

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (OS) No. 1359 of 2011

Reserved on: July 3, 2013

Decision on: July 31, 2013

NAU NIHAL SINGH RANA Plaintiff

Through: Mr. A.K. Behra and
Mr. Gyaneshwar, Advocates.

versus

SUNIL KUMAR Defendant

Through: Mr. Sanjeev Kumar, Advocate.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

31.07.2013

IA No. 442 of 2012 (under Order VII Rule 11CPC)

1. This is an application by the Defendant seeking rejection of the plaint on the ground that the plaint does not give rise to any cause of action.

2. The aforementioned suit has been filed by the Plaintiff claiming damages and compensation in the sum of Rs.25 lakhs along with interest @ 12% per annum from the date of filing of the suit till the date of realisation. According to the Plaintiff, the Defendant is liable to pay him the aforementioned sum as damages and compensation for defamation.

3. The Plaintiff states that he was working as Chief Personnel Officer with Northern Railway from 4th September 1995 to 31st October 1996. The
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Plaintiff states that he had filed a civil suit in this Court in January 2001 against the Ministry of Railways for grant of compensation of Rs.10 lakhs for defamation in connection with a press communique dated 4th November 1996 issued by the Ministry of Railways. When the suit was transferred to the Court of the learned Additional District Judge ('ADJ') on account of revision of pecuniary jurisdiction, it was re-numbered as CS No. 83 of 2009. The said suit was dismissed on 26th July 2010 on the ground of limitation. A copy of the said judgment has been placed on record. The Plaintiff states that he has filed an appeal being RFA No. 757 of 2010 against the said judgment which is pending.

4. Para 13 of the judgment dated 26th July 2010 shows that on behalf of the Defendants in CS No. 83 of 2009 Mr. Sunil Kumar, the Defendant herein, was examined as the sole witness DW 1. The present suit concerns the deposition of the Defendant in the said suit. According to the Plaintiff the answers given by the Defendant during the aforementioned deposition were totally false, not supported by any material on record or by any documentary proof and that the statements were "disparaging to the image and reputation of the Plaintiff and as result is also causing immense mental agony and mental harassment to the Plaintiff." In particular, the Plaintiff refers to the answers given by the Defendant during his cross-examination on 9th and 23rd August 2005. In the course of his cross-examination on 9th August 2005, the Defendant was asked about the complaint filed by Mrs. Kuljit Kaur on 4th October 1996 to the Railway Minister after which she was suspended from duty on 23rd September 1996 and had been issued a charge sheet on 24th September 1996 for dereliction of duties. That charge sheet was issued by the

Plaintiff. She had accused the Plaintiff of subjecting her to sexual harassment. During his cross-examination the Defendant appears to have volunteered that “the records suggest that there seems to be some case pertaining to the past period with regard to sexual harassment in which matter was taken to police but since I have never dealt with those cases, and I am not in a position to give detail thereof. I have not brought the record pertaining to such old cases. I am not sure as to whether any lady member had signed the aforesaid resolutions against the Plaintiff. I do not know the names of ladies who had made complaints as aforesaid other than Ms. Kuljit Kaur”. He further volunteered that “on the basis of my memory I can say that these cases pertain to some maid servants. It is correct that name of Mr. Rana was mentioned in the periodicals of Indian Railways Promotee Officers Federations submitted by other officers as mentioned by me in para 4 of my affidavit.” In his deposition on 23rd August 2005 he stated that “I cannot say as to whether there had been any complaint or not against the Plaintiff during these 30 years of service about causing any sexual harassment to any lady official before the suspension of Ms. Kuljit Kaur but the record suggest that there had been complaint as regards sexual harassment from some of the colleagues of the Rana including maid servants.” The Plaintiff states that the aforementioned portions of the statement made by the Defendant on oath were also noted by the Court which passed the judgment dated 26th July 2010. It must be noted here that in para 18, the Court noted what the Defendant has stated in its deposition and the fact that “as per him the complaint of sexual harassment of some ladies at the hand of Plaintiff pertain to maid servants”.

5. It must be noted at this stage that the aforementioned suit CS No. 83 of 2009 was filed by the Plaintiff on account of a press release dated 4th November 1996 issued by the Railway Ministry to the effect that the Plaintiff “was not found guilty of charges of sexual harassment or misbehavior”. As already noted, the said suit was dismissed on the ground of limitation. No other issue was decided. So there was no occasion for the Court to rely on the statement made by the Defendant herein in his cross examination.

6. In the present suit summons were directed to issue on 3rd October 2011. The case of the Plaintiff is that although the aforementioned statements were made by the Plaintiff on 9th and 23rd August 2005, a fresh cause of action arose when the trial court pronounced the judgment on 26th July 2010 when it dictated the judgment including the above portion of the statements made on oath by the Defendant and that he did not withdraw his false statements even at that stage. The present suit was filed on 19th May 2011.

7. In the present application by the Defendant under Order VII Rule 11 CPC, notice was directed to be issued on 9th January 2012. Meanwhile, written statement was also filed. The delay in filing the written statement was condoned on 7th September 2010.

8. Learned counsel for the Defendant relied on the settled position in law that statements of witnesses recorded in civil proceedings in courts are protected by ‘absolute privilege’ and, therefore, no case for defamation is made out. He submitted that the deposition of the Defendant as well as the judgment of the learned ADJ dated 26th July 2010 pertained to judicial proceedings and no

action for defamation by way of a civil suit would lie on that basis. Reliance is placed on the judgment in ***K. Daniel v. T. Hymavathy Amma AIR 1985 Kerala 233***. Secondly, it is contended that the suit in any event is barred by limitation.

9. Learned counsel for the Plaintiff on the other hand relied on the judgments in ***D. Ramachandran v. R.V. Janakiraman (1999) 3 SCC 267*** as well as ***Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success (2004) 9 SCC 512*** to contend that in all cases of preliminary objection, and in particular while considering an application under order VII Rule 11 CPC, the Court has to read only the averments made in the plaint in their entirety in order to find out if they disclose a cause of action; the plaint should not be rejected merely on the ground that the averments are not sufficient to prove the facts stated therein and the Court cannot probe into the facts on the basis of the averments in the written statement. He urged that the Court should not dissect the pleadings into several parts and examine if each one of them discloses a cause of action. Learned counsel further relied upon the decision in ***Singer Company Limited v. Chetan Machine Tools 159 (2009) DLT 135*** to urge that while examining whether a plaint gives rise to a cause of action, it is not the plaint alone but also the documents filed along with the plaint that have to be examined. He also placed reliance upon the decisions in ***Bai Shanta v. Umrao Amir Malek AIR 1926 Bombay 141***, ***Chotelal Bhurelal Jain v. Phulchand Ramchand Jain AIR 1937 Nagpur 138***, ***Hemraj Poonamchand v. Babulal Bhagirath AIR 1962 Madhya Pradesh 241*** and submitted that statements made by witness on oath or sworn affirmation in judicial proceedings are not protected by the proviso to Section 132 of the

Evidence Act. Learned counsel for the Plaintiff submitted that if the witness did not object to answering a question put to him, it would not be protected by the doctrine of absolute privilege. It is submitted that inasmuch as the Defendant volunteered to make statements, without being compelled to do so, and those statements are defamatory of the Plaintiff, they were not protected by the doctrine of absolute privilege.

10. The Court begins by referring to Section 132 of the Evidence Act which reads as under:

“Witness not excused from answering on ground that answer will criminate.- A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.”

11. The above provision is essentially concerned with the possible hesitation a witness may have in answering a question, either in civil or criminal proceedings, fearing that he may either incriminate himself or expose himself to penalty or forfeiture. The witness may not avoid answering a question on the above grounds. However, such answer will not subject him to arrest or criminal prosecution, except where such evidence is false and subjects him to perjury proceedings. While Section 132 of the Indian evidence act may be

seen as a departure from the rule of absolute privilege in criminal proceedings, it does not in any manner affect the common law rule of absolute privilege that protects statements of witnesses in civil actions, which has been consistently followed by Indian courts.

12. In ***K. Daniel***, the High Court of Kerala was dealing with a case where the appellant before it had unsuccessfully sued the Respondent (defendant in the suit) for damages for alleged defamation resulting from questions put to him in his cross examination by her counsel in an earlier suit for recovery of money filed by him against her. His allegation was that the questions asked of him by her lawyer during his cross examination lowered his reputation. The Court at the outset explained that it was “concerned only with the liability in a civil action for defamation as a tort.” This distinction is important since, as noted by the Kerala High Court in ***K. Daniel***, the rule of absolute privilege in civil cases “is different from the rule of qualified privilege as obtaining in Indian criminal law.”

13. The rationale behind the common law rule of absolute privilege in civil actions was explained by Fry L.J. in ***Munster v. Lamb (1883) 11 QBD 588*** as under:

“The rule of absolute privilege exists not because the conduct of those persons ought not of itself to be actionable, but because if their conduct is actionable, action would be brought against them in cases in which they had not spoken with malice, in which they had not spoken with false word. It is not the desire to prevent action from being brought in cases where they had to be maintained that has led to the adoption of this rule; but it is the fear that if the rule were otherwise numerous actions would be brought against persons who were merely discharging their duty.

It must always be borne in mind that it is not intended to protect malicious and untruthful persons, but that it is intended to protect persons action bona fide, who under a different rule, would be liable, not perhaps to verdicts and judgment against them, but to the vexation of defending actions”.

14. After noticing the above judgment, the Kerala High Court in ***K. Daniel*** proceeded to observe that the common law rule of absolute privilege in civil action for slander in regard to statements made in the course of judicial proceedings has been followed by Courts in India.

15. In ***Kamalini Manmade v. Union of India (1967) 69 Bom LR 512*** the Bombay High Court was dealing with a case where the plaintiff filed a suit for damages against the defendants, who were the advocates of one of the parties in a prior suit in which the plaintiff was involved, on the ground that certain allegedly defamatory statements were made by the defendants, against the plaintiff, during the suit proceedings. The Court emphasised the distinction between criminal prosecution and civil actions for defamation with regard to the applicability of the English common law rule of absolute privilege. The Court observed that although Sections 499 and 500 IPC constituted an exception to the English common law rule in relation to criminal prosecutions for defamation, the rule of absolute privilege with regards to civil actions for defamation was not affected by the above provisions of the IPC. The Court, relying on the decision of the Judicial Committee of the Privy Council in the case of ***Bahoo Ganesh Dutt Singh v. Mugneeram Chowdhry (1872) 11 Beng L.R. 321***, unequivocally held that the English Common law rule pertaining to absolute privilege enjoyed by Judges, advocates, attorneys, witnesses and parties in regard to words spoken

or uttered during the course of a judicial proceeding is applicable in India in relation to civil suits filed for damages for libel or slander.

16. In the same vein, in *Shybimon v. Haridas ILR 2010 (2) Kerala 442*, the Kerala High Court reiterated that while criminal prosecutions for defamation are governed by S. 499 and S. 500 IPC and the exceptions contained therein, the defence of absolute privilege was available to a party making an allegedly defamatory statement in a suit for compensation for defamation under the law of torts.

17. It is also pertinent to note that the Kerala High Court in *K.Daniel*, while agreeing with the trial court which recognised and applied the rule of absolute privilege to reject the claim for damages for defamation, explained that statements which have no connection with the case, or which are absolutely irrelevant, or are made dehors the case on hand or have no reference to the matter of inquiry cannot be privileged. It was further observed that “in deciding whether a statement has reference to matter of enquiry, the widest and most comprehensive interpretation must be given.”

18. To conclude this discussion on the rule of absolute privilege, it may be noted that the recent decisions of the English courts have reaffirmed the rule. In *Jones v. Kaney [2011] UKSC 13*, the UK Supreme Court, while abolishing the immunity enjoyed by expert witnesses from a suit of breach of duty, categorically held that the rule of absolute privilege with regards to civil suits for defamation against judges, counsels, witnesses and parties, was still applicable in the United Kingdom. While discussing the jurisprudence

and history behind the said rule, Lord Philips relied on ***Dawkins v Lord Rokeby (1873) LR 8 QB 255, 263*** wherein the Court held that

“The authorities are clear, uniform and conclusive, that no action of libel or slander lies, whether against judges, counsel, witnesses or parties, for words written or spoken in the ordinary course of any proceeding before any court or tribunal recognized by law.”

19. In ***Halls v. Simmons [2001] 1 AC 615***, the House of Lords, while doing away with the immunity enjoyed by advocates in cases of liability of negligence, in and outside the court, refused to take away their absolute privilege from claims of defamation. A similar proposition was followed later in ***Medcalf v Mardell [2002] UKHL 27, [2003] 1 AC 120***.

20. Each of the decisions cited by the Plaintiff pertains to application of the doctrine of absolute privilege in criminal proceedings. The facts and circumstances in ***Hemraj Poonamchand v. Babulal Bhagirath AIR 1962 Madhya Pradesh 241*** were that the appellant filed a complaint in the Court of the Judicial Magistrate under Section 500 IPC against Babulal stating that while deposing in a civil suit filed by one Pannalal (who was the nephew of Hemraj) against Babulal, a statement was made by Babulal during his deposition “that Hemraj was at Barnagar but has come away after becoming insolvent there”. The Magistrate acquitted Babulal holding that he might have thought that he was bound to answer the question. The High Court examined whether (1) the witness enjoyed absolute protection from prosecution for statements made in the box (2) the circumstances in which the benefit of Section 132 of Evidence Act may be claimed and (3) the manner in which a person charged with defamation for statement made in the

witness box could plead one of the exceptions under Section 499 IPC. It was in that context that the Court held that instead of simply answering the question whether he knew Pannalal in the affirmative or negative, “the witness unnecessarily moved away from the real point to speak ill of Pannalal’s mama who had nothing whatsoever to do with the controversy.” The Court further opined that even if the Court had asked him that question “if the witness goes on without showing the least hesitation or asking the Court to excuse him then on facts there is no compulsion”.

21. The tenor of the other decisions relied upon by the counsel for the Plaintiff, all of them in the context of criminal proceedings, is that if a witness makes an incriminating statement then he may take the benefit of the proviso to Section 132 of the Evidence Act if he declined to make such a statement but was compelled to do so by the Court.

22. As far as the present case is concerned, clearly the context is entirely different. The Court fails to appreciate how the law relating to the criminal proceedings can be applied in a civil suit seeking damages on account of alleged defamation or slander in regard to statements made in the course of an earlier civil suit. In the present case the Defendant was not appearing in his personal capacity. He was discharging his official duty as an employee of the Ministry of Railways. He was deposing on their behalf in the civil suit. The judgment dated 26th July 2010 makes only a passing reference only in para 18 to what was stated by the Defendant. A perusal of the judgment shows that Issue No.1 was whether the suit was barred by limitation. The said issue was answered in the affirmative. No other issue on merits was even

examined. The question of the Court relying upon the statements made by the Defendant during his cross examination to dismiss the suit of the Plaintiff simply did not arise.

23. Secondly, from the perusal of the deposition as a whole it is not possible to conclude that the statements made by the Defendant were wholly irrelevant to the context. The answer given by the Defendant immediately preceding the statement made by him during cross-examination on 9th August 2005 shows that the context was whether the Defendant knew if there were any other resolutions concerning any complaint by any lady officer. Even as regards the answer given by the witness in cross-examination on 23rd August 2005, the context was whether there was any complaint or not against the Plaintiff “during these 30 years of service about causing any sexual harassment to any lady official...” This Court is, therefore, unable to conclude that these statements were wholly irrelevant to the subject matter of the suit. It was made by the Defendant in his capacity as a sole witness for the Ministry of Railways. Nowhere did the Defendant hold out that he had any personal knowledge of these matters. Consequently, the Court fails to appreciate how answers given during the course of cross-examination in a civil suit can become subject matter of subsequent defamation proceedings when those statements have actually not been relied upon to decide the case.

24. Thirdly, in rendering the decision on 26th July 2010 dismissing the Plaintiff’s earlier suit, the judicial officer was performing his official duty. There is nothing to show that the Defendant was present in Court when the judgment was pronounced. In any event, even if he was present, it is

inconceivable how at that stage he could possibly have withdrawn the statements made by him in his cross-examination five years earlier. The question of, therefore, any fresh cause of action arising at the time of pronouncement of the judgment does not arise. The limitation for the present suit should be held to have begun on the date when the statement was made during cross-examination, particularly since there was no other witness examined on behalf of the Ministry of Railways. The suit is therefore barred by limitation as it has been filed more than five years after the alleged defamatory statements were made.

25. For the aforementioned reasons, the Court concludes that the plaint fails to disclose any cause of action to support the present suit for libel and defamation against the Defendant. The plaint is accordingly rejected.

26. The Defendant's application under Order VII Rule 11 CPC is allowed with costs of Rs.5,000 which will be paid by the Plaintiff to the Defendant within four weeks. Consequently, the suit and all pending applications are dismissed.

S. MURALIDHAR, J.

July 31, 2013
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