

of the trust and a *shebait* has no right to appoint a successor to himself: *Vide* the cases of *Chandra Nath Chakravarti v. Jadabendra Chakravarti* (1), *Sheo Prasad v. Aya Ram* (2) and *Sheoratan Kunwari v. Ram Pargash* (3). In the present case it has been held by both the courts below that Udho Ram is the heir of Manni Ram, the founder of the trust. Therefore the appointment of the plaintiff by Udho Ram as a *shebait* is a valid appointment and the plaintiff has a right to enter into possession of the endowed property as a trustee. The defendant has not a shadow of title to remain in possession and the decree passed against him is perfectly correct. The remaining grounds taken in the memorandum of appeal have not been pressed. Accordingly we dismiss the appeal with costs.

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Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Dalal.

EMPEROR *v.* MURLI PATHAK.*

Criminal Procedure Code, section 342—Extent of protection given to an accused in the matter of statements made by him when being examined by the court.

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 May, 25.

An accused person being examined by the court under section 342 of the Code of Criminal Procedure was asked why the charge had been brought against him, and he replied that it was through enmity on the part of the complainant. He was then asked if he had anything further to say, and he proceeded to give reasons for the alleged enmity, in the course of which he falsely made defamatory statements against the complainant.

*Criminal Revision No. 270 of 1927, from an order of Govind Sarup Mathur, Sessions Judge of Mirzapur, dated the 12th of March, 1927.

(1) (1906) I.L.R., 28 All., 689. (2) (1907) I.L.R., 29 All., 663.
 (3) (1896) I.L.R., 18 All., 227.

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Held, that the accused was exempt from prosecution in connection with the statement so made by reason of section 342(2) of the Code. *Champa Devi v. Pirbhu Lal* (1), *Bai Shania v. Umrao Amir Malik* (2), *In re Venkata Reddy* (3) and *Satish Chandra Chakravarti v. Ram Doyal* (4), referred to.

THE facts of this case sufficiently appear from the judgement of the Court.

Maulvi *Muhammad Abdul Aziz*, for the applicant.

Munshi *Gadadhar Prasad*, for the opposite party.

DALAL, J. :—The only ground worth considering in this application for revision is ground No. 3, that the alleged defamatory statement, having been made by the applicant as an accused person in his defence, cannot form the subject-matter of a prosecution for defamation. The applicant Murli Pathak was prosecuted by Bhukkal on a charge under section 426 of the Indian Penal Code. In the ordinary course, during the trial, the applicant Murli Pathak was examined by the court under section 342 of the Code of Criminal Procedure. Questions were put to him by the court, and he answered them. At the end, one question was why the charge was brought against him by Bhukkal, and he replied that this was owing to enmity. The next question was whether he had anything more to say, and in answer he gave a reason for the enmity. His answer was that he and Bhukkal were not on dining terms because Bhukkal's daughter-in-law was in the keeping of a *Lohar*. Bhukkal thereupon prosecuted Murli Pathak under section 499, Indian Penal Code, for defamation, and Murli was punished by a Magistrate with a fine under section 500, Indian Penal Code. An appeal by Murli was dismissed, and he has brought this revision application to this Court.

In my opinion the provisions of section 342 (2) of the Code of Criminal Procedure will apply. It is laid

(1) (1925) 24 A.L.J., 329.

(2) (1925) I.L.R., 50 Bom., 162.

(3) (1912) I.L.R., 36 Mad., 216.

(4) (1920) I.L.R., 48 Cal., 388.

down there that the accused shall not render himself liable to punishment by refusing to answer such questions—that is, those put to him by the court under clause (1)—or by giving false answers to them. Murli, who was an accused person in the case under section 426, is now punished for giving a false answer to a question by the court. In my opinion the order was prohibited by statute. On behalf of Bhukkai complainant my attention was drawn to the judgement of Mr. Justice DANIELS in *Champa Devi v. Pirbhu Lal* (1). In that case the accused person who was prosecuted for defamation had filed a written statement, and the learned Judge has specifically mentioned that the immunity conferred by section 342(2) of the Code of Criminal Procedure did not extend to a written statement. The learned counsel next referred me to a Full Bench decision of the Bombay High Court, *Bai Shanta v. Umrao Amir Malik* (2). The question referred to the Full Bench was whether relevant statements made by an accused person under section 342 of the Code of Criminal Procedure, or contained in a written statement filed by him with the court's permission, are absolutely protected from being the subject of a prosecution for defamation under section 500, Indian Penal Code. The answer to this was in the negative. With all respect it may be pointed out that the question includes two different matters, one privileged under section 342 (2) and the other (a written statement) not so privileged. The learned CHIEF JUSTICE while delivering the judgement of the Full Bench, observed :—

“ There is nothing in section 342 of the Code of Criminal Procedure which gives an accused person an absolute privilege as regards defamatory statements made by him in his examination.”

However the matter may be put, there is no explanation of the provisions of clause (2) of section 342,

(1) (1925) 24 A.L.J., 329.

(2) (1925) I.L.R., 50 Bom., 162.

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and even if the accused did not have any absolute privilege, it will be sufficient for his purpose if he cannot be punished for making a false statement in answer to a question put to him by the court. When he cannot be punished, it must be presumed that he had an absolute privilege under Section 342(2) of the Criminal Procedure Code. There is no consideration given to this matter by the learned Judges of the Bombay High Court. The Madras High Court is in favour of absolute privilege, see *In re Venkata Reddy* (1); while the Calcutta High Court has disagreed with this opinion: *Satish Chandra Chakravarti v. Ram Dayal De* (2). The question which arises here is not of absolute privilege, but of the bar to the accused being punished for anything he may state in answer to questions by the court.

It was argued that the answer containing the defamatory statement was wholly irrelevant and added by Murli Pathak, not in answer to any question, but of his own motion, to defame Bhukkal. I cannot agree to that view of the circumstances of the examination. Murli was asked the reason for a false charge, and when he gave that to be enmity, and when the court proceeded to direct him to make any further statement, the natural implication was that the court desired to know the reason for the enmity, and the defamatory statement did give that reason. The answer which is the subject of the defamation was relevant to the matter in issue and arose out of a question put by the court. I hold that Murli was saved from punishment by the protection given to him under section 342 (2) of the Code of Criminal Procedure when he made the defamatory statement.

I set aside the conviction and sentence and order the fine, if any recovered, to be refunded.

Conviction quashed.

(1) (1912) I.L.R., 36 Mad., 216.

(2) (1920) I.L.R., 48 Cal., 388.