	Law Times
48.	Cr LJ	Criminal Law Journal
49.	Hon'ble	Honorable
50.	&	And
51.	Rs.	Rupees

INDEX OF AUTHORITIES

STATUTES REFERRED:

1. CIVIL PROCEDURE CODE, 1908

CASES REFERRED:

INDIAN CASES:

1. Bhooni Money v. Nather Biswas, (1901) ILR 28 Cal 452.
2. Baba Gurudit Singh v. "Statesman" Ltd., (1935) 37 Bom LR 1033.
3. Chellapan Pillai v. R.K. Karanjia, (1961) Cr LJ 142.
4. Cholla Subarayadu v. Darbha Ramakrishna Rao, (1968) 2 ALT 101.
5. G. Chandrasekhara Pillai v. G. Raman Pillai, 1964 Ker LT 317.
6. Girish Chander Mitter v. Jatadhari, (1899) ILR 26 Cal 653.
7. Ghannan v. Glasgow Corporation, AIR 1950 SC 23.
8. Hay v. Asvini Kumar, AIR 1958 Cal 269.
9. K.C. Kumaran v. Vallabhadas VasANJI, AIR 1969 Ker 9.
10. Kumari Podder v. Chittagong Engineering and Electrical Supply Co. Ltd., (1946) Cal. 433.
11. Khima Nand v. Emperor 169 Ind Cas 622.
12. L.S. Jayappa v. N.S. Shame Gowda, 1985 (1) KarLJ 223.
13. Municipal Committee, Jullundur City v. Ramesh Saggi, AIR 1970 Punj 137.
14. P.M. Govindan Nair vs M. Achutha Menon,(1915) 28 MLJ 310.
15. Ramakant v. Devi Lal, 1969 MP LJ 805.
16. Rawlins vs Anant Lal Sahu,(1920) 2 PLT 176.

17. *Shyam Sunder v. State of Rajasthan*, (1974) 1 SCC 690, 693-694.

FOREIGN CASES:

18. *Allen v. Flood*, (1898) AC.

19. *Bronu v. Ritchie* (1904) F 842.

20. *Bromage v. Prosser*, (1828) 4 B & C 247.

21. *Bluck v. Lovering*, (1885) 1 TLR 497.

22. *Barrow v. Lewellin*, (1615) Hob. 62

23. *Butterfield v. Forrester*, (1809) 11 East. 60.

24. *Clayards v. Dethick*, (1848) 12 QBD 439.

25. *Capital and Counties Bank v Henty* (1887) LR 7 AC 741.

26. *Cook v. Ward*, (1830) 6 Bing 409.

27. *Capell v. Powell*, (1864) 17 CB (NS) 743.

28. *Cuenod v Leslie*, (1909) 1 KB 880.

29. *Carr v. Hood* (1808) 1 Camp 355.

30. *Dixon v. Holden*, (1869) LR Eq 488.

31. *De Crespigny v. Wellesley*, (1829) 3 Bing 392.

32. *Digby v. Thompson*, (1833) 4 B&Ad 821.

33. *Duke of Brunswick v. Harmer*, (1849) 14 QBD 185

34. *Davies v Swan Motor Co*, 1 All ER 620.

35. *Du Bost v. Beresford*, (1810) 2 Camp 355n.

36. *Englishman, Ltd., v. Antonio*, 1931 Cal 81.

37. *Greville v. Chapman*, (1844) 5 QB 731.

38. *Hough v. London Express Newspapers*, (1940) 2 KB 507.

-
39. *Hulton v. Jones*, (1910) AC 20.
 40. *Holdsworth v. Associated Newspapers Ltd.*, (1937) 3 All ER 872.
 41. *Harrison v. Pearce*, (1858) 1 F&F 567
 42. *Imperial Chemical Industries Ltd v Shatwell* (1964) 3 WLR 329.
 43. *Ingram v Lawson* (1840) 6 Bing NC 12
 44. *Jack Monroe v. Katie Hopkins*, (2017) EWHC 433 (QB).
 45. *Jones v. E. Houlton & Co.*, (1909) 2 KB 444, 455
 46. *Lewis v. Denye*, (1939) 1 KB 540.
 47. *Le Fann v. Malcolmson*,(1848) 1 HLC 637.
 48. *Morgan v. Sim*, (1857) 11 Moo (PC) 307.
 49. *Miss Violet Wapshare v. Miss Maureen Froud*, 1970 LW (Cr) 4.
 50. *Mackay v. M. Chankie*, (1888) 10 Rattie 537.
 51. *Nance v. British Columbia Electric Co.* (1951) 2 All ER 448 (HL).
 52. *Newstead v. London Express Newspapers Ltd.*, (1939) 2KB 317, (1940) 1 KB 377
 53. *Parmitter v Coupland* (1840) 6 M&W 105.
 54. *Pullman v. Hill*, (1891) 1 QB 524.
 55. *R. v. Munslow*, (1895) 1 QB 758.
 56. *R. v. Burdett*, (1821) 4 B&Ad 314.
 57. *Ratcliffe v. Evans*, (1892) 2 QB 524.
 58. *Savory & Co. v. Lloyds Bank*, (1932) 2 KB 122.
 59. *Shyam Sunder v. State of Rajasthan*, (1974) 1 SCC 690.
 60. *Sim v. Stretch*, (1936) 2 All ER 1233.
 61. *Suri v. Stretali*, (1936) 2 All ER 1237.

-
62. Sturt v. Blagg (1847) 10 QB 906.
 63. Silikin v. Beaverbrook Newspapers, (1958) 2 All ER 536: (1958) 1 WLR 743.
 64. Voneouver General Hospital v. M.C. Daniel,(1934) 152 LT 56.
 65. West v West (1911) 27 TLR.
 66. Wennhak v. Morgan, 20 QBD 635.
 67. Wakley v. Cooke, (1849) 4 Ex 511.
 68. Wakley v. Healey, (1849) 7 CB 591.
 69. White v. J and F, Stone (Lightning and Radio), Ltd., (1939) 2 KB 827.
 70. W. A Providence v. P.T. Christensen, (1914) 7 BLT 155.
 71. Turney v. Metro Goldwin Mayor Pictures Ltd., (1950) 1 All ER 449.

BOOKS REFERRED:

1. Law of Torts and Consumer Protection by Dr. J.N. Pandey.
2. The Law of Torts by M.N. Shukla.
3. Law of Torts by R.L. Anand.
4. Law of Defamation & Malicious Prosecution by V. Mitter.
5. Law of Torts by Ramaswamy Iyer.
6. Trademarks by D.P. Mittal.
7. Law of Torts and Consumer Protection Act by Dr. S. K.Kapoor.
8. The Law of Torts by Durga Das Basu.
9. The Law of Torts by Ratanlal & Dhirajlal.

ELECTRONIC SOURCES:

1. <http://www.supremecourtonline.com/>
2. <http://www.indiankanoon.org/>
3. www.westlaw.com
4. www.statista.com

STATEMENT OF JURISDICTION

The counsel on behalf of the plaintiff has submitted the memorandum of plaint under Order 7 Rule 1 and 2 r/w section 26 and section 19 of Civil Procedure Code, 1908 to the Hon'ble High Court of Judicature at Mumbai. The defendant humbly submits to this jurisdiction.

STATEMENT OF FACTS

BACKGROUND

The plaintiff, Mr. Heisenberg is a data analyst at Data Max. The defendant, Travel Solutions Pvt. Ltd., is a highly reputed company based in Mumbai which provides travel services. Mr. Heisenberg contacted Travel Solutions Pvt. Ltd. for arranging his trip to Australia with his wife and two kids. Travel Solutions Pvt. Ltd. assured Mr. Heisenberg that visa issuance takes 10-15 days. Mr. Heisenberg got the flight booked to Sydney, from Chennai instead of Mumbai on 08.09.2017 on the advice of Travel Solutions Pvt. Ltd and was asked to give the documents for visa processing on 07.08.2017, as in the list given, to Mr. Tommen which were submitted on 11.08.2017 but by that time Mr. Tommen had already left. The documents were dispatched by the receptionist on 16.08.2017 which were received on 18.08.2017 and verified on 21.08.2017 by the embassy. Mr. Heisenberg sent the missing document on 22.08.2017 which was received on 23.08.2017 by Travel Solutions Pvt. Ltd. On 06.09.2017, Travel Solutions Pvt. Ltd. received the passports and sent its image to Mr. Heisenberg on WhatsApp and also told Mr. Heisenberg that the passports shall be sent to Chennai airport directly, due to less time. Mr. Heisenberg with his family, reached Chennai by 14:00 hrs on 08.09.2017.

DISPUTE AND THE SUIT

The passports reached only by 21:00 hours by which Mr. Heisenberg had missed his flight. Out of frustration he tweeted “Travel Solutions Private Limited – a bunch of liars, cheaters and thieves with no ethics. The worst company ever”, along with a picture of his family on Facebook with #TSPL sucks and logo of the company, which was widely condemned. Mr. Heisenberg sued Travel Solutions Pvt. Ltd. before the High Court of Mumbai for negligence for a sum of Rs. 1 crore. Travel Solutions Pvt. Ltd. filed a counterclaim for defamation.

STATEMENT OF ISSUES

ISSUE 1: WHETHER THE DEFENDANT IS LIABLE FOR NEGLIGENCE AND THE PLAINTIFF ENTITLED TO DAMAGES?

(A): The negligence was contributory.

ISSUE 2: WHETHER THE PLAINTIFF IS LIABLE FOR DEFAMATION.

(A): The statement made was defamatory.

(B): The statement referred to the defendant.

(C): The statement was published.

SUMMARY OF ARGUMENTS

ISSUE 1: WHETHER THE DEFENDANT IS LIABLE FOR NEGLIGENCE AND THE PLAINTIFF ENTITLED TO DAMAGES?

It is humbly submitted before this Hon'ble court that there was contributory negligence also on the part of plaintiff also there was an involvement of third party in the whole subject matter complained of.

ISSUE 2: WHETHER THE PLAINTIFF IS LIABLE FOR DEFAMATION?

The counsel on behalf of the defendant contends that the statement made was defamatory which clearly referred to the defendant. The statement made was published on Twitter and Facebook which comes under the scope of libel and is actionable.

ARGUMENTS ADVANCED

1. WHETHER THE DEFENDANT IS LIABLE FOR NEGLIGENCE AND THE PLAINTIFF ENTITLED TO DAMAGES?

The counsel humbly submits to this Hon'ble Court that the defendant is not liable for negligence and thus the plaintiff is not entitled to damages. The defendant pleads that the plaintiff has not come to the court with clean hands as- the negligence was contributory.

(A) The Negligence was Contributory

1. It is the common law rule that anyone who by his own negligence contributed to the injury of which he complains cannot maintain an action against another in respect of it. For he will be considered in law to be author of his wrong. This rule was laid down in *Butterfield v. Forrester*¹. It is important to mention here that the plaintiff was given a list of documents to be submitted for visa issuance process by the defendant despite which he failed to submit the documents in order and consequently there was a delay in filing the documents with the embassy.
2. A plaintiff is guilty of contributory negligence when he has by his own want of care so far contributed to the damage occasioned by the negligence or improper conduct of the defendant that but for want of care the damage would not have occurred.² It is humbly submitted that even when the fault was on the part of plaintiff, the defendant managed to get the visa issued within 14 days from the date of filing the documents to embassy as was

¹ (1809) 11 East. 60.

²Underhills Law of Torts, 15th (1946) edn. P 186.

assured by the defendant.³The documents were filed along with the visa form on 23.08.2017 and the visas were issued on 06.09.2017 i.e. within 14 days. The plaintiff was under a legal duty to take care for his own safety.⁴The company won't be responsible for non-issuance of visa due to receipt of incomplete/ delayed document from the client. This is at the sole discretion of the consulate/authorities.

3. The doctrine of contributory negligence is based on the maxim "*injure non remota causa sed proxima spectator*" which means that the law takes into consideration only the proximate cause and not the remote one. The negligence and default of the plaintiff was in any degree the proximate cause of the damage, so he could not recover.⁵ Had the plaintiff submitted documents in order earlier, the defendant would have submitted the documents with the embassy even earlier and there wouldn't have been any delay in issuance of visa. The plaintiff had failed to take the ordinary care of himself.⁶
4. It has been held in the case of *Voneouver General Hospital v. M.C. Daniel*⁷, -

"*A defendant charged with negligence can clear himself if he shows that he has acted in accordance with general and approved practice.*"

The Judgement proves the defendant's conduct as the duty of the defendant on receipt of visa application was only to verify the documents and submit the application with supporting documents with the Embassy and collect the passports in sealed envelopes from the Embassy

³Para 3, moot problem.

⁴*Kumari Podder v. Chittagong Engineering and Electrical Supply Co. Ltd.*, (1946) Cal. 433.

⁵R.L. Anand, *Law of Torts*, p. 730.

⁶*Lewis v. Denye*, (1939) 1 KB 540.

⁷(1934) 152 LT 56, per Lord Alness at p. 57.

on the appointed time which was fulfilled by the defendant. Hence, the defendant has acted in accordance with the general practice.⁸ The usual and general practice cannot be condemned as negligent even if the subsequent experience may prove that some additional precaution was necessary.⁹ All the reasonable precautions were taken by the defendant to avoid the injury.¹⁰

5. The counsel on behalf of the defendant also contends that issuance or rejection of visa is the absolute prerogative of the concerned Embassy only and for any delay in issuance of visa, the defendant cannot be held liable. The defendant acted as a facilitator between the plaintiff and the Australian High Commission and had no role in this regard. The defendant sincerely denies any deficiency in service on its part.
6. It is important to mention here that the happening of the event i.e. issuance of visa depended upon a third party i.e. the Australian High Commission. The process of issuance of visa is in the sole control and discretion of the concerned embassy, which is the general practice. The event was not in the control of defendant and thereby, the plaintiff cannot claim anything from the defendant. The visa was issued on 06.09.2017 and the flight of the plaintiff was scheduled on 08.09.2017. The defendant only suggested that passports will be sent to Chennai airport directly owing to paucity of time. The plaintiff being so sceptic about the delay could have come and collected the passports from the defendant as he had a good time

⁸ Ibid.

⁹ Savory & Co. v. Lloyds Bank, (1932) 2 KB 122 at p. 134.

¹⁰ Shyam Sunder v. State of Rajasthan, (1974) 1 SCC 690, 693-694.

period of 2 days. A reasonable man is generally a cool and collected person and remembers to take precaution for his or her own safety in an emergency.¹¹

7. The defendant never had any *malafide* intention of cheating the plaintiff as when the passports were received by the defendant, the image of the visas were sent to the plaintiff on WhatsApp.
8. The defendant was advising and making the plaintiff aware of the better possibilities, in its professional capacity, as the ticket booking from Chennai was much more economical than that of Mumbai. The act of sending the passports to the Chennai Airport had also been made to ensure the safety and avoid any kind of loss to the plaintiff, as dispatching them to Mumbai was risky which showed the defendant's *bona fide* intention. The whole and sole intention of the defendant was only to provide better services and prevent any sort of harm to the plaintiff by refraining from the activities which would lead to greater risks and amount to heavy losses.

Hence, it is established before this Hon'ble Court that the plaintiff has not come to the court with clean hands as the plaintiff himself contributed to the injury complained of and is not entitled to the damages as sought.

¹¹Ghannan v. Glasgow Corporation, AIR 1950 SC 23.

2. WHETHER THE PLAINTIFFS LIABLE FOR DEFAMATION?

It is humbly submitted before this Hon'ble Court that the plaintiff is liable for defamation owing to a malicious propaganda as- The statement made was defamatory (A); the statement referred to the defendant (B); the statement was published (C).

(A) The statement made was defamatory

9. The statement made by plaintiff on Twitter was – *Travel Solutions Private Limited – a bunch of liars, cheats and thieves with no ethics. The worst company ever*". The plaintiff, further proceeded with a detailed post on Facebook with a picture of the plaintiff along with the family in the airport which ended with "*#TSPL sucks and a logo of the company*". The words are *prima facie* defamatory.
10. A statement is defamatory when it has the tendency to injure a persons' reputation. The usual definition adopted in judgements is that a defamatory statement is one which exposes a person to 'contempt, hatred or ridicule, or tends to injure him in his profession or trade, or causes him to be shunned or avoided by his neighbors'.¹²The language used by the plaintiff was extremely vituperative. The usage of words such as 'liars', 'cheats' and 'thieves' was an extremely harsh comment on the moral character of the defendant which had made the defendant suffered a tremendous loss of reputation. It is defamatory to impute dishonesty¹³ or

¹² Parmitter v Coupland (1840) 6 M&W 105.

¹³Greville v. Chapman, (1844) 5 QB 731.

immorality¹⁴. To state that a person has not that degree of skill which he holds himself as possessing is defamatory.¹⁵

11. The plaintiff had a malicious propaganda, which is evident by the fact that the mode used by the plaintiff for defaming were the two most popular social networking sites i.e. Twitter and Facebook which have the capability of reaching to thousands of people within a short span of time. Mode of the publication is an important test for determining that the words are defamatory.¹⁶ Malice is implied from publication of a defamatory statement.¹⁷The publication when made with the intention of defaming someone constitutes defamation.¹⁸

12. It has been held in *Sim v. Stretali*¹⁹ - "*The test of a defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinions or feeling of other persons. The typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct.*"

The statements were defamatory in their natural and ordinary meaning as it excited adverse opinion or feelings of other persons against the defendant which was evident by the fact that the tweet was retweeted several thousand times and the hashtag was also trending the very next day. The incident gathered widespread condemnation on the internet which held public hatred, contempt and had hampered the business of the defendant.

¹⁴Hulton v. Jones, (1910) AC 20.

¹⁵Turney v. Metro Goldwin Mayor Pictures Ltd., (1950) 1 All ER 449.

¹⁶Sturt v. Blagg (1847) 10 QB 906.

¹⁷ *Bromage v. Prosser*, (1828) 4 B & C 247.

¹⁸*Miss Violet Wapshare v. Miss Maureen Froud*, 1970 LW (Cr) 4.

¹⁹(1936) 2 All ER 1237.

-
13. The statement is defamatory if it conveys a defamatory meaning about the plaintiff to reasonable men placed on the position of those to whom it was published.²⁰ The standard of understanding is that of the ordinary, reasonable man²¹. In the case of *Jack Monroe v. Katie Hopkins*²², claimant succeeded in recovering damages in a Twitter Libel, the High Court of England held that in the context of Twitter, the reader should be taken to be a reasonable representative of users of Twitter who follow the defendant, but taking into account that readership of a tweet may go beyond these followers. Whether that meaning is defamatory depends on whether it would tend to have a substantially adverse effect on the way that right-thinking members of society would treat the defendant.²³
14. The right of a person during his lifetime to the unimpaired possession of his reputation and good name is recognized by law.²⁴ Everyone has an inherent right to have his reputation preserved inviolate. It is a *jus in rem* a right absolute and good against all the world. A man's reputation is his property and possibly more valuable than any other form of property.²⁵ The right of the defendant is violated by the plaintiff.
- The phrase - 'The worst company ever', degrades the efficiency of the defendant. It implies the inability of the defendant in attaining good standards which is certainly not the case. The plaintiff didn't stop here and used the word 'sucks' which is extremely vulgar and disparaging. The plaintiff has no right to use such derogatory words.

²⁰Capital and Counties Bank v Henty (1887) LR 7 AC 741.

²¹West v West (1911) 27 TLR.

²² [2017] EWHC 433 (QB).

²³Ibid.

²⁴Clerk and Lindsell on Torts, p. 773. Bronu v. Ritchie (1904) F 842.

²⁵Dixon v. Holden, (1869) LR Eq 488.

15. The plaintiff had published a statement which had brought the defendant into hatred, contempt or ridicule and lowered the reputation in the eyes of right- thinking members of society generally.²⁶

In light of the statements made above, it is humbly submitted before this Hon'ble Court , that the defendant has suffered tremendously on account of having its image lowered in the eyes of public because of the false and defamatory statements published by the plaintiff on Twitter and Facebook.

(B) The statement referred to the defendant

16. It is humbly submitted before this Hon'ble Court that the derogatory statements used by the plaintiff clearly referred to the defendant which is evident by the fact that the plaintiff had started the statement with the full name of the defendant and ended the social media post with the logo of the company. Hence, all the statements were directed towards the defendant.

17. It is important to mention here that the usage of the logo of the company is the violation of defendant's IPR rights. A logo is a visual depiction of a company and gives identity to it. They are identified by consumers, and, are used as means of creating brand recognition and corporate image.²⁷Corporate logo is like the personality of a brand which is carefully built up over a period of time, and, is the result of the inputs of product quality, communication and excellence. The plaintiff strictly had no right to upload the logo with the defamatory statements.

²⁶Sim v. Stretch, (1936) 2 All ER 1233.

²⁷Trade Marks by D.P. Mittal.

18. Every man whether he is in public life or not, is entitled not to have lies told about him and by that is meant that one is not entitled to make misstatement of facts about a person which are untrue and which redound to his discredit. That is to say it tends to lower him in the estimation of right- thinking men.²⁸

(C) The statement was published

19. A man's reputation is the estimate in which others hold him, not the good opinion which he entertains about himself. The attack on his reputation will therefore follow when the words calculated to harm his reputation are communicated to some third party i.e., to some person other than the person defamed, and in law this communication of defamatory words to a third party is termed publication. "Publication is the making known the defamatory matter after it has been written to some person other than the person of whom it is written".²⁹ As already mentioned and evident by the facts, the mode used by the plaintiff for defaming the defendant was Twitter and Facebook. Twitter and Facebook, being two of the largest social networking services, have the potential of reaching, number of people worldwide within blink of an eye. The monthly active users of Twitter were 330 million and of Facebook were 2.2 billion in 2017.³⁰ Tweets can be held to the same standard as a 'reputable' or 'serious' publication.³¹

²⁸ *Silikin v. Beaverbrook Newspapers*, (1958) 2 All ER 536; (1958) 1 WLR 743.

²⁹ *Pullman v. Hill*, (1891) 1 QB 524.

³⁰ www.statista.com.

³¹ *Jack Monroe v. Katie Hopkins*, (2017) EWHC 433 (QB).

-
20. It comes under the scope of a libel. The publication of the defamatory statement by the plaintiff was a disparagement in respect of the defendant's professional and official reputation. It was not made to a confined group of people but through larger media. The plaintiff had called the business reputation of defendant into question by his publication.
21. Every repetition of defamatory matter is a fresh publication and a fresh cause of action.³² The Facebook image was shared several hundred times and the tweet was retweeted several thousand times³³. Hence, the defamatory matter was repeated not once or twice but 'several thousand times' which gave rise to a fresh cause of action. Republication of a libel is actionable in the same way as a prior publication even though the republication mentions that its information is derived from some particular named source.³⁴
22. In *Chellapan Pillai v. R.K. Karanjia*,³⁵ the accused was prosecuted for having printed and published a photograph with a false caption with the intention of harming the reputation of the complainant. It was held that publication of a photograph with a false caption would amount to defamation. In the case concerned, the plaintiff had posted the photograph of his entire family on Facebook which ended with # TSLP Sucks along with logo of the company. The caption is false as the plaintiff had placed entire blame on the defendant which was certainly not the case, and was published with the sole intention of harming the reputation of the defendant.

³²Duke of Brunswick v. Harmer, (1849) 14 QBD 185.

³³Para 16, moot problem.

³⁴G. Chandrasekhara Pillai v. G. Raman Pillai, 1964 Ker LT 317.

³⁵1961 Cr LJ 142.

Hence, it is well- established before this Hon’ble Court that the acts and conducts of the plaintiff are defamatory, false and concocted. The above mentioned acts have caused serious damage to the image, reputation and goodwill of the defendant before the whole society which is its asset. In view of this, the defendant humbly requests this Hon’ble Court to direct the plaintiff to remove the defamatory statements from Twitter and Facebook and publish an apology on the same. The apology should contain a complete withdrawal of the imputation and an expression of regret for having made it.

PRAYER

Wherefore, in the light of facts stated, the cases cited, issues raised, arguments advanced and authorities cited, it is most humbly prayed and implored before the Hon'ble High Court of Judicature at Mumbai, that it may be graciously pleased to adjudge and declare that:

1. The defendant is not liable for negligence and the plaintiff is not entitled to damages as sought.
2. The plaintiff is liable for defamation and the suit of the plaintiff be dismissed with heavy costs.
3. The plaintiff be directed to remove the tweet and Facebook post and publish an apology on the same.

Also, pass any other order that the court may deem fit in the favour of plaintiff to meet the ends of equity, justice and good conscience.

For this act of Kindness, the Defendant shall duty bound forever pray.

Place: Mumbai

Dated: 11th March 2018

Respectfully submitted,

Counsel for Defendant