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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 661/2022 & I.As. 17416/2022, 17417/2022, 17485/2022

PANKAJ OSWAL THROUGH HIS CONSTITUTED

ATTORNEY MR. SANJAY WALL

..... Plaintiff

Through:

Mr. Kamal Mohan Gupta,
Mr. Ambar Shehbaz Ansari,
Mr. Aslam Khan, Mr. Gorakh
Nath Yadav, Advocates
(M:9971800229)

versus

VIKAS PAHWA

..... Defendant

Through:

Mr. A.S. Chandiok, Mr. Arvind
Nigam, Mr. Sanjeev Kakra, Sr.
Advocates with Mr. Bharat
Arora, Ms. Raavi Sharma,
Ms. Simran Kohli,
Ms. Vidushi Keshan Advocates
(M:9811628929)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

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J U D G M E N T

09.02.2023

MINI PUSHKARNA, J.

1. The present is a suit filed on behalf of the plaintiff against defendant, who is a senior advocate, for declaration that the statement as made by the said senior advocate during the course of arguments in open Court, is defamatory. Thus, damages to the tune of Rs. 2 crores have been prayed towards loss and harm caused to the reputation and goodwill of the plaintiff by the defamatory statement of the defendant. The following prayers have been made:

“a. Pass a decree declaring that the statement made by the Defendant on 14.07.2022, before the Learned Judge in Crl. Rev. Petition No. 554 of 2018 titled Pankaj Oswal v State of NCT of Delhi and Ors, in open court, as defamatory, infringing the Fundamental Right of the plaintiff under Article 21 of the Constitution of India;

b. Pass a decree of Permanent Injunction restraining the Defendant and his associates, agents, representatives, and those acting under the Defendant from fabricating and/or disseminating any false and prejudicial imputations, directly or indirectly, against the Plaintiff;

c. Pass a decree of Mandatory Injunction directing the Defendant to submit an unequivocal and unconditional apology to the Plaintiff for making false, unwarranted, and defamatory statements and imputations, causing damage and harm to the reputation of the plaintiff, against the Plaintiff;

d. Pass a decree in favour of the Plaintiff, directing the defendant to pay to the Plaintiff an amount of INR 2 Cr. as damages towards loss & harm caused to the reputation and goodwill of the Plaintiff by the defamatory statements / imputations of the Defendant against the Plaintiff;

e. Pass an order awarding exemplary costs and costs of the Suit in favour of the Plaintiff and against the Defendant;

f. Pass such other, further orders, directions and decree as this Hon'ble Court may deem fit in the facts and circumstances of this case and in the interest of justice.”

2. It is the case on behalf of the plaintiff that he is a highly acclaimed businessman belonging to one of India's most accomplished business families. His father, Late Mr. Abhey Kumar Oswal was a leading industrialist of his time, being the promoter, shareholder and director of the Oswal Group of Companies comprising of Oswal Agro Mills Limited (OAML) and Oswal Greentech Limited (OGL).

3. The relevant facts as given in the plaint are that the plaintiff prior to 2001 was acting as the full time director of Oswal Chemicals and Fertilisers Limited, now Oswal Greentech Limited (OGL). He was looking after day to day affairs and was responsible for taking the business decisions. In or around 2001, the plaintiff moved to Australia in order to establish and expand the Oswal Group Companies business. Even after moving to Australia, the plaintiff maintained healthy and cordial relations with all his family members and continued to enjoy a good reputation amongst his friends, business associates and society in general.

4. The father of the plaintiff, Mr. Abhey Kumar Oswal expired intestate on 29.03.2016 while travelling in Russia. He was survived by his Class-I legal heirs which included the plaintiff herein, his mother, his younger brother and his sister.

5. On 31.03.2016, plaintiff along with his wife and children flew to India to attend and perform the last rites of his late father. On 03.04.2016, the “rasam pagri” ceremony was performed as per Hindu rituals. The plaintiff being the eldest son, was bestowed with the “pagri” in the presence of more than 1200 persons of the Oswal community, relatives and family members.

6. After the ceremony, the plaintiff and his family members including his mother and siblings discussed the modalities for taking forward the family legacy. A consensus was arrived at between the parties that the joint family properties left behind by his father, would be managed by the plaintiff. Thus, based on the discussion held on 03.04.2016 with his mother and his siblings and in order to formalise

the consensus arrived at regarding the responsibilities assigned to him by his mother and other members of the family, the plaintiff and his wife visited his father's office on 04.04.2016.

7. However, after reaching the office, the plaintiff came to know that his mother and his siblings were not present at the office. As the plaintiff was leaving India on the same date, he called his mother, whereupon he came to learn that his mother and other siblings had decided not to execute any family arrangement.

8. Later on, a complaint dated 05.04.2016 was filed against the plaintiff with PS Barakhamba Road alleging criminal trespass. Consequent to the aforesaid complaint, FIR bearing no. 54/2016 was registered on 05.04.2016 at PS Barakhamba Road against the plaintiff and his wife. Thus, the plaintiff and his wife filed two separate petitions under Section 482 of the Code of Criminal Procedure, 1908 before this Court for quashing of FIR.

9. The plaintiff also filed a suit for partition, which is pending adjudication before this Court. The plaintiff had also filed a petition under Section 241 to 244 of the Companies Act, 2013 against oppression and mismanagement in the affairs of the company, before National Company Law Tribunal (NCLT), Chandigarh. Mother of the plaintiff challenged the maintainability of the company petition before the NCLT. Subsequently, the NCLT vide its order dated 13.11.2018 held that the company petition is maintainable. Plaintiff's mother in turn challenged the NCLT order before the National Company Appellate Tribunal (NCLAT). The NCLAT by its judgment dated 14.11.2019 upheld the NCLT order.

10. Subsequently, mother of the plaintiff as well as the company preferred an appeal against the NCLAT judgment before Supreme Court in Civil Appeal No. 9340/2019.

11. In the meanwhile, this Court in Criminal M.C. No. 3779/2019 filed by the plaintiff herein, referred the parties to mediation. With the common consensus between the parties, Mr. Sudhanshu Batra, learned Senior Advocate was appointed as Mediator.

12. It is submitted that in and around October 2019, mediation proceedings commenced wherein the parties joined through video conferencing. The respective parties joined the mediation proceedings before the mediator through video conferencing without their counsel and authorised representatives. However, after a few sessions, the mediation proceedings failed between the parties. It is submitted that defendant herein was not privy to the mediation proceedings.

13. In the meanwhile, mother of the plaintiff on 16.04.2016 transferred the shares owned by her husband and father of the plaintiff in OGL and OAML, in her own name. Aggrieved by this act of the plaintiff's mother in transferring all the shares held by her husband to her own name, thereby depriving the plaintiff of any share, the plaintiff on 14.05.2018 filed a complaint with the SHO, Tilak Marg, New Delhi. Subsequently, the plaintiff submitted a complaint dated 22.05.2018 with the Commissioner of Delhi Police as well as Deputy Commissioner of Police, New Delhi District.

14. Thereafter, the plaintiff filed a complaint under Section 200 of the Cr.P.C. along with an application under Section 156(3) of Cr.P.C. before the learned Magistrate, Patiala House Court, New Delhi. In the

said proceedings, mother of the plaintiff also filed an application under Section 340 of Cr.P.C. on 12.07.2018 stating that the plaintiff herein had concealed material facts, and thus, enquiry under Section 340(1) of Cr.P.C. must be conducted and perjury proceedings may be initiated against him.

15. The learned Magistrate vide order dated 13.08.2018 dismissed the aforesaid application for perjury proceedings against the plaintiff. A revision petition against the aforesaid order was filed before the learned District and Sessions Court, Patiala House. The learned Sessions Court vide its order dated 30.03.2019, remanded the matter for reconsideration before the learned Magistrate. Subsequently, the learned Magistrate while reconsidering the application filed by the mother of the plaintiff, dismissed the said application vide order dated 20.05.2022.

16. The learned Magistrate vide its order dated 13.08.2018 had also dismissed the application filed by the plaintiff under Section 156(3) of Cr.P.C. The plaintiff filed a revision petition bearing CRL.REV. P. No.554/2018 before the learned Sessions Court.

17. It is the case on behalf of the plaintiff that the aforesaid Criminal Revision Petition filed on behalf of the plaintiff was listed for arguments before the learned Sessions Court at Patiala House on 14.07.2022. It is contended by learned counsel appearing for the plaintiff that the defendant while appearing for plaintiff's mother made a false and *per se* defamatory statement against the plaintiff, in that during mediation proceedings held in October and November 2019, the plaintiff had used unparliamentary language against his

mother and had verbally abused her. It is submitted that the defendant stated as follows:

‘Plaintiff has used unparliamentary language and abused his mother during mediation proceedings’.

18. It is submitted that the defendant was not even present during the mediation proceedings held between the parties, wherein it was falsely alleged by the defendant that the plaintiff had used unparliamentary language against his mother and had verbally abused her. By making such per se false and derogatory statements and imputations, the defendant has harmed and lowered the reputation of the plaintiff amongst his relatives, friends, business circle and society in general.

19. It is the case on behalf of the plaintiff that the above mentioned imputations by the defendant against the plaintiff are completely false, baseless, divorced from reality, scandalous and defamatory. It is submitted that the defendant made such statements which had no relation to the proceedings pertaining to the revision petition, as the defendant himself had no personal or direct knowledge of what had transpired during the mediation proceedings. It is submitted that the said statement had been made by the defendant with malafide intentions solely to cause harm to plaintiff's reputation and malign him at the hearing in open Court, wherein relatives/ friends of the plaintiff, employees of the companies in question and other Advocates and litigants were present.

20. Learned counsel for the plaintiff submits that the plaintiff despite having various disputes with his mother, has never used any

unparliamentary words or never ever in his life has used any foul or abusive language against his mother. The plaintiff is a businessman of substantial repute and enjoys great respect amongst friends, family members, business circle and public in general. Therefore, such false statements and imputations being made by the defendant, clearly tarnishes the reputation of the plaintiff and lowers him in the estimation of others.

21. Learned counsel for the plaintiff submits that the said false statement and imputations have been made by the defendant against the plaintiff in open Court without any relevance to the pending court proceedings in a callous manner, without any factual or legal basis, with the sole motive to harm the reputation of the plaintiff and to earn some brownie points for himself from his clients. Pertinently, the statement made by the defendant was not even relevant to any issue pending before the Sessions Court.

22. It is submitted that during the proceedings on 14.07.2022, the learned Sessions Court had enquired from the parties as to the possibility of amicably settling the dispute in mediation proceedings. In response to the said query, the defendant made the said statement. Thus, it is contended that the statement made by the defendant was totally unrelated to the query posed by the learned Sessions Court.

23. It is further submitted that it has come to the knowledge of the plaintiff that the defendant has been making such defamatory allegations against the plaintiff before various Courts in other pending litigations between the plaintiff and his mother. It is submitted that the plaintiff has never been disrespectful towards his mother in any

proceedings, let alone Court ordered mediation proceedings, nor has he uttered disrespectful words for his mother.

24. It is submitted that absolute privilege cannot work against the fundamental right of a person. Right to reputation being recognised as a fundamental right under Article 21 of the Constitution, cannot be violated in the garb of immunity. It is contended that absolute privilege is not a fundamental right and there is no statutory right granting absolute privilege to a lawyer. In the garb of free speech, the reputation of a person cannot be sullied.

25. Thus, it is contended on behalf of the plaintiff that right to reputation of a person has been put at the pedestal of fundamental right and has been held to be a part of Article 21 of the Constitution. Hence, no one including the State can have any immunity against legal action for harming the reputation of a person and infringing his fundamental right. It is prayed that the plaintiff is entitled to not only injunctive reliefs, but also compensatory and aggravated damages along with exemplary damages on account of false and defamatory statements and imputations being spread by the defendant.

26. In support of his submissions, learned counsel for the plaintiff has relied upon the following judgments:

- I. *B. Sumat Prasad Jain, Advocate Vs. Sheo Dutt Sharma and Anr., AIR 1946 All 213.*
- II. *Subramanian Swamy Vs. Union of India, Ministry of Law & Ors, W.P. (Crl.) No. 184/2014 and connected matters, judgment dated 13.05.2016 passed by Hon'ble Supreme Court.*
- III. *Sh. Anil Chaudhry Vs. Yakult Danone India Pvt. Ltd. in CS(OS) 616/2017, judgment dated 01.10.2018 passed by Delhi High Court.*

IV. *Rajendra Kumar Shahani Vs. State of Maharashtra and Ors. in Criminal Revision Application No. 179/2014, decision dated 13.04.2018 passed by Bombay High Court.*

V. *Punjab National Bank Vs. Sh. Anuj Kaicker & Anr., FAO(OS) (COMM) 201/2022, order 28.09.2022 passed by Division Bench of Delhi High Court.*

27. On the other hand, learned senior advocates appearing on behalf of the defendant have very emphatically opposed the present plaint and seeks its rejection, as being without any cause of action. They submit that privilege of a lawyer is absolute and statement given by a lawyer in Court is absolute privilege.

28. It is submitted that the order dated 14.07.2022, records that part arguments were heard. The said order does not in any manner reflect the question that was put forth by the learned Judge, as alleged by the plaintiff. Thus, this Court would have to put the learned Sessions Judge to examination in order to elicit from him as to what question was asked by the said learned Judge, to which the statement in question was made by the defendant.

29. It is further contended by learned Senior Counsel appearing on behalf of the defendant that answer may be irrelevant, but it does not become defamatory. It is submitted that Senior Counsels have no dealing with the client and appear on instructions. The Senior Counsel appearing for the mother of the plaintiff had no personal knowledge as to what happened during the mediation and only the counsels on record were present during the mediation proceedings.

30. If the contentions made on behalf of the plaintiff were to be accepted, then the same would amount to putting the learned Sessions Court to question. There is no written record as to what transpired in

the Court on 14.07.2022, as the order only reflects regarding part arguments having been heard. It is contended that if the question as put by the Sessions Court was different, then answer as given by defendant would have to be relevant.

31. Reference is made to Para 22 of the plaint to contend that the suit is barred by law and is without any cause of action. The statement by the learned Senior Advocate representing the mother of the plaintiff before the Sessions Court, was made on instructions, as it is clear that the defendant was not present during the mediation proceedings. Para 22 of the plaint is reproduced as under:

“22. That in and around October 2019 mediation proceedings commenced wherein the parties joined through video conferencing. The respective parties joined the mediation proceeding before the mediator through video conferencing without their counsel and authorized representatives. However, after a few sessions, the mediation proceedings failed between the parties. The Plaintiff verily believes that the reason for failure of all the settlement talks between him and his mother was due to the ill advice and the falsehood being created by Ms Navneet Chahal (VP and General Legal Counsel of OGL) and Mr. Anil Bhalla (CEO OGL) against the Plaintiff to create a further rift between the Plaintiff and his mother and gain benefit from the family discord. It is pertinent to note here that the Defendant was not privy to the mediation proceedings.”

32. It is further contended that the present is a frivolous and vexatious litigation as the defendant has appeared as counsel for mother of the plaintiff 54 times and still appears for her. Thus, it is prayed that no summons be issued in the present plaint and that the same be dismissed in view of provisions under Order 7 Rule 11 (a) (d)

of CPC.

33. In support of their submissions, following judgments have been relied on behalf of the defendant:-

I. Ram Jethmalani Vs. Subramaniam Swamy, 2006 (87) DRJ 603

II. Anil Chaudhry Vs. Yakult Danone India Pvt. Ltd, (2019) 365 DLT 428

III. Brig. B.C. Rana (Retd.) Vs. Seema Katoch, (2013) 198 DLT 35

IV. Chunni Lal Vs. Narsingh Das, (1917) I.L.R. 40 All. 341, F.B.

V. Sumat Prasad Jain Vs. Sheodatt Sharma

VI. Miss Kamalini Manmade Vs. Union of India, (1967) 69 BOM LR 512

VII. K Daniel Vs. T. Hymavathy Amma, AIR 1985 KER 233

VIII. Ram Kirat Kamkar Vs. Biseswar Nath, AIR 1933 PAT 35

IX. Munster Vs. Lamb, (1883) L.R. 11 Q. B.D. 588

X. Madhab Chandra Ghose and Ors. Vs. Nirod Chandra Ghose, AIR 1939 CAL 477

XI. Atul Kumar Pandey Vs. Kumar Avinash, (2020) 4 CAL LT 240

34. In rejoinder, learned counsel for plaintiff submits that the plaintiff has to just show *prima facie* that suit for defamation is maintainable. Whether the statement made by the Senior Advocate was under instructions or as to what was the exact statement made by him, would be matter of trial. It is submitted that there is no law in India conferring absolute privilege upon lawyers. He submits that if irrelevance is established, then the defendant is liable to be proceeded for defamation of plaintiff. It is submitted that the question put forth by the learned Court was not why the earlier mediation failed, but was

whether parties can be referred to mediation. Thus, the answer given by the defendant, was an irrelevant answer.

35. I have heard learned counsels for the parties and have perused the record.

36. Statements and submissions made by a lawyer during the course of judicial proceedings is an absolute privilege and is a complete defence against any allegations of defamation. The justice system would be adversely affected if the lawyers were to be in fear of law themselves for any submission or statement made by them during the course of hearing of a case. Thus, it has been held in the case of **Ram Jethmalani Vs. Subramaniam Swamy**¹, as follows:

“95. Traditional defences to an action for defamation have now become fairly crystallized and can be compartmentalized in 3 compartments: truth, fair comment and privilege. Truth, or justification, is a complete defence. The standard of proof of truth is not absolute but is limited to establishing that what was spoken was ‘substantially correct’. Fair comment offers protection for the expression of opinions. Standard of proof is not that the Court has to agree with the opinion, but is limited to determine whether the views could honestly have been held by a fair-minded person on facts known at the time. Unlike defence of truth, defence based on fair comment can be defeated if the plaintiff proves that the defamer acted with malice. Similar is the situation where the defence is of qualified privilege. Privilege is designed to protect expression made for the public good. Protection of qualified privilege is lost if actual malice is established. In public interest, absolute privilege is a complete defence. Rationale of absolute privilege being restricted to Court proceedings or proceedings before Tribunals which have all the trappings of a Civil Court and Parliamentary

¹ (2006) 87 DRJ 603

proceedings is that if threat of defamation suits loom large over the heads of lawyers, litigants, witnesses, Judges and Parliamentarians it would prohibit them from speaking freely and public interest would suffer.”

37. It has been recognised time and again that statements by lawyers made in proceedings before court are conferred with absolute privilege. Thus, any statement made by any Advocate during the course of judicial proceedings would be protected in public interest and absolute privilege in that case would be a complete defence. Different courts have held in a catena of judgments that any restriction on the privilege granted to the advocates during the course of a judicial hearing, would hamper the process of administration of justice. Thus, in the case of **Brig. B.C.Rana (Retired) Vs. Seema Katoch and Ors²**, it has been held as follows:

“28. Absolute Privilege is a special defence available in an action for defamation under the common law which has been recognized by the Indian courts in a catena of cases.

29. A statement is said to be Absolutely Privileged when it is of such a nature that no action will lie for it, however false and defamatory it may be, and even though it is made maliciously, that is to say, from some improper motive. These cases are extremely opposite to the ordinary cases of unprivileged defamation. When a statement is not privileged, it is actionable, however honest its publication may have been; but if it is Absolutely Privileged it is not actionable, however dishonest its publication may have been.

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31. The occasions for the Absolute Privilege may be grouped under the heads parliamentary proceedings, judicial

² 2012 SCC OnLine Del 5421

proceedings and acts of State. We are concerned here with judicial proceedings.

32. The Kerela High Court in K. Daniel V.T. Hemavathy Amma, AIR 1985 Ker 233, explains the reason for conferring Absolute Privilege to the statements made in the course of judicial proceedings as below:-

“It is imperative that judges, counsel and witnesses participating in the judicial proceedings 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 such statements on such occasions. The privilege arises on account of privilege attached to the occasion and not to the individual....Basis of privilege is not absence of malice or the truth of the 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.”

Quoting the extracts from the judgment of Fry L.J. in Munster v. Lamb, (1883) 11 QBD 588, the court went on to say that “In public interest it is not desirable to inquire whether the words or actions of these persons are malicious or not. It is not that there is any privilege to be malicious, but that so far as it is a privilege of an individual and a right of a public, the privilege is to be exempted from all enquiries as to malice.”

33. The Patna High Court in Pandey Surinder Nath Singh v. Bageshwari Prasad AIR 1961 Patna 164 observed that:-

“It is not that there is any privilege to be malicious. The reason for the doctrine is that it is desirable that persons who occupy certain positions, for example, Judge, Advocates, and witnesses, in the course of legal proceedings, should be permitted to express themselves with complete freedom; and to secure their independence, Absolute Privilege is given to

their acts and words, so that they should not be brought before other Courts for inquiry merely on the allegation that they were malicious. It is a striking instance of the subordination of the individual's interest to that of the community."

38. As regards civil liability for defamation, full Bench of Allahabad High Court in the case of **Chunni Lal Vs. Narsingh Das, 1917 The Indian Law Reports (Allahabad Series), Vol. XL, 341** has held that there is no statute in India dealing with civil liability for defamation. Thus, in the absence of statute law in India regarding civil liability for libel, it has been held that there is no reason why the English Law applicable thereto should not be followed. Following the English Law, it was held that a person presenting a petition in a court is not liable in a civil suit for damages in respect of statements made therein which may be defamatory of the person complained against.

39. Holding that the questions of malice, bona fides and relevancy cannot be raised in case what is complained of has been said in the course of administration of the law by an advocate, in the case of **Sumat Prasad Jain Vs. Sheodatt Sharma and Anr.**³, it has been held as follows:

*".....In the equally well known case of **Munster v. Lamb in the Court of Appeal in 1883 [11 Q.B.D. 588.]** the question of the privilege attaching to an advocate was discussed. The facts in this case were peculiar. A woman was being tried at petty sessions at Brighton for having unlawfully administered drugs to the plaintiff's servants. The defendant was a solicitor who was acting as the advocate of the woman at the trial. During the hearing before the petty sessions and while acting as the advocate*

³ 1945 SCC OnLine All 102

of the accused, the defendant made observations relating to the plaintiff (who himself happened to be a barrister) imputing to him that he kept a stock of drugs in his house for an immoral purpose. The solicitor was then sued in defamation. It may be taken that the expressions used by the solicitor were defamatory and had no foundation whatever. No attempt was made either to justify or excuse them. At the trial Sir James Mathew, holding the defendant to be covered by an absolute privilege, explained the reason of that privilege in these words:

*“It may be inconvenient to individuals that advocates should be at liberty to abuse their privilege of free speech, subject only to animadversion or punishment from the presiding judge. But it would be a far greater inconvenience to suitors if advocates were embarrassed or enfeebled in endeavouring to perform their duty by the fear of subsequent litigation. This consequence would follow, that no advocates could be as independent as those whose circumstances rendered it useless to bring actions against them. The passage in *Seaman v. Netherclift*” (ubi supra)—this is the passage from the judgment of Lord Coleridge to which I have referred above—upon which Mr. Waddy relied was not, as it seems to me, intended to qualify the statement of the law contained in the earlier judgments relied upon for the defendant. All that was intended to be laid down was this, that, for defamatory statements made by an advocate outside his office of advocate and with no reference to the subject before the Court, and which, therefore, were necessarily made in bad faith and were irrelevant, a counsel might be proceeded against in an action’.”*

The Master of the Rolls, Sir William Brett, took the same view in the Court of Appeal. Discussing the privilege of counsel, he said:

“If upon the grounds of public policy and free administration of the law the privilege be extended to judges and witnesses, although they speak maliciously and without reasonable or probable cause, is it not for the benefit of the administration of the law that counsel also should have an entirely free mind? Of the three classes—judge, witness, and counsel—it seems to me that a counsel has a special need to have his mind clear from all anxiety. A counsel's position is one of the utmost difficulty. He is not to speak of that which he knows; he is not called upon to consider, whether the facts with which he is dealing are true or false..... The rule of law is that what is said in the course of the administration of the law, is privileged; and the reason of that rule covers a counsel even more than a judge or, a witness. To my mind it is illogical to argue that the protection of privilege ought not to exist for a counsel, who deliberately and maliciously slanders another person. The reason of the rule is, that a counsel, who is not malicious and who is acting bona fide, may not be in danger of having actions brought against him. If the rule of law were otherwise, the most innocent of counsel might be unrighteously harassed with suits, and therefore it is better to make the rule of law so large that an innocent counsel shall never be troubled, although by making it so large counsel are included who have been guilty of malice and misconduct.... Into the rule thus stated the word ‘counsel’ must be introduced, and the rule may be taken to be the rule of the common law. That rule is founded upon public policy. With regard to counsel, the questions of malice, bona fides, and relevancy, cannot be raised; the only question is, whether what is complained of has been said in the course of the administration of the law. If that be so, the case against a counsel must be stopped at once. No action of any kind, no criminal prosecution, can be maintained against a

defendant, when it is established that the words complained of were uttered by him as counsel in the course of a judicial inquiry, that is, an inquiry before any court of justice into any matter concerning the administration of the law.”

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*The only two other English cases to which I desire to refer are **Bottomley v. Brougham** [(1908) 1 K.B.D., 584.] and **Rodriguez v. Speyer Brothers** [(1919) A.C., 59.] . In **Bottomley v. Broughman**—a case in which the defendant was the senior Official Receiver under the Companies Acts—Mr. Justice Channell, explained that he thought that the expression “privilege” was misleading, since the law conferred on a Judge, a witness or an advocate no private right to be malicious. He said that—*

“...The real doctrine of what is called “absolute privilege” is that in the public interest it is not desirable to inquire whether the words or acts of certain persons are malicious or not. It is not that there is any privilege to be malicious, but that, so far as it is a privilege of the individual—I should call it rather a right of the public—the privilege is to be exempt from all inquiry as to malice, that he should not be liable to have his conduct enquired into to see whether it is malicious or not—the reason being that it is desirable that persons who occupy certain positions as judges, as advocates, or as litigants should be perfectly free and independent, and, to secure their independence, that their acts and words should not be brought before tribunals for inquiry into them merely on the allegation that they are malicious.”

*In **Rodriguez v. Speyer Brothers**⁴, Lord Atkinson said in the House of Lords that:*

“.... the well established rule of law which throws

⁴ (1919) A.C., 59.

the protection of an absolute privilege around the observations of a judge while presiding in a court of justice, of an advocate while, speaking there on behalf of his client, of, a witness while giving his evidence there.... is also based upon a principle of public policy—namely, this, that it is more for the public good that private individuals should be made to suffer in pocket or repute by the observations of the individuals I have named than that these latter should, by the fear of hostile litigation, be deterred from speaking their mind freely when discharging their respective duties.”

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The defamatory epithet in the appeal before us is the word “awara” applied to the plaintiff in a written statement drawn, and signed according to Order 6, rule 14, of the First Schedule to the Civil Procedure Code, by the defendant, the advocate engaged on behalf of the defendant in the suit in which the pleading was delivered. In respect of that epithet the defendant has been sued in a civil suit for defamation. The question is whether he is protected by an absolute privilege by virtue of his office of advocate.

In my opinion he is so protected, both on the authority of our own Full Bench case of Chunni Lal v. Narsingh Das [(1918) I.L.R. 40 Alld. 341.] , which we are bound to follow, and, if I may say so with respect, because I think the principles which that case enunciates reflect both the public interest and the law of India.

So long as the interests of litigants in this country are entrusted to recognized and qualified professional men and so long as the courts repose their confidence in the Bars which practise before them, I respectfully agree with Sir Henry Richards in thinking that it would be a disaster to the litigating public, both if the liberty of speech or action of their advocates were circumscribed by exposure to civil suits for words spoken or written in the course of the administration of causes entrusted to them, and if the

courts were by law compelled to withdraw their confidence from them. Such exposure would, I think, be calculated to limit their freedom and independence in their clients' interests to a greater extent than would be the case in England, if no absolute privilege existed there, since the risk of vexatious and often ruinous litigation in India is far greater. Nor do I perceive for what good reasons, so long as the same principles of the practice and administration of justice are maintained, or aimed at, in this country as in England, why the necessity for the maintenance of the absolute privilege of the Bar should be less. Indeed, there is the greater need for it in a country in which the advocate is exposed to larger risks of spiteful litigation. If it be said that, conversely, the risk of the abuse of an absolute privilege is also greater, I should still maintain that it were better in the public interest that the immunity of the advocate should be sufficiently large to enable him to perform his duty fearlessly, than that some relatively few cases of abuse should be made the subject of a just civil liability. If abuse occurs, as sometimes from inexperience and sometimes from less excusable causes is bound to happen, the remedy lies, I think, not in an alteration of the law relating to the privilege, but in fostering high standards of practice; in the censure of the public and in the continuous vigilance of the courts themselves.

In this High Court the view has not been accepted that the definition of defamation contained in section 499 of the Penal Code, 1860 has by inference affected the absolute privilege of witnesses, parties and advocates in respect of civil liability for words spoken or written by them "in office" in the course of legal proceedings in which they are engaged. Whatever may be the proper view of the effect of the Penal Code, 1860 on the immunity of these classes from criminal proceedings for defamation and even if the exceptions by section 499 of the Code are exhaustive—which are matters not falling to be considered in the case now before us—I should for myself be bound to think that the provisions of a criminal statute have altered

or affected the civil common law as to the privilege of certain classes in litigation—a privilege which existed, in India as in England, long before the Penal Code was enacted. If an anomaly has been created in consequence of section 499 of the Penal Code, 1860, then I should rather accept it than admit either that established civil rights designed in the public interest can be curtailed by mere analogies to be drawn from the criminal Code, or that the public can be deprived of the immunity accorded to their advocates in courts of law at least from civil liability.”

40. Similarly, with respect to statements made in judicial and quasi judicial proceedings before Courts, it has been held that the same are protected as being privileged. A suit for defamation on the basis of statements in such proceedings is clearly not maintainable. This Court in the case of **Anil Chaudhary Vs. Yakult Danone India Pvt. Ltd.**⁵, has held as follows:

“31. 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.

32. In the present case, all the statements which are relied upon which form the basis of cause of action in the suit

⁵ 2018 SCC OnLine Del 11638

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.

.....

34. 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.”

41. To similar effect is the judgment in the case of **K. Daniel Vs. T. Hymavathi Amma**⁶, wherein it has been held as follows:

“8. We are now concerned only with the liability in a civil action for defamation as a tort. An examination of the common law of England would show that English Courts have accepted that statements made by Judges, Juries, counsel, parties and witnesses in the course of trial in the course of any judicial proceeding are statements made on privileged occasions and the maker of the statements is saved from civil action by the rule of absolute privilege and no action will lie for damages.

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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

⁶ 1985 SCC OnLine Ker 110

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.

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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 in mind that in deciding whether a statement has reference to the matter of enquiry, the widest and most comprehensive interpretation must be given."

42. Accordingly, it is manifest that counsels cannot be obligated to examine the complete relevancy of the statements made by them during course of court hearing. Independence and freedom needs to be accorded to the counsels for putting their case before the Court with complete liberty, without any fear or threat that they may be

embroiled in a litigation for any statement made by them in Court during judicial proceedings. Thus, any statement made by a counsel during court hearings is a privileged occasion and no counsel can be made liable for any action for libel or slander in respect of any statement made thereto.

43. In the present case, the contention made on behalf of the plaintiff is that irrelevant statement was made by the defendant to a question that was put forward by the Court. This Court has perused the order dated 14.07.2022 passed by the learned Sessions Court. The said order simply records the fact of part arguments having been heard. Thus, even if it were to be assumed that what the plaintiff is saying is correct, there would be no means to ascertain as to whether what was the question put forth by the Court and what was the exact statement that was made on behalf of the defendant. Anyway, as per the law as discussed above, the defendant being a Senior Advocate and having made the statement during the course of judicial proceedings would be protected, the statement being in the nature of absolute privilege. This Court will not go into any exercise as to whether the statement made by the counsel was irrelevant in any manner or was made with any malice. If every statement made by a lawyer during judicial proceedings was to be subjected to such scrutiny, then the system of judiciary would come to a literal halt as the lawyers would feel constrained in making their submissions before the Court. This may interfere and hamper the judicial process in a detrimental manner. Therefore, it is necessary to protect the statements made by lawyers during the course of judicial proceedings

as absolute privilege and they cannot be put to trial for defamation on the basis of any statements made before Court during the course of judicial proceedings.

44. Even otherwise, the order dated 14.07.2022 passed by Ld. Sessions Court does not record the presence of any friend circle or family members of the plaintiff and therefore, it cannot be said that reputation of the plaintiff has been damaged in front of his friend circle or family members.

45. It goes without saying that a Senior Advocate, in the scheme of things as per general code of conduct, makes statement upon instructions from the briefing counsels. Thus, no malice or motive can be imputed to such counsel for making any statement made on instructions. The plaintiff has not been able to make any *prima facie* case for registering the present plaint and for issuance of summons.

46. In view thereof, it is held that the defamatory statement as alleged by the plaintiff in this suit is not actionable, on the ground of absolute privilege.

47. Accordingly, the present plaint is rejected.

(MINI PUSHKARNA)
JUDGE

FEBRUARY 09, 2023/c/PB