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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 263/2024 and CAV 188/2024**

RAJESH KUMAR SINGHAL Appellant
Through: **Mr.K.S.Kashyap and Mr.Ravi**
Kaushal, Advocates

versus

RAJ KUMAR AGGARWAL Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% **25.04.2024**

CM APPL No.23759/2024

Exemption allowed, subject to just exceptions.

The application stands disposed of

RFA 263/2024

1. The instant Regular First Appeal has been filed on behalf of the appellant seeking setting aside of the impugned judgment and decree dated 3rd February, 2024 passed by the learned Additional District Judge-10, Central, Tis Hazari Courts.
2. Learned counsel appearing on behalf of the appellant submitted that whilst passing the impugned judgment, the learned Trial Court had taken a note about the “qualified privilege” without considering the factum that neither the qualified privilege plea has been taken in the written statement filed by the respondent nor in the arguments addressed by the parties. It is further submitted that neither did the learned Trial Court frame any issue with regard to “qualified privilege” nor was any evidence led by any party.
3. Placing reliance on paragraphs 22, 23 and 28 of the impugned



judgment, learned counsel appearing on behalf of the appellant submitted that the learned Trial Court has taken note of two letters in paragraph 22 and based on those, it has wrongly taken the view that the said two letters as reproduced in the impugned judgment do not amount to any defamation.

4. The learned counsel appearing on behalf of the petitioner has placed reliance upon paragraph Nos. 57 and 85 to 90 in the judgment passed by the Patna High Court in ***Surendra Nath V. Bageshwar Pd.***; AIR 1961 PATNA 164, which read to the effect:

“57. The principle, which determines whether any particular occasion is privileged, was expounded by Parke B. in Toogood v. Spyring, (1834) 1 Cr. M. and R. 181, at p. 193, thus:

“The statement is protected if it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of the society; and the law has not restricted the right to make them within any narrow limits.”

* * * *

85. Here, the trial court held that it was not a case of absolute privilege, but, the lower appellate court, in disagreement with it, held that it was. I have also agreed with the trial judge that it was not a case of absolute privilege, but, at best, it was a case of qualified privilege, as held by Wort, J., in the Patna case, and, by the Full Bench in the Allahabad case.

86. In the words of Pearson, J., in *Webb v. Times Publishing Co. Ltd.*, (1960) 2 All E.R. 789, Q.B.D., at p. 800, there is no qualified privilege of a general or ‘blanket character.’ The plea of qualified privilege, as such, in the present case, should have been pleaded specifically in the written statement, either



as a substantial defence, or, as an alternative defence, and, also raised in the issues at the trial; because, in the case of a qualified privilege, the defendant has this limited protection that, provided he is not misusing the privileged occasion, the publication is covered by the privilege, but, if, however, he is malicious he has no defence on the ground of privilege. This not having been done, the defendant cannot now be allowed at the appellate stage to raise the defence of qualified privilege, and, as such, it is not necessary, in the present case, to refer the question of qualified privilege for further investigation to the Courts below.

87. The above view, which I have taken, that the defendant not having put forward the plea of privilege in his pleading, cannot be allowed to raise the defence of qualified privilege, which is a mixed question of law and fact, is supported by three decisions of the Privy Council in the Official Trustee of Bengal v. Krishna Chunder Mazoomdar, ILR 12 Cal 239 : 12 Ind App. 166; Siddik Mahomed Shah v. Mt. Sarari, AIR 1930 PC 57 (1); and, Hem Chand v. Pearey Lal, AIR 1942 PC 64.

88. These decisions firmly establish, beyond doubt, that where a claim has been never made in the defence presented no amount of evidence can be looked into upon a plea which was never put forward. Venkatarama Aiyer, J., of the Supreme Court, also, in pronouncing the unanimous opinion of the Court, in State of Mysore v. Sri Venkataramana Devaru, AIR 1958 SC 255, on this question, at p. 263, observed that:

“The object of requiring a party to put forward his pleas in the pleadings is to enable the opposite party to controvert them and to adduce evidence in support of his case. And it would be neither legal nor just to refer to evidence adduced with reference to a matter which was actually in issue and on the basis of that evidence, to come to a finding on a matter which was not in issue, and decide the rights of parties on the basis of that finding.”

89. For the reasons given above, therefore, I hold that the Courts below should not have entertained the plea of privilege



when it was not pleaded in defence, in the written statement by the defendant, or, raised in the issues at the trial.

90. I hold further that as it was not a case of absolute privilege, but, at best, a case of qualified privilege, which raised a mixed question of law and fact, the initial onus to prove which was on the defendant, the Courts below would have been better advised if they had tried the issues as framed, the most important of which was issue No. 4, at the trial.”

5. During the course of arguments learned counsel appearing on behalf of the appellant submitted that the learned Trial Court whilst placing reliance on paragraph 9 of the above said judgment has wrongly interpreted the ratio observed therein.

6. In view of the above, learned counsel appearing on behalf of the appellant submitted that the impugned judgment may be set aside and this Court may adjudicate in favour of the appellant.

7. Heard the learned counsel appearing on behalf of the appellant and perused the contents of the appeal as well as the impugned order dated 3rd February, 2024 and also analysed the ratio of the judgment relied upon by the learned counsel appearing on behalf of the appellant in support of his submissions.

8. On a perusal of the above, this Court is of the view that the appellant has been able to make out a case for issuance of notice.

9. Issue notice to the respondent on filing PF within one week through all permissible modes returnable before the Registrar on 22nd August, 2024.

10. The Trial Court Record be requisitioned.

CHANDRA DHARI SINGH, J

APRIL 25, 2024/SV/RYP

[Click here to check corrigendum, if any](#)