

**GA No. 507 of 2018**  
**with**  
**CS No. 121 of 2017**  
**GA No. 33 of 2019**  
**IN THE HIGH COURT AT CALCUTTA**  
**Ordinary Original Civil Jurisdiction**  
**Original Side**  
**ATUL KUMAR PANDEY**  
**Vs.**  
**KUMAR AVINASH**

For the Plaintiff : Mr. Dipak Prahladka, Advocate  
Ms. Aindrila De, Advocate

For the Defendant : Mr. Chayan Gupta, Advocate  
Mr. Rajesh Upadhyay, Advocate

Hearing concluded on : February 3, 2020

Judgment on : June 17, 2020

**DEBANGSU BASAK, J. :-**

1. Two applications have been heard analogously as they are in the same suit. GA No. 507 of 2018 is an application at the behest of the defendant seeking dismissal of the suit. GA No. 33 of 2019 is an application of the plaintiff claiming that the defendant is guilty of perjury. The hearing was concluded on February 3, 2020. By the time the judgment was made ready the country went into lockdown due to COVID-19.

2. Learned advocate appearing for the defendant has submitted that, the cause of action of the present suit is barred by law. He has submitted that, the plaintiff in the plaint claims that, the defendant made a statement in an application seeking divorce from his wife which is allegedly defamatory. According to him even by taking the statements made in the plaint to be true and correct, the cause of action of the plaintiff is barred by law. Contents of a pleading in a judicial proceeding are protected by absolute privilege. A civil action for defamation does not lie in respect of a statement made in a pleading filed in a judicial proceeding. In support of his contentions, learned advocate appearing for the defendant has relied upon a passage from **Gatley** on **Libel and Slander**, Eighth edition. He has relied upon a full bench decision of the High Court reported in ***All India Reporter 1921 Calcutta page 1 (Satis Chandra Chakraborty v. Ram Dayal De)***. He has also relied upon ***40 ILR Calcutta page 433 (Kari Singh v. Emperor), 2012 SCC Online Delhi page 5421 (Brig. B.C. Rana (Retd.) v. Ms. Seema Katoch & Ors.)*** and ***2018 SCC Online Delhi page 11638 (Shri Anil Chaudhry v. Yakult Danone India Pvt. Ltd.)***.

3. Learned advocate appearing for the plaintiff has relied upon a list of dates. He has submitted that, the plaintiff is married to the elder sister of the wife of the defendant. The marriage of the plaintiff took place on May 6, 2011. The younger sister of the wife of the plaintiff and the defendant became friends while working in HCL at Noida. On November 30, 2016, the defendant married the younger sister of the wife of the plaintiff at Allahabad. The defendant and his wife went to Ranchi and stayed there in a rented flat from December 2, 2016. The defendant and his wife left for Mumbai on December 8, 2016 and started staying in a rented flat. On January 11, 2017, the wife of the defendant left the defendant and came to Allahabad. On January 28, 2017, the wife of the defendant along with her mother went to Mumbai where they were informed that the defendant left the flat. The wife of the defendant and her mother returned to Allahabad. On February 4, 2017, the defendant filed a petition being O.S. No. 80 of 2017 under section 11 and 12 (1-b) read with section 12 (1-d) of the Hindu Marriage Act, 1955 before the learned Principal Judge, Family Court, Ranchi, Jharkhand praying for an order of decree of declaration of marriage between the defendant and his wife held on November 30, 2016 to be null and void. The plaintiff was made respondent No.5 in such divorce petition. On February 6, 2017, the wife

of the defendant lodged a complaint with George Town police station, Allahabad against the defendant and a police case inter alia under sections 498A, 406, 313, 323, 504, 506 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Domestic Violence Act was started. Such police case resulted in a charge-sheet against the defendant. The defendant challenged such charge-sheet before the High Court at Allahabad. Such challenge is pending. On February 9, 2017, the Family Court at Ranchi issued summons to the plaintiff for settlement of issues in the divorce petition. Such divorce petition contained the defamatory statements. The defendant filed a petition under section 156 (3) of the Criminal Procedure Code before the learned magistrate at Karachi. Learned magistrate directed the police to register a case and investigate under sections 420, 328, 307, 377, 389, 496, 506 and 511 of the Indian Penal Code, 1860. A case was started against the plaintiff, his wife and his parents and the wife of the defendant on February 18, 2017 which resulted in a police report stating that there was a mistake as to fact in the complaint. The defendant challenged such report which was converted into a complaint case and the learned Magistrate issued summons against the wife of the defendant for prosecution under Section 506 of the Indian Penal Code, 2005 but refused to issue summons

against the plaintiff, his wife and his parents. The defendant challenged the same before the learned Sessions Court at Ranchi which admitted the same and issued notice to the plaintiff, his wife, parents of his wife, and the wife of the defendant. The same is pending. Thereafter, the plaintiff filed the present suit on May 12, 2017. The defendant filed an application for dismissal of the suit on February 15, 2018. The defendant filed a petition before the Principal Judge Family Court, Jharkhand on February 6, 2018 praying for withdrawal of the divorce case on the ground of defects in the plaint and also due to some other reasons. The learned Judge allowed the prayer and dismissed the case as withdrawn. The High Court when being informed about the dismissal of the divorce case, directed the defendant to ascertain the status of the divorce case. On October 3, 2018, the learned advocate for the defendant submitted before the Hon'ble Court that, the defendant filed a fresh case before the Civil Judge Principal Family Court, Allahabad. The same was disclosed by the defendant by an affidavit affirmed on December 5, 2018. The defendant filed a fresh suit being MT. No. 1613 of 2018 before the Learned Principal Family Judge, Allahabad praying for a decree of dissolution of the marriage held on November 30, 2016 on the ground of cruelty committed by his wife. The plaintiff was made the respondent

No.2 in such suit. On January 5, 2019, the plaintiff filed an application praying for prosecution under section 340 of the Code of Criminal Procedure, 1973 against the defendant for making false statements in the supplementary affidavit affirmed on December 5, 2018. In the affidavit in opposition filed in GA No. 33 of 2019, the defendant extended apologies for the alleged inadvertent mistake in paragraph 4 of the supplementary affidavit dated December 5, 2018 filed in GA 507 of 2017.

4. Learned advocate appearing for the plaintiff has submitted that, although criminal defamation has been codified in the Indian Penal Code, 2005 the civil defamation part is yet to be codified. According to him, both the civil proceedings for damages caused due to defamatory statements and criminal proceeding for the same defamatory statements are maintainable simultaneously. There is a qualitative difference between criminal proceedings for defamation and civil proceedings with regard to the same defamation. In a civil action for defamation, the plaintiff can seek damages which the criminal Court may not be a position to grant in the criminal proceeding for the same defamatory statement. According to him, a civil proceeding for defamation is more rigorous.

5. Learned advocate appearing for the plaintiff has submitted that, a statement once made in a pleading filed before a court of law, is publication of such statement. Such statement does not enjoy absolute privilege. If the statement is defamatory in nature then, a civil proceeding for damages in respect of such defamatory statement lies. In support of his contentions, learned Advocate for the plaintiff has relied upon unreported decision of the High Court of Kerala Ernakulam rendered in ***CRL. M.C. No. 6794 of 2019(H) ( M.K. Varghese Cor Episcopa v. State of Kerala & Anr.)***, 2018 Volume 4 Crimes 273 Bombay (X v. Y), 2016 Volume 4 JCC page 2761 (Arvind Kejriwal v. Arun Jaitley & Ors.), unreported decision of the Calcutta High Court dated December 5, 2012 rendered in ***C.R.R. No. 1257 of 2008 (In re : Smt. Krishna Dutta (Chowdhury))***, 2003 Volume 3 SCC page 362 (State of Haryana v. Balwant Singh), 1992 ILR (MP) 762 (Trichinopoly Ramaswami Ardhanani & Ors. v. Kripa Shankar Bhargava), 1985 Volume 27 DLT 24 (K.L. Dhall v. B.P. Dutta), All India Reporter 1985 (Calcutta) 148 (Dhirendra Nath Mukherjee v. State of West Bengal), All India Reporter 1967 (Calcutta) 178 (Asoke Kumar Sarkar & Anr. v. Radha Kanto Pandey & Ors.), All India Reporter 1966 (Madras) 363 (Thangavelu Chettiar v. Ponnammal), All India Reporter 1940

***(Madras) 879 (Edara Venkayya Pantuly Alias E.V. Pant & Anr. v. Kalipattapu Chitti Surya Prakasamma & Anr.), All India Reporter 1926 (Madras) 906 (Tiruvengada Mudali v. Tripurasundari Ammal), All India Reporter 1921 (Calcutta) 1 (Satis Chandra Chakrabarti v. Ram Dayal De) and 1927 Volume 65 IndCas 204 (Dhiro Koch & Anr. v. Gobinda Dev Mishra Bura Satria).***

6. Learned Advocate for the plaintiff has submitted that the cause of action of the plaintiff not being barred by law, the application of the defendant for dismissal of the suit be dismissed. He has submitted that the defendant having made a false statement before the Court the apology offered should not be accepted and the defendant be dealt with appropriately.

7. The plaintiff has sought a decree for Rs. 10 crores for damages for defamation. The defendant is the husband of the sister of the wife of the plaintiff. The defendant filed a petition under Section 11 and 12 (1-b) read with Section 12 (1-d) of the Hindu Marriage Act, 1955 being O.S. No. 80 of 2017 before the learned Principal Judge, Family Court, Ranchi, Jharkhand praying for declaration that, the marriage between the

defendant and his wife held on November 30, 2016 was null and void. The plaintiff was the respondent No. 5 in such proceeding. The mother-in-law of the plaintiff was the respondent No. 3 in such proceeding. Summons were issued in such proceedings on February 9, 2017. The plaintiff as the respondent No. 5 in such proceeding, received the summons through the mother-in-law of the plaintiff. The mother-in-law of the plaintiff forwarded the summons and the petition to the plaintiff. According to the plaintiff, the petition being O.S. No. 80 of 2017 contained imputations concerning the plaintiff which are unfounded, untrue and defamatory in nature. According to the plaintiff, the defendant defamed the plaintiff by making such untrue statements. The plaintiff called upon the defendant to pay damages for the defamation by a notice dated March 7, 2017. The defendant responded thereto by an advocate's letter dated April 3, 2017 claiming that the matter is subjudice and that, the defendant is ready to substantiate the statements made in such petition in Court.

8. The plaintiff has sought a decree of Rs. 10 crores against the defendant. The cause of action of the plaintiff is based on the statements claimed to be defamatory in nature, made by the defendant in a

proceeding in which the defendant sought decree of divorce against his wife.

9. The defendant has contended that, the statements contained in an application made to Court are absolutely privileged and that, no civil suit for damages on account of defamation lies. The suit is therefore barred under Order VII Rule 11 of the Code of Civil Procedure, 1908.

10. Our Constitution guarantees freedom of speech as a fundamental right. However as all fundamental rights are subject to reasonable restrictions the fundamental right of freedom of speech is subject to the laws of defamation. Laws of defamation recognises that statements made in public can be protected from prosecution in a Court of law under certain circumstances. Absolute privilege attaches to public statements made in certain circumstances. **Gatley** on **Libel and Slander** has categorized the statements to which absolute privilege attaches. According to him, an absolute privilege attaches to the following statements :-

- “(1) *Statements made in the course of judicial proceedings.*
- (2) *Statements made in the course of quasi-judicial proceedings.*

- (3) *Statements contained in documents made in judicial or quasi-judicial proceedings.*
- (4) *Statements made by one officer of state to another in the course of his official duty.*
- (5) *Statements made in the course of parliamentary proceedings.*
- (6) *Statements contained in reports published by order of either House of Parliament.*
- (7) *Statements contained in reports of the Parliamentary Commissioner and in communications between him and a member of the House of Commons for the purposes of the Parliamentary Commissioner Act 1967.*
- (8) *Fair and accurate reports in a “newspaper” of proceedings publicly heard before a court exercising judicial authority within the United Kingdom.”*

11. The law of tort of defamation in India underwent codifications so far as criminal defamation is concerned under Section 499 of the Indian Penal Code, 1860. Section 499 of the Indian Penal Code, 1860 does not attach absolute privilege to statements made in the Courts of a judicial proceeding. The privilege recognised under Section 499 of the Indian Penal Code, 1860 is qualified.

12. The issue as to whether statements contained in an application to the Court upon which a charge of defamation is based is absolutely privileged or not was considered by the Full Bench of the Calcutta High Court in **Satis Chandra Chakrabarti (supra)**. It has held as follows:-

*“12..... it is necessary to emphasise that in this country questions of civil liability for damages for defamation and questions of liability to criminal prosecution for defamation do not, for purpose of adjudication, stand on the same basis; as regards the former, we have no codified law; as regards the latter the relevant provisions are embodied in the Indian Penal Code. This fundamental distinction, as will presently appear, has not always been borne in mind. The position then is that questions relating to civil liability for damages for defamation must be determined with reference to either the rules of English Common Law where they are shown to be applicable Mayor of Lyons v. East India Co. 1 M.I.A. 175 : 1 Moo. P.C. 175 : 3 State Tr. (N.S.) 617 : 1 Sar. P.C.I. 107 : 18 E.R. 66 : 12 E.R. 782 and with reference to principles of justice, equity and good conscience in all other cases..... Now, the decision of a case according to the principles of justice, equity and good conscience has generally meant decision according to the principles of English Law applicable to a similar state of circumstances.....*

*In these circumstances, when the law of torts has not been codified and cases of civil liability for damages have been left to*

*be decided according to rules of justice, equity and good conscience, it is not surprising to find that the law of civil wrongs as administered in British Indian Courts has been practically taken in its entirety from the Common Law of England; the only justice, equity and good conscience which Judges steeped in the principles of English jurisprudence could and did administer in default of any other rule was so much of English Law and usage as seemed reasonably applicable in this country. A familiar illustration of this is afforded by the judgment of the Judicial Committee in the case of Baboo Gunesh Dutt Singh v. Mugneeram 17 W.R. 283 : 11 B.L.R. (P.C.) 21 where the principle that witnesses cannot be used in a Civil Court for damages in respect of evidence given by them upon oath in a judicial proceeding was enunciated in the following terms in affirmance of the decision of this Court in Mugnee Ram Chowdhry v. Ganesh Dutt Singh 5 W.R. 134: "Their Lordships hold this maxim which certainly has been recognised by all the Courts of this country, to be one based upon principles of public policy. The ground of it is this, that it concerns the public and the administration of justice that witnesses giving their evidence on oath in a Court of justice should not have before their eyes the fear of being harassed by suits for damages; but that the only penalty which they should incur if they give evidence falsely should be an indictment for perjury." This, in the absence of legislation on the subject of civil wrongs, is, if we may say so without impropriety, a perfectly legitimate process;*

*but if we were to read into the provisions of the Indian Penal Code an exception which finds no place therein, as the Court was invited to do in Nagarji Trikamji, In re 19 B. 340: 10 Ind. Dec. (N. s.) 230, where Counsel relied upon the lucid statement of Brett, M.B., in Munster v. Lamb (1883) 11 Q.B.D. 588 at p. 603 : 52 L.J.Q.B. 726 : 49 L.T. 252 : 32 W.R. 248 : 47 J.P. 805, as to the immunity enjoyed by Judges, Counsels and witnesses under the Common Law, the operation would in essence be legislation in the guise of judicial interpretation.”*

13. The Full Bench has summarised their Lordship’s conclusions as:-

*“22. Our conclusions then may be summarized as follows:*

*(1) If a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise, his liability must be determined by reference to the provisions of Section 499, Indian Penal Code. Under the Letters Patent, the question must be solved by the application of the provisions of the Indian Penal Code and not otherwise; the Court cannot engraft thereupon exceptions derived from the Common Law of England or based on grounds of public policy. Consequently, a person in such a position is entitled only to the benefit of the qualified privilege mentioned in Section 499, Indian Penal Code.*

*(2) If a party to a judicial proceeding is sued in a Civil Court for damages for defamation in respect of a statement made therein*

*on oath or otherwise, his liability, in the absence of statutory rules applicable to the subject, must be determined with reference to principles of justice, equity and good conscience. There is a large preponderance of judicial opinion in favour of the view that the principles of justice, equity and good conscience applicable in such circumstances should be identical with the corresponding relevant rules of the Common Law of England. A small minority favours the view that the principles of justice, equity and good conscience should be identical with the rules embodied in the Indian Penal Code.”*

14. **Satis Chandra Chakrabarti (supra)** has been considered by a Division Bench of the Calcutta High Court in **Dhiro Koch & Anr. (supra)**. So far as the second conclusion of **Satis Chandra Chakrabarti (supra)** is concerned, **Dhiro Koch & Anr. (supra)** has taken the view that such second conclusion was not a decision upon a point which arose in the facts of that case. In **Dhiro Koch & Anr. (supra)** a suit for damages for defamatory statements made against the plaintiff by the defendants in their written statement in a suit was under consideration. The suit was found to be maintainable and damages were awarded. In appeal, the Division Bench has held as follows :-

*“We are of opinion that defamatory statements made by parties in pleadings are not absolutely privileged. The appeal is accordingly dismissed with costs.”*

15. In ***Sri Anil Chowdhury (supra)*** the Delhi High Court has considered an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 seeking dismissal of a suit for damages founded on the basis of defamatory statements made before the Directorate of Revenue Intelligence. It has considered various authorities of other High Courts cited before it. It has held that, 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 was found to be not maintainable.

16. The Delhi High Court in ***Brig. B.C. Rana (supra)*** has considered an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 relating to a suit for defamation on the basis of statements made before the Registrar of Society. It has held that, statements made in an affidavit in the course of judicial proceeding before the Registrar of Society was absolutely privileged and cannot be made basis for any defamatory

action. It has allowed the application under Order VII Rule 11 of the Code of Civil Procedure, 1908.

17. The Bombay High Court in ***X v. Y (supra)*** has refused to quash an order of issuance of process in a complaint which alleges commission of offence punishable under Section 500 of the Indian Penal Code, 1860.

18. The Delhi High Court in ***Arvind Kejriwal (supra)*** has refused to quash a criminal proceeding relating to defamatory statements pending a civil suit in relation to the defamatory statements. It has held that, there was no legal impediment in invoking civil proceeding for defamation as well as initiating criminal proceedings for defamation simultaneously and continuing with the same. The Calcutta High Court in ***Smt. Krishna Dutta (Chowdhury)(supra)*** has also refused to entertain an application under Section 401 of the Criminal Procedure Code, 1973 in a criminal proceedings when a civil suit for defamation was pending.

19. The Supreme Court in ***Balwant Singh (supra)*** has taken into consideration Article 20(2) of the Constitution of India and observed that, offences such as criminal breach of trust, misappropriation, cheating,

defamation etc., may give rise to prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages etc., unless there is a bar created by law.

20. The Madhya Pradesh High Court in ***Trichinopoly Ramaswami Ardhanani & Ors. (supra)*** has not accepted the contention that, the criminal proceedings be stayed till the decision of the civil suit in respect of the defamatory statement was rendered. It has held that, proceedings in civil suit has nothing to do with the criminal proceeding. It has also held that, the statements once made in the plaint even if allowed to be amended, does not absolve the criminal or the civil liability for making such defamatory statement.

21. The Delhi High Court in ***K.L. Dhall (supra)*** has considered a petition under Section 482 of the Criminal Procedure Code, 1973 for quashing a criminal proceedings against the accused, inter alia, under Section 500 of the Indian Penal Code, 1860.

22. The Calcutta High Court in ***Dhirendra Nath Mukherjee (supra)*** has considered the issue as to whether Court-fee should be paid in a suit

for damages for malicious prosecution. It has noted that the two types of suits for damages, namely, for defamation and malicious prosecution are, therefore, essentially different having different ingredients, barring of course, damage or injury to character or reputation. It has held that, a suit for damages for malicious prosecution is exempt from payment of Court-fees in view of the provisions of the West Bengal Court Fees Act, 1970.

23. In ***Asoke Kumar Sarkar & Anr. (supra)***, the Calcutta High Court has considered a contempt rule. It has held that, a letter of demand issued by the solicitor cannot constitute contempt of the Magistrate Court and the proceeding under Section 500 of the Indian Penal Code, 1860. It has noted that, a person aggrieved by defamation has a right to proceed both in the civil court as well as in the criminal court. Such a person can take either the one or the other or both the courses. Law does not debar the aggrieved person from enforcing civil and criminal rights at the same time.

24. In ***All India Reporter 1939 Calcutta page 477 (Madhab Chandra Ghose & Ors. v. Nirode Chandra Ghosh)*** a Division Bench of

the Calcutta High Court has considered the question relating to civil liability for defamation. It has also considered various authorities on the proposition as to what is the law so far as civil suits for defamation is concerned. It has noticed **Satis Chandra Chakraborty (supra)** and **(1872) 11 B.L.R. 321 (Baboo Gunnesh Dutt Singh v. Mugneeram Chowdhry)**. It has held as follows :-

*“There it was held that, on principles of public policy, a witness cannot be sued for damages in respect of defamatory evidence given by him in a judicial proceeding. But there their Lordships were dealing with a civil suit, and not with a criminal prosecution; and were not considering the effect of section 499 of the Penal Code. This is a real distinction, because, while the law of crimes has been codified and offences have been defined by Statute, the codification of the Law of Torts was abandoned, and actionable wrongs are not defined by Statute. It is likely enough that, if the Law of Torts had been codified, some provisions would have been introduced, such as exists in the Contract Act, by which suits opposed to public policy would have been barred. But this has not been done, and the question, what is or is not an actionable wrong, has to be gathered from case law, and considerations of justice, equity and good conscience, and not from a statutory definition. It is, therefore, possible in such cases to apply*

*principles of the English law which are consonant with justice, equity and good conscience, which would have no application if actionable wrongs had been defined by Statute. Secondly, it is clear that a voluntary statement by an accused is different from a statement made by a witness who is compelled to answer the questions put to him. The distinction may be fine, but it has been recognised and acted upon by this Court.”*

25. The word defamation is commonly understood to mean casting a false aspersion on an individual so as to discredit him, to destroy his good fame or reputation. **Halsbury’s Laws of England**, fourth edition has defined defamatory statement as follows:-

*“Defamatory statement – a defamatory statement is a statement which tends to lower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided ought to expose into hatred, contempt and ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business.”*

26. In India, defamation gives rise to two types of liabilities – one in the civil side and one in the criminal side. In the criminal side, the

liability for defamatory statement is governed by Sections 499 and 500 of the Indian Penal Code, 1860. Section 499 of the Indian Penal Code, 1860 defines defamation and explains it. It prescribes 10 exceptions thereto where, a person cannot be held guilty of a charge of defamation if it fulfils any of the 10 exceptions enumerated therein. Section 500 of the Indian Penal Code, 1860 prescribes the punishment for a defamatory statement. However, there is no statute governing the civil liability of a defamatory statement. Courts in India have recognised that, a person can maintain action both before a criminal court as also a civil court for a defamatory statement and that, both the proceedings can proceed simultaneously. However, while, the criminal proceeding for a defamatory statement is governed by Sections 499 and 500 of the Indian Penal Code, 1860 there is no corresponding statute governing a civil liability for defamation.

27. Article 19(1) (a) of the Constitution guarantees the fundamental right of freedom of speech and expression to citizens of India. However, Article 19(2) of the Constitution provides that, nothing in sub-clause (a) of Clause (1) of Article 19 shall affect the operation of any existing law, or prevent the state from making any law, insofar as such law imposes

reasonable restriction on the exercise of the right conferred by such sub-clause in the interest of the security of the State, friendly relations with foreign states, public order, decency of morality or in relation to contempt of court, defamation or incitement to an offence. Therefore, although freedom of speech and expression is regarded as a fundamental right of every citizen of India, the same is subject to reasonable restrictions that may be imposed under Article 19(2) of the Constitution. Specific to the law of defamation, Articles 19(2) of the Constitution should be read to mean that, the fundamental right of freedom of speech and expression is subject to the operation of any existing law or a law that the State may make on such subject subsequently. Article 372 of the Constitution has to be noticed in this context. The common law of England was the prevalent law being adopted before the Constitution came into force it was deemed as a law in force under Article 372 of the Constitution of India. This position in law was accepted by the Supreme Court in **1967 volume 2 Supreme Court Reports page 170 (Superintendent and Remembrancer of Legal Affairs versus Corporation of Calcutta)**. Consequently, in India, a civil action can be brought under Section 9 of the Code of Civil Procedure 1908, before a

civil court, where there is no codified law, on the basis of a common law right governing the field.

28. In a civil action for defamation, plea of absolute privilege has been held to be a good defence. Absolute privilege protects a statement as no action would lie for it, however false and defamatory it may be, even though, it was made maliciously and with improper motive. Parliamentary proceedings and judicial proceedings are some of the arena where absolute privilege can be claimed successfully.

29. In England, absolute privilege attaches to statements made in course of judicial proceedings and statements contained in documents made in judicial or quasi judicial proceedings. In a civil suit for defamatory statement, Courts in India have recognised and applied the principle of absolute privilege to attach to statements made in the course of judicial proceedings and statements contained in documents made in judicial or quasi judicial proceedings on the ground that, it is a public policy that, a litigant approaching the Court enjoys absolute freedom in making a charge and contesting a charge. A litigant must not suffer from any inhibition or threat of further prosecution or labour under any

apprehension of the consequences of the statements made by such litigant in the course of a judicial proceedings. Courts in India have recognised that, a litigant must be protected from further litigations for having made a statement perceived to be defamatory, in the course of a judicial proceeding. Courts of India have recognised that, in the event, a litigant makes a statement which is considered to be defamatory or in perjury, then, the Court before which such proceeding is pending can be invited to take appropriate measures with regard to such defamatory statements.

30. Although, ***Dhiro Koch & Anr. (supra)*** has considered the Full Bench decision of ***Satis Chandra Chakraborty (supra)*** and distinguished the same by holding that, the second conclusion arrived at by ***Satis Chandra Chakraborty (supra)*** that, if a party to a judicial proceeding is sued in a Civil Court for damages for defamation, was not a decision upon a point which arose in the facts of that case, a subsequent Division Bench being ***Madhab Chandra Ghose & Ors. (supra)*** has followed and applied ***Satis Chandra Chakraborty (supra)***.

31. **Satis Chandra Chakraborty (supra)** being a Full Bench decision and of a higher authority than **Dhiro Koch & Anr. (supra)**, and being bound by the ratio laid down in **Satis Chandra Chakraborty (supra)** particularly in view of the decision of **Madhab Chandra Ghose & Ors. (supra)**, applying the second conclusion of **Satis Chandra Chakraborty (supra)** to the facts of the present case, the plaintiff has no cause of action for the present suit.

32. In view of such finding, the application of the defendant being GA No. 507 of 2018 is allowed. CS No. 121 of 2017 is dismissed.

33. GA No. 33 of 2019 is an application of the plaintiff claiming that the defendant is guilty of perjury. The defendant has tendered unqualified apology for making a wrong statement after accepting the statement to be wrong. No right of the plaintiff stands affected by the statement made by the defendant and subsequently retracted with apology. The apology tendered cannot be said to be continued.

34. In such view I am minded to accept the apology tendered by the defendant. No doubt the defendant will exercise caution in making

statements on oath. G.A. No. 33 of 2019 is disposed of accordingly without any order as to costs.

**[DEBANGSU BASAK, J.]**