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COMMISSIONER OF  
INCOME-TAX  
v.  
INDRA SEN  
RAIZADA

BAJPAI and BRAUND, JJ.:—We answer both the questions referred to us together in these words:

That upon the materials before us the assessee is not entitled to claim a set-off of losses either on the racing establishment account or on the betting account.

The fee of the learned Advocate-General is assessed at a sum of Rs.200. A copy of our judgments and of the order of the Court under the seal of the Court and the signature of the Registrar shall be sent to the Commissioner of Income-tax.

In the circumstances of the present case we direct the parties to bear their own costs.

### REVISIONAL CRIMINAL

1940  
January, 10

Before Mr. Justice Rachhpal Singh  
MUHAMMAD ISA v. NAZIM HUSAIN\*

*Privilege—Witness making defamatory statement—No absolute privilege—Prosecution on complaint by defamed person—Sanction of court not necessary—Criminal Procedure Code, sections 195, 198, 476.*

Statements made by a witness in judicial proceedings are not absolutely privileged, and a witness making a defamatory statement can be prosecuted for defamation.

Such prosecution will lie on the complaint of the person aggrieved, according to section 198 of the Criminal Procedure Code; the sanction of the court is not necessary nor can the court itself make a complaint.

Mr. *Mahbub Alam*, for the applicant.

Mr. *Shambhu Prasad*, for the opposite party.

The Deputy Government Advocate (Mr. *Sankar Saran*), for the Crown.

RACHHPAL SINGH, J.:—These are two connected revision applications which can be conveniently disposed of together.

In connection with a murder charge Chhote Lal and Nazim Husain made statements before a Magistrate.

\*Criminal Revision No. 669 of 1939, from an order of M. M. Seth, Sessions Judge of Allahabad, dated the 25th of April, 1939.

Khan Bahadur Syed Muhammad Isa, the complainant, alleged that these statements were defamatory towards him and in connection with them he filed complaints against Chhote Lal and Nazim Husain under section 500 of the Indian Penal Code. The learned trial Magistrate was of opinion that the complaints of the complainant were incompetent. According to his view, no case could be started against the two accused persons unless there was a complaint made by the judicial officer before whom the alleged defamatory statements were made. The two complaints were dismissed. The applicant filed revisions before the learned Sessions Judge who summarily rejected them. The applicant has now come up in revision before this Court.

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Two points arise for consideration in this case. The first is whether the statements made by the accused persons during the judicial proceedings are absolutely privileged and for that reason the complaints by the complainant were incompetent. The second is whether a complaint could be made by a private person without the sanction of the Magistrate before whom the alleged defamatory statements were made.

I will at first deal with the first point. I do not think that the statements made in judicial proceedings are absolutely privileged. In *Emperor v. Ganga Prasad* (1) a Full Bench of this Court held that the question of criminal liability of a witness for defamation for statements made in course of their depositions must be decided by what is laid down in the Indian Penal Code without regard to the state of the law in England or considerations of what would be desirable in the interests of public policy and administration of justice. The majority view of this Full Bench was that when a witness makes a statement which is defamatory of a third party in a judicial proceeding he can be convicted of defamation. In *Bai Shanta v. Umrao*

(1) (1907) I.L.R. 29 All. 685.

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*Amir Malik* (1) a Full Bench of the Bombay High Court held that the statement made by a witness in judicial proceedings was not absolutely protected from being made the subject of a prosecution for defamation under section 500 of the Indian Penal Code on the ground of public policy or exceptions derived from the common law of England, apart from the provisions of section 499 of the Indian Penal Code. In view of these two Full Bench rulings I am of opinion that the view taken by the learned trial Magistrate is not correct. It appears to me to be quite clear that so far as this Court is concerned it is well settled as a result of the Full Bench ruling referred to above that there is no absolute privilege and that a person making a defamatory statement in the course of a judicial proceeding can be prosecuted for defamation. That view is supported by the Full Bench ruling of the Bombay High Court referred to above.

As regards the second question also I am of opinion that the decision of the trial Magistrate cannot be sustained. If we read the provisions of sections 195 and 476 of the Code of Criminal Procedure it will appear that there is nothing which prevents a man from making a complaint for defamation in respect of a statement made during judicial proceedings. It may be that where a false statement is made the person making the statement is liable for prosecution on two counts if the statement happens to be defamatory. On the complaint of the complainant he can be prosecuted for defamation and he can further be prosecuted under section 211 or 193 of the Indian Penal Code. So far as charges under sections 211 and 193 of the Indian Penal Code are concerned, it is clear that no prosecution can be started unless a complaint is made by the judicial officer before whom the false statement is made. But in the matter of defamation the Magistrate on his own authority cannot take any initiative.

He has no power to say that a person should be prosecuted for defamation because he has made a defamatory statement. I am not aware of any provision in the Indian criminal law under which it can be said that a party who has been defamed has to take the sanction of the court where the defamatory statement was made, before starting a prosecution for defamation. In connection with this matter it is very necessary to take into consideration the provisions of section 198 of the Code of Criminal Procedure which enacts that "No court shall take cognizance of an offence falling under chapter XIX or chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence." Section 500 of the Indian Penal Code is in chapter XXI of that Code. It, therefore, follows that in view of the provisions of section 198 of the Criminal Procedure Code a Magistrate is not competent to file a complaint for the prosecution of a witness for making a defamatory statement. It is the complainant alone, who has been defamed, who is given the sole right to file a complaint for defamation if he so chooses. The learned trial Magistrate has relied in his judgment on a ruling of this Court in *Emperor v. Ram Nath* (1). That was a case where according to law it was essential for the prosecution to obtain sanction of the Local Government before a prosecution could be started. Where such is the case no prosecution could succeed. But that case can have no reference to a case like the one before me. Here according to law it was not at all necessary for the applicant to have obtained sanction of the Government before starting the prosecution. The learned trial Magistrate relied on the following observations made in that case: "Where the law clearly says that it is a condition precedent to the prosecution that a sanction shall be obtained from the Local Government, I do not think it is open to any subordinate

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(1) (1924) I.L.R. 47 All. 268(271).

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authority to override the provision of the law by saying that the offence falls under another section of the Indian Penal Code and as no sanction is necessary for the prosecution under that section the offender may be prosecuted without any sanction." Here in the present case the matter stands on a different footing altogether. Here the law ordains under section 198 of the Criminal Procedure Code that a complaint for defamation cannot be filed by any person except the complainant. According to section 198 of the Criminal Procedure Code a Magistrate would be incompetent to make a complaint for defamation. So it cannot be said that the ruling relied upon by the learned trial Magistrate has any application to the case before me.

The result is that I allow these applications, set aside the orders passed by the trial Magistrate and send back both the cases to the court of the trial Magistrate through the District Magistrate with directions that the learned Magistrate should try both the cases according to law.

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## APPELLATE CIVIL

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*Before Justice Sir Edward Bennet and Mr. Justice Verma*

SHANTI LAL (JUDGMENT-DEBTOR) v. JAMNI KUNWAR  
(DECREE-HOLDER)\*

1940  
January, 11

*Civil Procedure Code, section 39(1)—Transfer of decree for execution on application by decree-holder—Pecuniary jurisdiction of court to which such transfer is made—Need not be competent to try the original suit—Civil Procedure Code, section 6—Limitation Act (IX of 1908), article 182(5)—Application in accordance with law—Application for transfer of decree to court of a lower grade.*

It is not necessary that the court to which a decree is transferred for execution, upon the application of the decree-holder, under section 39(1) of the Civil Procedure Code should be a

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\*First Appeal No. 102 of 1938, from a decree of Shiva Harakh Lal, Civil Judge of Budaun, dated the 18th of December, 1937.