Purshottam Lal Sayal vs Prem Shanker on 12 April, 1965

Equivalent citations: AIR 1966 All 377

Author: Dhavan
Bench: S Dhavan

JUDGMENT Dhavan, J.

1. This is a defendant's second appeal from the decree of the Second Additional Civil Judge of Meerut awarding the plaintiff respondent a sum of Rs. 1,000 as damages for slander. It raises several questions of law, including constitutional law, of general importance. The factual findings of the lower appellate Court were not challenged in this appeal and its decree was assailed on legal and constitutional grounds; but it is necessary to relate very briefly the facts which have led to this suit. An inquiry was instituted against one R. L. Bansal, Agent of the Allahabad Bank Ghaziabad, on the application of an employee of the Bank, Tara Chand. The defendant-appellant Purushottam Lal Siyal (hereinafter called Siyal), represented Tara Chand in that inquiry which was conducted by the Regional Officer of the Bank who was sent from Delhi. R. L. Bansal, as agent of the Ghaziabad branch, had made a report against Tara Chand complaining that his behaviour to the customers was unsatisfactory and this led to a proposal for the compulsory retirement of Tara Chand. The latter however sent a representation accusing R. L. Bansal of personal prejudice against him, and the Bank ordered an inquiry. It was held in the premises of the Bank and both parties were permitted to lead evidence and produce witnesses. The appellant, who represented Tara Chand, was at the time holding a responsible position in the All-India Bank Employees Association. One of the witnesses of R. L. Bansal was Prem Shanker a local business man of some standing and repute. He is the plaintiff in the suit, and respondent in this appeal. He gave evidence in Favour of R. L. Bansal and against Tara Chand. While cross-examining him, the appellant Siyal made statements which were regarded by the latter as defamatory and have resulted in this suit.

The plaintiff's case is that the appellant while cross-examining him made the following statement to the inquiry officer:

"In se yeh poochcha jave ki inko kitna qarz dena hai; yeh kiya income-tax dete hain; yeh log gharibon ka khoon choos maldar ho gaye hain; aise gawah das das vo bees rupya men behut mil sakte hain; in se yeh maloom kiya jaye ki inhon ne dedh dedh rupiya le kar kitni bar gawahi di; duniya bhar ka black-market karte hain aur ab ek gharib bank karma-chari ka khoon choosne aye hain." ("The witness should be asked how much debt he has incurred and whether he pays income-tax, he has amassed wealth by sucking the blood of the poor; witnesses like him are obtainable in abundance for Rs. 10 or Rs. 20; he should be asked how many times he appeared as a witness on being paid Rs. 1-8-0 he indulges in black marketing all over the world and now he has come here to suck the blood of a poor bank employee").

According to the plaintiff the appellant uttered these words in a fit of anger in the presence of several other persons, including some witnesses. He pleaded that these remarks were defamatory of him and had lowered him in the prestige of others and caused him considerable pain. He served a notice on the appellant claiming Rs. 5,000 as damages, but the appellant refused to accept it. Thereupon the plaintiff filed this suit claiming the same amount as damages.

2. The defendant resisted the suit and all liability. His defence was that he had never made the remarks attributed to him. Alternatively, he pleaded that the remarks were not defamatory and, in any case, the occasion was privileged. He also alleged that the suit was filed at the instigation of R. L. Bansal who was on friendly terms with the plaintiff.

3. Both the parties led evidence. The inquiry officer, Shri Bishan Dass and several other persons appeared for the plaintiff. The plaintiff himself appeared in the witness box and confirmed the allegations made by him in the plaint. Sri Bishan Das deposed that the appellant had made the disputed remarks attributed to him in his presence. The appellant also appeared in the witness box and denied having made the remarks attributed to him. He also produced several witnesses to support his version.

4. The trial Court believed the plaintiff's version and disbelieved the appellant. It held that the appellant did make the remarks attributed to him and that the statement that witnesses like the plaintiff could be procured on payment of Rs. 10 or Rs. 20 and that the plaintiff should be asked how many times he had given evidence on being paid Rs. 1-8-0 were defamatory. The remaining remarks were held by the trial Court to be merely abusive but not actionable. It also held that the remarks quoted above amounted to an imputation of dishonesty against the plaintiff as a tradesman and actionable per se. It awarded the plaintiff a sum of Rs. 100 as compensation with proportionate costs. Both sides appealed--the appellant filed an appeal and the plaintiff a cross-objection. The learned Civil Judge confirmed all the findings of the trial Court and held the appellant liable for slander. But he thought that the sum awarded by the trial Court as damages was inadequate. Accordingly, he dismissed the appeal but allowed the cross-objection and increased the compensation to Rs. 1,000. The appellant has come to this Court in second appeal.

5. Mr. M. A. Ansari who argued this case with thoroughness, stated at the outset that it would not be possible for him to assail the findings of fact of the lower appellate Court that the appellant made the disputed remarks and he pressed the appeal on legal and constitutional grounds.

6. Learned counsel first contended that the statement made by the appellant were not defamatory in law though they might be regarded as insulting or even abusive. The plaintiff's statements may be divided into three parts. The first part, relating to the indebtedness of the plaintiff and the amount of income tax paid by him, was quite legitimate and neither insulting nor defamatory. The second contains the statements that the plaintiff had amassed wealth by sucking the blood of the poor. This remark was insulting and abusive, but not defamatory in law. Such remarks are the usual stock in trade of a certain class of persons claiming to be the representatives of the working class whose vanity and ego are fed by abusing others and who regard abusive language as a fashionable means of gaining notoriety. The third part consisted of a remark that the plaintiff was the type of a man who was willing to give evidence on payment of ten or twenty rupees, and a question to the plaintiff inquiring how many times he had given evidence on being paid Rs. 1-8-0. This part was clearly defamatory as the defendant implied that the plaintiff was a sort of professional witness whose evidence could be purchased. The fourth part consisted of a sarcastic remark that the plaintiff had indulged in black marketing all over the world. This was also defamatory. To say of a business man that he had engaged in black marketing on an extensive scale cannot but lower him in the eyes of others. I think the view of the lower Court is correct.

7. Mr. Ansari then contended that the plaintiff's action must fail because his witnesses did not remember the exact words uttered by the appellant. The law is that the plaintiff in a defamation suit must quote the precise words uttered by the defamer to enable the Court to decide whether they are capable of a defamatory meaning. But this rule relates to the plaintiff and not his witnesses. If he quotes the exact words of the defamatory statement both in his written statement and his testimony in the witness-box, his suit will not fail because some of the witnesses remember the gist but not the exact words of the statement. In the present case, the plaintiff quoted the precise words used by the appellant, though some of his witnesses could only give a gist of what he said and did not remember whether he spoke in English or Hindi. Therefore, it cannot be said that the Court did not have before it the precise words uttered by the defendant.

8. Mr. Ansari next contended that the appellant is not liable as the occasion was one of absolute privilege. He pointed out that the appellant was giving evidence in an inquiry and his position as a witness conferred on him an absolute privilege giving complete immunity from liability for anything said by him before the Inquiry Officer. I cannot agree. Privilege under the law of defamation is of the two kinds, absolute and qualified. A statement made by a judge or counsel or witness in proceedings before a Court of justice is absolutely privileged and confers on the person making it complete immunity from liability to an action for damages. In a case of absolute privilege, malice is immaterial. A witness making a defamatory statement maliciously is not liable in damages if his immunity is absolute. The principle of absolute privilege is founded on public policy. It is essential for the proper administration of justice that any statement made in a Court of law, by a judge or a counsel or a witness, should not expose the person making it to legal proceedings. Occasionally this privilege may be grossly abused and yet the defamed person deprived of his remedies under the law, but public policy requires that judges, counsel, and witnesses should be able to make their statements without fear of being exposed to legal consequences.

9. Absolute privilege was originally confined to proceedings in a Court of justice, but subsequently extended to tribunals which had the attributes and functions of a Court of law, though not the status. In Dawkins v. Lord Rokeby (1873) 8 QB 255: LR 7 HL 744, it was extended to a military Court of enquiry. But absolute privilege has never been extended to tribunals discharging administrative functions with a duty to act judicially. As observed by Fry, L. J. in Royal Acquarium and Summer and Winter Garden Society, Ltd. v. Parkinson (1892) 1 QB 431 at p. 447 as follows:

"It is to be borne in mind that there is a great difference between the constitution of bodies of the kind to which I have referred and most Courts. Courts are, for the most part, controlled and presided over by some person selected as specially qualified for the purpose: and they have generally a fixed and dignified course of procedure, which tends to minimise the risks that might flow from this absolute immunity. These considerations do not apply to bodies such as I have mentioned."

10. The Courts in England have consistently refused to extend absolute privilege to various classes of administrative tribunals which were required to act in a quasi-judicial (sic). Smith v. National Meter Co. Ltd. (1945) 2 All ER 35; Addis v. Cracker (1961) 1 QB 11; O'Connor v. Waldron, 1935 AC 76.

11. In this case the enquiry was held by a superior officer of the Bank into the conduct of a Bank Manager of a Branch. This was a purely an administrative inquiry, though the Officer in fairness

gave an opportunity to the parties to produce witnesses. In my opinion, the doctrine of absolute privilege does not extend to such an enquiry and the appellant's statements were not absolutely privileged. His privilege was qualified, which meant that his statement was protected only if made bona fide in the discharge of his duties. But the plaintiff has established that the appellant made these remarks in a fit of anger. A person representing a bank employee in an enquiry is entitled to ask questions of a witness but not to make defamatory remarks to give vent to his anger. To insult a witness in a fit of temper is an abuse of privilege, and if the insulting remarks are defamatory in law, they render the person who utters them liable in damages. I am of the opinion that the appellant's remarks were not protected by privilege, absolute or qualified.

12. Finally Mr. Ansari contended that the appellant is not liable because the unwritten law of libel and slander must be deemed to have been invalidated after the enactment of Article 18 of the Constitution. Learned counsel argued this law infringes the right of freedom of speech guaranteed under Article 19(1)(a) of the Constitution and is not saved by Clause (2) of that article. To understand his argument, it is necessary to consider the effect of the Constitution (First) Amendment Act, 1951, on the right of freedom of expression conferred by Clause (1) of Article 19. Mr. Ansari contended that its effect was to amend Clause (2) of the same Article, and he read out the amended clause from the text of the Constitution published by the State. It runs thus:

"(2) Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence."

13. Mr. Ansarl's entire argument is founded on the phrase "existing law" in this case. He argued that the right of freedom of speech under Clause (1) is absolute excepting any limitations authorised by Clause (2), and, therefore, any valid restriction on these rights must be contained in the latter clause. Clause (2) provides for two kinds of limitation on the right of freedom of speech, those already existing, and those which might be imposed in the future. In this case we are not concerned with the latter. As regards existing restrictions the clause provides that the right of free expression shall be subject to any "existing law" imposing reasonable restrictions on this right in respect of eight matters specified in this clause, one of which is defamation. The law of defamation, criminal and civil, existed at the commencement of the Constitution. But Mr. Ansari argued that all laws imposing restrictions were not saved under Clause (2) but only those which could be included in the definition of "existing law". Learned counsel pointed out that the phrase "existing law" had been defined in Article 366(10) of the Constitution thus:

"(10) "existing law" means any law, Ordinance, Order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation." Learned counsel contended that Clause (10) of Article 366 limits the phrase "existing law" to statutes or Ordinances, orders, bye-laws, rules or regulations made under the statutory authority, but not to any unwritten law or custom or usage having the force of law. Therefore, if any unwritten law (otherwise called common law) existing at the commencement of the Constitution infringes or restricts the right of free speech, it is void irrespective or whether the restrictions imposed by it are reasonable or otherwise. According to Mr. Ansari, the test of reasonableness is relevant for restrictions imposed by any "existing law" as defined by Article 366(10), but irrelevant for those imposed by a law not covered by the definition and, therefore, all existing restrictions,

reasonable or unreasonable, imposed by a law which was not "existing law" as defined by Article 366(10) became void under Article 13 at the commencement of the Constitution. Hence, the unwritten law of civil defamation making a person liable in damages became invalid. Mr. Ansari conceded that the statutory law of criminal defamation is within the definition of "existing law", and, therefore, Section 500, I. P. C. which makes defamation a criminal offence is saved by Clause (2), subject to its being reasonable; but he argued that the law of civil defamation could not survive the commencement of the Constitution. Learned counsel frankly conceded that if his argument is accepted the result must be that a person may be convicted and sent to prison for making a defamatory statement but cannot be liable in damages for the same statement. Learned counsel contended that this is a laouna in the law created by the language of Clause (2) of Article 19, but the Court cannot fill it up by judicial interpretation, and the appellant is entitled to take advantage of it.

14. In reply, Mr. K.C. Agarwala for the plaintiff-respondent argued that the effect of limiting the definition of "existing law" to the law of criminal definition will be very harmful. But the flaw in this argument is that if the language of a statute is clear and unambiguous the Court cannot alter a statute on the ground that its effect will be harmful. Learned counsel conceded that there is no ambiguity in the definition of "existing law" in Article 366(10).

15. But Mr. Ansari's argument cannot be accepted for another reason. Article 366 makes every definition therein subject to the words, "unless the context otherwise requires." I think in the present case the context requires that the phrase "existing law" in relation to defamation should not be given the restricted meaning under Clause 10 of Article 366. The law of defamation is criminal as well as civil, the former statutory and the latter unwritten. Criminal defamation is punishable under Section 500, I. P. C., while libel and slander are actionable wrongs. But the generic word 'defamation' covers both the crime and the tort, and therefore, in Clause 2 of Article 19 it means the entire law of defamation criminal and civil. It is inconceivable that the makers of the Constitution wanted the law of defamation to be split up into two parts after the commencement of the Constitution--one valid and the other invalid, and thus make Clause (2) a charter of immunity for every slanderer and defamer in the country.

16. It is important to note that Contempt is one of the eight matters included in Clause 2 of Article 19.But the law relating to Contempt is partly statutory and partly unwritten. In AIR 1952 Orissa 318, the words "existing, law" as applied to the law relating to contempt were given their ordinary meaning and not the restricted meaning under Article 366(10). There is no reason for making a different approach in the case of the law relating to defamation. I am therefore of the opinion that the words "existing law" in Clause 2 of Article 19 when applied to the law of defamation must be given their ordinary meaning and not the restricted meaning under Article 366(10).

17. Moreover, even assuming that the words 'existing law' must be given a restricted meaning according to Article 366 and the unwritten law of defamation excluded from the saving effect of Clause (2), the lacuna was filled by the Constitution (1st Amendment) Act, 1951. This Act consists of 14 sections, but we are concerned only with Section 3. It runs as follows:

"3. Amendment of Article 19 and validation of certain laws--(1) in Article 19 of the Constitution,--

(a) for Clause (2), the following clause shall be substituted, and the said clause shall be deemed always to have been enacted in the following form namely:--

(2) Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or present the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.';

(b) in Clause (6), for the words beginning with the words "nothing in the said sub-clause" and ending with the words "occupation, trade or business," the following shall be substituted, namely:--

'nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,--

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State or any trade, business, industry or service whether to the exclusion, complete or partial, of citizens or otherwise,' (2) No law in force in the territory of India immediately before the commencement of the Constitution which is consistent with the provisions of Article 19 of the Constitution as amended by Sub-section (1) of this section shall be deemed to be void, or ever to have become void, on the ground only that being a law which takes away or abridges the right conferred by Sub-clause (a) of Clause (1) of the said article, its operation was not saved by Clause (2) of that article as originally enacted-

Explanation.--In this sub-section, the expression "law in force" has the same meaning as in Clause (1) of Article 13 of the Constitution."

18. Section 3 consists of two sub-sections. The first changes the language of Section 2 and substitute's new words for the old, with retrospective effect. The second does not alter any existing words, but provides in effect that no law in force at the commencement of the Constitution shall be deemed to be void on the ground that its operation was not saved by Clause 2 of Article 19 as originally enacted. To leave no room for doubt that the protection of Sub-section (2) was not confined to statutory law, the words "law in force" were given the same wide meaning as in Article 13.

19. It was conceded by Mr. Ansari that if Sub-section (2) has the effect of amending the Constitution, it saves the civil law of defamation from becoming void on the ground that it is not covered by the definition of "existing law". But he argued that Sub-section (2) cannot be regarded as having amended the Constitution, because it does not alter any existing provision. He argued that the proper method of amending any provision of the Constitution is to alter the language of that provision. Counsel pointed out that in the Constitution (1st Amendment) Act of 1951 itself this very method has been followed, and every amending section alters the text of the particular article which was to be amended. He further pointed out that in all the sixteen Constitution Amendment Acts the method of amendment has been to alter the existing text of the Constitution. Therefore, he contended, if any clause of an amending Act did not purport to alter the text of any existing provision of Constitution, it cannot have the effect of amending the Constitution. Secondly Mr. Ansari relied on the official text of the amended Constitution published by the Government of India which does not incorporate the provisions of Sub-section (2) or Section 3 of the Constitution (1st Amendment) Act, 1951. He read out the text

of Clause 2 of Article 19 as contained in the official text. For these reasons, learned counsel contended that Sub-section (2) of the Constitution (1st Amendment) Act must be ignored as of no effect.

20. I cannot agree. There are two ways of amending a written Constitution. One is to alter the text of any existing provision by adding or deleting or substituting words. The other is to enact a new article or section which becomes an integral part of the Constitution without altering a single word of it. In India up-till now the first procedure has been followed, in the United States the second. But if our Parliament has adopted one of the alternative modes of drafting the various Constitution Amendment Acts, it does not follow that the other mode is illegal or ineffective. The U. S. Constitution has been amended 22 times during the last 180 years, but not one of the amendments purports to modify the words of any existing article. Some of the historic amendments did not alter a single word of the existing text of the Constitution. The 13th amendment which abolished slavery through the United States merely provides:

"1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. 2. Congress shall have power to enforce this article by appropriate legislation." Again, the 5th amendment introduced the famous "due process of law" in the American Constitution by these words: "No person shall be held to answer for a capital, or otherwise infamous crime, unless." No one has ever argued that these and other amendments are ineffective.

21. In India, too, the second mode has been adopted to some extent--as for example, whenever an amendment is made retrospective, the words "shall be deemed always to have been added (or substituted)" gives retrospective effect to an amendment but the retrospectiveness is not indicated by any alteration in the text or the Constitution.

22. An amendment of an existing law is contained in and flows from the Amending Act itself, and not from the consequent alteration of the text which is a purely ministerial Act. But every provision, of the amending Act is effective, including those provisions which cannot grammatically or idiomatically be filled into the text of the parent Constitution, like the amending articles in the American Constitution.

23. Article 368 of our Constitution which provides the procedure for its amendment does not enjoin that an amendment to be effective must alter the text of any existing provision. It runs thus:

"368. An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of not less than two-thirds of the members of that House present on voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill."

24. The following procedure is enjoined for amending the Constitution. The Bill for the amendment of the Constitution must be introduced in either House of Parliament; it must be passed in each house by a majority of the total membership of that House and also not less than two-thirds of the members present on voting; it must be presented to the President for his assent and the President must give his assent. When these conditions are fulfilled the Constitution shall stand amended in accordance with the terms of the Bill. No particular

phraseology for amendment is prescribed, and there is not a word in this article requiring that a Bill for amending the Constitution must alter the existing text of the Constitution.

25. It is expressly provided that "the Constitution shall stand amended in accordance with the terms of the Bill." I have examined the provisions of the Bill which was introduced in Parliament on the 12th of May 1951. It contained Sub-section (2) of Section 3, which on the passing of the Bill became a part of the Constitution Amendment Act. Therefore, after the passing of this amending Act the Constitution stood amended in accordance with the terms of Sub-section (3).

26. If Sub-section (3) was not included in the Bill for the purpose of amending the Constitution, it is difficult to understand why it was inserted. Mr. Ansari was unable to give any explanation, in spite of repeated questions from me, the reasons for including Sub-section (3). It is a cardinal principle of statutory interpretation that every part of a statute must be regarded as material and given effect to and no part rejected as superfluous or decorative.

27. Mr. Ansari's statement that the official text of the Constitution makes no reference to Sub-section (2) of Section 3 is not correct. The full text of the Constitution (First Amendment) Act is appended to the text, and a part of it. For these reasons, I am of the opinion that Sub-section (3) of the Constitution (First Amendment) Act, had the effect of amending the Constitution.

28. The appeal is dismissed with costs.