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Court : Rajasthan

Decided On : Feb-25-1958

Reported in : AIR1958Raj257

Judge : I.N. Modi, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 7; [Evidence Act, 1872](#)
- Sections 101 to 104

Appeal No. : Second Appeal No. 42 of 1953

Appellant : Ramdas and ors.

Respondent : Raja and ors.

Advocate for Def. : Rikhab Raj, Adv.

Advocate for Pet/Ap. : B.K. Acharya, Adv.

Disposition : Appeal dismissed

Judgement :

I.N. Modi, J.

1. This is a second appeal by the plaintiff Ramdas and others in a suit for damages for defamation.

2. The plaintiff was the Pujari of Shri Raghu-nathji's temple in village Sanwatra at all material times. The defendants are residents of that village. The plaintiff's case was that the defendants made an application on Posh Vadi 11 Smt. 1998 to the Mehkma Khas of the State of Mewar, as it then was, and later during the course of an enquiry emanating from that application gave statements before the Assistant Settlement Officer on 3-5-1945, in which they stated that the plaintiff was not a man of good character, that he did not perform the worship of the temple regularly or properly, that when he was being asked to perform the worship properly he assumed an attitude of aggression and behaved violently, that he had blocked the way to the temple and that he also beat the 'gwalas', both women and men, when they brought firewood from the jungle, and, therefore, he was not fit to be allowed to continue as Pujari of the temple. The plaintiff's contention was that all these allegations were false and defamatory, and, therefore, he claimed damages to the extent of Rs. 500/- from the defendants. This suit was brought on 5-2-1947.

3. The defendants admitted that they had made an application to the Mehkma Khas of the former State of Udaipur that the plaintiff being the Pujari of the temple was not performing the worship regularly or properly, and that the plaintiff was in the habit of acting violently whenever he was reminded of his duties; but they contended that whatever they had done, they did in the performance of their duty as they were interested in the proper worship of the temple of the village and that the complaint against the plaintiff was true in fact and substance. The Munsif Rajsamand who tried the suit decreed it and awarded damages in favour of the plaintiff as claimed. The defendants then went in appeal and the learned Civil Judge, Udaipur, before whom the appeal came for disposal, dismissed the suit. The present appeal has been filed from the aforesaid judgment and decree.

4. It is to be regretted that both courts below have misdirected themselves in the trial of this suit, and their judgments are more or less superficial and perfunctory, and the real issues which arise in the case have been completely missed. The trial court was obviously of the opinion that an executive enquiry had been ordered as respects the complaint of the defendants and that it was found by the officers concerned that the complaint was false, and, therefore, it came to the conclusion that the defendants had made themselves liable to the plaintiff for damages and

consequently decreed the suit in toto.

I desire to point out that it was not right for the trial court to have based its finding upon the decision arrived at by the executive authorities in this connection. The trial court should have decided the case on the material which was placed before it, and not on the extra-judicial finding of certain executive officers of the State.

5. Turning to the judgment of the learned Civil Judge, I cannot help stating that his judgment is equally unsatisfactory. The learned Civil Judge dismissed the suit on a number of grounds, the one important ground being that the plaintiff had failed to prove 'facts or circumstances by which injury to his mind and reputation could have been assessed in terms of money', and that in the absence of such evidence, the damages awarded by the trial court were entirely arbitrary. It is difficult to understand what the learned Civil Judge meant by this. The plaintiff had claimed a sum of Rs. 500/- as general damages and not as special damages, and the learned Civil Judge obviously was not conscious of the legal principle which is well established that general damages are not required to be proved specifically. The learned Civil Judge further held that the plaintiff should have established by evidence how and to what extent he was lowered in the public eyes.

Here again he seems to be labouring under a misconception of law because if the words used by the defendants in connection with the plaintiff were per se defamatory and tended to injure his reputation as a Pujari, as they appear to be, it was scarcely necessary for him to show 'how and to what extent he was lowered in the public eyes'. There is still another matter where the learned Civil Judge seems to me to have clearly gone wrong and that is where he says that the plaintiff was bound to prove that the application, upon which this suit was founded had been made by the defendants and that the allegations made by them were false and mala fide and without any reasonable ground.

So far as the allegations are concerned, it seems to me that the defendants themselves admitted specifically that they had made them although their defence was that they had made them in performance of their duty as plaintiff being the Pujari of the village temple was not performing the worship regularly and properly, which it was his duty to perform. No further proof of the application, or the contents

thereof therefore, was required, and it was not for the plaintiff to prove, at any rate in the first instance, that these allegations had been made falsely and for improper motives or without any reasonable grounds.

The learned Judge thus wrongly relied on matters in arriving at the decision to which he did, and completely failed to give any finding on the crucial point in the case, namely, whether the defendants were protected by the circumstance on which they relied, namely, that the complaints made by them to the authorities concerned had been made in the performance of their own duty as members of the village community to the administration which was equally responsible for the proper maintenance of the worship of the temple.

6. Now, I may state at once that so far as the allegations made against the plaintiff are concerned, they are prima facie defamatory inasmuch as they cast a serious reflection on him- as a Pujari of the temple. The complaints against him were that he was irregular and negligent in the performance of the worship of the temple which it was his duty to perform and that when cautioned & reminded by the village people to perform his duty properly, he used to assume an attitude of defiance and violence. Another essential factor which is necessary for the plaintiff to prove in a suit for defamation is that of publication, and this allegation is also fulfilled in the present case because the complaints were not made to the Pujari himself but were communicated to the authorities concerned, and this was, in my opinion, sufficient publication. The defendants' reply, put briefly, was twofold. Firstly, that the complaints were correct and secondly that they had been made in the performance of their duty as members of the village community to the administration, and were consequently privileged and did not constitute defamation under any circumstances.

7. So far as the first plea is concerned, the defendants examined one of themselves namely, Lachhi-ram, in support of their case. His evidence was that the plaintiff did not perform worship at the temple properly and that when villagers brought firewood from the jungle, the plaintiff was in the habit of dealing violently with them and particularly his behaviour towards the women and children was improper though this witness plainly stated that he did not give any application

against the plaintiff.

It is true that this witness was not a signatory to the application made to the Mehmka Khas by a number of people in 1941. It also does not appear that he was one of the persons who were examined by the Assistant Settlement Officer during the course of the enquiry arising out of that application. The defendants seem to have produced this witness in order to establish that the allegations made in the complaint to the Mehkma Khas were correct.

There is the evidence of this solitary witness in support of these allegations and it is impossible to hold on such meagre evidence that the complaints against the plaintiff were well founded. I, therefore, hold that the plea of justification has not been established. That, however, does not end the matter and the question still remains whether the plea of privilege should be held to have been established in the circumstances of this case.

8. As to that, it is the plaintiff's own case that the allegations against him were contained in an application made by the villagers to the Mehkam Khas of the State of Mewar as it then existed. Broadly speaking, by Mehkma Khas is meant the ministry concerned. Now, the defence of privilege is of two kinds: first, an absolute privilege, and, secondly, a qualified privilege. It may be pointed out that the term 'privilege' is used in the sense of an excuse or immunity conferred by law on certain statements or communications made on certain occasions which are called 'privileged occasions.'

These are occasions when a person has duty or interest in making certain statements to some person or persons having a corresponding duty or interest. The principle underlying this privilege is that the law considers that a person acting from a sense of duty or interest should be left free to perform his duty without fear of being called upon to prove the truth of his words in a court of law. Now, as already stated above, privileges are of two kinds: absolute and qualified.

In the case of an absolute privilege, once such a privilege is established there is an end of the matter and thereafter it is not open to the plaintiff to negative the privilege by establishing malice on the part of the defendant. Instances of absolute

privilege are the speeches made by the members of the Parliament or of the various State Assemblies on the floor of their respective houses. Another instance of the same privilege is to be found in, the case of Judges while exercising judicial powers. In the case of a qualified privilege, the demands of public policy are not so high and the exigencies demand that protection should be afforded only so long as such persons are not proved to have acted maliciously or from an improper motive. I may also point out in this connection that the performance of duty which may justly occasion, or bring into play, the defence of privilege may be legal but need not be legal only and the duty may be moral or social.

Complaints made against the conduct of an official to his superior authorities by a citizen thus fall under this category. See *Jenoure v. Delmege*, 1891 AC 73 (A). Again a complaint made by a tenant to his landlord with respect to the misconduct of a workman sent by the latter was held to be protected on the ground of qualified privilege. See *Toogood v. Spyring*, (1834) 1 Cr. M & R 181 (B). It should further be remembered in this connection that in order to constitute a communication to be privileged, which is a well recognised class under this head (and the other class is 'privileged reports' with which we are not concerned in this case), a duty or interest should exist not only in the defendant but a corresponding duty or interest should also reside in the person or authority to whom the statement is published.

I desire to invite particular attention in this connection to the *King v. Russell*, (1937) 2 KB 375 (C). The facts in that case were these. Mr. C was a member of Parliament for a certain county. The appellant was an inhabitant of and a voter in that county. The appellant wrote to Mr. C with the object of seeking his assistance to bring certain matters of importance to the attention of the Minister concerned. The appellant wrote certain letters to Mr. C which contained allegations of grave misconduct against a detective-sergeant of police connected with his county. The appellant was then prosecuted for libel. The defence was that the occasion was a privileged one. It was argued that a Member of Parliament had an interest in receiving the grievances of his constituents and bringing them before the House and that a person like the appellant could only approach the Parliament through an individual member that there was sufficient common interest or duty in a Member dealing with a communication from a constituent to render the occasion privileged.

It was also contended that even if the writer made an honest mistake in going to the wrong person, that would not deprive him of his privilege. The appellant was convicted and in the final appeal to the Court of Criminal Appeal, Lord Humphreys C. J. laid down the principle that

'in the absence of any finding that the appellant was actuated by malice, we are bound to assume for the purposes of our judgment that, although these libels were wholly untrue, the appellant honestly believed them to be true and, in publishing them, was not influenced by any wrong or indirect motive.'

Reliance was placed on the decision of the Queen's Bench in *Harrison v. Bush*. (1856) 5 E & B 344 (D) where it was laid down that

'A communication made bona fide upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contains criminary matter which, without this privilege, would be slanderous and actionable.'

It was held that every inhabitant of a locality had an interest in the conduct of its public functionaries and further that Mr. C. Member of the Parliament had a corresponding interest, and, therefore, the occasion was a privileged one, and that the conviction of the appellant could not be maintained. I need not multiply cases. The principle which is deducible from decided cases clearly is that where the defendant has a duty or interest which entitles him to speak and the person or authority to whom he so speaks is also under a corresponding duty or interest in that connection, the occasion is a privileged one, and though the complaint made may be per se defamatory, it would be protected even if it be made falsely or erroneously so long as it is not made out of malice or from improper motive.

9. Let us apply this principle to the facts and circumstances of the present case. The defendants are villagers of Sanwatra and were obviously interested in the proper worship of the village temple which, on the plaintiff's own showing, was a government temple. The defendants were aggrieved by what they thought was the improper conduct of the Pujari of the deity inasmuch as he did not worship the

temple regularly and his behaviour towards the village people was far from satisfactory. The defendants' complaint to the Mehkma khas of the State of Mewar, as it then was, was for redress. The Mehkma Khas or the ministry concerned was certainly under a corresponding duty to set filings right if they were wrong. It cannot be said for a moment, therefore, that in the present case the defendants were approaching a wrong person or wrong authority. Consequently, the occasion, in my opinion, was a privileged one and the defendants were protected even if their complaints were not correct unless the plaintiff was able to establish that the complaints had been made against him from some improper motive. On the latter circumstance there is no evidence whatsoever in the present case.

10. It follows that the same allegations which were more or less repeated in the statement given before the Assistant Settlement Officer during the course of the enquiry and were made in support of those contained in the application filed in the Mehkma Khas, stand, to say the least, on no worse footing and are equally protected.

11. In this view of the matter, the plaintiff's suit cannot but be dismissed. Consequently, I dismiss this appeal though for very different reasons from those relied on by the learned Civil Judge. Having regard to the circumstance that the case was mismanaged in the courts below by both parties, I would leave them to bear their own costs throughout.