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# Lawyer's Statement During Judicial Proceedings Protected By Privilege: Supreme Court Upholds Dismissal Of Defamation Suit Against Advocate

**Debby Jain**

(/debby-jain)

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The Supreme Court today upheld the **dismissal** of a **defamation suit** filed against **Senior Advocate Vikas Pahwa** over a statement made by him in course of judicial proceedings at Patiala House Courts, Delhi on the briefing counsel's instructions.

A bench of **Justices Dipankar Datta and Sandeep Mehta** passed the order, dealing with Indian businessman Pankaj Oswal's challenge to Delhi High Court's dismissal of the defamation suit on a view that Pahwa's statement was protected by doctrine of absolute privilege.

## **Factual Background**

To state briefly, Pahwa represented complainant-Pankaj Oswal's mother in a criminal revision hearing where, on instructions, he informed the court that mediation was not feasible due to Pankaj Oswal's use of “unparliamentary language” and abusive behavior towards his mother during previous mediation sessions.

Pankaj Oswal objected to this statement and subsequently filed a defamation suit against Pahwa before the Delhi High Court.

## **Proceedings before the Delhi High Court**

Initially, the defamation suit was dismissed by a Single Judge of the High Court under O7R11 CPC, which allows for the rejection of a plaint when it fails to disclose a valid cause of action. The Court observed that the suit lacked merit and rejected it without issuing summons, emphasizing that the statement made by Pahwa was protected by the privilege afforded to lawyers during judicial proceedings.

Aggrieved, Pankaj Oswal appealed the Single Judge's decision before a Division Bench of the High Court, arguing that the dismissal was unwarranted. His principal contention was that lawyers do not enjoy absolute immunity when their statements infringe upon an individual's right to reputation, which is a fundamental right protected under Article 21 of the Constitution of India.

The Division Bench however also ruled in Pahwa's favor, observing,

*"The utterance, even if assumed to be true, in our opinion, would be protected by the doctrine of absolute privilege...The respondent, in our view, was well within his right and within the framework of the doctrine of absolute privilege available to him to respond to the suggestion of the learned Sessions Judge as to why settlement through mediation was, perhaps, not feasible...Since the cause of action for instituting the suit was founded on the alleged defamatory statement, in our opinion, because of the protection offered to the respondent by the doctrine of absolute privilege, the Court could not have entertained such cause. Therefore, the plaint was rightly rejected by the learned Single Judge. Such cause is not recognized by the Court and in any event, is barred from being entertained."*

Against the Division Bench's order, Pankaj Oswal approached the Supreme Court.

### **Arguments on behalf of Pankaj Oswal**

Counsels for Pankaj Oswal raised the following arguments:

1. No absolute privilege: Lawyers are not entitled to absolute privilege when their statements violate a person's fundamental right to reputation.
2. Conditional immunity: While advocates enjoy certain privileges during court proceedings, these privileges are not absolute. Lawyers can still be held liable for criminal defamation under Section 499 IPC or for contempt of court.
3. Premature dismissal: The suit should not have been summarily dismissed without a proper evaluation of the merits of the case.

### **Arguments on behalf of Vikas Pahwa**

Counsels for Pahwa, on the other hand, argued that the defamation suit was without merit. Their key points were:

1. *Absolute privilege in judicial proceedings*: It was emphasized that advocates are protected by absolute privilege when making statements in court as part of judicial proceedings. This protection is rooted in public policy to ensure that the administration of justice is not obstructed by the fear of defamation claims.
2. *Protection for all participants*: This privilege extends beyond lawyers to judges, witnesses, and all parties involved in judicial proceedings, ensuring that legal matters can be conducted freely and fairly.
3. *Statements based on instructions*: The statement in question was made by Pahwa based on explicit instructions from the counsel-on-record, thus eliminating any question of malice.
4. *Frivolous and vexatious claim*: The defamation suit was frivolous, intended solely to disrupt the ongoing legal representation of Pankaj Oswal's mother by Pahwa.
5. *Lack of documentary evidence*: The alleged defamatory statement was not recorded in the Sessions Court's order sheet, further undermining the credibility of Pankaj Oswal's case.

### **Supreme Court Observations**

The Supreme Court upheld the decision of the Division Bench of the Delhi High Court, dismissing the SLP filed by Pankaj Oswal. It agreed with the principle of absolute privilege, affirming that statements made by lawyers in the course of judicial proceedings are protected from defamation claims, particularly when those statements are made based on instructions from clients.

**Senior Advocates Kapil Sibal, Vikas Singh, Sanjiv Sen, and Sanjiv Kakra**, along with **Advocate Bharat Arora**, represented Pahwa.

**Case Title: Pankaj Oswal v. Vikas Pahwa, Diary No. 19381-2024**

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