

REVISIONAL CRIMINAL.

Before Mr. Justice Fforde.

BENARSI DAS, Petitioner,

versus

THE CROWN, Respondent.

Criminal Revision No. 657 of 1924.

Revision (Criminal)—Criminal Procedure Code, Act V of 1898, section 439—to have certain reflections upon the character of petitioner expunged from the judgment of the Magistrate.

Held, that a Magistrate should not in his judgment in a criminal case make observations prejudicial to the character of a person who is neither a witness in nor a party to the proceedings, and who has had no opportunity of being heard, and upon material which is not legal evidence in the case.

Held also, that it would be a denial of justice to allow the reflections made upon the character of the petitioner to stand and that they should be expunged from the judgment of the Magistrate.

Application in revision to have certain portions of the judgment of Chaudhri Sardar Khan, Magistrate, 1st class, Ambala, dated the 18th February 1924, upheld by the Sessions Judge, Ambala, on 21st March 1924, expunged.

JAGAN NATH, for Petitioner.

BADRI DAS, for Shugan Chand, Accused.

Nemo, for Crown, Respondent.

JUDGMENT.

FFORDE J.—This is an application on behalf of *Rai Bahadur Lala Benarsi Das* for an order that certain remarks contained in the judgment of *Chaudhri Sardar Khan*, a Magistrate invested with first class powers, delivered in a criminal case, be expunged.

The facts giving rise to this petition are shortly as follows:—*Pandit* Shugan Chand, Head Clerk of the Cantonment Magistrate's office, Ambala, was prosecuted at the instance of *Pandit* Ram Kishan under the provisions of section 168 of the Indian Penal Code. The section runs as follows:—"Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both." It was contended by the prosecution that *Pandit* Shugan Chand was a public servant, was legally bound as such public servant not to engage in trade and did in fact engage in trade. The learned Magistrate, who tried the case, came to the conclusion that the accused had not been proved guilty of any offence. He considered that, though the Head Clerk in the Cantonment Magistrate's office was a public servant within the statutory definition of that term, he was not legally bound as such public servant not to engage in trade, and he further held that there was no definite proof that he had in fact engaged in trade, and upon these findings the accused was acquitted.

Not content with deciding the issues which properly arose out of the charge which he had to try, the learned Magistrate proceeded in the concluding portion of his judgment to express strong opinions as to the motives which he considered had inspired the prosecution. He declared that the accused was the victim of a conspiracy on the part of the managing committee of the All-India Cantonment Association. He stated that this body, of which the petitioner is the vice-president, was anxious to have the accused dismissed from his post simply because its members had failed to have their own way with the Cantonment authorities. He further added that the columns of a newspaper known as the "Cantonment Advocate" had

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been freely used by the petitioner and those associated with him to injure the accused. He concluded his judgment by stating that "the complaint is based purely on malicious prosecution of the accused." These are the portions of the judgment which the petitioner asks to have expunged. An application for this purpose was made to the Sessions Judge of Ambala but was rejected.

The learned Sessions Judge in the course of his judgment says, "Ordinarily I would be strongly disposed to forward the proceedings to the High Court with a recommendation that these remarks against a person who was neither a party nor a witness should be expunged." He then goes on to say that the article in the "Cantonment Advocate" afforded justification for the adverse comments of the Magistrate, and that it was essential in order to enable the Magistrate to properly weigh the prosecution evidence to ascertain how far the allegations of the accused against certain members of the association were justified. He further says that the petitioner by putting at the disposal of his association some of his private correspondence has himself invited criticism of his actions, and he concludes by stating "that there is sufficient evidence on the record to justify the Magistrate in making the remarks which form the complaint of the present application."

It is urged by Mr. Jagan Nath, who appears for the petitioner, that as his client was neither a witness in, nor a party to, the proceedings in question, the Court had no right to come to these conclusions—highly prejudicial, as they are to his character, amounting as they do to a charge of serious misconduct if not of criminal conspiracy—without the petitioner having had an opportunity of being heard in his defence. Mr. Jagan Nath further contends that

the material upon which the strictures against the petitioner have been based is not legal evidence in the case and should not have been admitted. He also contends that even if such material could legally be admitted in evidence it does not justify the conclusions based upon it.

The principal material relied upon by the Magistrate for passing these strictures upon the petitioner consists of three letters written to the petitioner by the Cantonment Magistrate. These letters deal almost exclusively with the writer's own affairs, though in two of them a passing reference is made to the Head Clerk Shugan Chand. It is obvious to any one with the most rudimentary knowledge of the Law of Evidence that these letters could not be made evidence by the prosecution. The writer has not been called as a witness, and under no circumstances could his letters be evidence in the proceedings against Shugan Chand. It was the duty of the trial Magistrate to refuse to admit these documents, but instead of doing so he has used them for the purpose of making an attack upon the recipient of the letters which is not warranted by anything contained in them. Similarly, the newspaper which has been admitted to the record, is not evidence and should have been excluded by the Magistrate.

I can find no legal evidence upon the record warranting any of the strictures passed by the Magistrate upon the petitioner, and even if the documents upon which the Magistrate has relied for passing the strictures had been properly admitted in evidence, he had no right to express himself as he did without giving the petitioner an opportunity to be heard in his defence. I may point out that it is an elementary duty of a Judge in a criminal case to exclude evidence which is not legally admissible. The trial Magistrate

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in the case before me has conspicuously failed in this duty. I am further of opinion that the observations of the Magistrate concerning the petitioner, made in a proceeding in which the petitioner had no opportunity of being heard, based upon material which is not admissible in evidence in those proceedings, and which even if admissible would not justify the observations in question, amount to an abuse of judicial privilege. In view of the fact that the Magistrate was aware that a suit by Shugan Chand for damages for malicious prosecution was pending, or was intended to be instituted, there was an additional duty cast upon him in the interests of justice that he should say nothing which might prejudice a fair trial of the suit.

For the reasons I have given, I am of opinion that it would be a denial of justice to allow the reflection upon the character of the petitioner to stand, and I accordingly direct that the portion of the judgment commencing with the words "A perusal of the allegation in the 'Cantonment Advocate' down to the end of the judgment be expunged," with the exception of the words "Upon these facts I hold that no case under section 168, Indian Penal Code, has been made out against the accused whom I acquit," and the words, "I do not think he can be ordered to pay compensation under section 250, Criminal Procedure Code. The accused is present. Ram Kishan has not turned up. Announced."

A. R.

Revision accepted.