

1913
 DURGHA
 PRASAD
 SINGH
 v.
 RAJENDRA
 NABA-YAN
 BAGCHI.

Court of the Subordinate Judge, and, on appeal, in the High Court.

The respondents must pay the costs of this appeal.

Appeal allowed.

Solicitor for the appellant : *Edward Dalgado.*

Solicitors for the respondents : *W. W. Box & Co.*

J. V. W.

CRIMINAL REFERENCE.

Before Imam and Chapman JJ.

NIKUNJA BEHARI SEN

v.

HARENDRA CHANDRA SINHA.*

1913
 Aug. 12.

Defamation—Defamation by Pleader—Questions put in cross-examination on instructions without ascertaining their truth or falsity—Absence of personal malice—Presumption of good faith—Rebuttal of presumption—Duty of Advocate—Public good—Penal Code (Act XLV of 1860) s. 499, Exception(9).

A pleader is entitled to the presumption that the questions he asks in cross-examination are put in good faith for the protection of his client's interest, within Exception (9) to s. 499 of the Penal Code. To rebut the presumption it is not sufficient merely to show that the client knew the imputation to be untrue, but there must be convincing evidence that the pleader was actuated by an improper motive personal to himself and not by a desire to protect or further his client's interest.

Upendra Nath Bagchi v. Emperor(1) followed.

It is the duty of the pleader to present his client's case, but it is not his duty to enquire whether it is true or false, so far, at any rate, as the purpose of a prosecution for defamation is concerned.

It is for the public good that a person charged with the responsibility of an advocate should, as far as may be, feel unfettered by any control, other

* Criminal Reference, No. 175 of 1913, by S. E. Stinton, Sessions Judge of Sylhet, dated June 19, 1913.

(1) (1909) I. L. R. 36 Calo. 375 ; 13 C. W. N. 340.

than that of the Court, in the use of every weapon placed at his disposal by law for the defence of his client.

DURING the trial of one Chandra Kishore, in the Court of a Deputy Magistrate of Sylhet, on a charge of criminal breach of trust brought by a man named Girindra, a witness, named Nikunja Behari Sen, was examined for the prosecution. The defence in the case was that it was entirely concocted and that the witnesses were associates of the complainant, Girindra. The petitioner, a District Court pleader, appeared for the defence and cross examined Nikunja who stated that "Girindra drinks liquor and smokes *ganja*," whereupon the pleader put him, under instructions, the question—"Do you drink or smoke *ganja*," apparently for the purpose of showing his association with Girindra, to which the witness replied in the negative. Nikunja, thereupon, laid a complaint before the Additional District Magistrate, under s. 500 of the Penal Code, against Chandra Kishore and the petitioner. In his examination on the complaint he said "I have seen Harendra Babu, pleader, in connection with a post once, but he does not know me well enough to be able to say personally about my character and habits." There was no allegation of private malice but a suggestion that the pleader had no means of knowing whether the instruction he had received from his client in the matter was true or false. The Magistrate summoned both the accused. The Sessions Judge of Sylhet, thereupon, referred the case to the High Court, under s. 438 of the Criminal Procedure Code, on the authority of the ruling in *Upendra Nath Bagchi v. Emperor* (1).

Mr. Rasul (with Babu Hemendra Kumar Das), for the petitioner. The question put is not defamatory.

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There are numerous decisions of the English and the Indian Courts that a counsel or pleader cannot be prosecuted for defamation for words used by him in the discharge of his duties towards his client. The presumption is in favour of good faith, unless there is cogent evidence of personal malice and abuse. It was so held in *Upendra Nath Bagchi v. Emperor*(1).

No one appeared for the Crown.

Cur. adv. vult.

IMAM AND CHAPMAN JJ. This case comes before us on a reference from the Sessions Judge of Sylhet. One Nikunja Behari Sen was a prosecution witness in a case under section 408 of the Indian Penal Code. The pleader for the defence asked the witness in cross-examination:—"Do you drink or smoke *ganja*?" The witness replied in the negative. Subsequently the witness laid a complaint against the pleader before a Magistrate alleging that the question was asked only to satisfy the grudge of the pleader's client. Summons was issued under section 500 of the Indian Penal Code.

The learned Sessions Judge has referred the matter to this Court and has recommended that the proceeding against the pleader be quashed. The petition of complaint did not allege any improper motive on the part of the pleader himself. There was merely a suggestion that the pleader had no means of knowing whether the instruction he had received from his client in the matter was true or false.

In our opinion the Magistrate should have dismissed the complaint. It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it or of any

(1) (1909) I.L.R. 36 Calc. 375 ; 13 G.W.N. 340.

other person (Indian Penal Code section 499, 9th Exception). A pleader is entitled to the presumption that the questions he asks in cross-examination are asked in good faith for the protection of the interest of his client. The presumption, therefore, is that a question asked in cross-examination making an imputation affords no ground for a criminal prosecution. To rebut this presumption it is not sufficient merely to allege that the client knew the imputation to be untrue for the duty of the pleader is to present his clients' case. So far, at any rate, as the purposes of a prosecution for defamation are concerned, it would be wholly unreasonable to say that it is the duty of a pleader to require whether his clients' case is true or false. To rebut the presumption of good faith in such a case there must be convincing evidence that the pleader was actuated by an improper motive personal to himself and not by a desire to protect or further the interests of his client in the cause. No such motive was suggested in the present case.

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The view which we have taken is supported by the case of *Upendra Nath Bagchi v. Emperor*(1).

It is for the public good that a person charged with the responsibility of an advocate should, so far as may be, feel unfettered by any control other than that of the presiding judge, in the use of every weapon placed at his disposal by the law for the defence of the liberty of his client. The provisions of the ninth Exception to section 499 of the Indian Penal Code, must be interpreted accordingly.

We direct that all further proceedings be stayed.

E. H. M.

(1) (1909) I. L. R. 36 Calc. 375; 13 C. W. N. 340.