Before Amol Rattan Singh, J.

CAPT. MAHAN SINGH—*Appellant*

versus

CAPT. NATHA SINGH—*Respondent*

RSA No.766 of 2014

January 11, 2016

Indian Penal Code, 1860—S.499—Defamation —Recovery of damages—Respondent uttered words in context of mutation proceedings of land summoned as witness—Statement made in Court during respondent's testimony not of such nature that can be termed defamatory to appellant—When words are taken in context of testimony in closed environment, even of open Court, with appellant obviously able to rebut the said testimony—Matter cannot go to length seeking damages from person who makes such statement — Appeal dismissed.

Held that, when the words are taken in the context of a testimony in a closed environment, even of an open Court, with the appellant obviously able to rebut the said testimony, in my opinion, the matter cannot go to the length of seeking such damages from the person who makes such kind of a statement, only in Court.

(Para 23)

Madan Gopal Gupta, Advocate,
for the appellant.

AMOL RATTAN SINGH, J.

(1) The appellant, Capt. Mahan Singh, has filed this appeal impugning the judgment of the learned Additional District Judge, Fast Track Court, Ludhiana, dated 29.10.2013, setting aside the judgment of the learned Civil Judge (Senior Division), Ludhiana, 25.10.2011. The trial Court had decreed the suit filed by the appellant, seeking recovery of Rs.5,00,000/- as damages from the respondent, Capt. Natha Singh. The first appellate court has, thereby, dismissed the suit filed by the appellant.

(2) The case set up by the appellant-plaintiff was that he has retired from the Indian Army as a Captain, is drawing pension of Rs.9500/- per month and earns Rs.50,000/- from agricultural land. He is also the recipient of a prize awarded by the Rampur Milk

Producers Co-operative Society Ltd., for getting the highest yield of good quality milk.

(3) In a litigation between him and his younger brother, Narinder Singh/Narinder Singhs' son Mohan Singh, regarding a piece of land stated to have been sold to him (appellant), the respondent herein (Capt. Natha Singh) appeared as a witness in a Revenue Court, against the present appellant and made the following statement:-

> "I do not know whether the sale proceeds of the land has been paid by Mahan Singh to Gajjan singh (volunteered) when he can retain the sale proceeds of Narinder Singh then how it could be said that he has paid the sale proceeds. At present the possession of the land covered by the sale deed in favour of Capt. Mahan Singh is with Mohan Singh son of Narinder Singh. Mahan Singh is residing in the Gurdwara in the village and takes the meals there in the Gurdwara. He has no son andhe has brought up the son of his daughter. I do not knowwhether the said boy is getting education."

(4) Thus, as per the appellant, the words used by the respondent in his testimony, with regard to the appellant residing in the Gurdwara and taking his meals also there, are derogatory and defamatory in nature, due to which the appellants' image has been lowered, in the eyes of people. It was also alleged in the plaint that the allegations were false, made only todisgrace and humiliate the appellant and to make a laughing stock out of him.

(5) He issued notice on 25.08.2005 to the defendant, seeking a written apology or payment of Rs.5,00,000/- by way of damages but the latter refused to do either.

(6) In the reply filed by the defendant, before the trial court, he stated that the appellant-plaintiff was an ordinary citizen, who owned 2B- 19B of land, with no tractor and other implements and as such, could not have Rs.50,000/- income from his land. He further stated that he has onlyone buffalo.

(7) He admitted to having testified by using the words reproduced earlier, but stated that these were in no way defamatory to the reputation of the plaintiff, or that he had ever made any derogatory deposition against him. It was also stated that the statement was fully covered by the exceptions given in Section 499 of the IPC. The respondent also stated that the appellants' reputation had not been

lowered and no loss had been suffered by him for which any damages were to be paid.

(8) Having framed the necessary issues, the trial Court went into the evidence, including the statements of the appellant and two other persons, Gurnam Singh and Amrik Singh, who appeared as witnesses with regard to the statement having been made by the respondent and lowering of the reputation of the plaintiff because of it.

(9) The respondent appeared as his own witness and in his testimony, he denied having made any such statement, also challenging the economic status shown by the plaintiff-appellant, in the plaint.

(10) Thus, though in the written statement the respondent admitted to having made the statement while testifying in revenue proceedings pertaining to the land in dispute between the appellant and his relatives, while testifying in the trial Court, he denied having actually made the statement.

(11) The statement, Ex.P5, was proved before the trial Court, as recorded in its judgment, by PW6, Jasbir Singh, the 'Ex-Reader' to the S.D.M., Payal (as a Revenue Court), to the effect that it was the same as made by respondent Natha Singh, on 13.06.2005.

(12) Before the trial Court, counsel appearing for the respondent-defendant had referred to Section 132 of the Indian Evidence Act, 1872, which reads as follows:-

> "**132. Witness not excused from answering on ground that answer will criminate**.- A witness shall not be excused from answering any question as to any matter relevant to the matterin issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:
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> **Proviso-** Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer."

(13) Thus, it was argued that firstly a witness is bound to answer anyquestion with regard to any matter relevant to the issue and, as per

the proviso to Section 132, no such answer, that a witness has been compelledto give, shall subject him to any arrest or prosecution or be proved against him in any criminal proceedings.

(14) The learned trial Court, however, held that, firstly, as per Section 132 only criminal proceedings are barred and further, cited the judgment of a Full Bench of the Bombay High Court in **Shanta Bal v. Umaro Ameer Malik (Manu/MH/0182/1925)**, wherein it was held that unless a person objects to any question, the answer to which is likely to incriminate him, he cannot be said to have been compelled to give such answer, within the meaning of the proviso to Section 132.

(15) The trial Court, therefore, held the respondent guilty of having made defamatory and derogatory remarks against the appellant and decreed the suit in his favour with costs, alongwith 9% interest per annum witheffect from the date of notice issued to the respondent till the date of actual realisation of the amount.

(16) The respondent herein having appealed against the aforesaid judgment before the learned District Judge, the appellate court set aside that judgment, holding that simply stating that the appellant was taking his meals in a Gurdwara and was residing there, was not a defamatory and derogatory statement.

(17) The first appellate court also expressed doubt as to whether the exact words were actually uttered by the respondent or not and as to whether they had been actually correctly recorded, as said by him. It was held that even if the words stated by him are accepted to have been actually uttered by him, though denied in the exact form that they were reproduced, they were not words which were either published or proclaimed in the village. They were only uttered in a Court room as a part of testimony andas such, could not be held to be scandalous or defamatory.

(18) In any case, having held that even if they were actually spoken, they were not derogatory and defamatory words in the context that theywere uttered, the judgment of the trial Court was set aside and the suit filed by the appellant was dismissed.

(19) Before this Court, Mr. Madan Gopal Gupta, learned counsel appearing for the appellant, submitted that the trial Court having come to a correct finding, the lower appellate court had wholly erred in holding that just because the words were spoken in a Court room, they were not derogatory and defamatory.

(20) Learned counsel further submitted that, in fact, if the respondent is issued notice to come to this Court, he would almost certainly apologise to the appellant, thereby assuaging his feelings and finishing the controversy.

(21) Having considered the arguments and having gone through the judgments of the learned Courts below in detail, I am not inclined to interfere with the judgment of the first appellant court, in view of the fact that undoubtedly, what is stated to have been uttered by the respondent, was in the context of revenue proceedings pertaining to a mutation of land, in which the respondent had been summoned as a witness. Without going further into the issue whether or not the words were actually recorded in the manner that they are stated to have been, that in any case being a part of Court record, and accepting that they were so uttered, the fact remains that it was not by way of any publication or proclamation etc. that the respondent told, or intended to tell, the public at large, that the appellantwas taking his meals in a Gurdwara and was living there. He did so only upon testifying in the context of the Court proceedings and even if he may have said something more than what was required of him, it does not appear to this Court that the matter should be carried to further length than to which it already has been taken.

(22) Undoubtedly, there is a difference of opinion between the trial Court and the appellate court and there also appears to be a doubt as to whether the statement uttered was a part of the examination-in-chief or cross-examination of the respondent. Thus, if it was a voluntary statement made by the respondent, not in answer to any question during cross- examination, it would not be saved by Section 132 of the Evidence Act because, if voluntarily uttered during examination-in-chief, it would not be an answer to a question put to the witness. However, this Court is not inclined further go into the matter, even if the respondent made the remarks during his examination-in-chief, for two reasons; firstly, as already said, the respondent has already been subjected to litigation for the past 10 years on too trivial a matter in the opinion of this Court; therefore, to now award damages for a statement made during testimony in Court, at this stage, would actually amount to a travesty of justice.

(23) Secondly, undoubtedly this statement was made in Court duringthe respondents' testimony and is not of such a nature that would actually be defamatory to the appellant. No doubt, the insinuation, by saying that the appellant was having his meals in a Gurdwara and

living there, would be that the appellant is not able to earn his own means of livelihood. However, when the words are taken in the context of a testimony in a closed environment, even of an open Court, with the appellant obviously able to rebut the said testimony, in my opinion, the matter cannot go to the length of seeking such damages from the person who makes such kind of a statement, only in Court.

(24) In view of the above, I find no merit in this appeal, which is accordingly dismissed *in limine*, with no order as to costs.

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