

1936  
 RAM  
 SARUP  
 v.  
 KANIZ  
 UMMEHAN.

tion, a learned Judge of this Court hearing the appeal was not competent to alter that order. This argument is wholly untenable. The learned Judge pointed out that in one case at least the court below had passed an order without the record being before it. He has reconsidered the matter and come to the conclusion that the injunction should be issued unconditionally. We do not think that this is a fit case in which we should interfere in a Letters Patent appeal. The appeal is dismissed with costs.

*Before Sir Shah Muhammad Sulaiman, Chief Justice,  
 and Mr. Justice Bennet*

1936  
 October, 13

BENI MADHO PRASAD (PLAINTIFF) v. WAJID ALI  
 (DEFENDANT)\*

*Defamation—Liability to damages—Police inquiry and report ordered by Magistrate upon a complaint—Report made by police officer thereupon—Privilege—Absolute privilege—Judicial proceedings—Communication between officials relating to state proceedings—Public policy.*

Absolute privilege attaches to a report made by a police officer to a Magistrate, which has been ordered by the Magistrate under section 202 of the Criminal Procedure Code, and a suit for damages can not lie in respect of any alleged defamatory statements contained therein, and no question of malice or absence of malice arises in such a suit.

When a Magistrate calls for a report by the police under section 202 of the Criminal Procedure Code it is the imperative duty of the police officer to submit, fearlessly and without any apprehension in his mind, the full facts which are disclosed to him and indeed all the information which is relevant to the inquiry. He is merely to collect information during the course of investigation, and is not the judge of its truth, and he must record his own conclusion based on the inquiry made by him. It would be injurious to the public interest if his freedom of action in a matter concerning the public welfare were to be curbed by his apprehension that if he reported any fact, the absolute truth of which he might not be able to establish in a court of law, he would be liable to an action for defamation. It is for this reason that the law confers on him an absolute privilege in such a case.

\*First Appeal No. 483 of 1933, from a decree of R. Dayal, Subordinate Judge of Mirzapur, dated the 23rd of May, 1933.

1936

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 BENI  
 MADHO  
 PRASAD  
 v.  
 WAJID ALI

Such a statement falls within the class of statements made in the course of judicial proceedings, and is accordingly absolutely privileged. Proceedings before a Magistrate under chapter XVI of the Criminal Procedure Code are judicial proceedings, as defined in section 4(1)(m) of the Code; and, for the purpose of the absolute privilege, it is not necessary that the statement in question should itself have been made on oath, so long as it is a part of the judicial proceeding, particularly if it is a report made under orders of the court.

Such a statement also falls within the class of communications relating to state matters made by one public official to another, and is accordingly absolutely privileged. In India state matters must include public matters, particularly matters connected with the administration of justice, and a state officer must include a public officer whose duty it is to make inquiries and investigations into allegations of commission of criminal offences.

Mr. S. B. Johari, for the appellant.

Sir Syed Wazir Hasan and Mr. Muhammad Ismail, for the respondent.

BENNET, J.:—This is a first appeal by the plaintiff, the Raja of Kantit, who brought a suit for damages for libel against an inspector of police, M. Wajid Ali, and his suit was decreed for damages of Re.1 only. There is also a cross-objection claiming that the suit should be dismissed *in toto*. The plaint set out that the defendant was actuated by feelings for certain Muhammadans, against whom the Raja had taken action preventing them from obtaining fuel, etc. from Bijaipur jungle, and that in the sessions case No. 5 of 1932, Sarjoo Gond v. Bhagwan Singh and others, under section 395 of the Indian Penal Code the defendant had been ordered to make an investigation and he submitted a false and wrong report in which the defendant, without reasonable and probable cause and out of sheer malice, made false statements which are claimed to be libellous and defamatory and which are as follows:

“(1) These improper acts of the Raja Saheb are sufficiently known in that neighbourhood and every one hates him on account of these acts of tyranny of his.

1936

BIRRI  
MADHO  
LHASAB  
v.  
WALID ALI

Burns, J.

“(2) In order to carry out such improper and illegal orders the Raja Sahab has employed mostly previous convicts and persons of bad character.

“(3) In this way there are several history-sheeters who are in the employ of Raja Sahab and who, being under the protection of such a big man, commit crimes and escape punishments.

“(4) It is very shameful for a person like Raja Sahab of Bijaipur to do such acts.”

The defence was that the defendant was ordered to investigate case No. 5 of 1932 and he submitted case diaries containing a report of the investigation to the Superintendent of Police in which he made the statements detailed in the plaint. But the written statement denied that the report was false or wrong or that the statements were made without reasonable and probable cause or out of malice, or that they were unjust and uncalled for. In paragraph 11 it was pleaded “That the defendant having been under a legal duty to investigate the case and to submit his diaries to the Superintendent of Police, the diaries and their contents were confidential and privileged and no suit for libel can legally be based on them”. The defendant produced evidence to show that the statements made were true, and we have been taken over some of this evidence, and the court below has come to the conclusion that the defendant had reasonable and probable cause for making the statements complained of. But the court stated on page 41 of its judgment: “The fourth statement complained of is to the effect that such conduct is disgraceful for a person like Raja Sahab, Bijaipur. This expression of opinion was certainly uncalled for and the presumption can be made that it was made maliciously.” The court below treated the case as one of qualified privilege. If the case was one of qualified privilege, we are of opinion that it was for the plaintiff to prove that there was express malice, and express malice could not be presumed merely from looking at the document itself.

[The judgment then proceeded to discuss the evidence and came to the following finding.]

If therefore the case was one of merely qualified privilege we consider that the defence have clearly shown that there was ample justification for the statements in the report and the plaintiff has altogether failed to show that there was any express malice of the defendant.

But a wider question has been argued in this case, namely the question which was raised by the written statement in paragraph 11, which is a plea of absolute privilege for a report of this nature. This subject may be examined from various points of view. First of all as to the practical point of view. If there was not an absolute privilege for the confidential reports of a police officer it would obviously be very difficult for a police officer to do his duty. A police officer has to report on the question whether in his opinion an accused person has or has not committed an offence. If he states his opinion that an accused person has committed an offence and the accused person is afterwards acquitted by a court, then obviously in every case, on the view put forward for the appellant, a police officer would be liable to be sued for libel and the question would arise as to whether he had reasonable and probable cause for the statements which he made. It would be extremely inconvenient if the police were constantly hampered in the execution of their duty by defending suits for libel brought against them on account of what they stated in confidential reports. Learned counsel for the appellant has been unable to show that any case has ever been brought either in England or in India against a police officer for the statements which he made in a confidential report. Learned counsel referred at some length to a ruling of a Full Bench in this Court, *Majju v. Lachman Prasad* (1); but that was a report made by a

1936

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 BENI  
 MADHO  
 PRASAD  
 v.  
 WAJID ALI
*Benrol, J.*

1936

BENI  
MADHO  
PRASAD  
v.  
WAJID ALI

*Bennet, J.*

member of the public in the police station and it was held that that was an occasion of qualified privilege. It is obvious that a report in a police station by a member of the public does not stand at all on the same footing as a confidential report made by a police officer in the course of his duty to another officer or to a Magistrate.

It may be noted, as a matter of practice, that these reports do not form part of the judicial record but they are kept in the custody of a police official in the court and are retained in the police record room. In the present case it appears by some error the report was filed with the record. But that cannot affect the position of the defendant, because if the defendant was protected by an absolute privilege in making what he believed to be a confidential report, then the publication of that by attaching it to the record will not affect his position. The particular report in this case appears to have been made under section 202 of the Code of Criminal Procedure, and although in that section there is a reference in sub-section (2) to the powers of a police officer conducting an investigation under the Code, that is, under chapter XIV, it may well be that all the provisions of chapter XIV do not apply. In any case it has not been shown for the appellant that the accused has any right to receive copies of the statements made in the report or to inspect the report. In regard to the statements in an ordinary police diary under chapter XIV there is a provision under section 162 of the Code of Criminal Procedure against the use of those statements in any way except that on the request of the accused the statements are inspected by the court and not by the accused, and if the court considers under the proviso that there is nothing against the public interest in the statements then the court may allow a copy to be granted to the accused to be used for contradicting the witness in the manner provided by section 145 of the Indian Evidence Act. Now cases of absolute

privilege in the various books on libel have been summarised under a few headings which are:

- (1) Parliamentary proceedings.
- (2) Judicial proceedings.
- (3) Naval, Military and State proceedings

We are of opinion that the report of the police officer in the present case might either be considered as part of a Judicial proceeding or as a State proceeding. Learned counsel for the appellant invited attention to the fact that in the Criminal Procedure Code a judicial proceeding was defined in section 4(1)(m) as "includes any proceeding in the course of which evidence is or may be legally taken on oath", and he argued that as the circle inspector's proceedings and report were not evidence taken on oath, therefore, it could not be said that the report was part of the judicial proceedings. But we understand that the words "judicial proceedings" include the whole proceeding from the filing of the complaint until the decision of the court, and under section 202 an inquiry or investigation may be ordered and such inquiry or investigation is part of the judicial proceedings. It is on the result of the inquiry or investigation that the Magistrate takes further action either by dismissing the complaint under section 203 or issuing a process for the appearance of the accused. In regard to the third class of absolute privilege—naval, military and state proceedings—learned counsel for the appellant argued that state proceedings in the English books on libel and slander only cover the proceedings of high officers of state. We do not think that any such meaning is to be attached to the words "state proceedings", and as regards officers of state in India all servants of the Government, high or low, of a certain degree are classed under section 2(17) of the Code of Civil Procedure as public officers and in that class of public officer the defendant comes under sub-section (f) as an officer of Government whose duty it is as such officer to prevent offences, etc. If therefore there is a privilege of

1936

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BENI  
MADHO  
PRASAD  
v.  
WAJID ALI

*Bennet, J.*

1936  
 BANI  
 MADHO  
 PRASAD  
 v.  
 WAJID ALI

Grant, J.

this nature in India it must apparently be for all public officers within the definition of section 2, sub-section (17) as that Code draws no distinction between officers who belong to the class of the Secretary of State and high officers of that nature and other officers who are not so highly placed. But the English rulings do not support the argument put forward for the appellant; on the contrary in *Chatterton v. Secretary of State for India* (1) it is laid down at page 190 that there is absolute privilege for every official letter written by an officer of the state in the course of the performance of his official duty, and the same proposition has been laid down in *Salamon v. Secretary of State for India* (2). In *Burr v. Smith* (3), there was the case of the report by a liquidator in bankruptcy proceedings and it was held that this report had an absolute privilege. In that case and in *Watson v. M'Ewan* (4) it was held that all documents are privileged which are necessary to the preparation or conduct of litigation, provided the proceeding is or is pending before a court of competent jurisdiction and the publication is made at a proper time and place. Reference by learned counsel for the appellant was made to the case of *Adam v. Ward* (5), where it was held that it was a qualified privilege only. But in that case the circumstances were widely different and it was not a case of a communication by one official to another; on the contrary the defendant had at the direction of the Army Council published matters in the newspapers which reflected on the plaintiff. The publication in the newspapers by an official stands on an entirely different footing from a communication made by one official to another. In *Narasimha Shankar v. Balwant Lakshman* (6) there was a case where there was a communication by a chief constable of police to his superior officers and it was held to be a case of qualified privilege. But there was no point raised

(1) [1895] 2 Q.B., 189.

(3) [1909] 2 K.B., 306

(5) [1917] A.C., 309.

(2) [1906] 1 K.P., 613.

(4) [1905] A.C., 480.

(6) [1903] LL.R., 27 Bom., 585.

before the court to the effect that this should have been classed as a communication of absolute privilege and therefore as the point was not raised the ruling did not make any decision on it. In regard to the argument that only important matters can be treated as affording absolute privilege we would refer to the case of *M. Isaacs and Sons v. Cook* (1). In that case the High Commissioner for Australia in London sent a communication to the Prime Minister of Australia about green-fruit brokers in Covent garden in London, and it was stated that they took consignments from merchants in Australia and realised low prices and made 100 per cent. profit from sales, the consignment in question being oranges. The sale of oranges in London is not a matter of very great importance, and in our opinion it is not of as much importance as the administration of justice in India. In *Collector of Jaunpur v. Jamna Prasad* (2) there was a case where a statement had been made in writing to the Collector on a form prescribed under the Court of Wards Act and the applicant desired that his estate should be taken under the Court of Wards and he detailed his financial position giving a list of his property and his liabilities. Subsequently the plaintiff in a suit on a mortgage against the applicant desired to use this document as an admission by the applicant of his liability for this mortgage debt. It was held that a communication made by the applicant to a public officer was one of official confidence within the meaning of section 124 of the Evidence Act and could not therefore be used as an acknowledgment of liability in any way. We fail to see why section 124 of the Evidence Act should not be applied to the report of the circle inspector in the present case as the case is obviously a stronger one than that of the application by a member of the public to the Collector.

There is no English ruling precisely on the point of a suit against the defendant for an official communica-

1936

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 BIRNI  
 MADHO  
 PRASAD  
 v.  
 WAJID ALI

Bennet, J

(1) [1925] 2 K.B., 391.

(2) (1922) I.L.R., 44 All., 360.



1936

BENI  
MADHO  
PRASAD  
v.  
WAJID ALI

Bennet, J.

tion by one police officer to another. But in *Stuart v. Bell* (1) there was a case in which the chief constable of Edinburgh had sent a report in writing to the chief constable of Newcastle stating that there was reason to suspect that the plaintiff had been guilty of theft in a hotel in Edinburgh. Now the plaintiff did not bring any suit for libel against the police officer for that communication but he brought a suit for libel against the Mayor of Newcastle who had divulged the contents of that communication to the master of the plaintiff, the late Sir H. M. Stanley, and it was held that that was an occasion of qualified privilege for the Mayor of Newcastle. The inference would be that apparently it was considered that it was a case of absolute privilege for the police officer. We are of opinion that the present was a case of absolute privilege and that whether malice existed or not no suit for libel would lie against the defendant.

One other point was argued on behalf of the defendant and that is that limitation would apply in the present case under article 2 of the Limitation Act for which the period is 90 days and he made a reference to the Full Bench ruling of *Shiam Lal v. Abdul Raoof* (2). Although that case was also concerned with a police constable, we consider that the present case is not one which would come under article 2 of the Limitation Act and that the period of limitation for the present case is the ordinary one for a suit in tort and that the plaint, therefore, in the present case was within limitation.

SULAIMAN, C.J.:—I agree and would like to add only a few words because of the importance of the question of law raised in this case. The suit was brought for damages for defamation contained in a police report submitted by the defendant, who was a circle inspector. On the 30th of July, 1931, Sarju had filed a complaint before the Magistrate accusing certain servants of the plaintiff of offences under sections 379 and 342 of the

(1) [1891] 2 Q.B., 341.

(2) (1935) I.L.R., 57 All., 935.

Indian Penal Code. The Magistrate who took cognizance of this complaint passed an order on the same day requesting the Superintendent of Police to get an inquiry made by the circle inspector. The Superintendent of Police forwarded the complaint to the circle inspector, with directions to comply with the order. The circle inspector then made an investigation and submitted a report to the court through the Superintendent of Police. It is this report which is the basis of the present suit. The question is whether the allegations made in this report are absolutely privileged, or whether there is only a qualified privilege with regard to them.

On grounds of public policy there are certain matters to which an absolute privilege attaches, whereas there are other matters of less importance which have only a restricted protection. The reason for giving an absolute privilege to certain classes of cases was given by LORD ESHER in *Chatterton v. Secretary of State for India* (1): "It is that it would be injurious to the public interest that such an inquiry should be allowed, because it would tend to take from an officer of state his freedom of action in a matter concerning the public weal. If an officer of state were liable to an action of libel in respect of such a communication as this, actual malice could be alleged to rebut a plea of privilege, and it would be necessary that he should be called as a witness to deny that he acted maliciously. That he should be placed in such a position, and that his conduct should be so questioned before a jury, would clearly be against the public interest and prejudicial to the independence necessary for the performance of his functions as an official of state. Therefore the law confers upon him an absolute privilege in such a case." It is essential in the public interest that an official should be free to speak his mind fully and frankly without any fear or apprehension.

1936

BENI  
MADHO  
PRASAD  
v.

WAJID ALI

*Sulaiman.*  
C.J.

(1) [1895] 2 Q.B., 189(191).

1936

BENI  
MADHO  
PRASAD  
v.  
WAJID ALI

There are, among others, two distinct classes which have an absolute privilege attaching to them, (a) statements made in the course of judicial proceedings, and (b) communications relating to state matters made by one official to another.

*Sulaiman,*  
C.J.

It is to be seen whether the report made by the defendant in this case came under one or the other or both of these categories. Now chapter XIV of the Criminal Procedure Code deals with information received by the police and their powers of investigation. Section 172(1) refers to the duty of proceeding in investigation "under that chapter". Similarly section 173(1) refers to the report of the police officer in an investigation "under that chapter". On the other hand, chapter XVI deals with the complaints made to Magistrates and taking cognizance of an offence brought to their notice. When a Magistrate takes cognizance of an offence, it is his first duty to examine the complainant on oath under section 200. Then, if he thinks it necessary, he may either issue the process for compelling the attendance of the accused or postpone the issue of the process and inquire into the case himself or order a Magistrate subordinate to him to make an inquiry or investigation, or direct an inquiry or investigation to be made by a police officer or by such other person as he thinks fit. The object is that the Magistrate should satisfy himself that the complaint is not a frivolous one, and if on the receipt of the report in such inquiry he considers that the complaint should be dismissed summarily, he need not issue the process for the appearance of the accused.

Now when a police officer has been called upon by a Magistrate, when considering a complaint under chapter XVI, to make a report, it is the imperative duty of the police officer to submit, fearlessly and without any apprehension in his mind, the full facts which are disclosed to him and indeed all the information which is relevant to the inquiry. If a police officer is to labour under the apprehension that later on he would be called

upon to substantiate the truth of the allegations made by him in his report, it would be almost impossible for him to make any report at all. He is merely to collect information during the course of investigation and is not the Judge of its truth, and is to report on the basis of the impression formed by him whether or not the complaint is true; and he must record his own conclusion based on the inquiry made by him.

It cannot be doubted that the proceedings before a Magistrate under chapter XVI are judicial proceedings within the meaning of section 4(1)(m) of the Code of Criminal Procedure in which evidence may be legally taken on oath. Indeed, as already pointed out, it is the duty of the Magistrate to examine the complainant on oath before he proceeds further. For the absolute privilege, it is not necessary that the statement made should itself have been made on oath, so long as it is a part of the judicial proceeding, particularly if it is a report made under orders of the court. When a police officer is ordered by the Magistrate to make an inquiry or investigation, he is bound to report stating all the facts that have come to his information, and it would be improper on his part to conceal any facts from the knowledge of the Magistrate simply because he has a fear that if called upon he may not be able to prove the truth of such facts in a court of law.

It also seems to me that a report made by a police officer to his superior officer under the orders of the latter, with a view to the same being forwarded to the Magistrate, is an official communication made by one official to another in the discharge of his duty. The Superintendent of Police had called upon the circle inspector to make an investigation and to report, and the circle inspector had no option but to submit a report to the Superintendent of Police. The category "communications relating to state matters" is not confined to cases where Secretaries of State or Under-Secretaries of State are communicating with one another. In India state

1936

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 BENI  
 MADHO  
 PRASAD  
 v.  
 WAJID ALI

*Sulaiman,*  
*C.J.*

1936

BENI  
MADHO  
PRASAD  
v.  
WAJID ALI

*Sulaiman,*  
C.J.

matters must mean public matters, particularly matters connected with the administration of justice, and a state officer must include a public officer whose duty it is to make inquiries and investigations into allegations of commission of criminal offences. The report that was made in this case was not a voluntary act done by the circle inspector on his own initiative, but was one which had been ordered from him and which it was his bounden duty to make. If such reports are not to be given an absolute privilege, there would be a great danger of police officers being deterred by personal fear from making a complete disclosure of the information they are able to collect during an inquiry. I therefore agree that there was an absolute privilege in making this report to the Magistrate through the Superintendent of Police, which had been ordered under section 202 of the Code of Criminal Procedure.

BY THE COURT:—The appeal is dismissed and the cross-objection is allowed and the suit is dismissed. The plaintiff will pay the costs of the defendant throughout and will bear his own costs.