

The Commissary-General is in error in supposing that he is not bound to accept and serve the summons. He is bound to do so under s. 468 of the Civil Procedure Code, although the soldier is entitled to the protection given by s. 144 and is not compelled to appear in Court in person.

ABRAHAM
v.
HOLMES.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Shephard.

MANJAYA

against

SESHA SHETTI.*

1888.
April 11, 24.

Penal Code, s. 500—Statement by witness—Privilege absolute.

M.S. was convicted under s. 500 of the Indian Penal Code of defaming S.S. by making a certain statement when under cross-examination as a witness before a Court of criminal jurisdiction :

Held ; that the conviction was bad.

The statements of witnesses are privileged ; if false, the remedy is by indictment for perjury and not for defamation.

CASE referred under s. 438 of the Code of Criminal Procedure by J. W. Best, Sessions Judge of South Canara.

The petitioner was convicted by Mir Shujat Ali Khan, Head Assistant Magistrate of Canara, in calendar case No. 106 of 1887 and fined Rs. 15 under s. 500 of the Penal Code.

The Sessions Judge stated the case as follows:—

“The contention on behalf of the petitioner is that the words constituting the alleged defamation were elicited from him in the course of his cross-examination as a witness in a case under trial before the Third-class Magistrate at Kundapur, and are therefore privileged.

“Such no doubt, is the law in England. *Seaman v. Netherclift*(1) and *Goffin v. Donnelly*(2). As stated by Cockburn, C.J., in the former case, page 56, “if there is anything as to which the authority is overwhelming, it is that a witness is privileged to the

* Criminal Revision Case No. 126 of 1888. (1) L.R., 2 C.P.D., 53.
(2) L.R., 6 Q.B.D., 307.

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extent of what he says in course of his examination. Neither is that privilege affected by the relevancy or irrelevancy of what he says; for then he would be obliged to judge of what is relevant or irrelevant, and questions might be and are constantly asked which are not strictly relevant to the issue; and as remarked by Field, J., in *Goffin v. Donnelly*, 'it may be a hardship upon individuals that statements of a defamatory nature should be made concerning them, but the interest of the individual is subordinated by the law to a higher interest, viz., that of public justice, to the administration of which it is necessary that witnesses should be free to give their evidence without fear of consequences.'

"I have been unable to find any decision of the Indian courts exactly in point, but in the case of *Hinde v. Baudry*(1) in which the defamatory statements complained of were contained in a petition presented to a Court by third parties with reference to a pending suit, it is stated by the learned Judges, 'if they (the petitioners) were rightfully making an application in the suit, the principle of public policy which guards the statement of a party or witness against an action would protect them whether the statement was malicious or not;' and in support of this proposition the case of *Scaman v. Netherclift* above referred to is cited.

"With reference to the above authorities I submit the case for the consideration and orders of the High Court."

The defendant did not appear.

Narayana Rau for complainant.

The Court (Collins, C.J., and Shephard, J.) delivered the following judgments:—

COLLINS, C.J.—I am of opinion that the petitioner (defendant) was wrongfully convicted of defamation. The petitioner had brought a charge against a man named Sesha Shetti and was under cross-examination as a witness, and in answer to a question by one of the defendants, he said that Sesha Shetti was "not a Nadawar and was not a member of his family." Sesha Shetti then charged the petitioner with defamation under s. 500, Indian Penal Code, and the Head Assistant Magistrate being of opinion that the petitioner's answer as above caused harm to the reputation of Sesha Shetti, convicted him and fined him Rs. 15 and Rs. 2-12-0, costs, being of opinion that even if petitioner did not know the answers

(1) J.L.R., 2 Mad., 13.

to be false, yet he did not know them to be true, and the circumstances under which the statements were made indicated a total absence of legal and actual good faith. I apply the observations of Cockburn, C.J., in the case of *Seaman v. Nethereliff*(1) and of Field, J., in *Goffin v Donnelly*(2) as to the rules of public policy which subordinated the interest of the individual to that of a higher interest, viz., public justice and of this Court, in the case of *Hinde v. Baudry*(3). The Judges there said that the principle of public policy guards the statements of a witness against an action whether the statements were malicious or not. I think the same observations will apply if the criminal law is set in motion and proceedings are taken under s. 500 of the Indian Penal Code. If the petitioner gave false evidence, he can be punished for that offence. I therefore hold that the petitioner was wrongfully convicted of defamation, and I set the conviction aside and direct the fine and costs to be refunded if paid, to the petitioner.

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SHEPARD, J.—I agree with the learned Chief Justice in thinking that the accused has been wrongly convicted, and I would only refer to the opinion strongly expressed by the Judicial Committee in *Baboo Gunnesk v. Mugneeram*(4) that witnesses are free from any other consequences with respect to statements made by them as such, except that of indictment for perjury. This opinion was expressed with reference to a civil action for damages, but that, as it appears to me, makes no difference. If the ground of the principle is that “it concerns the public and the administration of justice that witnesses giving their evidence on oath in a Court of justice should not have before their eyes the fear of being harassed by suits for damages,” public policy must no less require that they should not be exposed to the fear of prosecution except, as I have observed, the prosecution for perjury.

(1) L.R., 2 C.P.D., 53. (2) L.R., 6 Q.B.D., 307. (3) I.L.R., 2 Mad., 13.

(4) 11 B.L.R., 321, followed in I.L.R., 15 Cal., 264.