

**Nannu Mal Vs. Ram Prasad**

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**SooperKanoon Citation :** [sooperkanoon.com/462266](http://sooperkanoon.com/462266)

**Court :** Allahabad

**Decided On :** Feb-19-1926

**Reported in :** AIR1926All672

**Appellant :** Nannu Mal

**Respondent :** Ram Prasad

**Judgement :**

1. This appeal must be allowed. We do not say that the view taken by the learned Judge is not in many cases, perhaps in most cases, a perfectly sound view to take. What we mean by that is this. As a general rule, however wide and unsatisfactory a claim in the plaint may be, it is better for the Munsif or the trial Court to take the plaintiff's evidence before he dismisses it. The evidence of the plaintiff may improve the plaint and the plaintiff may, if no evidence at all is taken, open up argument in the appellate Court as to whether it is not possible for the plaintiff to make out some sort of a case at the trial. In the second place, as a general rule, an amendment, what is sought to be made by the plaintiff's pleader before the trial with a view to curing a defect in the pleading or bringing the matter more clearly before the Court or including some matter, which the plaintiff omitted to inform his pleader, ought to be allowed. It is discretionary; and, if the Court in the exercise of its discretion allows an amendment, no Court ought to interfere with its discretion. But we think that this case is an exception to the general rule.

2. The suit is one brought for defamation against a witness who gave evidence on behalf of the prosecution in a badmashi case. It is alleged that in giving evidence against the person, who was accused of being a badmash, he said that he was a member of a gang of which the plaintiff was the ring-leader. If it was untrue, it no doubt was a serious injury to the feeling of the plaintiff. But the law is, and has recently been explained in *Chunni Lal v. Narsingh Das* AIR 1918 All 69, that it is of greater importance in the public interest that witnesses should be absolutely protected in giving evidence than that persons to whom they may have referred and about whom they may mistake or even tell lies should have the protection of being able to sue them for damages. Statements made by witnesses in Court relevant to the proceedings are absolutely protected. It is quite true, as the learned Subordinate Judge says, that the statement must be relevant; but the plaint in this case sufficiently shows that it was relevant. The plaintiff was unable to make his complaint in the plaint without showing what the defendant said; and, when he showed what the defendant said, he showed that it was said in relation to, and, therefore, relevant to, the question 'whether Nawab Singh, the accused, was or was not a member of a gang of badmashes. Therefore the Munsif was right in holding that the plaint disclosed no cause of action and showed clearly that the statements of the defendant were relevant to the proceedings in which he was giving evidence. 'Whether the statements were true or untrue makes no difference for the purpose of suits for defamation of this class; but untruth to the knowledge of the witness would undoubtedly, render him liable to proceedings for perjury.

3. We now come to the second, and rather more difficult, question. The plaintiff presumably, according to the view of the Munsif, finding that his case was bound to fail, tried to patch it up by alleging a subsequent slander generally before the public in public places on the same day as the day when the defendant gave evidence in Court. It is alleged in the proposed amendment that the defendant said that the plaintiff was the ringleader of a gang of badmashes and that he (the defendant) had said so in Court. The latter part of that statement was perfectly true, but the earlier portion of it is very vaguely alleged. The Munsif refused to allow the plaint to be patched up by this totally new cause of action. He has given an excellent reason. He was of opinion that it was deliberately done, because it had been discovered that the suit must fail and that the only chance of keeping it

alive was by adding this obvious after-thought. This is a matter entirely in the discretion of the trial Court, and we do not think that the Subordinate Judge has given sufficient reason for overruling the discretion of the trial Court. We, therefore, allow the appeal, and set aside his order. The suit must be dismissed and the plaintiff must pay the costs here and below including in this Court fees on the higher scale.

4. We may say that, although no assistance is to be derived from the form given in the Coda for pleadings in a case of defamation, nonetheless the general provision in Order 6, Rule 2, must be complied with and the Munsif might have disallowed the amendment on the ground that it was much too vague. A plaint in a case of defamation ought to allege not only the publication, or set out not only the words, but that they were published or spoken to, at any rate, some named individuals at a particular time and place specified in the plaint. The plaint was really too vague and might have been struck out on that ground. But that is not the ground which we have decided in this appeal.