REVISIONAL CRIMINAL.

Before Mr. Justice Nánábhái Haridás, and Sir W. Wedderburn, Justice.

1885
February 4.

QUEEN EMPRESS *v.* PURSHOTAM KÁLA.

Defamation—Penal Code (Act XLV of 1845), Sec. 499, Exception 9—Good faith—Malice, want of—Tampering with witnesses, imputation of.

The accused was watching a civil case on behalf of his partner. During the hearing of the case the accused informed the Subordinate Judge that the complainant was "tampering with the witnesses", and prayed that the complainant might be made to sit in the Court. Accordingly the Subordinate Judge directed the complainant to sit in the Court. The complainant thereupon lodged a complaint against the accused before a First Class Magistrate, charging the accused with having defamed him. The Magistrate convicted the accused of the offence, and inflicted upon him a fine of Rs. 25, or, in default, sentenced him to one month's simple imprisonment. The accused made an application to the Sessions Judge at Thána to call for the record of his case, and, if he thought proper, to make a reference to the High Court. The Sessions Judge, having called for the record and examined it, was of opinion that as no malice or bad faith appeared on the part of the accused in making the imputation, the case of the accused fell within exception 9 of section 499 of the Indian Penal Code, and that the accused had committed no offence. He, accordingly, referred the case, under section 438 of the Criminal Procedure Code (Act X of 1882), to the High Court.

Held that the view of the Sessions Judge was correct. The conviction and sentence were accordingly set aside.

THIS was a reference by H. Parsons, Sessions Judge of Thána, under section 438 of the Code of Criminal Procedure (Act X of 1882).

He stated the reference as follows:—

"The applicant Purshotam Kála Thákar was convicted on a trial held on the 8th of December, 1884, by C. M. Thathe, Esq., Magistrate of the First Class in the District of Thána, of defamation, an offence under section 500 of the Indian Penal Code, and sentenced to pay a fine of Rs. 25, or, in default, to undergo simple imprisonment for one month.

"This application was made under Chapter 32 of the Code, and asked the Court to call for the record, and, if it thinks fit, report it under section 438 to the High Court. The case was called for. I have now heard the pleader for the applicant, and examined

* Criminal Reference, No. 3 of 1885.

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the record, and as I consider that the finding of the Magistrate is illegal, I report the case to the High Court.

"The Magistrate has convicted the applicant of defamation, and sentenced him to pay a fine of Rs. 25. The Magistrate says: "The witnesses examined for the prosecution have conclusively proved that the prisoner did state before the Subordinate Judge that the prosecutor would suborn witnesses and tamper with the evidence in the case, and that he should not to be allowed to sit along with the other witnesses, and that this statement of the prisoner led the Subordinate Judge to call the prosecutor into his Court, and make him sit there until the hearing of the case was over. Some of the witnesses examined for the prosecution are gentlemen of established respectability, and the Court fully believes them. The defence has not even attempted to show why they should not be believed." In this finding the Magistrate has, in my opinion, ran counter to the whole evidence in the case. Witness No. 1 knows nothing. He does not, I mean, identify the applicant. Witness No. 2 says that the applicant told the Subordinate Judge that the complainant was 'tampering with the evidence for the defendant.' These are not the words of the Magistrate, and since the witness has been dismissed from Government service he cannot be one of the respectable witnesses referred to. Witness No. 4 says that, after the Court had ordered the witnesses to sit far away, the accused informed the Court that the complainant, who was sitting among the witnesses, should be made to sit away from them, lest he should tamper with the evidence, and that, in consequence of a motion he (the witness) made, the complainant was ordered to sit inside the Court. This witness, therefore, does not support the finding of the Magistrate. Witness No. 6, another pleader, says the same as No. 4, *viz.*, that the applicant asked the Court not to allow the complainant to sit among the witnesses, lest he should tamper with them. Witnesses 8 and 9 do not go much further in their statements. They say that the applicant told the Subordinate Judge that the complainant was with the witnesses, and that he was tampering with them, or would tamper with them, and that he should not be allowed to sit with them. Whether these are respectable witnesses or not, I have no reason of judging myself. This is the evidence for the prosecution, and I

think that it by no means supports the finding of the Magistrate. The evidence for the defence the Magistrate has entirely ignored. I need not allude to Nos. 13 and 14. Their story may or may not be true; but, if true, it supports completely the story of the applicant. Witness No. 15 is the Subordinate Judge himself. To his evidence on this point the Magistrate does not allude at all. Yet I presume that the Magistrate, Mr. Thathe, will allow him some amount of respectability and some amount of credence as to what occurred in his own Court. His evidence certainly does not support the case for the prosecution. There are two other points of fact I wish to mention before dealing with the law of the case. The first is this. The Magistrate says the fact of the complainant having been convicted of theft, has no bearing on the present case, and that he bears a good character in spite of the conviction. The second is this. The Magistrate says the prisoner himself denies the fact that he was connected with the case, and the Subordinate Judge also distinctly says that the prisoner had no connection with the case. Now, taking the answer of the prisoner (No. 2), it is, I think, difficult to extract from it the denial spoken to by the Magistrate. He was not asked the question whether he had any interest in the case or not. I construe his answer to the long, far too long, question to be—I had nothing to do with this matter, *i.e.*, this matter of defaming the complainant. I do not find that the Subordinate Judge deposes as a fact within his own knowledge that the applicant had no connection with the case. I find that the witness No. 2 says that the applicant had nothing to do with the case. No. 4 says the same. On the other hand, the witness No. 10, who is much better acquainted with the facts than either of these persons, says that the applicant was the partner of the defendant in the civil suit, and was sent by the latter to watch the case for him.

"I will now deal with the law of the case, and in this I think the Magistrate has gravely erred. I will take the facts as found by the Magistrate himself. It appears that the Subordinate Judge had given an order that the witnesses should go out of Court and sit separate until examined. The complainant in this case, though not a witness, went and sat with the witnesses and began talking to them. The applicant, therefore, informed the Court of this,

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and asked the Court to stop it, lest he should tamper with the witnesses. For this he has been convicted of defamation. I think there is nothing defamatory in this information; but, even if there is, in my opinion exception 9 of section 499 of the Penal Code would clearly apply to the case, and I consider that the applicant has committed no offence. It is not alleged that he acted maliciously, and the facts show that he was acting in good faith in the interest of his partner, who was defendant in the suit."

Branson (*Ghanashám Nilkanth Nádkarni* with him) for the accused.—The imputation which the accused made, was made in good faith, and without any malice, as the Sessions Judge has found. He was justified in making such imputation to guard the interest of his partner, who had expressly set him to watch the case. The case of the accused, therefore, falls within the purview of exception 9 to section 499 of the Penal Code.

NÁNÁBHÁI HARIDÁS, J.—We agree with the view taken by the Sessions Judge, and order that the conviction and sentence be set aside.

Conviction quashed.

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1885
February 5.

Before Mr. Justice Nánábhái Haridás, and Sir W. Wedderburn, Justice.

In re THE PETITION OF RA'JA PABA KHOJI.

Municipal Act (Bombay) VI of 1873, *Secs.* 66 *and* 3—*Sale of vegetables on the otá of a house—Power of the municipality to prevent such sale—Market—Place, definition of—Otá of a house.*

The word "place," as defined in section 3 of Bombay Act VI of 1873, does not include a house, or *otá* of a house.

Selling vegetables on the *otá* of a house is not using the *otá* "as a market" within the meaning of section 66.

Accordingly a person, who sold vegetables on the *otá* of his house, was held not thereby to have committed any offence under section 66 of the Municipal Act (Bombay) VI of 1873.

THE Municipality of Thánà promulgated an order that no other place, except the municipal market, should be used for the

* Criminal Review, Petition No. 264 of 1884.