

(1876) 04 CAL CK 0001
In the Calcutta High Court

Mohender Nath Mozoomdar

APPELLANT

Vs

Futeek Parooee

RESPONDENT

Date of Decision : 10-04-1876

Acts Referred:

Citation : (1876) ILR (Cal) 386

Hon'ble Judges : Mitter, J; Markby, J

Bench : Division Bench

Judgement

Markby, J.—This was a suit to recover damages for defamation. The matter had already been the subject of criminal proceedings. The Subordinate Judge gave the plaintiff a decree for nominal damages; but being of opinion that the suit was a vexatious one, directed the plaintiff to pay the costs of the litigation.

2. The case having come up to this Court on special appeal, Mr. Justice Birch was of opinion that there was no ground upon which he could interfere with the decree for nominal damages, but being of opinion that the plaintiff ought not to have been made to pay the costs of the suit set aside the order of the Subordinate Judge as to costs, and directed that the plaintiff should recover the costs of the litigation.

3. It is contended before us that, in special appeal, this Court cannot interfere with the discretion of the Courts below as to costs: and that in this case the award of costs to the defendant notwithstanding that the plaintiff obtained a decree for nominal damages, was within the discretion of the Court below.

4. Upon the first point we are of opinion that the question is concluded by the decision of the Full Bench in Gridhari Lal Roy v. Sundar Bibi B.L.R. Sup. Vol. 496. It was there laid down that this Court could, in regular appeal, review the exercise of the discretion of the lower Court as to award of costs; but that in special appeal this Court could not interfere unless the order made as to costs was illegal. We have no reason to doubt that this rule, which has also been approved in Bombay in Amirsabeb Hafizulla v. Jamshedji Rustam 4 Bom.

H.C.A.C. 41 followed in *Desaji Lakhmaji v. Bhavanidas Narotamdas* 8 Bom. H.C.A.C. 100; but the opposite view was taken by the Madras High Court in *Sri Dantuluri Narayana Gajapati Razu Garu v. Surappa Razu* 3 Mad. H.C. 113 has been since generally acted on in this Court. The only instances in which there is any apparent departure from it are in the cases of *Mussamut Bibee Monoorun v. Mussamut Bibee Munoorun* 24 W.R. 69 and *Ooma Churn v. Grish Chundar Banerjee* 25 W.R. 22 but the Full Bench decision does not seem to have been there referred to, and we have no reason to suppose that the learned Judges intended to question a rule thus authoritatively laid down. We may also observe that the attention of Mr. Justice Birch was not called to the Full Bench decision when the present case was before him. On the other hand, quite recently, a Judge of this Court, acting on the Full Bench decision refused to review in special appeal the discretion of the Court below as to costs.

5. We think that we ought to follow the Full Bench decision, and to hold that a special appeal will not lie against any order as to costs, which it was within the discretion of the lower Courts to make. It, therefore, remains to consider whether, when a decree had been given for nominal damages, the Court had a discretion to award costs to the defendant. We are of opinion that it had. The Court below thought that though the words complained of had been spoken, the plaintiff was not entitled to any damages, and that to bring this suit after criminal proceedings had been taken in the same matter was vexatious. In substance, therefore, the defendant succeeded in the Court below. Perhaps it would have been better under these circumstances to have dismissed the suit altogether, the Court in such a case not being bound to award nominal damages. But we are not aware of any law which prevents the Court, if it thinks that the suit is a vexatious one, and that no damage has really been sustained, from giving nominal damages to the plaintiff, and awarding costs to the defendant. The words of Section 187 leave the discretion of the Courts as to costs wholly unlimited, and it would be impossible to say that such an award of costs was illegal.