

CRIMINAL REVISION.

Before Mr. Justice Dunkley.

MAUNG CHIT TAY v. MAUNG TUN NYUN.*

1935

Jan. 18.

Defamation—Prosecution by Corporation—Defamation of Corporation, elements of—Corporation has no personal reputation—De novo trial, right of accused to demand—Non-cognisable case—Order directing payment by accused of process-fees and witnesses' expenses—Criminal Procedure Code (Act V of 1898), s. 350 (1), proviso (a).

The applicant published a pamphlet adversely criticising certain resolutions of a Municipal Committee. It was mainly an attack on certain individual members of the Committee, and the Committee as such suffered no damage. The President of the Committee on behalf of the Committee prosecuted the applicant for defamation. In the course of the trial the trying magistrate was transferred, and was succeeded by a new magistrate, who declined to grant the applicant's request for a *de novo* trial unless the applicant deposited process-fees and witnesses' expenses for re-summoning the prosecution witnesses already examined.

Held, that the right of an accused person to demand a *de novo* trial on a new magistrate succeeding the original magistrate is a statutory right, which cannot in a non-cognisable case be defeated by ordering that the accused shall deposit process-fees and witnesses' expenses before the witnesses already examined before the first magistrate are re-summoned.

Held further, that a Corporation has no reputation apart from its property or trade. It cannot maintain an action for a libel merely affecting personal reputation. The words complained of, to support a prosecution, must reflect on the management of its business and must injuriously affect the Corporation, as distinct from the individuals who compose it. They must attack the Corporation in its method of conducting its affairs, must accuse it of fraud or mismanagement, or must attack its financial position. A Corporation cannot bring a prosecution for words which merely affect its honour or dignity. *Proceedings quashed.*

Metroplitan Saloon Omnibus Co. v. Hawkins, 4 H. & N. 87; *Mayor etc. of Manchester v. Williams*, (1891) 1 Q.B. 94; *Slazengers, Ltd. v. Gibbs & Co.*, 33 T.L.R. 35; *South Hetton Coal Co., Ltd. v. North-Eastern News Association, Ltd.*, (1894) 1 Q.B. 133—*referred to.*

Thein Maung for the applicant.

No appearance for the respondent.

* Criminal Revision No. 824B of 1934 arising out of Criminal Regular Trial No. 51 of 1934 of the Second Additional Special Power Magistrate, Paungdè.

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DUNKLEY, J.—The applicant U Chit Tay published a pamphlet in which he commented adversely on certain resolutions which, according to him, had been passed by the Municipal Committee of Paungdè. On the 10th May, 1934, the Committee held a special meeting to consider what action should be taken as a result of the publication of this pamphlet and at this meeting a resolution was carried by a majority that " necessary action according to law be taken " against U Chit Tay. I do not pretend to understand what may have been the meaning which the supporters of this most ambiguous resolution attached to it, but the President of the Municipal Committee, U Tun Nyun, construed it as an instruction to him to prosecute U Chit Tay in a criminal Court for defamation, and, on the 1st June, he filed a complaint against the applicant before the Subdivisional Magistrate of Paungdè, alleging that the applicant by the publication of this pamphlet had committed an offence under section 500 of the Indian Penal Code against the Municipality. In the heading of the complaint he described himself as " President and agent of the Paungdè Municipality ", and it is clear that he presented this complaint in consequence of the resolution of the 10th May and on behalf of the Municipal Committee as such, and not in his personal capacity. He did not, in fact, complain that he personally, or any individual member of the Committee, had been defamed ; he complained that the Committee as a corporate body had been defamed.

This complaint was sent by the Subdivisional Magistrate to the Second Additional Magistrate of Paungdè for disposal and the trial proceeded. On the 9th November 1934, the trying Magistrate was

transferred and was succeeded by another Magistrate. Application was then made by the accused, (who is the present applicant), for a *de novo* trial under proviso (a) to section 350 (1) of the Code of Criminal Procedure, but the new Magistrate declined to resummon the witnesses already examined unless the accused paid fees for the issue of process to them, and also deposited in Court the expenses of these witnesses according to the prescribed scales, on the ground that the case was a complaint case and a non-cognisable case. Objection has been taken before me to this order of the Magistrate, which was passed on the 12th November, and the order was plainly wrong. Under proviso (a) to section 350 (1) the accused had an absolute statutory right to claim a *de novo* trial, and the Magistrate had no authority to limit that right by imposing any condition on its exercise. Processes issued under such circumstances fall within clause (ii) of sub-rule (a) (1) of rule 18 of the Process Fees Rules, (paragraph 1046, Burma Courts Manual), and should be issued free of charge, and the Magistrate should order the expenses of witnesses, recalled in the exercise of this statutory right, to be paid by Government under the discretion conferred upon him by section 544 of the Code of Criminal Procedure.

As I have said, the complaint was laid by U Tun Nyun on behalf of the Municipal Committee, and the further objection has been raised that the Committee as such cannot bring a charge of defamation unless it can show that it has suffered damage in its property in consequence of the imputations alleged, and that, as no such pecuniary damage to the Committee is alleged in the complaint, the complaint ought to have been dismissed,

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and the proceedings should now be quashed. In the last paragraph of the complaint it is alleged that "this publication is made with intent to lower the reputation of the members of the Committee and to destroy the authority of the Municipality," and, consequently, it is clear that the complaint does not allege that the Committee as such has suffered any damage by reason of the publication of U Chit Tay's pamphlet. It is further contended that the pamphlet in question is nothing more than a fair comment on the acts of certain members of the Municipal Committee and that, therefore, the applicant U Chit Tay is protected by the Second and Third Exceptions to section 499 of the Penal Code. With the question of "fair comment" I should not now be prepared to deal, as the trial is still pending before the Magistrate and this is a defence which has been raised before him. But, in my opinion, the first contention must prevail. U Chit Tay's pamphlet must be read as a whole, and, if this is done, it is clear that the pamphlet was not an attack on the Municipal Committee as such, but an attack upon certain individual members of the Committee, particularly one U Ba Yin, who opposed certain proposals which were brought before the Committee by other members, and which U Chit Tay considered to be for the benefit of the Town. A corporation may maintain a prosecution or an action for a libel affecting its property, but not for a libel merely affecting personal reputation, as a corporation has no reputation apart from its property or trade. The words complained of must reflect on the management of its business and must injuriously affect the corporation, as distinct from the individuals who compose it. The alleged libel must attack the corporation in its method of conduct-

ing its affairs, must accuse it of fraud or mismanagement, or must attack its financial position. It cannot bring a prosecution for words which merely affect its honour or dignity. Moreover, it cannot maintain a prosecution for words which reflect, not upon it as a body, but upon its members individually, unless special damage has thereby been caused to it. *Metropolitan Saloon Omnibus Company (Limited) v. Hawkins* (1) ; *The Mayor, Aldermen, and Citizens of Manchester v. Williams* (2) ; *South Hellon Coal Company, Limited v. North-Eastern News Association, Limited* (3) and *Slazengers (Limited) v. C. Gibbs & Co.* (4).

Now, as I have said, it is clear that U Chit Tay's pamphlet was an attack, not upon the Committee as such, but upon certain members of the Committee personally and it is not suggested that the Municipality of Paungdè has suffered any damage by reason of the publication of this pamphlet. Consequently, the Municipal Committee cannot maintain a prosecution for defamation against U Chit Tay in respect of the publication of this pamphlet, and, therefore, the complaint filed by U Tun Nyun on behalf of the Committee ought not to have been entertained, and U Chit Tay should not be called upon to rebut a charge based upon this complaint. Consequently the proceedings pending against the applicant U Chit Tay in Criminal Regular No. 51 of 1934 of the Second Additional Magistrate of Paungdè are quashed.

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(1) (1859) 4 H. & N. 87.

(3) (1894) L.R. 1 Q.B. 133.

(2) (1891) L.R. 1 Q.B. 94.

(4) (1916) 33 T.L.R. 35.