

APPELLATE CRIMINAL.

Before Mr. Justice Waller and Mr. Justice Krishnan Pandalai.

IN RE A. S. RADHAKRISHNA AYYAR (ACCUSED),
PETITIONER.*

1932,
January 28.

Indian Penal Code (Act XLV of 1860), sec. 171G—Offence under—Meaning of “any statement purporting to be a statement of fact”—Mere general imputations not sufficient.

By the words “any statement purporting to be a statement of fact” in section 171G, Indian Penal Code, is intended “any statement which is made as a statement of fact” and to constitute an offence under that section something must be stated as a fact and not as a general imputation or as a matter of opinion.

General imputations of misconduct unaccompanied by any charges of particular acts of misconduct cannot properly be described as statements of fact within the meaning of section 171G, Indian Penal Code.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of Session of the Chingleput Division in Criminal Appeal No. 8 of 1931 preferred against the judgment of the Court of the Sub-Divisional First-class Magistrate of Saidapet in Calendar Case No. 126 of 1931.

A. S. Sivakaminathan for petitioner.

N. S. Mani for Public Prosecutor (*L. H. Bewes*) for the Crown.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by WALLER J.—The petitioner in this case was convicted of the offence of criminal defamation under section

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* Criminal Revision Case No. 710 of 1931.

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500, Indian Penal Code, and his conviction was confirmed on appeal. The defamation was embodied in a document which was published by him during an election to a Taluk Board, at which election one Ramanatha Ayyar (the respondent) was a candidate. In revision it is contended on his behalf that he should have been prosecuted for an offence under section 171G, Indian Penal Code, which could not be done without the sanction of the Local Government. Several decisions have been cited before us on this point but we propose to deal with the petition on another ground. Section 171G, Indian Penal Code, has been framed on the lines of section 1 of an analogous English Act, An Act to amend the Corrupt and Illegal Practices Prevention Act of 1883, which was passed in 1895. Section 1 of that Act defines as an illegal practice the making or publishing of any false statement of fact in relation to the personal character or conduct of a candidate. Section 171G, Indian Penal Code, runs as follows:—

“Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate shall be punished with fine.”

It is not apparent why the Indian Legislature should have thought fit to use the words “any statement purporting to be a statement of fact”, but what was intended doubtless was “any statement which is made as a statement of fact” and that comes to much the same thing as is conveyed by the English Statute. One thing at any rate is clear, that something must be stated as a fact and not as a general imputation or as a matter of opinion. The document in question is in the following terms:—

“This is to inform all that the Village Munsif Krishna-swami Ayyar and his son Ramanatha Ayyar in zamin Pallavaram

have no properties. They will not shrink from committing even murder. Both are in enjoyment of some properties by virtue of an adoption which is false and opposed to law. Those properties belong to Government. Krishnaswami Ayyar of them has been making many kinds of forgeries. They are doing many kinds of harm to the poor. Ramanatha Ayyar of them is an atheist. They are eating (misappropriating) Government money unjustly by committing forgeries, misrepresentation and false personation. They are unjustly eating the common money and the temple money in zamin Pallavaram. They are doing acts which even mean-minded men will not (stoop to) do. They are doing many other improper acts. It is understood that the said Ramanatha Ayyar stands as a candidate for membership of the Taluk Board. I respectfully request vote should not be given to him for the above mentioned reasons."

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It begins by asserting that the candidate and his father have no properties. As that statement, which is a statement of fact, is followed by another statement that they are in enjoyment of some properties it requires no consideration. The next imputation is that they will not shrink from committing even murder; that can hardly be described as a statement of fact. The next statement is that they are in enjoyment of some properties by virtue of an adoption which is false and opposed to law; that might possibly be described as a mixed statement of fact and opinion. The next statement is that they are doing many kinds of harm to the poor; that again is not a statement of fact. The next statement is that the candidate is an atheist; that again may possibly be described as a statement of fact. The next four sentences embody general charges of forgery, misrepresentation, false personation, misappropriation, acts "which even mean-minded men will not stoop to do"; not a single specific act of forgery or misrepresentation or misappropriation is charged and the allegations can most certainly not be described as statements of facts. The English Act provides that any person who shall make or publish any false

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statement of fact such as is contemplated by it may be restrained by injunction by the High Court of Justice from repeating the false statement and for the purpose of granting an interim injunction *prima facie* proof of the falsity of the statement shall be sufficient. No similar provision has been made in India but the section of the English Act makes it clear what statements of fact fall within its mischief. They are statements of fact of the falsity of which *prima facie* proof is possible. When the statement is that a man will not shrink from committing murder, how is that expression of opinion to be disproved? When it is alleged that a man does many kinds of harm to the poor, that he misappropriates Government money, that he commits forgery and so forth, how would it be possible, in the absence of particulars, to prove *prima facie* that the allegations are false? It is true that there are in the document in question one or two statements which can properly be described as statements of fact, but the bulk of it is taken up with general imputations of misconduct unaccompanied by any charges of particular acts of misconduct and they cannot properly be described as statements of fact within the meaning of section 171G, Indian Penal Code. That being so, we think that the petitioner was properly convicted and sentenced for an offence under section 500 of the Indian Penal Code. The offending document, as a whole, was not one to which section 171G, Indian Penal Code, applied and he could not therefore be prosecuted under that section. The petition is dismissed.

K.N.G.