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v.  
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extent indicated above and confirmed in other respects. Costs will be paid proportionately by appellant and first and second respondents, but the other respondents are entitled to their costs, as many sets as there are separate pleaders.

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## APPELLATE CRIMINAL.

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

THIAGARAYA AND OTHERS (PETITIONERS),

v.

KRISHNASAMI (COMPLAINANT).\*

*Penal Code, s. 499, exc. X—Defamation—Privilege—“Mala fides”—  
Privilege exceeded.*

The complainant, a Brahman who had been put out of caste, was re-admitted by the executive committee of the caste after performing expiatory ceremonies. This re-admission was not approved of by the accused, who formed a faction of the caste; and they, after an interval of six months, distributed in the bazaar to all classes of the public printed papers in which the complainant was described as a “doshi” or sinner, which signified that he was a person unfit to be associated with. The accused were charged with the offence of defamation. They pleaded privilege, and it was admitted that they had acted without malice:

*Held*, that the accused had not acted in good faith, and that the publication was not under the circumstances privileged and protected by Penal Code, s. 499, exc. X, and that the accused were accordingly guilty of defamation.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the proceedings of Sultan Mohideen Saheb, a Presidency Magistrate, Black Town, Madras, in calendar case No. 16872 of 1891.

The facts of the case, as stated by the Magistrate, are as follow:—

“One Akilandayya, a Smarta Telugu Brahman of the Valva-nad sect, went to England with his wife and two minor children (daughter and son aged five and two years respectively). Having stayed there for some time, he returned to India with his family. He and his wife were, of course, expelled from caste under the

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\* Criminal Revision Case No. 600 of 1891.

“ shastras for having committed the sin of crossing the sea. So  
 “ were the poor children, who were taken by their parents to  
 “ England. It was announced by the community to which the  
 “ family belonged that those who associated with the members  
 “ thereof would be guilty of Pathitha Sumsunga Doshum, *i.e.*, the  
 “ sin of associating with the fallen or outcaste.

“ One Davalla Venkatakrishnayya is the brother of the wife of  
 “ the aforesaid Akilandayya. It is said that this man lived with  
 “ the family after its return from England for a year and a half and  
 “ performed the cunniathanum (marriage ceremony) of his niece  
 “ (Akilandayya’s daughter) and upanayanam of his nephew (Aki-  
 “ landayya’s son). He was under the circumstances, as the accused  
 “ would have it, guilty of Pathitha Samsurgam.

“ It is contended by the accused that under the shastras no  
 “ penance or any purificatory ceremony (prayaschithum) could  
 “ exonerate him from the sin, and that death alone was his prayas-  
 “ chithum.

“ The aforesaid Davalla Venkatakrishnayya, however, submitted  
 “ a petition (see exhibit No. 1) to the second and third accused  
 “ begging of them to consider his case and re-admit him into caste.  
 “ The matter lay in abeyance. In the meantime he submitted  
 “ another petition to one Chivakulu Krishnayya, the elected presi-  
 “ dent of the executive committee (see exhibit B) praying for re-  
 “ admission. Upon this, a meeting was duly convened in the mattam  
 “ and the members proceeded to take action in the matter of the  
 “ petition. It was decided that Davalla Venkatakrishnayya should  
 “ be admitted into caste on his performing certain expiatory cere-  
 “ monies. This being done, Davalla Venkatakrishnayya was duly  
 “ admitted into caste. There were now two factions in the com-  
 “ munity—one adhering to the views of the committee declaring  
 “ Davalla Venkatakrishnayya eligible for readmission, and the  
 “ other dissenting from them. The prosecutor belongs to the  
 “ former faction and the accused to the latter.

“ The accused, indignant at the decision of the prosecutor’s fac-  
 “ tion, gave publicity to this Telugu hand-bill marked as exhibit  
 “ A, the subject matter of the present charge. In this publication  
 “ they say the prosecutor and others are the associates of Davalla  
 “ Venkatakrishnayya and therefore guilty of Pathitha Samsurgam.  
 “ They publicly declare them to be doshis or Samsurga doshis.  
 “ This and the latter part of the publication are what the prosecutor

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“complaints to be defamatory. Six hundred copies of A. were struck off and promiscuously distributed to all classes of people.

“The accused admit the publication. The first accused is the proprietor of the printing press at which the hand-bill was printed and issued. The rest are the signatories.”

*The Acting Advocate-General* (Hon. Mr. Wedderburn) for petitioners.

*The Crown Prosecutor* (Mr. W. Grant) for complainant.

COLLINS, C.J.—The accused were convicted of the offence of defamation under section 500 of the Indian Penal Code, and the question I have to decide is whether the evidence is sufficient to support the conviction, or whether the accused can claim the benefit of any of the exceptions to the section. The accused are Brahmans, and the complainant is also of that caste. It appears that one Akilandayya, a Smarta Telugu Brahman, went to England with his wife and family, and, by doing so, committed a caste offence. He was, therefore, expelled from caste under the shastras for having committed the sin of crossing the sea. The brother-in-law of Akilandayya associated with Akilandayya, and apparently thereby committed an offence against caste. He, however, petitioned and submitted his case to Chivakalu Krishnayya, the elected president of the executive committee, and, at a meeting in February 1891 duly convened, it was resolved that Davalla Venkatakrishnayya should be re-admitted into caste after performing certain expiatory ceremonies. The present accused, however, objected to this, and in August 1891 they published a statement setting forth the facts of the case, the grievous results that must follow if Brahmans associated in any way with persons outcasted, and naming the complainant as one of the “sinners” who associated with Davalla Venkatakrishnayya. A number of copies of the paper containing this statement was distributed to the public by one of the accused in the bazaar. The evidence satisfies me that the word “doshi” or sinner signifies a person unfit to be associated with, and is therefore *prima facie* clearly defamatory.

The Acting Advocate-General for the accused contends that the accused are protected by the tenth exception to section 499 of the Indian Penal Code. “It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is

“interested, or for the public good.” The Crown Prosecutor, however, points out that, although Davalla Venkatakrishnayya was re-admitted to caste in February 1891, the statement complained of was made in August 1891, and that the defamatory matter being published and scattered broadcast amongst the people generally, it was not done in good faith, and that the accused being admittedly only a faction of the Brahmans, had no right to act in the way they did. To bring this case within exception X of section 499 of the Indian Penal Code, it must be proved that the accused intended in good faith to convey a caution to one person against another, that such caution was intended for the good of the person to whom it was conveyed, or of some person in whom that person was interested, or for the public good, and that the caution should be conveyed by the proper means. The defamatory statement was in this case distributed indiscriminately. It cannot be said that it was necessary to caution every pariah who received a copy of the statement against associating with certain Brahmans, or to inform all Madras that the complainant was a doshi. It must also be borne in mind that Davalla Venkatakrishnayya had been re-admitted into caste by at least a portion of the Brahman community, and it would be intolerable to allow a few dissentients to circulate defamatory statements about a person, because they believed that in a caste dispute a wrong conclusion was arrived at. I believe that there was an utter absence of good faith in the proceedings the accused chose to take; that the manner in which the publication was made was unnecessary and in excess of the purpose for which the privilege was allowed, and therefore not protected. In *The Queen v. Sankara*(1), the guru of N published a notice declaring N to be an outcaste and sent by post a registered post-card of similar purport to N. It was held by TURNER, C.J., and MUTTUSAMI AYYAR, J., that the mode of publication adopted by the defendant, *i.e.*, sending the notice on a post-card, vitiated the privilege and indicated a conscious disregard of the complainant’s legal right, and that, therefore, legal malice had been made out and the defendant was guilty of defamation. See also *Williamson v. Freer*(2) and *Somerville v. Hawkins*(3). It is not suggested that the publication was for the public good. As I find that the accused did not act in good faith, none of the other

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(1) I.L.R., 6 Mad., 381.

(2) L.R., 9 C.P., 393.

(3) 10 C.B., 522.

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I hold, therefore, that the conviction was right, and I would dismiss the petition.

PARKER, J.—I am of opinion that the circulation of the warning to members of the caste would certainly be privileged, and here it is admitted that there was no malice. The evidence, however, shows that six hundred copies of exhibit A were struck off and promiscuously distributed to *all classes* of people in the bazaar. Such a mode of publication would destroy the privilege, since the communication would be made to persons who had no corresponding interest in it, and the mode and extent of the publication would be more injurious to the complainant than necessary.

It is then urged by the Acting Advocate-General that all castes are interested that the Brahmans who frequent the temple should not be contaminated, but, on reading exhibit A carefully, I do not find it alleged that others than Brahmans were unable to eat the food offered, because some of those to whom chits had been granted were "sinners." The Magistrate finds that the question only affects the Brahman class of the Hindu community, and is not one in which the general public is interested. That finding on revision must be accepted.

For these reasons, I agree that we should not interfere with the conviction, and dismiss the petition.

*Ranganadham*, Attorney for petitioners.

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