

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 6-5-2019

Judgment delivered on 21 -06-2019

FA No. 155 of 2006

- Tathagat Shrivastava son of K.L. Shrivastava, aged about 33 years, occupation Managing Director, resident of Shriram Colony, behind stadium, Raigarh, Post Tahsil and Dist. Raigarh (CG).

---- Appellant

Versus

- Subhash Chandra Taneja son of late Shanti Lal aged about 62 years, occupation Retired ITI employee, resident of C-07, Parijat Apartment, near to Govind Provision, Bilaspur, Post Tahsil and District Bilaspur (CG) PIN 495 001.

---- Respondent

For appellant : Mr. Malay Kumar Bhaduri, Advocate

For respondent None though served.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 21-7-2006 passed by 1st Additional District Judge, Raigarh (CG) in Civil Suit No. 7-B/2006 wherein the said court dismissed the suit filed by the appellant/plaintiff for compensation of Rs.75,700/- on account of defamation caused by respondent which is caused on 23-9-2003 in the court of 2nd Additional District Judge, Raigarh while deposing

before the said court and made imputation against the appellant that he is criminal minded.

2) Appellant/plaintiff filed a suit against the respondent/defendant before the trial court on the ground that the appellant is running a computer institution in Raigarh city and said institution affiliated to State and all India level various computer institution. Further, he is a political figure and local leader of the nationalist congress party. On 29-7-1996 appellant got married with one Kapila Taneja. Said marriage was a "Gandharwa and love marriage" without consent of family members of Kapila Taneja. Out of said wedlock a she baby was born on 27-10-1992. After some time of marriage wife of the plaintiff/appellant went to her marital house and made a conspiracy against the appellant and his family members to indulge them in a criminal case. On 3-1-2002 said Kapila Taneja herself poured kerosene on her body and set her ablaze and sustained burn injuries. Immediately she was taken to hospital by mother of the appellant at Raigarh thereafter she was shifted to Bhilai hospital where she had been treated by the doctors and entire medical treatment was afforded by the maternal aunt of the appellant. Upon such incident wife of the appellant lodged report in Police Station against the appellant, his mother and maternal aunt under Sections 307 and 498-A, read with Section 34 of IPC. The appellant was charge-sheeted and case was tried and

the trial was started as Sessions Trial No. 60 of 2003. The respondent appeared before the trial court as witness and deposed that the appellant is criminal minded. The said imputation brought down the reputation of the appellant that is why he filed suit for damages before the trial Court, but the trial Court recorded finding that while deposing as witness before the Sessions Court the respondent had absolute privilege and therefore, he is not liable to be involved in the civil proceeding.

3) Learned counsel for the appellant would submit as under:

- i) The trial court dismissed the suit as premature which is not permissible as per law laid down in the matter of **K.L. Dhall vs. B.P. Dutta, reported in Crimes 1985 (1) 848, Vithalbhai Pvt. Ltd. vs. Union of India, 2005(4) SBR 108, Tathagat Shrivastava vs. Subhash** decided by this court on 21-8-2006 in M.Cr.C.No. 2900 of 2005 and FA No. 4 of 2009 decided by this court on 14-1-2019 in F.A.No. 4 of 2009.
- ii) The trial court ought to have returned the plaint to the plaintiff with liberty to file afresh subject to the limitation and cause of action.
- iii) The act of the respondent is actionable, but the trial court dismissed the suit contrary to law which is liable to be reversed.

4) I have heard learned counsel for the appellant and perused the record in which judgment and decree has been passed.

5) The core issue for consideration of this court is whether the act of the respondent is actionable and whether suit for damages will lie against him. Admittedly, the victim namely Kapila Taneja is daughter of respondent who suffered burn injuries in the house of the appellant and she was residing with the appellant as his wife. Appellant was charge-sheeted for attempt to murder before the Sessions Court. Respondent appeared before the said court as witness and deposed before the said court that appellant is criminal minded.

6) From the evidence, it is clear that he deposed against the appellant out of anger because his daughter suffered burn injuries in the house of the appellant. In the matter of **Madhab Chandra Ghose and others vs. Nirod Chandra Ghose reported in AIR 1939 Calcutta 477**, it is held as under:

“No action for libel or slander lies, whether' against Judges, counsel, witnesses, or parties, for words written or spoken in the course of any proceeding before any Court recognized by law and this, though the words were written or spoken maliciously without any justification or excuse, and from personal-ill-will and anger against the; person defamed. Further the statements made with a view to repeating them

on oath in a subsequent judicial proceeding are similarly protected. Hence, statements made by him in subsequent judicial proceedings as a witness are absolutely privileged even though they are defamatory and false. No civil action for damages themselves lies”

7) The trial Court recorded finding that the act of the respondent falls within absolute privilege act and no civil action will lie against him. From the evidence and circumstances of the case it appears that words spoken by respondent are unintended. It is unintentional act deposed before the court while examining as prosecution witness to support the prosecution case. Appellant was facing trial for attempt to murder of daughter of respondent and he made imputation on the character of the appellant for protection of interest of his daughter in good faith, therefore, the trial Court is right in recording finding that looking to privilege he is not liable for civil action. The trial Court has not recorded finding only on the basis of pre-mature but the trial court also recorded finding that civil action will not lie in the present case. Finding of the trial court is based on proper marshalling of the evidence and after re-assessing the evidence, this court has no reason to substitute contrary finding. Argument advanced on behalf of the appellant is not sustainable and the case laws cited by learned counsel for the

appellant are clearly distinguishable from the facts of the present case.

8) As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondent and against the appellant as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellant to bear the cost of the respondent through out.
- (iii) Pleader's fee, if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju