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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 27th August, 2018

Date of decision : 1st October, 2018

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CS (OS) 616/2017, I.A. 2232/2018 & 9146/2018

SH ANIL CHAUDHRY

..... Plaintiff

Through: Mr. Ajay Sharma and Ms. Poonam
Lau, Advocates.

versus

YAKULT DANONE INDIA PVT LTD.

..... Defendant

Through: Mr. Raj Shekhar Rao, Mr. Tanuj
Bhushan, Ms. Nandita Chauhan &
Ms. Kruttika, Advocates.
(M:8800491497).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The Plaintiff- Shri Anil Chaudhary was appointed as a CFO and Company Secretary of the Defendant company on 16th January, 2007. He continued in the employment of the Defendant company until September, 2010. The Defendant company is a joint venture between Yakult Honsha Company Ltd., Japan and Danone Probiotics, Singapore, which in turn is a subsidiary of Group Danone, France.

2. The brief background of the present suit is that imports of machinery were made by the Defendant in the year 2007-08. The Directorate of Revenue Intelligence ('DRI'), Mumbai Zonal Unit, issued a show cause notice dated 25th April, 2012, to the Defendant company alleging evasion of customs duty to the tune of Rs.4,22,58,706/-.

3. The factory and office premises of the Defendant were searched in August, 2011 and during the said search, statements were recorded of Mr. Kiyoshi Oike, Managing Director of the Defendant company. Mr. Oike in his statement to the DRI stated that products such as tanks for culturing, storage and blending, water sterilizer, injection moulding machine, unscrambler selector, filling/sealing machine and refrigeration unit, were described as 'dairy machinery' on the advice of the Plaintiff who was the CFO and Company Secretary. The statement of Mr. Oike dated 25th August, 2011 reads as under:

"Statement of Mr. Kiyoshi Tatsuei Oike, Managing Director of M/s. Yakult Danone India Pvt. Ltd., aged 61 years; Date of Birth 04-10- 1949, having permanent residence at 3-21-6, room No.401, Miyanishi-Chou, Fuchu-City, Tokyo, Japan; residing at B-406, 1st Floor, New Friends Colony, New Delhi; recorded before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Mumbai Zonal Unit under Section 108 of the Customs Act, 1962 on 25.08.11 at the office premises of Yakult Danone India P. Ltd. 52, Okhia Industrial Estate, Phase-Ill, New Delhi-20.

...

On being asked about the person who advised the company in the matters regarding import of the said machinery, I state that Shri Anil Chaudhry who was our Chief Financial Officer and Company Secretary since January 2007 advised us regarding classification of the imported machinery. Shri Anil Chaudhry had told me that if the machinery for the manufacture of Yakult was classified as dairy machinery we would be saving substantial amount in Customs duty. I accepted his advice and the machinery was classified accordingly. On being asked about the amount of duty

saved on such Imports, I say that I have no idea about the total Customs duty saved, but I am aware that Shri Anil Chaudhry in his performance appraisal report for the year 2007-2008 (05 pages) has claimed that he was instrumental in saving Customs duty to the extent of Rs.362 lakhs in the import of machinery from Japan. I am submitting the original of the said performance appraisal report. The said report was reviewed by Shri Tomoshi Suzuki who was Senior Manager of the company to whom Shri Anil Chaudhry was reporting. I am also submitting the original performance appraisal report (05 pages) of Shri Anil Chaudhry for the year 2008-09.”

4. In a further statement on 12th September, 2011 Mr. Oike stated as under:

“On being as to how the goods covered under the bills of entry mentioned at Sr.No.2 & 3 of Table I were classified by us under CTH 843420, I state that we engaged M/s Deloitte Haskins & Sells, New Delhi as our consultant. The consignment mentioned at sr.No.21 of Table I was cleared under the advice of M/s. Deloitte Haskins & Sells. Thereafter, we employed some of employees including one Shri Anil Choudhary. Shri Anil Choudhary was our Chief Finance Officer Cum Company Secretary. Shri Anil Choudhary advised me to classify the goods covered under Sr.No.2 & 3 under CTH 843420 as dairy machinery. We did not consult M/s Deolitte Haskins & Sells. We asked our parent company to prepare the invoices for item no.1 & 2 of consignment mentioned at Sr.No.2 of Table I under CTH 843420 and had availed the benefit of exemption from payment of CVD on importation. Further, it was not objected by Customs at the time of clearance. Therefore, we also cleared the consignment mentioned at Sr.No.3 also by availing the benefit of exemption from CVD. Now I show you a copy of Performance Appraisal Report (SAR) for year 2007-08

of Shri Anil Choudhary. It was submitted by you under your statement dated 25.08.2011. Shri Anil Choudhary claimed to have saved Rs.362 lakhs for the company. On being asked as to whether Shri Anil Choudhary claimed to have saved Customs duty to the tune of Rs.362 lakhs in the said SAR by wrongly classifying the said goods as dairy machinery under CTH 843420, I state that Shri Anil Choudhary advised me to classify the goods mentioned in Table II and III as dairy machinery and Customs duty was saved by such wrong classification.”

5. The show cause notice, which was addressed to the company was replied to by the Plaintiff, and it resulted in order dated 31st December, 2013 passed by Commissioner of Customs. The Commissioner of Customs held that the goods were liable to be confiscated and penalties were also liable to be imposed. Insofar as the role of Mr. Oike and Mr. Anil Chaudhary is concerned, the Commissioner held as under:

“.....

YDL, India, is a company which has knowingly committed the acts of omission and commission which rendered the said goods liable to confiscation and, are thereby liable for penal action under section 114 A; Since I am inclined to impose penalty on YDL India under Section 114A, I can not impose penalty under Section 112 in terms of the proviso to Section 114A.

(vii) Mr Kiyoshi Tatsui Oike pre-planned the conspiracy of unduly availing the benefit of notification no.6/2006-CE dated 1.03.2006 by misdeclaration on the basis of managed and manipulated invoices and submitting fabricated SPE sheets. He committed acts of omission and commission which rendered the impugned goods liable to confiscation under section 111(m) and had rendered himself liable for penal action under section 112 (a) of Customs Act, 1962.

Further, Mr Kiyoshi Tatsui Oike, is the person who had knowingly or intentionally made, signed or used, or caused to be made, signed, or used, the declaration, statement or document viz invoice, SPE sheets which were false and/or incorrect in material particulars in the transaction of business for the purpose of section 46 of Custom Act, and he shall, therefore, be liable to a penalty under Section 114 AA of the Customs Act, 1962.

(viii) From the investigation carried out and various statements of Shri Anil Chaudhry it is evident that Shri Anil Chaudhry was fully aware of the fact that the importer company was trying to evade the Customs duty and he did not take any action to inform the Customs regarding the planned evasion of Customs Duty. I also note the fact that Shri Anil Choudhary had flagged the issue of wrong availment of benefit of exemption from Payment of due Customs duties for clearance of 2nd and 3rd consignments, vide emails sent to Sr. M.D. of M/s Yakult Honsha Co. Ltd., Japan. However he same was rejected by the Sr. M. D.of M/s Yakult Honsha Co. Ltd., Japan. In such a case Shri. Anil Choudhary had a choice of approaching Customs authorities. This act would have purged him of his own complicity. By not doing so, he has made himself as a party to the misdeclaration. Hence I find that even Shri Anil Chaudhry is equally responsible for the same. Shri Anil Choudhary abetted in the acts of omission and commission of Mr. Kiyoshi Tatsuei Oike and had thus, rendered himself liable for penal action under section 112 (a) of Customs Act, 1962. ”

6. This order was carried to the CESTAT, which vide order dated 24th October, 2016, finally held as under:

“.....

In view of the fact that the goods were correctly classifiable in the SPE Sheets as per their respective

description and individual function but were changed by the Appellant's employee in consultation with the Management, we are of the view that the goods does not merit classification as parts of dairy Machinery. For the reasons stated above and looking to the fact that the issue involves of intended mis-declaration, mis-classification and suppression of facts we do not find any infirmity in the order passed by adjudicating authority and uphold the same in as much as the same is related to Appellant M/s Yakult Danone (India) Pvt. Ltd.

9. As regard penalty imposed upon Shri Kiyoshi Tatsui Oike, Managing Director is concerned we find that he was concerned with overall working and not particularly involved in any contumacious conduct. The correspondence for changes of HS codes and alteration of SPE sheets was an act between its parent company M/s Yakult Honsha Ltd, Japan and Mr. Tomoshi Suzuki on the advice of Consultant M/s SBBFL. We thus find that no active involvement of Shri Oike is appearing in record that he orchestrated the alleged acts of violation of Custom laws and intended to cause revenue loss. We therefore do not find it fit to impose penalty and set aside the penalty imposed upon him.

10. As regard penalty upon Shri Anil Choudhary is concerned, we find that he was merely an employee who acted on the directions of the company and had no personal involvement. We therefore do not find it fit to impose penalty upon him. The penalty upon Shri Anil Choudhary is therefore set aside.

11. The Appeal filed by M/s Yakult Danone (India) Ltd. is dismissed and appeals of Shri Kiyoshi Tatsui Oike and Shri Anil Choudhary are allowed.”

7. Thus, the CESTAT, while holding that the machinery was wrongly classified as dairy machinery, upheld the penalty imposed on the Defendant

company but allowed the appeals of Mr. Oike and the Plaintiff by holding that no penalties were leviable on them, personally.

8. The present suit was thereafter filed by the Plaintiff, claiming damages against the company. The primary grievance in the suit is that he had no role in the alleged manipulation of documents etc. and Mr. Oike had incorrectly implicated him. Resultantly, the Plaintiff avers that he suffered immensely due to the proceedings, which were commenced by DRI, including the loss of his job. It is the Plaintiff's case that Mr. Oike maliciously implicated the Plaintiff in the customs duty evasion case. The Plaintiff, accordingly, prays for damages at Rs.5 crores, along with interest.

9. The Defendant has filed an application under Order VII Rule 11 CPC seeking dismissal of the suit on two counts. One, that the suit is barred by limitation and two, that the tort of malicious implication is not recognized in India and that no damages have been suffered.

10. The objections raised under Order VII Rule 11 CPC are to be decided by a mere reading of the plaint and not on the basis of averments made in the application or any defence statement or document filed by the Defendant. The documents filed on record clearly show that there has been a long drawn litigation between the customs department and the Defendant company. The Plaintiff himself, in his Performance Appraisal Report for 2007-08, claimed credit for the saving of customs duty. The litigation between the customs department and the Defendant company, which commenced in 2012 ended with the CESTAT order dated 24th October, 2016. By the CESTAT order, both the Managing Director Mr.Oike and the Plaintiff were successful and penalties against them were set aside. The Plaintiff obviously could not have filed the suit for damages prior to the

order of the CESTAT. Until and unless his stand was accepted by the adjudicatory bodies, there was no cause of action to file the present suit. Thus, the filing of the suit is not barred by limitation.

11. Insofar the tort of malicious prosecution/malicious implication is concerned, the averments made in the plaint are primarily against the Managing Director and various other officers of the parent company of the Defendant. It is argued on behalf of the Defendant that the conditions to constitute malicious prosecution are not satisfied. Further there is no tort such as malicious implication, hence the suit is not maintainable.

12. A perusal of the plaint reveals that the suit is based on compensation for loss of reputation and malicious implication. The allegation of conspiracy and connivance is based on the statements made by Mr.Oike to the Customs Authorities on 25th August, 2011 and 12th September, 2011. In the said statements, Mr. Oike had stated that the Plaintiff had advised him to classify the machinery as dairy machinery instead of capital machinery. He had also stated that the Plaintiff had claimed credit for saving of the customs duty in his performance appraisal report for 2007-08. These statements, according to the Plaintiff were made with malicious intent and with criminality, though the said statements were withdrawn by Mr. Oike on 24th September, 2011. The Plaintiff avers that he had to undergo enormous stress and had to defend himself in the proceedings by the DRI and the Customs authorities. Thus, according to the Plaintiff, the statements made by Mr. Oike constitute malicious implication. He submits that his family suffered immensely due to the wrong allegations made by Mr. Oike against him, which is liable to be compensated in damages. He also avers that enormous mental stress and agony was suffered by him.

13. In order to determine as to whether there is any tort made out in the present case, the nature of the proceedings needs to be considered. Clearly, the Plaintiff alleges a tort of malicious implication, which has no basis. The defendant alleges that the Plaintiff alleges malicious prosecution, the pre-conditions of which are not satisfied. Obviously, the tort is not well identified in the Plaint. All that the Plaintiff is saying in the Plaint is that he ought not to have been blamed solely for what was a joint decision of the management. He alleges loss of reputation for having been made the 'scapegoat' in the entire customs duty fiasco which occurred. The factual basis for the said claim of compensation is the statements of Mr.Oike before the Customs authorities/DRI. Can there be any compensation claim for such statements made before such authorities is the question. Neither party has addressed this issue.

14. The statements of Mr. Oike were recorded under Section 108 of the Customs Act, 1962 as is clear from the extracts above. The said provision reads as under:

108. Power to summon persons to give evidence and produce documents.—1[

(1) Any gazetted officer of customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.]

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under control of the person summoned.

(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such

officer may direct; and all persons so summoned shall be bound to state the truth upon any subject, respecting which they are examined or make statements and produce such documents and other things as may be required: Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

The said provision is part of Chapter XIII of the Customs Act, 1962 which vests the customs authorities with enormous powers, including that of seizure, arrest, confiscation etc., Thus, in the very least, the statements recorded by these authorities as part of the Enquiries conducted by them would be quasi-judicial in nature.

15. In ***Miss Kamalini Manmade v. Union of India (1967) 69 Bom LR 512***, the Plaintiff filed a suit for recovery of Rs.1 lakh towards damages for defamation. The Plaintiff had been described as “Miss Prostitution Solicitor” in a telephone directory. The Defendants had initially submitted that such an expression had appeared due to inadvertence and gave an apology. However, during the course of evidence being recorded in the suit, it was submitted on behalf of the Defendant that they had evidence about various facts relating to the character of the Plaintiff and that they would placing the said evidence on record. Thereafter, the Plaintiff filed a suit for damages for the defamatory statements made before the Court during the earlier litigation in respect of her character. The question that arose before the Bombay High Court was whether the words spoken in the course of judicial proceedings

before a Court of law could constitute defamation. The Bombay High Court considered the doctrine of absolute privilege in respect of Court proceedings and the legal position thereof. The Court quoted Halsbury's Laws of England, which opined that if a defamatory or untrue statement is made as part of the privileged communication, the same is absolute and unconditionally protected. The question is only whether the statement was made on an occasion of qualified privilege or absolute privilege. In cases of absolute privilege, no case for defamation/libel/slander would lie. The Court thereafter held as under:

“19. The next question is as to whether this rule of common law obtaining in England has been recognized and applied by Indian Courts in our country. At the outset it may be stated that at one time there was divergence of opinion among the several High Courts as to whether this rule of common law regarding absolute privilege enjoyed by an advocate or counsel should be recognized and applied in this country find some older decisions of Calcutta and Allahabad High Courts had taken the view that it should not be applied in India. Besides, some doubt has also been expressed in some of the older decisions as to whether in view of the provisions of s. 499, Indian Penal Code, if the common law rule could be said to have been abrogated at least in regard to criminal prosecutions, the same should or should not be applied to civil actions instituted for libel or slander. But I may observe that so far as the applicability of this common law rule (that absolute privilege is enjoyed by the advocates and counsel in regard to whatever is spoken or written during the course of a judicial proceeding) to civil actions in libel or slander is concerned, there is now

preponderance of authority in favour of applying this common, law rule in this country. I shall first refer to some of the decisions of the other High Courts and then I will come to the decisions of this Court on the point”.

The Court, after considering the Indian law on the issue went on to hold as under:

“30. In other words, this Court has clearly taken the view in the case mentioned by me above, that the English common law rule pertaining to absolute privilege in regard to defamatory statements made in the course of judicial proceedings, even though such statements are false or malicious, would be applicable in India to civil actions in libel or slander and apart from the question as to whether making of such statements would make these statements criminally liable. The same view has been accepted and expressed in a later Division Bench ruling reported in Govind Ramchandra v. Gangadhar Mahadeo. In that case allegations were made in a petition as well as in the affidavit in support of it, addressed to the High Court for taking steps under the Bar Council Act, 1926, against a legal practitioner under the disciplinary jurisdiction and the legal practitioner filed a suit to recover damages for libel contained in the petition as well as in the affidavit. It was held that the petition as well as the affidavit made in support thereof were essential steps in a judicial proceeding and, therefore, were absolutely privileged. This Court while deciding the case did not go into the merits of the allegations contained in the petition and affidavit and apart from the question as to whether the said allegations were true or not, the Court held that since those allegations had been made on an occasion which was absolutely privileged, the legal practitioner's suit was liable to be dismissed. Incidentally, it may be stated that both these

Bombay decisions dealt with cases in which parties were concerned in making defamatory allegations in judicial proceedings.”

The Court finally concluded as under:

“21. Having regard to the aforesaid discussion of the several authorities, it is clear to me 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, at any rate, in relation to civil suits filed for damages for libel or slander. The preponderance of authority obtaining in the matter, as I have indicated above, favours this view and I, therefore, feel no hesitation in coming to the conclusion that having regard to the fact that the alleged defamatory statements were made by defendant No. 6 on an occasion which was absolutely privileged, the plaintiff's suit to recover damages for the said slander would be not maintainable. In the result, the two preliminary issues are answered in favour of the defendants and consequently the suit is dismissed with costs.”

The suit was accordingly dismissed.

16. Similar is the view taken in ***K. Daniel v. T. Hymavathy Amma AIR 1985 Ker 233*** wherein the Kerala High Court held as under:

“11. It is imperative that Judges, counsel, parties and witnesses participating in a judicial proceeding must be able to conduct themselves without any apprehension of being called upon to answer a claim for damages for defamation. They must be able to act uninfluenced by any such fear. Freedom of speech on such occasions has to be totally safeguarded. Hence it is necessary to protect the maker of statements on such occasions. The privilege arises on account of privilege

attached to the occasion and not to the individual. It is possible that sometimes counsel or the parties or witnesses may take advantage of the occasion and indulge in false or malicious statement which has the effect of bringing down the reputation of some other person; that would certainly be mischievous. But to say that statement would be privileged only in the absence of malice would put these persons in considerable strain and apprehension on such occasions. Basis of privilege is not absence of malice or the truth of statement or the intention of the maker but public policy. Any restriction on privilege during the occasion would create constraints in the process of administration of justice.

...

16. *There is logic behind this rule. When participating in a judicial proceeding, persons concerned must be able to devote their entire attention to the conduct of the proceedings; be they Judges, counsel, parties or witnesses. At every stage they should not be compelled to pause and analyse the absolute relevancy of the statements they proposed to make in the course of proceedings; to insist that they should do so would seriously hamper and weaken judicial process. At the same time statements which are absolutely irrelevant or are made dehors the matter in hand or have no reference to the matter of enquiry cannot be privileged. It must always be borne that in deciding whether a statement has reference to the matter of enquiry, the widest and most comprehensive interpretation must be given."*

Even in this case, the suit was dismissed.

17. ***In B.C. Rana v Seema Katoch, (2013) 198 DLT 35***, The Delhi High Court considered a similar case wherein statements were made before the Registrar, Cooperative Society, Delhi and the Court held that:

“40. In Lincoln v. Daniels (1960) 3 All ER 205; Q. B. D., Salmon J., held that complaints made to the General Council of the Bar concerning the conduct of a member of the Bar are protected in proceedings for defamation by qualified privilege, but not by Absolute Privilege, since that body have no power, to carry out judicial or quasi-judicial functions and, accordingly, any document addressed to them cannot be regarded as setting in motion judicial or quasi-judicial proceedings.

41. It follows, therefore, and, it is also quite plain, from the above decisions, that the doctrine of judicial privilege, even when extended to tribunals exercising functions equivalent to those of an established Court of justice, applies where there is an authorised enquiry, which though not before a Court of justice, is before a tribunal which has similar attributes.

42. The essence of the rule of Absolute Privilege, therefore, is that the complaint must be addressed to a body which has judicial functions, or, quasi-judicial functions, and, the complaint must be a step in setting in motion judicial or quasi-judicial proceedings.

43. Observing the facts of the present case in the background of the law & the principles discussed above, the present suit for defamation is based on the defamatory statements contained in the affidavits filed by the defendants in the proceedings before the Registrar of the Cooperative Society, Delhi. In my view, the proceedings before the Registrar of the cooperative society are quasi-judicial in nature.

...

46. Thus to conclude, the statements made in the affidavit being filed by the defendants in the course of judicial proceedings before the Registrar of the Society is Absolutely Privileged and for the said reason cannot be made basis for any defamatory action. In the light of this observation, the present plaint deserves to be rejected under Order 7 Rule 11(d), CPC, 1908 being

barred by law.”

18. In ***Nau Nihal Singh v Sunil Kumar***, (2013) 202 DLT 465, in the context of a statement made during cross-examination before the Additional District Judge, compensation was sought by the Plaintiff. The Court rejected the plaint.

19. A contrary view has however been taken by the Gauhati High Court in ***Mohini Gohain Baruah v. Putali Gohain Baruah*** CRP No.328/2016 (Decided on 9th March, 2017) wherein a Learned Single Judge has held:

“14. Thus, the inevitable conclusion of this court is that there being no codified law for defamation or in respect of tort, a person can avail civil remedy under the four corners of Specific Relief Act, 1963 and the rules of evidence as prescribed under the provisions of Evidence Act, 1872 would govern such suits. Moreover, the absolute privilege under Evidence Act, 1872 can only be found from the provisions of section 121 to 129 thereof. The foreign law, being not applicable to India, presumption of ‘absolute privilege’ cannot be made outside the scope of the provisions of the Evidence Act by referring to English law on defamation. For the foregoing reasons, this court is not inclined to accept that statements made before authorities like Additional Deputy Commissioner, Lakhimpur would be a defence of absolute privilege as argued by the learned counsel for the respondent .”

20. In fact, some of the judgments quoted above were cited before the Gauhati High Court which, however, sought to postpone the decision and proceeded further for framing of an issue in respect to maintainability of the suit. The Court observed that there is no bar to the institution of a suit and the doctrine of absolute privilege does not have applicability in India.

21. The cause of action in the present suit needs to be examined in the context of the above law. Apart from the dramatised terminology used in the plaint, the allegations in the plaint are:

- Planning and conspiracy by the officials of the Defendant company;
- Humiliation due to the acts of Mr. Oike;
- Statements recorded by Mr. Oike before the Customs Authorities/DRI;
- Disgraceful termination of the Plaintiff;
- The retraction by Mr. Oike of his statement;
- Stigma surrounding the Plaintiff which affected personal and social life.

22. According to the Plaintiff, all the above constitute wrongful implication in the customs duty evasion case, as well as loss of reputation. The above pleadings in the amended suit primarily relate to an allegation of malicious implication resulting in loss of reputation. Thus, the allegation is one of defamation and nothing more, though the Plaint is not happily worded. The Plaintiff does not allege malicious prosecution and further, the elements of malicious prosecution are not made out.

23. Malicious implication is nothing but wrongful implication leading to loss of reputation i.e. defamation/libel/slander. There is no other tort of malicious implication which can be separately sued for. The Plaintiff has not been able to show any judgment where the so called tort of malicious implication has resulted in a cause of action. The Plaintiff has merely relied upon judgments to argue that the question of limitation is a mixed question of facts and law. This Court has already held that the suit is not barred by

limitation. The question is whether the suit is otherwise barred.

24. A perusal of the curriculum vitae of the Plaintiff which according to the Defendant was submitted by him at the time when he was recruited, claims that the Plaintiff is “a highly dedicated professional having around 16 years of experience in handling accounts, finance, legal, secretarial, commercial, human resources and administration”. He was a member of institutions which are as under:

- Institute of Cost and Works Accountant of India – qualified in June 1990 (ICWAI);
- Institute of Company Secretaries of India – qualified in June, 1993 (ICSI);
- Society of Certified Public Accountant of India – qualified in October 2003 (CPA)

25. His work experience, as stated in his curriculum vitae, included handling of “commercial activities relating of sales tax, VAT, assessments in Delhi and Haryana and supervised logistics including warehousing, commercial contracts with Freight Forwarder, Clearing Agents, Consignees accounts and courier companies.” These areas of expertise of the Plaintiff are not denied by him.

26. The Plaintiff has not impleaded Mr. Oike or any of the so called officers, who were allegedly involved in the criminal conspiracy. The present suit claims damages for loss of reputation against the company. The statements made by Mr. Oike and the other officers were made during the investigation by DRI/Customs Authorities. The Plaintiff himself describes the said proceedings to be quasi-judicial. Under such circumstances, the

question is whether a suit for damages would lie in respect of statements made during an investigation by any authorities exercising quasi-judicial powers. This has been dealt with in case of ***Brig. B.C. Rana (Retd.) v. Seema Katoch (supra)*** wherein a Single Judge of this Court has held that statements made before the Registrar of Cooperative Societies would be protected by absolute privilege.

27. In the present case, all the statements which are relied upon which form the basis of cause of action in the suit having been made before DRI officials/Customs Authorities, in statements recorded under Section 108 of the Customs Act, 1962. There is no publication of the said statements. Mr. Oike in fact having also retracted the same, no case of defamation is made out. As per the settled law, statements made in judicial and quasi-judicial proceedings before courts, authorities and tribunals are protected as being privileged. A suit for defamation on the basis of statements in such proceedings is clearly not maintainable.

28. There is yet another dimension to this whole case. The Plaintiff is neither an uneducated nor an illiterate person who is not aware of the consequences of his actions of claiming experience in handling issues before the Customs Authorities and was also quite adept. The CFO of a company has enormous responsibility. The Plaintiff was responsible for legal and secretarial compliances in the Defendant company. Even if the Plaintiff had got wind of an alleged conspiracy by the Japanese officials, as is pleaded in the plaint, he had a duty to warn the Defendant company and its officials that the classification of machinery as dairy machinery instead of capital machinery would be contrary to law. Moreover, the Plaintiff not only did not warn the management of the Defendant but also went ahead and claimed the

savings of the customs duty as a feather in his cap in his appraisal report. This shows that to say the least, he was not an innocent bystander. After the appraisal report, he was terminated on 20th September 2010. On the same very day, he claims to be a whistle-blower and he addresses a detailed email to the Japanese management of the Defendant company. The show-cause notice is thereafter issued by the Customs department, in 2012. Thus the termination had occurred prior to the statements made by Mr. Oike to the Customs department. The CESTAT has, since, decided the issue on merits and the company has been ordered to pay a penalty. The Plaintiff, who was holding a responsible position having not challenged the order of the CESTAT which holds that Mr. Oike had no active involvement and neither did the Plaintiff have a personal role, ought to be satisfied with the said finding.

29. The statements made in quasi-judicial proceedings before the Customs Authorities cannot be held to be defamation/libel/slander. There is no tort made out in the present suit and the suit for compensation is not maintainable, in view of the settled law. The plaint is accordingly rejected. All pending I.As are disposed of.

PRATHIBA M. SINGH, J.
JUDGE

OCTOBER 01, 2018/dk