

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No. 28 of 2005

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Chandra Kishore Khetan Son of Late Prabha Dayal Khetan, Resident of
Village- Jamalpur, P.S. Gogri, Distirict- Khagaria.

... .. (Defendant) Appellant/s

Versus

1. Prakash Kumar Khetan
2. Padm Kumar Khetan @ Bangali Khetan.
Both sons of Sri Sheo Shankar Khetan, Resident of Village-Jamalpur, P.S.
Gogari, District- Khagaria.

... ..(Plaintiff/s) / Respondent/s

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Appearance :

For the Appellant/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 06-12-2018

Heard learned counsel for the appellant. Despite valid service of notice on the respondents and learned counsel entering appearance on their behalf, nobody has appeared when the case was heard.

2. The present appeal is directed against the judgment and decree dated 14.10.2004 passed by Mr. Raj Bansh Dwivedi, learned Sub Judge, III, Khagaria in Money Suit No. 14 of 2001/ 7 of 2003, by which a suit for libel filed by the respondents was decreed and damage of Rs. 5,000/- was awarded.

3. The respondents had filed the suit against the appellant on the basis of an application dated 24.05.2001 filed by the appellant before the *Anchal Adhikari*, Beldaur in



Miscellaneous Case No. 01/2001-02 in which, at one place, the appellant had referred to the respondents as *Atankwadi*.

4. The learned Sub Judge, after full trial in which eight witnesses were examined on behalf of plaintiffs including respondent no. 1 and nine witnesses on behalf of the defendant-appellant, including himself.

5. Learned counsel for the appellant has taken the Court through the depositions and exhibits. It was submitted that the respondent no. 1 (plaintiff no. 1 in the suit) had himself, in the cross-examination, stated and admitted that the appellant had filed criminal cases alleging loot of crops against the respondents in which they were on bail. Learned counsel submitted that in such background, when an innocuous statement has been made, that too, in a petition filed before the *Anchal Adhikari*, Beldaur in Miscellaneous Case No. 01/2001-02, and not a public statement at large, it cannot be construed that it had defamed the respondents for the reason that once they admit that they are accused in many criminal cases in which they are on bail, calling them *Atankwadi* is not an original reason for them to lose their prestige, as a person who is accused and on bail has already lost some prestige and just by referring to the respondents as *Atankwadi* would not give them any cause of action for bringing a suit for libel on the ground of



losing social prestige and reputation as already the people are aware that they are accused in many cases and in which they are on bail. Learned counsel submitted that in the aforesaid admitted background, the contention of the respondents that because of the reference to them as *Atankwadi* in the petition referred above, they have lost their reputation and prestige among their villagers and the general public, is totally misconceived. Learned counsel further submitted that the Court below has only presumed, and that too without any sound basis, that such statement by the appellant has caused loss of prestige and reputation and has, thus, awarded exemplary damage on account of mental tension and shock.

6. Though, the Court did not have the privilege of assistance of learned counsel for the respondents, but upon going through the materials on record, including the judgment impugned, is of the opinion that the contention of learned counsel for the appellant is correct. The respondents, especially, respondent no. 1, in his evidence admitting that the appellant had filed a number of criminal cases in which the respondents were on bail, is proof enough that mere reference as *Atankwadi* in a petition filed in a case before the *Anchal Adhikari* by the appellant could not have caused any further damage to the prestige or reputation of the respondents.



7. The Court also finds that the Court below has misdirected itself towards appreciation of the evidence and its obvious import without taking an overall and pragmatic view in the matter and has, thus, arrived at an erroneous conclusion.

8. For the reasons aforesaid, the appeal stands allowed. The judgment and decree dated 14.10.2004 passed by Mr. Raj Bansh Dwivedi, Sub Judge, III, Khagaria in Money Suit No. 14 of 2001/7 of 2003 stands set aside.

9. The lower Court records be returned to the Court below by the Registry forthwith.

(Ahsanuddin Amanullah, J)

P. Kumar

AFR/NAFR	
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