

Ali Mohammad Vs. Manna Lal

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Court : Allahabad

Decided On : Apr-10-1929

Reported in : AIR1929All972; 118Ind.Cas.657

Appellant : Ali Mohammad

Respondent : Manna Lal

Judgement :

Bennet, J.

1. This is a second appeal by the defendant against whom the lower appellate Court has granted a decree for Rs. 200 for defamation. The defamation in question was contained in an application which was made by the appellant to a civil Court, asking that certain papers should be sent to arbitrators in a suit in which the appellant was a party, but the respondent was not a party. The passage in question is as follows:

The plaintiff (viz., Beni Prasad the plaintiff in suit No. 1001 of 1925) has a regular gang. The plaintiff is a great forgerer, liar and a clever man, and Bala Prasad, Parbhu Dial and Manna Lal (the plaintiff in this suit) are included in that gang which is responsible for producing many forged pronotes charging others with liability and which has filed many false suits against others and has made illegal gain in this way.

2. In second appeal the only question raised is whether the occasion on which this statement was made was or was not an occasion of absolute privilege. Various rulings have been produced and for the respondent the earlier rulings of the Allahabad High Court such as *Radha Prosad v. Bhajan Rai* [1885] 7 All. 677 and *Balu Parshad v. Mudamal* [1913] 11 A.L.J. 193, lay down that before it can be decided whether a statement made by a witness or in a pleading amounts to defamation, it has to be considered whether that statement was relevant to the enquiry in which the evidence was given or statement was made. It has also been held all along by the Calcutta High Court in *Dhiro Koch v. Gobinda Dev* [1921] 65 I.C. 204., and other rulings that a defamatory statement made by the parties to a suit in pleadings is not absolutely privileged. There is no doubt that in England such statements are absolutely privileged. Halsbury's Laws of England, Vol. 18, p. 678, para. 1253. lays down that there is an absolute privilege for parties, witnesses, counsel, jury or Judge in regard to words spoken in office; and this privilege extends to statements in affidavits made by parties or witnesses as has been held in *Seman v. Metherclift* [1877] 2 C.P.D. 53; *Astley v. Younge* [1759] 20 Burr, 807 and *Kennedy v. Hilliard* [1860] 10 C.L.R. 195. High Courts in India have, however, differed in their opinion on whether the English rule of absolute privilege should be applied to judicial proceedings, or whether Section 498, I.P.C., which made a modification in the criminal law should be considered to have made an alteration by implication in the civil law in regard to libel. This question was fully considered by a Full Bench of the Allahabad High Court in the year 1918: *Chunni Lal v. Narsingh Das* [1918] 40 All. 341. On p. 371 (of 16 A.L.J.) of that ruling the Full Bench laid down that it would not accept the view that the introduction of the Penal Code had made an alteration in the civil law, on this point. At p. 371 (of 16 A.L.J.) it is stated:

In this instance we consider that what is sound public policy in England is equally sound policy in India and that the rule of English Law is in accordance with the principles of justice, equity and good conscience... we cannot agree with the decision of the Calcutta High Court in *Angada Ram Shaha v. Nimai Chand Shafia* [1896] 23 Cal. 867. It appears to be based upon the assumption that there was no law of defamation in India before the Penal Code. This is not the case for there are reported decisions on the subject in this province as far back as 1852. Moreover

the learned Judges applied the test of the criminal law to the civil law whereas we hold that the two are independent of each other.

3. And finally it was held:

We, therefore, hold that defamatory words used on such an occasion as is alleged by the plaintiff in this suit are not action-able on the ground of absolute privilege and that the present suit fails.

4. It is true that in the case before the Full Bench the defamatory matter was made in a petition presented to a criminal Court whereas in the present case the petition was presented to a civil Court. But I consider that although the language in the Full Bench ruling is somewhat guarded, the intention would be to apply the principles of English law in a case like the present which is also a case of an application in a judicial proceeding. There are no rulings of this Court to the contrary subsequent to this Full Bench rulings of 1918. For the respondent reference was made to *Bindeshwari Prasad v. Hanuman Prasad* A.I.R. 1924 All. 445., but that was not a statement in a judicial proceeding; on the contrary it was an oral statement made to a Sub-Divisional Officer on tour. Reference was also made to *Majju v. Lachman Prasad* A.I.R. 1924 All. 535 which was merely a police report, I consider, therefore, that I am bound to follow the principle of the Full Bench in *Chunni Lal v. Narsingh Das* [1918] 40 All. 341 and hold that the present action was one of absolute privilege. One further argument was made on behalf of the respondent to the effect that the Court was not endowed with jurisdiction at the time to decide the suit. That suit had been referred to arbitration. No doubt *Aftab Begam v. Abdul Majid Khan* A.I.R. 1924 All. 800. lays down that arbitration ousts the jurisdiction of a Court except for the purpose of controlling the arbitrators, but the present application was one to send papers to the arbitrators, and, therefore, it was an application with which the Court could deal. I consider that as the case is one of absolute privilege, the lower appellate Court was wrong in granting a decree for damages for defamation to the plaintiff. Accordingly I allow this second appeal and dismiss the suit of the plaintiff for damages. In view of the fact that the statements have been found to be defamatory and that the defendant failed to prove his plea of jurisdiction, I consider that it will be equitable to order that each side should pay

their own costs throughout.

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