

Murli Pathak Vs. King-emperor

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Court : Allahabad

Decided On : May-25-1927

Reported in : AIR1927All707

Appellant : Murli Pathak

Respondent : King-emperor

Judgement :

Dalal, J.

1. The only ground worth considering in this application for revision is ground 3, that the alleged defamatory statement having been made by the applicant as an accused person in his defence cannot form the subject-matter of a prosecution for defamation. The applicant Murli Pathak was prosecuted by Bhukkal on a charge under Section 426, I.P.C. In the ordinary course, during the trial, the applicant Murli Pathak was examined by the Court under Section 342, Criminal P.C. Questions were put to him by the Court, and he answered them At the end, one question was:

Why the charge was brought against him by Bhukkal

and he replied that this was owing to enmity. The next question was whether he had anything more to say, and in answer he gave reason for the enmity. His answer was that he and Bhukkal were not on dining terms because Bhukkal's

daughter-in-law was in the keeping of a Lohar. Bhukkal thereupon prosecuted Murli Pathak under Section 499, I.P.C., for defamation, and Murli was punished by a Magistrate with fine under Section 500, I.P.C. An appeal by Murli was dismissed, and he has brought this revision application to this Court.

2. In my opinion the provisions of Section 342. (2), Criminal P.C., will apply. It is laid down there that the accused shall not render himself liable to punishment by refusing to answer such questions, that is, those put to him by the Court under Clause (1) or by giving false answers to them. Murli, who was an accused person in the case under Section 426 is now punished for giving a false answer to a question by the Court. In my opinion the order was prohibited by statute. On behalf of Bhukkal, complainant, my attention was drawn to the judgment of Mr. Justice Daniels in *Champa Devi v. Pirbhu Lal* : AIR1926 All287 . In that case the accused person who was prosecuted for defamation had filed a written statement, and the learned Judge has specifically mentioned that the immunity conferred by Section 342(2), Criminal P.C., did not extend to a written statement. The learned Counsel next referred me to a Full Bench decision of the Bombay High Court, *Bai Shanta v. Umrao Amir Malek* : AIR1926 Bom141 The question referred to the Full Bench was whether relevant statements made by an accused person under Section 342, Criminal P.C., or contained in a written statement filed by him with the Court's permission, are absolutely protected from being the subject of a prosecution for defamation under Section 500, I.P.C. The answer to this was in the negative. With all respect it may be pointed out that the question includes two different matters: one privileged under Section 342(2); and the other (a written statement) not so privileged. The learned Chief Justice, while delivering the judgment of the Full Bench observed:

There is nothing in Section 342, Criminal P.C. which gives an accused person an absolute privilege as regards defamatory statements made by him in his examination.

3. However, the matter may be put, there is no explanation of the provisions of Clause (2), Section 342, and even if the accused did not have any absolute privilege, it will be sufficient for his purpose if he cannot be punished for making a

false statement in answer to question put to him by Court. When he cannot be punished, it must be presumed that he had an absolute privilege under Section 342(2), Criminal P.C. There is no consideration given to this matter by the learned Judges of the Bombay High Court. The Madras High Court is in favour of absolute privilege: see *In re P. Venkata Reddy* [1912] 36 Mad. 216, while the Calcutta High Court has disagreed with this opinion: *Satish Chandra Chakravarti v. Ram Doyal De* A.I.R. 1921 Cal. 1. The question which arises here is not of absolute privilege, but of the bar to the accused being punished for anything he may state in answer to questions by Court.

4. It was argued that the answer containing the defamatory statement was wholly irrelevant and added by Murli Pathak, not in answer to any question, but of his own motion, to defame Bhukkal. I cannot agree to that view of the circumstances of the examination. Murli was asked the reason for a false charge, and when he gave that to be enmity, and when the Court proceeded to direct him to make any further statement, the natural implication was that the Court desired to know the reason for the enmity, and the defamatory statement did give that reason. The answer which is the subject of the defamation was relevant to the matter in issue and arose out of a question put by the Court, I hold that Murli was saved from punishment by the protection given to him under Section 342(2), Criminal P.C., when he made the defamatory statement. I set aside the conviction and sentence and order the fine, if any recovered, to be refunded.