

CRIMINAL REVISION.

Before Mukerji J.

YADALI

v.

GAYA SINGH.*

1929

July 30.

Defamation—Allegations made in a complaint to a court—"Good faith"—Care and caution, standard of—Indian Penal Code (Act XLV of 1860), ss. 500 and 499, excepts. 8, 9.

The standard of care and caution required by the expression "good faith" in the exceptions to section 499 of the Indian Penal Code varies with the circumstances of each case.

How far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the circumstances and capacity of the person whose conduct is in question, and allowances have got to be made for the intelligence of the accused, his capacity to reason, the circumstances under which he was placed, and the occasion which necessitated his making the imputations.

Emperor v. Abdool Wadood Ahmed (1), Bhawoo Jivaji v. Mulji Dayal (2) and Promotho Nath Mukhopadhya v. King-Emperor (3) referred to.

When the accused acted with a desire to protect himself by an appeal to the magistrate, rather than to injure the complainant, his conduct came within exceptions 8 and 9 to section 499 of the Indian Penal Code.

In the Matter of the Petition of Shibo Prosad Pandah (4) followed.

RULE obtained by the accused.

The petitioner, Yad Ali, was cited as a witness on behalf of the defendant in a suit brought by the opposite party, Gaya Singh, against one Bhagirathi. As a result of this, Gaya Singh entertained a grudge against the petitioner and uttered threats against him and his associates from time to time, and the latter communicated the information to the petitioner. The petitioner then told some people that Gaya Singh and some others were making a plot to kill him and put him into trouble in various ways and he also filed a complaint before the Subdivisional Magistrate at Barackpur, stating that he was apprehensive of his

*Criminal Revision, No. 747 of 1929, against the order of M. N. Stuart, Subdivisional Magistrate of Barackpur, dated Mar. 11, 1929.

(1) (1907) I. L. R. 31 Bom. 293.

(3) (1923) 27 C. W. N. 389.

(2) (1888) I. L. R. 12 Bom. 377.

(4) (1878) I. L. R. 4 Calc. 124

1929
YADALI
v.
GAYA SINGH.

safety, as Gaya Singh, in conspiracy with others, had been threatening him and had been saying that he would anyhow get him, the petitioner, imprisoned or would kill him on the road or *ghât*, or would get him convicted by planting cocaine on him, or would get him convicted or sentenced to imprisonment in a theft case, or would beat him on getting him alone on a road or *ghât*, or would ruin him by false civil suits, and that Gaya Singh and others were hatching plots as they had thieves, wicked men and *goondâs* in their hands. Gaya Singh then filed a complaint against the petitioner, Yad Ali, charging him with defamation under section 500 of the Indian Penal Code, in respect of what he had said orally as aforesaid and also what he had stated in his petition before the magistrate. The trial magistrate held that the evidence adduced on behalf of Gaya Singh with regard to the allegations about the defamatory words spoken by Yad Ali was untrustworthy. But with regard to the written petition, the magistrate held that, although the accused Yad Ali had some reason for filing the petition, he had grossly exaggerated the facts and had no justifiable grounds for wording it as he did and had overstepped the privilege given him by law. He, therefore, convicted him under section 500 of the Indian Penal Code and sentenced him to a fine of Rs. 40, in default to one month's rigorous imprisonment. Against his conviction, the petitioner then moved the Additional District Magistrate for a reference to the High Court, but his application was rejected. The petitioner, thereupon, moved the High Court and obtained this Rule.

Mr. Hiralal Ganguli for *Mr. Pannalal Chatterji*, for the petitioner.

Mr. Mrityunjay Chattopadhyaya and *Manindranath Bannerji*, for the opposite party.

MUKERJI J. The petitioner has been convicted under section 500 of the Indian Penal Code and sentenced to pay a fine of Rs. 40, in default to undergo rigorous imprisonment for one month. There were

two items forming the subject matter of the charge. One of them was certain imputations made orally as against the complainant and the other consisted of certain statements made in a petition which the petitioner had filed before the Subdivisional Magistrate of Barackpur. As regards the first of these items, the evidence that was brought to establish it was not accepted as reliable by the trial magistrate. The conviction is based upon the statements contained in the petition, to which I have referred. Those statements are to the effect that the complainant was threatening the petitioner with assault and also with murder, imprisonment and so forth; and that the complainant was giving out that he would institute civil as well as criminal cases against the accused and further that the complainant belonged to a gang of *badmâshes* and *goondâs* and the members of that gang are all conspiring together for the purpose of putting the complainant into trouble and that for all these reasons the petitioner was apprehensive of his safety.

The learned Magistrate has recorded certain findings in his judgment, in which he has dealt with the whole case very clearly and elaborately and to these I shall now refer. One line of defence taken by the petitioner was that he had himself heard the complainant and others hatching a plot against him. The learned Magistrate has held that the direct evidence that the accused gave for the purpose of establishing that he overheard a plot being hatched against him by the complainant was not reliable. The substance of the other line of defence was that there was enmity between the parties and the petitioner had reasonable ground for believing that there was such a plot. The learned Magistrate has observed, so far as the line of defence is concerned, that "there was no doubt that the petitioner had some reason for filing the petition, because it is probable that the petitioner feared something in the way of a litigation." At the same time, the learned Magistrate was of opinion that the petitioner "had no justifiable grounds for wording the petition in

1929

YADALI

v.

GAYA SINGH.

MUKERJI J.

1929

YADALI

v.

GAYA SINGH.

MUKERJI J.

“the way that he did or at least that the contents of “the petition were gross exaggerations.” The learned Magistrate appreciated fully the difficulty of sustaining a charge under section 500 of the Indian Penal Code upon a petition of this character presented before a Magistrate and has pertinently observed thus: “As regards the written defamation “the responsibility of the accused for stating that the “complainant meant to kill him is a problem of great “difficulty.” He appreciated also that the motive of the complainant in instituting the present case was “not to vindicate himself but to injure the accused.” In the result, however, he held that the accused did not use due care in wording his petition in the way in which he had done and, being of opinion that the accused had overstepped his privilege, convicted him under section 500 of the Code.

In convicting the accused on the findings to which I have referred, the learned Magistrate, in my opinion, has not given due weight to two important matters. In the first place, it seems that there is a body of evidence proceeding from the witnesses who were examined on behalf of the defence and which to a certain extent showed that from time to time threats were uttered by the complainant or his associates, though not exactly of the same nature, as was alleged in the petition which the accused filed. It may be that the witnesses who have deposed to these threats are people in whom not much confidence may be placed. This I say because of the fact that the learned Magistrate has not thought fit to make any particular reference to the evidence of these witnesses. Even then, the question remains as to whether these witnesses, who have now come before the court to speak to these threats, did not supply to the petitioner the information which formed the foundation of his petition and which information was to a certain extent exaggerated for the purpose of making out that there was a threat to murder the petitioner and so on. This, in my opinion, is not an altogether unreasonable finding to arrive at, and if these

witnesses communicated the information to the petitioner and the petitioner, apprehending that there was some risk of his life or his safety, exaggerated the information that he received and put in the petition in matters which ultimately brought about this case, I am very doubtful as to whether a conviction under section 500 of the Indian Penal Code would be maintainable.

The other matter is the important principle which should guide a court in the matter of a case under section 500, when it is said to rest upon allegations made in a complaint to a court. That principle has been laid down in a series of decisions, amongst which I propose to refer to only a few. In the case of *Emperor v. Abdool Wadood Ahmed* (1), the High Court of Bombay, in dealing with exception 9 to section 499 of the Indian Penal Code and following an earlier decision of that Court in the case of *Bhawoo Jivaji v. Mulji Dayal* (2), observed thus:—"Good "faith" in the 9th exception "requires not, indeed, "logical infallibility but due care and attention. But "how far erroneous actions or statements are to be "imputed to want of due care and caution must, in "each case, be considered with reference to the "general circumstances and the capacity and "intelligence of the person whose conduct is in "question. It is only to be expected that the honest "conclusions of a calm and philosophical mind, may "differ very largely from the honest conclusions of a "person excited by sectarian zeal and untrained to "habits of precise reasoning." This principle has been accepted as well-founded by Mr. Justice Suhrawardy in the case of *Promotho Nath Mukhopadhyaya v. King-Emperor* (3). In determining whether due care was taken by the accused, allowances, therefore, have got to be made for the intelligence of the accused, his capacity to reason, the circumstances under which he was placed and the occasion which necessitated his making the

1929
 YADALI
 v.
 GAYA SINGH.
 MUKERJI J.

(1) (1907) I. L. R. 31 Bom. 293, 298. (2) (1888) I. L. R. 12 Bom. 377.

(3) (1923) 27 C. W. N. 389, 403.

1929

YADALI

v.

GAYA SINGH.

MUKERJI J.

imputations. Bearing this principle in mind, I am of opinion, the learned Magistrate in considering the question as to whether there was due care and caution on the part of the accused has applied to the case a rather too exacting standard. In view of the findings to which I have referred, I think this is a case in which I might say, adopting the words of Mr. Justice Markby as used *In the Matter of the Petition of Shibo Prosad Pandah* (1), that the facts seem to me to show that the accused, a comparatively ignorant and timid man apprehending harassment by the complainant, did what a man of superior intelligence and knowledge of the law could not have done, namely, presented a petition to the magistrate, but I have little doubt that he acted with a desire to protect himself by an appeal to the magistrate, rather than to injure others. I am of opinion, therefore, that it would not be right to uphold the conviction of the petitioner under section 500 of the Indian Penal Code, in the circumstances to which I have referred.

The result is that the Rule is made absolute, the conviction and sentence passed on the petitioner are set aside and ordered that the fine if paid be refunded.

Rule absolute.

A. A.

(1) (1878) I. L. R. 4 Calc. 124, 131.