

We, therefore, set aside the Head Assistant Magistrate's order dismissing the application and direct the Magistrate to proceed with the inquiry and pass an order in accordance with law.

PONNAMMAL,
Isr.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

GOVINDA PILLAI.*

1892.
September 1.

*Penal Code, Act XLII of 1860, s. 500—Defamation—Privilege of witness—
Investigation by Police.*

A statement made in answer to a question put by a Police officer under Criminal Procedure Code, s. 161, in the course of investigation made by him is privileged, and cannot be made the foundation of a charge of defamation.

CASE referred for the orders of the High Court under Criminal Procedure Code, s. 438, by T. Weir, Sessions Judge of Madura.

The case was stated by the Sessions Judge as follows :

“The material facts are that in the course of an investigation by the Police into a charge of murder, which was afterwards committed to the Sessions Court for trial (Register Case No. 12 of 1891, Usilampatty Magistrate's file or Session Case No. 99 of 1891) the said Govinda Pillai, when examined by the Police Head Constable (third witness for the prosecution), stated, in the presence of others, that he was keeping the complainant, a married woman. When afterwards examined as a witness for the prosecution (eighth witness) before the Committing Magistrate who held the preliminary enquiry into the murder case, he repeated the same statement, and added that he was told by the complainant that the deceased (in the murder case, was mistaken by her relations for him (Govinda Pillai defendant) and murdered under mistake, their object being to kill him (defendant) for his criminal intimacy with her. The Deputy Magistrate was of

* Criminal Revision Case No. 248 of 1892.

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“opinion that the information given by the defendant to the Police regarding his intimacy with the complainant was untrue, that it offered no clue to the murder then under investigation and was not made for the public good nor to protect the defendant’s own interests, and he accordingly convicted the defendant of an offence under section 500, Indian Penal Code.

“On a perusal of the record I am unable to agree with the Deputy Magistrate. Although I am more than disposed to think that the Deputy Magistrate has not come to a correct finding on the evidence as a whole, I do not make the reference on this ground, but on the ground that the Deputy Magistrate has in my opinion, erred in law in not holding that the communication was, in the circumstances in which it was made a privileged or protected communication.

“I understand it to be the law that a defamatory statement is protected, except for purposes of a prosecution for perjury, when though not made in good faith it is made in the course of judicial enquiry, and is pertinent to the enquiry, or if it is made in answer to questions which were allowed to be put and which the person making the statement was compelled to answer—*Manjaya v. Sesha Shetti*(1) and the English decisions therein referred to.

“In the present case it should be stated that the charge on which the accused has been tried and convicted is for some reason other founded on the statement made to the Police on the 15th August (exhibit B) and not on the more detailed statement to the same effect subsequently made on the 14th September to the Committing Magistrate, and it may perhaps be suggested, having regard to the definition of the terms ‘investigation’ and judicial proceedings in the Code of Criminal Procedure that the statement was not one made in the course of a judicial enquiry.

“Such a construction would, however, in my opinion, be an unduly narrow one and would defeat the object and intention of the law, inasmuch as all the reasons which justify the attaching privilege to a defamatory communication when made in a Court of Justice exist in my opinion still more forcibly for attaching the privilege to such statements made in this country to Police officers conducting an investigation.

“The pressure under which a statement is made to the Police

(1) I.L.R., 11 Mad., 477.

“in this country is probably ordinarily greater than the pressure exercised in a Court of Justice. The witness, it is observed, is bound to answer the questions truly (section 161, Criminal Procedure Code). No doubt an exception is made in favor of questions the answers to which would have tendency to expose the witness to a criminal charge, but the witness, it may fairly be assumed, would not ordinarily be aware of this distinction.

“In the present case the evidence for the prosecution itself shows that the defamatory statement was made under pressure. The third witness’ (Head Constable) evidence on the subject is that he sent for the accused on information received and asked him. He said ‘No.’ Then I insisted on his telling me the truth. Then he admitted he was keeping the woman.

“As to the pertinency of the communication, there can, I think, be no reasonable question. The Police were investigating a murder, and the motive for the crime was obscure. The deceased, it should be mentioned, was killed, while being pursued after stealing betel-leaves (property of trifling value) from a garden, and the information that the deceased was killed in mistake for the present accused, against whom enmity was said to be entertained on account of the alleged criminal intimacy with complainant appeared to afford some reasonable motive for the commission of the offence.

“The information, such as it was, was at any rate accepted and put forward along with other matter by the Police as explaining the murder on their occurrence report of 15th August 1891, and it may here be stated that the evidence of the accused as to this fact of motive was only excluded by me at the sessions trial, because his alleged informant (the present complainant) had not been called or sent up as a witness.

“It may perhaps be suggested that the ground of public policy on which the principle of protecting a defamatory statement made by a witness before a Court of Justice is based (viz., 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) does not apply in the case of the merely preparatory proceedings before the Police.

“This view, although deserving of consideration is, however, I think, scarcely well founded. Public policy, it appears to me,

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"requires that a witness should be protected equally when giving information which may turn out to be pertinent to the Police as when giving evidence in a Court of Justice.

"If I am correct in this view it can make no difference that the Magistrate has (erroneously as I am inclined to think) found the information given to be untrue."

Counsel were not instructed.

JUDGMENT.—We think that the Sessions Judge is right in holding that the principle of the decision in *Manjaya v. Sesha Shetti*(1) is applicable to the case of persons making statements in the course of an investigation by a Police officer. Such persons are bound by section 161, Criminal Procedure Code, to answer truly all questions put to them, except such as tend to criminate themselves, and are therefore entitled to the protection which the law gives to witnesses. Accused, in the present case, made the statement, on which the defamation is laid in answer to a question by the Police Constable, and we think, under the principles laid down in the above decision, his statement is a privileged communication.

The conviction is set aside, and the fine, if paid, is to be refunded.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

1892.
Sept. 6, 7, 8, 9.
October 12.
1893.
February 3.

MAYEN AND ANOTHER (DEFENDANTS NOS. 1 AND 3), APPELLANTS,
v.

ALSTON AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Contract Act—Act IX of 1872, ss. 215, 216—Principal and agent—Unauthorised profits of agent—Evidence Act—Act I of 1872, s. 92—Contemporaneous oral agreement—Account-sales.

The plaintiffs, a firm of merchants, entered into an agreement (which was reduced to writing) with the defendants, who were dealers in coffee and other produce, to the following effect, viz.:—that all consignments of produce, which the defendants might make to Europe, should be made through the plaintiffs' firm; that the plaintiffs should receive a commission of 1 per cent. for themselves and 2½ per cent. for their agents at the port of consignment; that the plaintiffs should make

(1) I.L.R., 11 Mad., 477.

* Appeal No. 129 of 1891.