

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2018

PRONOUNCED ON : 16.04.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.251 of 2004

Shanmugam ... Appellant/Appellant/Plaintiff

Vs.

Ramamoorthy ...Respondent/Respondent/Defendant

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 25.08.2003 in A.S.No.92 of 2002 on the file of the Court of District Judge, Nagapattinam, confirming the judgment and decree dated 12.07.2002 in O.S.No.33 of 2001 on the file of the Court of Prl.Subordinate Judge, Mayiladuthurai.

For Appellant : Mr.Muthukumar

For Respondent : Mr.S.Sounthar

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 25.08.2003 passed in A.S.No.92 of 2002, on the file of the Court of the District Judge, Nagapattinam, confirming the judgment and decree dated 12.07.2002 passed in O.S.No.33 of 2001 on the file of the Principal Subordinate Court, Mayiladuthurai.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for damages.

4. The case of the plaintiff, in brief, is that he is the Village Administrative Officer of Kazhiyappa Nallur village from the year 1997 and discharging his duties to the best of his abilities and to the satisfaction of the superiors and the defendant is the Village Assistant and working under the plaintiff and one Asokan filed a suit before the District Munsif

Sirkali for recovery of possession of the property involved in the said suit and the said suit was decreed and Asokan took delivery of the said property on 30.06.2000 and the plaintiff and the defendant accompanied the Amin of the said Court along with Asokan and identified the property to be taken delivery and also attested the delivery account and subsequently, one Ramadoss preferred the suit in O.S. No.245/98, on the file of the District Munsif Court, Sirkali against the abovesaid Asokan for the relief of injunction, as if, he is the sub lessee and in the said suit, the defendant tendered evidence on the side of Ramadoss, as PW5, on 17.11.2000 and he has deposed as if no delivery was effected and he signed the delivery account because the plaintiff signed it and also denied as to having been to the village at the time of delivery being effected and further, tendered evidence as if the plaintiff would create records, give false certificate and accustomed to create false signature and that he would stoop to any level if money is paid to him and the abovesaid statements made by the defendant in the civil forum in the presence of the Advocate and public assembled before the Court and the false statements were made deliberately in order to defame the plaintiff as if the plaintiff used to receive money and would not give any share to him and as if the plaintiff used to discharge the duties without consulting the defendant and the statements were made maliciously and without any reasonable and probable cause and the defendant made the statements knowing fully well that they were all false with the sole aim to defame the plaintiff and to put him to mental agony. However, his evidence was not accepted by the District Munsif Sirkali and on account of the abovesaid statement made by the defendant, the plaintiff's friends, relatives etc., began to question him and though the plaintiff convinced of his innocence, the plaintiff has been mentally upset and spent sleepless nights and his body became emaciated and he has been forced to consult a doctor for his body ailments and informed to be suffering from mental agony and on account of false statements of the defendant, the high esteem in which the plaintiff has held in the midst of the public has come down and the plaintiff has been prevented from discharging his duties properly on account of the same and pointing out all these facts, notice had been issued to the defendant on 02.01.2001 claiming damages and the defendant sent reply on 08.01.2001 reiterating as if all the statements made by him are true statements and the defendant has also enclosed a copy of the blank papers in which the plaintiff has signed and it is a fact that the plaintiff used to sign blank papers in order to facilitate the defendant to fill up the same and submit the papers for getting the leave and the defendant, being the assistant working under the plaintiff, the plaintiff used to sign blank papers and handover to the defendant and the said position is now been taken advantage and a false story has been

coined, as if the plaintiff used to issue false certificate and as if the plaintiff used to attest documents without any proper spot inspection and all these scandalous allegations had been levelled by the defendant against the plaintiff to defame him and on account of the abovesaid acts of the defendant, the plaintiff has been put to damages which is quantified at Rs.50,000/-and hence, the suit for recovery of the same.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is false to state that on account of the evidence tendered by the defendant in O.S.No. 245/98, on the file of the District Munsif Court, Sirkali, the plaintiff has been put to mental agony and his esteem in the midst of the public has been diminished and the plaintiff without seeking the permission of the Court concerned cannot institute action against the defendant for recovery of damages in connection with the evidence tendered by the defendant in the said Court and the defendant had tendered evidence only as to the true facts and it is false to state that on account of the same, the plaintiff's reputation had been damaged and it is false to state that the plaintiff thereby is unable to discharge his duties properly and the defendant has not tendered any evidence maliciously against the plaintiff to defame him and merely because the Court had also recorded that the evidence of the defendant is unacceptable and in such view of the matter, the suit laid by the plaintiff for damages as against the defendant in the light of the evidence tendered by him in the above said matter is legally not sustainable. The plaintiff's health has not been spoiled in any manner as alleged in the plaint. He has not been put to any mental agony as claimed in the plaint. The claim of damages is untenable and the plaintiff has also not described as to how he is entitled to claim and quantify the damages and for the notice sent by the plaintiff, the defendant sent a reply and the plaintiff used to sign blank papers and entrust the same to the defendant and it is false to state that it is only for availing leave and the defendant used to entrust the signed papers to the parties concerned as directed by the plaintiff and accordingly, the defendant has sent a copy of the said signed papers to the plaintiff while sending the reply and the defendant has not given any evidence out of malicie against the plaintiff and hence, the plaintiff has no cause of action to levy the suit and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 to 3 were examined, Exs.A1 to A8 were marked. On the side of the defendant, DWs 1 to 3 were examined, Exs.B1 to B9 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the

Courts below were pleased to dismiss the suit. Aggrieved over the same, the present second appeal has been laid.

8. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration:

Whether the judgment of the Court below is vitiated inasmuch as the witness deposing in a suit is only entitled to qualified privilege?

9. The plaintiff is the Village Administrative Officer. The defendant is the village assistant working under the plaintiff. It is found that while tendering evidence in O.S.No.245/98, on the file of the District Munsif Court, Sirkali, the defendant has made statements inter alia that the plaintiff would create records and issued false certificate and accustomed to create false documents if money is paid to him and alleging that the abovesaid statements made by the defendant in the said suit being made maliciously in order to defame him and thereby, the plaintiff having been put to mental agony and his reputation being lowered in the midst of the society, according to the plaintiff, for the damages sustained by him, thereby, it is his case that he has been necessitated to lay the suit for the recovery of damages.

10. Per contra, it is pleaded by the defendant that the evidence adduced by him in the abovesaid suit is based on true facts and it is false to state that the said statements were made by him out of malicie with a view to defame the plaintiff and further, according to the defendant, the plaintiff is not entitled to maintain the suit without obtaining necessary permission of the Court, in which, the defendant had tendered evidence and further, according to the defendant, the case of the plaintiff that he has been put to mental agony and his reputation had been spoiled etc., on account of the statements made by the defendant are all false and only with a view to wreak vengeance against the defendant, it is stated that the present suit has been laid by the plaintiff without any cause of action and therefore, the suit is liable to be dismissed.

11. Materials placed on record would go to disclose that the defendant has tendered his evidence in O.S. No.245/98, after being administered oath. Now, according to the plaintiff, the abovesaid statements made by the defendant damaging his reputation has been done deliberately by the defendant with a view to defame him and hence, he is liable to pay the damages as prayed for. As rightly found by the Courts below, considering the nature of the evidence of the defendant adduced in the matter, the Court has not come to the conclusion that the

evidence tendered by the defendant as against the plaintiff is false. All that the Court has determined is that the evidence of the defendant is unacceptable and accordingly, it is found that the Court has not initiated any action as against the defendant for the alleged evidence tendered by him against the plaintiff as per law. As rightly found by the Courts below, if really, the concerned Court had felt with the evidence tendered by the defendant per se amounts as equivalent to defamatory statements either suo motu or on the initiative of the plaintiff, the Court would have initiated necessary action against the defendant in the manner known to law. However, it is found that apart from holding that the evidence of the defendant is unacceptable, the Court has not endeavoured to proceed further against the defendant. Even the plaintiff has not approached the concerned Court for initiating necessary action against the defendant for the alleged statements tendered by him during the course of evidence.

12. As abovenoted, the defendant, who has been examined as PW5 in the abovesaid proceedings, has tendered evidence after being administered oath. In such view of the matter, when it is found that the evidence of the defendant has been tendered on oath, unless and until the said evidence of the defendant has been determined by the said Court as false statements, it is seen that per se, we cannot make the defendant culpable for the abovesaid statements. It is found that the statements made by the witnesses before the Court of law on being administered oath cannot be the basis for initiating civil action for damages, as it is found that such statement enjoy absolute immunity/privilege.

13. In this connection, as rightly putforth by the defendant's counsel in the decision reported in (1926) 50 MLJ 460 (Pedda Sanjivi Reddy And Anr. vs Kondasari Koneri Reddi) wherein, the suit claiming damages for both malicious prosecution and defamation was laid on the footing that the defendant had presented the petition making some defamatory statements against the plaintiff to the Deputy Magistrate concerned and it is further found that the Magistrate concerned sent the said petition for police enquiry and report and the police after enquiry, reported that there is no foundation for the allegations made by the defendant in the said petition and thereby, the Magistrate dismissed the same and it is thereafter, the plaintiff levied the suit seeking the damages. Considering the scope of law involved on the above factual matrix, this Court has dealt with the mater and held that the public policy renders the protection of witnesses necessary for the administration of justice and the privilege given to the witness from an action of slander in respect of the evidence tendered by him in the box is absolute and accordingly opined that in such

view of the matter, the principles of justice, equity and good conscience should be applied and thereby non suited the claim of damages. The relevant observations of the Court in the said matter are extracted as follows:

In *Watson v. McEwan* (1905) A.C. 480, the House of Lords decided that the absolute privilege which attaches to a witness in the box also attaches to statements made by him for the purpose of his being examined in the box. In that case one of the statements on which it was sought to be found the action was made to the solicitor for the purpose of taking the witness's proof and might have been held to be covered by the professional privilege of the solicitor.

Lord Halsbury says at p. 487, "It is very obvious that the public policy which renders the protection of witnesses necessary for the administration of justice must as a necessary consequence involve that which is a step towards and is a part of the administration of justice, namely, the preliminary examination of witnesses to find out what they can prove." take that as clearly implying that all statements made by a potential witness as a preliminary to going into the witness-box are equally privileged with the statements made when actually in the box in Court.

"The privilege which protects a witness from an action of slander in respect of his evidence in the box also protects him against the consequence of statements made to the client and solicitor in preparing the proof for trial." I. am therefore of opinion that the statements made to the police officer which could only be made with a view to their being repeated on oath before the Magistrate were absolutely privileged.

If so, it would clearly be invested by the common law of England with absolute privilege which attaches not merely to the actual proceedings of any tribunal exercising judicial function, but to" all preliminary steps which are in accordance with the cognised and reasonable procedure of such a tribunal.

Lord Holt, C.J in (1700) 1 Ld Raymond 454 held: I am of opinion that that principle

which is absolutely necessary for the administration of justice must be held to obtain in India also. The learned Judge was therefore right in non-suiting the plaintiffs, and this appeal must be dismissed with costs.

In *Chunni Lal v. Nar Singh Dm* (1917) ILR 40 A 341 (F.B.) a Bench of five Judges held that "the Civil and the Criminal Law and procedure are independent of each other," and that as "there was no statute in India dealing with civil liability for defamation the rule of equity justice and good conscience" had to be applied. The same view has been taken, by a Special Bench of five Judges of the Calcutta High Court in *Satis Chandra Chakravarthi v. Ram Doyal De* (1920) ILR 48 C 388 (FB). At page 426 it is stated that "the principles of justice, equity and good conscience applicable in such circumstances should be identical with the corresponding relevant rules of the Common Law of England."

In Halsbury's Laws of England (Edition of 1911), Vol. XVIII, Section 1254 it is stated that "the privilege attaches not merely to proceedings at the trial, but to proceedings which are essentially steps in Judicial Proceedings." In the footnote reference is made to *Watson v. Janes* (1905) A C 4.80, where it was held "the the public policy which renders the protection of witnesses necessary for the administration of justice necessarily involves that which is a step towards, and is part of the administration of Justice, namely the preliminary examination of witnesses to find out what they can prove, and that consequently statements made by a witness to a litigant or his solicitor in preparing proof are absolutely privileged."

14. Similarly, in the decision reported in AIR 1962 Pat 229 (*Bira Gareri vs Dulhin Somaria And Ors.*), which is also pertaining to a lis instituted for claiming damages based on the alleged defamatory statements containing the written information to the police and while considering the privilege or the protection given to such statements, the Court has observed various relevant points on the subject matter and the same are

extracted as below:

The only point which has been argued is as to whether the appellant enjoyed the protection of absolute privilege in respect of the defamatory statement made by him in the information sent to the Police.

The Civil liability for defamation to pay damages, however, is not governed by any statute law but is determined with reference to the principles of justice, equity and good conscience,.....

I would briefly quote a few passages from some of the standard English text books.

5. Folkard in his book "The Law of Slander and Libel", 7th edition, has said at pages 88-89....

that persons engaged in the administration of the law, and those who seek justice in respect of wrongs or injuries suffered, or give evidence as to any such or make defence thereto, may not be deterred from so doing by the fear of being harassed by actions or prosecutions for defamation in respect thereof.

X X X X It has, indeed, been held that whether (whatever?) is said, however, false or injurious to the character or interests of a complainant, by Judges upon the Bench, whether in the Superior Courts of law or equity, or in County Courts, or Sessions of the Peace, by counsel "at the bar in pleading causes, or by witnesses in giving evidence, or by members of the legislature in either House of Parliament, or by ministers of the Crown in advising the Sovereign, is absolutely privileged, and cannot be inquired into in an action at-law for defamation." The law of absolute privilege concerning the judicial proceedings is summed up under the heading 'Judicial privilege' at pages 348-349 of the 12th edition of the well-known book 'Salmond on Torts'. The following few lines need be quoted here:-

"This absolute privilege has been conceded on the grounds of public policy to ensure

freedom of speech where it is essential that freedom of speech should exist, and with the knowledge that courts of justice are presided over by those who from their high character are not likely to abuse the privilege, and who have the power and ought to have the will to check any abuse of it by those who appear before them. The privilege extends to all counts, superior and inferior, civil and military. The privilege extends not merely to Judges but witnesses, parties, and advocates. It includes not merely statements made by a witness in court but also statements made by him to a party, or to the party's solicitor, in the course of preparation for trial."

The principle and extent of absolute privilege relating to Judicial proceedings is lucidly stated at pages 765-768 of the 11th edition of 'Clerk and Lindsell on Torts' thus--

With regard to Judicial proceedings, "neither party witness, counsel, Jury, or Judge can be put to answer civilly, or criminally, For words spoken in office". The authorities are clear, uniform, and conclusive that no action of slander or libel 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 recognised by law' It is not merely with respect to the hearing in open court that there is absolute privilege but also with regard to every step taken in the conduct of legal proceeding.

'It is very obvious that the public policy which renders the protection of witnesses necessary for the administration of justice must as a necessary consequence involve that which is a step towards and is part of the administration of justice--namely, the preliminary examination of witnesses to find out what they can prove. It may be that to some extent it seems to impose a hardship, but after all the hardship is not to be compared with that which would arise if it were impossible to administer justice, because people would be afraid to give their

testimony."

On principle, I find no difficulty in extending the applicability of the doctrine of absolute privilege to the statements made before the police in connection with the alleged commission of a, cognizable offence, inasmuch as this is essentially a step in judicial proceedings.

7. In Baboo Gunesh Dutt Singh v. Mugneeram Chowdbry, 17 Suth WR 283, accusations were made against Gunesh Dutt Singh of having been accessory to the murder by inciting his partisans to violence. He was brought before the Magistrate, who, however, upon hearing the case dismissed it as against him for want of proof, and declined to commit him for trial. There upon, Gunesh Dutt Singh brought an action which was called a suit to recover damages for defamation of character.

Their Lordships of the Judicial Committee agreed with the High Court and opined that such an action could not be brought as the witnesses could not be sued in a civil court for damages in respect of evidence given by them upon oath in a judicial proceeding. They, however, observed that the action could be supported as one to recover damages for malicious prosecution in which case the burden would lie upon the plaintiff to prove that defendants were the prosecutors of the criminal proceedings against the plaintiff; that they were actuated by malice; and further that their proceedings were without any reasonable or probable cause. The proposition of law laid down by the Privy Council with reference to the evidence of witnesses in judicial proceedings is beyond any question now.

With respect. I do not agree with this decision of the Allahabad High Court as, in my opinion, if the statement was made as a preliminary step to the starting of the judicial proceedings, the same (statement) is absolutely privileged irrespective of the fact as to whether the judicial proceedings actually had commenced or not.

In Madhab Chandra's case, AIR 1939 Cal477 B.K.Mukherjea, J., as he then was, was also

a member of the Division Bench and by a separate Judgment, he concurred in the decision of S.K.Ghose, J. Mukherjee, J. observed--

"No action for defamation therefore lies in respect of the statements made by the defendants as witnesses in the criminal cases even though the statements were false and malicious "

15. Further, in the decision reported in 45 Ind Cas 540, it has been held that though there is no statute in India dealing with civil liability for defamation, as regards the same, the rules of equity, justice and good conscience should be applied and it has been thereby held that the defendant's statements of defamatory words used on such an occasion as alleged by the plaintiff in the suit are not actionable on the ground of absolute privilege and hence, the suit fails.

16. Considering the principles of law as adumbrated in the abovesaid decisions above extracted, it is found that an action could not be initiated as against the statement made by a witness before the court of law, for damages, given by the said witness upon oath in the judicial proceedings. If such statements are not protected from civil right, it is found that no one would come forward to depose in the judicial proceedings and when it is found that more particularly, when the government wants to encourage the people to testify openly and honestly and accordingly when the evidence in judicial forum are tendered under oath to tell the truth, what is stated by the said witness by itself cannot be considered to be defamatory, no matter, how malicious, it may be and it is thus found that as rightly putforth by the defendant's counsel as well as determined in the above said decisions, the statement of the defendant tendered on oath in a judicial proceedings has absolute privilege and protected from civil right for damages as constituting defamation and the protection is offered to witness concerned even on the public policy for the effective administration of justice and in such view of the matter, the rules of equity, justice and good conscience should apply and so it is found that the present suit seeking damages for the alleged defamatory statements has no legs to stand and thereby, it is seen that the suit laid by the plaintiff has to fail.

17. In this matter, the defendant has not tendered any evidence defaming the plaintiff during the course of chief examination and only during cross examination, he is found to have tendered certain statements, which according to the plaintiff, are defamatory. However, as rightly determined by the Courts below, the concerned Court has not held the said

statements of the defendant are per se false and the Court has only determined that the evidence of the defendant is unacceptable and it is further seen that the plaintiff did not initiate any action in the concerned Court against the defendant for the alleged statements made by him during the course of evidence. That apart, it is not the case of the plaintiff that the said statements had been made by the defendant to one and all other than that made by him during the judicial proceedings. No doubt, the plaintiff's witnesses examined as PWs 2 and 3 have tendered evidence to sustain his case of having sustained damage. However, as rightly put forth, PW3 is not personally acquainted as to the dissemination of the alleged statements by the defendant to one and all. The Courts below had rightly did not place reliance upon his evidence. Similarly, the Courts below did not place reliance upon the evidence of PW2, as he was also found to be an interested witness and that apart, it is seen that PW2 happens to be the defendant in O.S. No.245/98 and in such view of the matter, no safe reliance could be attached to his evidence for upholding the plaintiff's case.

18. Materials placed on record would go to disclose that the plaintiff has handed over signed blank papers to the defendant and according to the plaintiff, the same had been entrusted to him for submitting to the higher authorities, in case the plaintiff avails leave. However, according to the defendant, the same had been entrusted to him for handing over to the parties as directed by the plaintiff. Such entrustment of the signed blank papers to the defendant is not denied by the plaintiff. The plaintiff being a public servant, it does not stand to reason as to how come he used to sign blank papers and hand over it to the defendant working under him and and this admission by the plaintiff, by itself, throws a grave and serious suspicion as to the nature of the work done by the plaintiff in the discharge of his official duties and the Courts below had also rightly taken the same into consideration for assessing the plaintiff's case as such. The abovesaid conduct speaks volumes of the plaintiff's character, particularly, raises a serious doubt as to the proper discharge of the official work. Therefore, it is seen that the case of the plaintiff that he has been put to public shame on account of the statements of the defendant, as abovesaid, cannot be readily accepted.

19. As rightly determined by the Courts below, the plaintiff has not placed any acceptable materials to show that he has either suffered mental agony or his health got affected on account of the false statements made by the defendant in the abovesaid judicial proceedings and the materials placed by him do not support his case.

20. In the light of the above discussions, when it is found that the statements of the defendant made in the judicial proceedings on oath enjoy absolute immunity and privilege as above pointed out, it is found that the plaintiff is not entitled to maintain the civil action for damages based on such statements and as far as this case is concerned, the plaintiff has failed to establish that on account of the said statements of the defendant, he has been put to public shame, and thereby, his mental and physical conditions had been spoiled as alleged in the plaint. The substantial question of law formulated in the second appeal is accordingly answered against the plaintiff and in favour of the defendant.

21. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sli

To

1. The District Court,
Nagapattinam.
2. The Principal Subordinate Court,
Mayiladuthurai.

+lcc to Mr.Muthukumar, Advocate, S.R.No.27889

सत्यमेव जयते

S.A.No.251 of 2004

SSD(CO)
CS/21/05/18

WEB COPY