

V. Narayana Bhat Vs. E. Subbanna Bhat

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Court : Karnataka

Decided On : Dec-02-1974

Reported in : AIR1975Kant162; ILR1975KAR1000; 1975(1)KarLJ506

Judge : M. Sadanandaswamy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 182, 211 and 392; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 107

Appeal No. : Second Appeal No. 334 of 1971

Appellant : V. Narayana Bhat

Respondent : E. Subbanna Bhat

Advocate for Def. : T.S. Krishna Bhat, Adv. for ;U.L. Narayana Rao, Adv.

Advocate for Pet/Ap. : P. Ganapathy Bhat, Adv.

Judgement :

1. The appellant is the plaintiff. The suit was for recovery of damages of Rs. 1,000 for defamation'. The defendant-respondent presented a complaint on 28-11-1964 to the Station House Officer, Puttur Police Station, imputing an offence under Section 392 of the Indian Penal Code against the plaintiff. The plaintiff alleged that the defamatory statements contained in the complaint brought him disrepute and infamy in society. He alleged that Police Officers came to his house, questioned

him about the contents of the complaint and wanted to search his house. He also alleged that he had to go with the police and remain in the Police station till the evening and had to visit the Police station on several occasions on account of this complaint. The defendant admitted having lodged a complaint against the plaintiff to the police and asserted that the plaintiff along with other persons mentioned in the complaint petition committed acts attributed to them in the complaint. He also pleaded that the statements made in the complaint were made in the interests of law and order and to seek justice. The trial court held that the complaint filed by the defendant is not false or frivolous or vexatious to the knowledge of the defendant, that the plaintiff failed to show that he was defamed in any way by the allegations in the complaint and dismissed the suit without going into the question of quantum of damages. The lower appellate court held that the imputations made in the complaint petition are defamatory per se. It further held that the defendant's plea of justification by proof had not been substantiated. But it came to the conclusion that the statements contained in the complaint are protected by absolute privilege and that the question of malice or want of justification does not arise. Hence, it confirmed the decision of the trial court.

2. The complaint was enquired into by the Police and found to be false. Thereafter, the police prosecuted the defendant for filing a false complaint and he was convicted, but the conviction was set aside in appeal.

3. It is contended by Mr. Ganapathi Bhat, appearing for the plaintiff-appellant, that the statements contained in the complaint filed by the defendant to the police are not covered by absolute privilege and that the defendant could claim only qualified privilege for the same. It is therefore urged by him that the defendant must prove that he made the statements in good faith and that if he succeeds in proving the same then the burden shifts on to the plaintiff to prove malice and that the finding of the lower appellate court is erroneous. The question for decision in this appeal is whether the defendant could claim absolute privilege for the statements made in the complaint or only qualified privilege for the same.

4. In *Watson v. McEwan*, (1905) AC 480, H.L., the question was whether absolute privilege protected a witness against the consequences of statements made to the

client and solicitor in preparing the brief for trial. Lord Halsbury observed as follows at page 487:

'It appears to me that the privilege which surrounds the evidence actually given in a Court of Justice necessarily involves the same privilege in the case of making a statement to a solicitor and other persons who are engaged in the conduct of proceedings in Courts of justice when what is intended to be stated in a Court of justice is narrated to them that is, to the solicitor or writer to the Signet. If it were otherwise, I think what one of the learned counsel has with great cogency pointed out would apply-- that from time to time in these various efforts which have been made to make actual witnesses responsible in the shape of an action against them for the evidence they have given, the difficulty in the way of those who were bringing the action would have been removed at once by saying, 'I do not bring the action against you for what you said in the witness box, but I bring the action against you for what you told the solicitor you were about to say in the witness box'. If that could be done the object for which the privilege exists is gone, because then no witness could be called: no one would know whether what he was going to say was relevant to the question in debate between the parties. A witness would only have to say, 'I shall not tell you anything; I may have an action brought against me tomorrow if I do; therefore I shall not give you any information at all.' It is very obvious that the public policy which renders the protection of witnesses necessary for the administration of justice must as a necessary consequence involve that which is a step towards and is part of the administration of justice namely, the preliminary examination of witnesses to find out what they can prove. It may be that to some extent it seems to impose a hardship, but after all the hardship is not to be compared with that which would arise if it were impossible to administer justice, because people would be afraid to give their testimony.'

In AIR 1924 All 535 (Majju v. Lachman Prasad) the Full Bench held that in the case of a report made to a Police Officer, the question whether it is covered by absolute privilege is governed by the English common law and since the statements made in the course of a judicial proceeding are absolutely privileged in England, they must be held to be absolutely privileged in India following an earlier

decision of the Full Bench of the same court in ILR 40 All 341 = (AIR 1918 All 69). In Halsbury's Laws of England, Vol. 24, third Edition, at page 49, it is stated as follows:--

'89. Absolute privilege: No action lies, whether against Judges, counsel, jury, witnesses, or parties, for words spoken in the ordinary course of any proceedings before any court or tribunal recognised by law. It is manifest that the administration of justice would be paralysed if those who were engaged in it were liable to actions of libel or slander upon the imputation that they had acted maliciously and not bona fide. Thus, all witnesses or parties speaking with reference to the matter before the court have privilege for their evidence, whether oral or in writing, relevant or irrelevant, malicious or not. The privilege extends not only to words spoken but also to documents properly used and regularly prepared for use in the proceedings.....'

The last sentence in the above quotation is based on the decision in 1905 AC 480. In Salmond on Torts, fifteenth Edition, page 208, it is stated as follows:--

'Judicial privilege.

The authorities establish beyond all question this : that neither party, witness, counsel, jury, nor Judge can be put to answer civilly or criminally for words spoken in office; that no action of libel or slander lies, whether against Judges, counsel, witnesses, or parties, for words written or spoken in the course of any proceeding before any court recognised by law, and this though the words written or spoken maliciously without any justification or excuse, and from personal ill-will and anger against the person defamed. This absolute privilege has been conceded on the grounds of public policy to ensure freedom of speech where it is essential that freedom of speech should exist, and with the knowledge that courts of justice are presided over by those who from their high character are not likely to abuse the privilege, and who have the power and ought to have the will to check any abuse of it by those who appear before them. The privilege extends to all courts, superior and inferior, civil and military.

The privilege extends not merely to Judges but witnesses, parties, and advocates. It includes not merely statements made by a witness in court but also statements made by him to a party, or to the party's solicitor, in the course of preparation for trial. For it would not be of much use to grant absolute privilege to what is said in court, if & plaintiff could say: 'I cannot sue you for what you said in the witness-box, but I am going to sue you for what you told your solicitor you were going to say in it.'

Here also reliance is placed on 1905 AC 480.

5. In AIR 1926 Mad 521--(Sanjivi Reddy v. Koneri Reddi) the defendant presented a petition to the Deputy Magistrate praying that the plaintiffs and some others should be bound over under Section 107 of the Code of Criminal Procedure. The Magistrate sent the petition to the Police for enquiry and report. The police reported after enquiry that there was no foundation for the allegations in the petition. The Magistrate thereafter dismissed the petition. It was held that the statements made to the police officer with a view to their being repeated before the Magistrate were absolutely privileged. It was further held that the petition presented under Section 107, Cr. P. C. was invested under the common law of England with absolute privilege which attaches not merely to the actual proceedings of any tribunal exercising judicial functions but to all preliminary steps which are in accordance with the recognized and reasonable procedure of such a tribunal. The decision in 1905 AC 480 was followed. In AIR 1941 Mad 26 (Bapalal & Co. v. Krishnaswamy Iyer) it was held that a complaint to a Police Officer being a statement which the complainant is prepared if called upon to do so, to substantiate upon oath later is absolutely privileged following the decision of the Division Bench in AIR 1926 Mad 521 (Sanjivi Reddy v. Koneri Reddi). In AIR 1941 Mad 538 (Vattappa Kone v. Muthu Karuppan) the allegations made by the defendants in their statement to the village Magistrate were held to be absolutely privileged following the decision in AIR 1926 Mad 521. In : AIR1939 Cal477 (Madhab Chandra v. Nirod Chandra) certain defamatory statements were made by the defendants against the plaintiff in certain reports to the police. The decision in 1905 AC 480 was followed. The observation by Lord Halsbury to the effect that 'the overwhelming consideration that a witness must be protected for' a preliminary

statement or he has no protection at all' was referred to. The contention that witnesses and parties stand on a different footing was rejected, and it was observed:

'It may be said however that when a party comes to depose on oath there can be no distinction with regard to his liability to answer questions as between him and any other witness, and the same must be said with regard to statement preparatory to giving evidence on oath.'

It was further observed that in a sense the statements made to the police appear to be in this respect on a stronger ground than the statements made to the solicitor as reported in the English case 1905 AC 480 and it was observed as follows:--

'For statements made to a solicitor may or may not be followed up by judicial proceeding, the matter being at the option of the party consulting such solicitor, in which case the statements would slumber in the office of the solicitor, as Lord Halsbury said. But the party lodging information before the police has no option and the police are empowered to So on with the matter and investigate, leading to other results.'

The decision in AIR 1926 Mad 521 (*Sanjivi Reddi v. Koneri Reddy*) was followed. In (*Lachhman v. Pyarchand*) the defendants made a report to the Station House Officer of the police station. In a suit filed by the plaintiff, against whom defamatory statements had been made in the said report, it was held that the statements were absolutely privileged. The decisions in AIR 1941 Mad 538 and : AIR1939 Cal477 were followed, and the decision of Blagden J. in ILR (1943) 1 Cal 250 (*Mayr v. Rivaz*) was dissented from.

6. Mr. Ganapathi Bhat relied on the decisions in *Gangappagouda v. Basayya* AIR 1943 Bom 167; *Maroti 'sada-shiv v. Godubai Narayana Rao* : AIR1959 Bom443 , and *Mayr v. Rivaz*, ILR (1943) 1 Cal 250 in support of his contention that the report to the police officer filed by the defendant is not covered by absolute privilege, but that the defendant could only claim a qualified privilege In AIR 1943 Bom 167 a Mahalkari holding a preliminary enquiry relating to the conduct of a police patil, on the directions of the Collector in order to report to the Collector, recorded the

statements of the defendants. It was held that the Mahalkari was not acting in a judicial capacity nor was exercising the attributes of a Court and that the evidence given before the Mahalkari in such an enquiry is not absolutely privileged. In : AIR1959 Bom443 it was held that the defamatory statement made before the police officer in the course of investigation carried on under the Criminal Procedure Code cannot be regarded as absolutely privileged but that only a qualified privilege attaches to them. The learned single Judge who decided the case observed that the Police Officer who recorded the statement cannot be stated to have been acting in a judicial capacity or exercising the attributes of a Court and that the statements were not absolutely privileged. The decision in ILR (1943) 1 Cal 250 was followed and the decisions in AIR 1926 Mad 521 and AIR 1941 Mad 26 were dissented from since the learned Single Judge felt that he was bound by the decision of the Division Bench-- AIR 1943 Bom 167. In ILR (1943) 1 Cal 250, the defendant wrote a letter to the Commissioner of Police containing passages admittedly defamatory to the plaintiff. The learned Single Judge Blagden J. considered the decision of a Division Bench of the same court in : AIR1939 Cal477 but did not follow the same. The decision in AIR 1941 Mad 26 was also dissented from. It was held that the defendant was not protected by absolute privilege. The learned Judge considered two illustrations to show why a complaint to a Police Officer cannot come under the principle in 1905 AC 480 and should not be considered as absolutely privileged. The first is a case of the Editor of a newspaper who publishes a statement that AB is a murderer and states therein that he would be prepared later to substantiate the statement upon oath in a judicial proceeding which may be taken by AB. In such a case, according to the learned Judge, if AB takes proceedings against the editor, he can plead absolute privilege if the aforesaid principle applies. The other illustration referred to by the learned Judge is that in case a report to the police is made which culminates in a prosecution and the accused is acquitted, it is open to the person charged to sue the complaint for malicious prosecution and in order to succeed in the suit, the plaintiff would have to prove malice; but if the charge appears to the police to be groundless and no prosecution follows, the person against whom the allegations are made in the report to the police would have no civil remedy at all; if those allegations are absolutely privileged; and it would appear odd that a person who

makes baseless allegations in a complaint to the police is in a safer position than a person whose allegations to the police may be found to be sufficiently justified to result in a prosecution though it may prove unsuccessful.

7. The reason why absolute privilege is extended to the statement of a witness made prior to the commencement of a judicial proceeding is based on public policy as stated by Lord Halsbury in 1905 AC 480. There is no reason why the principle stated in the said decision should not be extended to a party and the absolute privilege confined only to the statement of a witness under such circumstances. Of the two instances referred to by Blagden J. in ILR (1943) 1 Cal 250 the first refers to the editor of a newspaper as stated above. But it is doubtful whether the editor of the newspaper in such circumstances can claim absolute privilege on the basis of the principle laid down in 1905 AC 480. With regard to the second illustration referred to by Blagden J., if the complaint to the police results in an unsuccessful prosecution then the person defamed can only claim damages for malicious prosecution and not for defamation. In case the complaint to the police does not result in a prosecution, then also the persons defamed have no remedy in respect of defamatory statements made in such a complaint to the police. But if a false complaint is made to the police, the person who makes such a false complaint would be punishable either under Section 182 or Section 211 of the Indian Penal Code. It cannot therefore be said that a person against whom false charges are made in a complaint to the police, even if no further action is taken by the police authorities on such complaint, goes scot-free. I would, therefore, prefer to follow the earlier view of the Division Bench of the same High Court in : AIR1939 Cal477 and the other decisions referred to above which take the view that a complaint to a police officer is absolutely privileged.

8. It must therefore be held that the statements made by the defendant in his complaint to the police officer are absolutely privileged'. This appeal is accordingly dismissed. Parties shall bear their own costs in this appeal.

9. Appeal dismissed.