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Doctrine Of Absolute Privilege Prohibits Entertainment Of Claims Against Judges, Lawyers For Statements Made During Judicial Proceedings: Delhi HC

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The Delhi High Court has observed that the doctrine of absolute privilege prohibits entertainment of claims made against judges, counsel, witnesses or parties qua judicial proceedings in Courts or tribunals.

A division bench comprising of **Justice Rajiv Shakdher and Justice Amit Bansal** said that the privilege extends to witness statements, testimonies, and documents properly used and regularly prepared for use in judicial proceedings.

The bench added that the only exception that is carved out are statements which are not uttered for the purposes of judicial proceedings by a person who has a duty to make a statement in the said proceedings, or which has no reference at all to the subject matter of the proceedings.

“Likewise, where Court and Parliamentary proceedings are concerned, the doctrine of privilege kicks in based on public interest. At times, when the defence of absolute privilege is not available, in exceptional cases, public policy can also preclude the Court from entertaining a claim,” the bench said.

The court made the observations while dismissing an appeal moved by a businessman against a single judge's order (<https://www.livelaw.in/amp/news-updates/statements-lawyers-proceedings-trial-defamation-delhi-high-court-221228>) rejecting his plaint filed against a senior counsel alleging that a statement made by him during the course of arguments in open court was defamatory.

The single judge had said that statements made by a lawyer during judicial proceedings are conferred with an “absolute privilege” and no action for defamation, slander or libel can lie against them for advancing the submissions.

Upholding the impugned order, the bench said that since the alleged defamatory statement was made by the senior counsel orally in the course of judicial proceedings held before the Sessions Court, it would be protected by the doctrine of absolute privilege, unless it was that it had no reference to the subject proceedings.

The court observed that the utterances of the senior counsel have to be contextualized and referenced to what transpired in the Court in the presence of the Sessions Judge.

“The utterance, even if assumed to be true, in our opinion, would be protected by the doctrine of absolute privilege. Thus, the argument advanced by Mr Gupta on behalf of the appellant that, utterances had no connection with the action pending in the Sessions Court if accepted, would result in taking a very narrow view of exception,” the court said.

The bench concluded that the senior counsel 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 Sessions Judge as to why settlement through mediation in the matter was not feasible.

“While one cannot quibble with the broad proposition that a person, while exercising his right to free speech, cannot make reckless utterances, which tantamount to defaming another person, it has certain exceptions which we have referred to hereinabove. The exception, to reiterate, concerns claims for defamation involving utterances made during Parliamentary or Judicial proceedings,” the court said.

It added that the rationale is to subserve public interest and do away with the anxiety that the defendant may experience while making utterances, which may expose a defendant to defamation action.

“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,” the bench said.

Proceedings before the Single Judge

The plaintiff businessman had sought Rs. 2 crores of damages from the Senior Advocate towards “loss and harm caused to his reputation and goodwill” due to the alleged defamatory statement.

It was the plaintiff's case that his reputation was tarnished and that absolute privilege cannot work against fundamental right of a person. It was also contended that there is no statutory right granting absolute privilege to a lawyer.

On the other hand, it was the senior counsel's case that privilege of a lawyer is absolute and statement given by him in court is an absolute privilege.

Observing that such statements are “complete defence against any allegations of defamation”, the single judge had said that justice system would be adversely affected “if lawyers were to be in fear of law themselves” for any submission or statement made by them during a hearing.

Title: PO v. VP

Citation: 2024 LiveLaw (Del) 190

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