CIVIL APPELLATE SIDE.

Before Kapur, J.

GOPI RAM —*Appellant.*

versus

LOK RAM, ALIAS LOK NATH—*Respondent.*

Regular Second Appeal No. 95 of 1952

1955

May, 6th

Legal Practitioner—Complaint against to Court—Allegations in the complaint of a defamatory and malicious nature—Whether the plea of absolute privilege by the complainant, sustainable—Rule stated—High Court Rules and Orders, Volume V, Chapter 6-C—District Judge whether competent to hold preliminary enquiry.

G. R. made complaints to the District Judge, Ferozepore, against his Pleader that he had colluded with the opposite side and that action be taken against him under sections 13 and 14 of the Legal Practitioners Act. The District Judge after enquiry held the complaints to be false. The counsel brought a suit for recovery of damages against G. R. as he had been maliciously proceeded against and the allegations against him were libellous. The

defence was that the statements were absolutely privileged and were true. Trial Court held that the allegations were false and libellous and were not privileged. Defendant appealed to the High Court.

Held, that in order to sustain a claim of absolute privilege the person making the complaint should have either interest or duty to a person to whom a complaint is made and that person should have duty or power to take action upon the communication made to him and mere belief of the defendant that the occasion was privileged does not make it privileged. The honesty of belief as to duty or interest must exist and it is not enough for the defendant honestly to believe that a duty or interest exists. Again it is immaterial that the defendant reasonably or unreasonably believed that the person to whom he made the communication had some duty or interest with regard to the subject-matter. If such person had, in fact, no such duty or interest the defence of privilege fails.

Held also, that no preliminary enquiry by the District Judge was essential and he had according to the rules no authority to deal with the matter. The rules in regard to complaints against legal practitioners are contained in Chapter 6-C, Volume V, High Court Rules and Orders. Therefore, there was no occasion for making an application to the District Judge.

Second appeal from the decree of Shri Gurcharan Singh, Additional District Judge, Ferozepore, dated the 25th October, 1951, modifying that of Shri Om Nath Vohra, Sub-Judge, 4th Class, Zira, dated the 23rd February, 1951 (granting the plaintiff a decree in the sum of Rs. 500 against the defendant with proportionate costs) to the extent of granting the plaintiff a decree for Rs. 1,000 with full costs throughout as against the defendant in cross-objection.

M. R. AGGARWAL, and S. C. MITAL, for Appellant.

D. N. AGGARWAL and R. N. AGGARWAL, for Respondents.

S. M. SIKRI, Advocate-General, for the State.

R. P. KHOSLA, for Bar Council.

JUDGMENT

KAPUR, J.—The defendant Gopi Ram has brought this appeal against an appellate decree of the Additional District Judge, Ferozepore modifying the decree of the trial Court and thus decreeing a sum of Rs. 1,000 instead of Rs. 500 as damages which had been decreed by the trial Court. Kapur, J.

In a pre-emption suit brought by the appellant Gopi Ram against Hukam Chand and others amended plaint Ex. D. 1 was filed by the plaintiff Lok Ram on the 17th December, 1946. It is immaterial as to what the amendment was. On the 19th May, 1947, the defendant Gopi Ram made a complaint to the District Judge, Ferozepore, alleging that the plaintiff who was appearing as his pleader in that case had colluded with the other party, had put in an amended plaint without the instructions of the defendant and asked for action being taken under sections 13 and 14 of the Legal Practitioners Act. The defendant on the 14th November, 1947, made a further application to the District Judge making allegations that he was made to sign a statement by his *vakil*, meaning the plaintiff in the present case. The defendant made another complaint to the District Judge that certain words in the amended plaint had been entered without the instructions of the client and also that the plaintiff had made a statement in Court which was without instructions. The District Judge enquired into the complaints and on the 2nd of December, 1947, held them to be false.

The plaintiff Lok Ram who is an Advocate of Zira, therefore, has brought the present suit for recovery of Rs. 1,000 as damages alleging that he had been maliciously proceeded against and that

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the allegations made against him were libellous which has caused him a great deal of loss in reputation and time and he had to expend a fair amount of money in defending the application which was made by the defendant.

The main defence taken by the defendant was that the statements were absolutely privileged and no suit for damages on account of libel was maintainable. He also pleaded that the allegations were true and the plaintiff was not entitled to any damages. It was held that the allegations made by the defendant against the plaintiff were false and libellous and there was no privilege and although the trial Court assessed the damages at Rs. 500 the appellate Court enhanced them to a sum of Rs 1,000.

The only question which has to be decided in the present case is whether the defendant is entitled to claim privilege. The defendant has made most serious allegations against the plaintiff who is an Advocate or a Pleader in Zira. He accused him of colluding with the opposite party and of making amendments in the plaint and statements in Court on behalf of his client which were unauthorized, and against instructions. His allegations against a member of the Bar are as serious as any allegations can be against a person in a profession. Therefore, the matter requires consideration and the sustainability of the plea of absolute privilege has to be examined in some detail.

As the case was of some importance, I requested the learned Advocate-General and the Bar Council to assist me in the case. The learned Advocate-General and Mr. Ram Parshad Khosla for the Bar Council have both given me a great deal of assistance in the present case.

The case of the appellant before me is as it was in the Courts below that the statements were absolutely privileged, that he was acting *bona fide* and had an interest or duty and that unless such a privilege was there no person could venture to bring to the notice of the Court the misconduct of members of the Bar.

He has relied on a judgment of the Bombay High Court in *Govind* v. *Gangadhar*, (1), where such a plea of absolute privilege was upheld and a petition made to the High Court for taking steps against the legal practitioner under the Bar Councils Act supported by an affidavit in which allegations of a defamatory nature were made was held to be privileged. The Court held that an application made to the High Court for the purpose of taking action is an essential step for taking legal proceedings under the Act and relying on the following passage from Halsubury's Laws of England, Hailsham Edition, Vol. 20, p. 465, para 564—

> "The privilege attaches not merely to proceedings at the trial, but to proceedings which are essential steps in judicial proceedings, including statements in pleadings and communications passing between a solicitor and his client on the subject on which the client has retained the solicitor and which are relevant to the matter."

The plea of absolute privilege was upheld. But in that case the complaint was made to the proper authority which was the High Court, which could if it thought the allegations of misconduct made out *prima facie* send the papers to the Bar Council,

(1) A.I.R. 1944 Bom. 246

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but in the present case the application was made to the District Judge who does not come into the picture at all. The learned Advocate then relied on a Madras High Court judgment in *Vattappa Kone* v. *Muthukaruppan* (1), where it was held that a verbal complaint made to a village Magistrate making certain charges against the plaintiff which on enquiry were found to be false could not form the basis of a suit for damages for malicious prosecution. At page 539 Abdur Rahman, J. said—

> "Defamation is undoubtedly one of actionable wrongs but in order to prove the same one must be able to put those allegations in evidence. If they are found to have been made on an occasion which is found to be absolutely privileged as held in 49 Mad. 315 they could not be permitted to be referred to and the contention raised by learned counsel for the respondent must be for that reason alone repelled."

But this case again has no application to the facts of the present case. Similarly, in a judgment of the Calcutta High Court in *Madhab Chandra* v. *Nimod Chandra*, (2), rules of common law were held to be applicable in defamation cases and it was also held that no action for libel or slander lies, whether against Judges, counsel, witnesses or parties, for words written or spoken in the course of any proceeding before any Court recognised by law even though the words were written or spoken maliciously without any justification or excuse, and from personal ill-will, but that case was confined to matters in Courts dealing with cases arising out of disputes between the parties.

(1) A.I.R. 1941 Mad. 538
(2) A.I.R. 1939 Cal. 477

The learned Advocate-General submitted that according to English law absolute privilege would apply if the matter is taken before an authority authorized to take cognizance of the complaint. He relied on a passage in Odgers on Libel and Slander, 6th edition, page 195, where the law is stated as follows—

> "An absolute privilege also attaches to all proceedings of, and to all evidence given before, any tribunal which by-law, though not expressly a Court, exercises judicial functions—that is to say has power to determine the legal rights and to effect the status of the parties who appear before it. All preliminary steps which are in accordance with the recognised and reasonable procedure of such a tribunal are also absolutely privileged."

In *Hebditch* v. *Macllwaine* (1), it was held that in order that the occasion upon which a defamatory statement made becomes privileged, it is necessary that a person to whom such statement is made, as well as the person making it, should have an interest or duty in respect of the subject-matter of such statement and an honest belief of the maker of the statement is not sufficient. A Solicitor's case which is in point is *Lilley* v. *Roney* (2). In this case a letter of complaint against a solicitor in respect of his professional conduct, with an affidavit of alleged charges was forwarded to the Registrar of the Incorporated Law Society in accordance with the rules made under the Solicitors Act and this was held to be absolutely privileged.

(1) (1894) 2 Q.B. 54
(2) (1892) 61 L.J. (Q.B.D.) 727

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I may now refer to a case decided by the Privy Council, *Jenoure* v. *Delmege*, (1), where it was held that if a person addresses a defamatory letter to an authority by an honest and unintentional mistake as to the proper authority to deal with the complaint then the communication would not be deprived of any privilege to which it would otherwise have been entitled. In this case a complaint against a doctor instead of its being sent to the Superintending Medical Officer was sent to the Police Inspector of constabulary and the plea of privilege was sustained. This case again has no application to the facts of the present case. The law in my opinion seems to be that the person making the complaint should have either interest or duty to a person to whom a complaint is made and that person should have duty or power to take action upon the communication made to him and mere belief of the defendant that the occasion was privileged does not make it privileged. The honesty of belief as to duty or interest must exist and it is not enough for the defendant honestly to believe that a duty or interest exists. Again it is immaterial that the defendant reasonably or unreasonably believed that the person to whom he made the communication had some duty or interest with regard to the subject-matter. If such person had, in fact, no such duty or interest the defence of privilege fails. See Odgers on Libel and Slander, page 207, and *Hebditch* v. *MacIlwaine*, (2). The case relied upon by the appellant *Harrison* v. *Bush* (3), does not apply because there the communication was made *bona fide* upon a subject-matter in which the party communicating had an interest and was made to a person having a corresponding interest or duty.

(1) 1891 A.C. 73
(2) (1894) 2 Q.B. 54
(3) 103 R.R. 507

It has been held that a Mahalkari holding a preliminary enquiry in the conduct of a police patil under the orders of a Collector is not acting in a judicial capacity, nor exercising the attributes of a Court and the evidence given before such a Mahalkari is not absolutely privileged and qualified privilege is of no assistance to defendants when the statements are malicious. See *Gangappagounda* v. *Basayya* (1).

In this case no preliminary enquiry by the District Judge was essential and he had according to the rules no authority to deal with the matter. The rules in regard to complaints against legal practitioners are contained in Chapter 6-C, Vol V, High Court Rules and Orders. Therefore, there was no occasion for making an application to the District Judge and it appears to me that the object of the defendant was not protection of any interest or in discharge of any duty but as he has stated himself as D.W. 1. he made the application so that the amendments made may have no effect on his case and it is important to note that the District Judge found in that case that the allegations made by the plaintiff were wholly false.

I would, therefore, hold that the defendant had no interest or duty in making the application to the person to whom he made the complaint, i.e., the District Judge, who had no power to take action upon the complaint made to him. The defendant could not have had any *bona fide* belief that the District Judge was the proper person to whom the application could be made and in any case if the District Judge had, in fact, no duty or interest the defence of privilege must fail. I would, therefore, dismiss this appeal with costs.

(1) A.I.R. 1943 Bom. 167