

1889.
 QUEEN-
 EMPRESS
 v.
 DÁDÁ A'NÁ.

Upon the whole of the evidence I am of opinion that the guilt of Dádá is so clearly made out that it becomes the duty of this Court to set aside the verdict of the jury and find the prisoner guilty of murder.

The case being thus sent back to Mr. Justice Jardine and Mr. Justice Candy their Lordships passed the following order:—Following the opinion of the Chief Justice, to whom the case was referred under section 429 of the Code of Criminal Procedure, the Court convicts the prisoner Dádá of murder under section 302 of the Indian Pena Code and sentences him to transportation for life.

APPELLATE CRIMINAL.

Before Mr. Justice Scott and Mr. Justice Jardine.

IN RE CLIVE DURANT.

1889.
 August 2.

Practice—Petition for prisoner's admission to bail—Form of petition—Petition containing defamatory allegations against trying Magistrate and other public officers.

When a prisoner applied to the High Court to be admitted to bail pending the disposal of his appeal, and the petition contained defamatory allegations, consisting (*inter alie*) of irrelevant attacks on the trying Magistrate and other officers in the service of the Government of India, the Court refused to allow the petition to be filed, and ordered it to be returned.

THE applicant, Clive Durant, was convicted by Lieutenant Newmarch, Cantonment Magistrate of Secunderabad, of defamation under section 500 of the Indian Penal Code, and sentenced to four months' simple imprisonment.

Against this conviction and sentence Clive Durant appealed to the High Court, and at the same time presented a petition for his release on bail.

In this petition he complained of the manner in which a former application of his had been disposed of by a Divisional Bench of the High Court. The petition also contained attacks, which were quite irrelevant, on the trying Magistrate and on the private and public conduct of other officers of high rank in the service of the Government of India.

1889.

IN RE
CLIVE
DURANT.

This petition was rejected, for the reasons contained in the following judgment of the Court :—

SCOTT, J.:—In the matter of Clive Durant, a prisoner in Secunderabad Jail, two applications are before us. The first is an application to be admitted to bail. The libel for which the petitioner is in prison, is on the face of it grossly defamatory. He says it was justified in fact, and that he wrote it for the public good. The jury, however, found him guilty. We have admitted his appeal, and he will have an opportunity of proving the jury wrong. But I see no reason to release him on bail on the apparent merits of his case, so far as they appear from the proceedings forwarded to us. He says he made an application to the Magistrate for leave to apply to this Court for a transfer of the case, and that the transfer was refused. But it appears he had already applied for transfer to the High Court on the 3rd May, and his application was refused. I do not think, therefore, that on the possibility of the conviction being wrong on this technical ground he should be admitted to bail. His application must be rejected. The petition he now presents is full of defamatory allegations which are irrelevant to this application and most improper in themselves. It cannot be filed in its present scandalous form, and must be returned.

The second application is for a copy of the report of the Magistrate to this Court in reply to a question from us. The petitioner is not, in strictness, entitled to have a copy; but we see no reason to withhold it from him, and a copy may be supplied to him.

JARDINE, J.:—In his petition of appeal the prisoner, Durant, applied to be admitted to bail, and at the hearing of that petition his counsel argued that the trying Magistrate had contravened section 526A of the Code of Criminal Procedure (Act X of 1882), and that the proceedings ought, therefore, to be quashed. It now appears, from the report furnished to us by the Magistrate, that although section 526A was not brought to his notice, the prisoner did obtain an adjournment, which according to his present allegations he made use of by coming to Bombay to make an application

1889.

 IN RE
 CLIVE
 DURANT.

to this Court for transfer of his case, which application was rejected. On the facts brought to our notice, it would appear that the trial by jury began after the High Court had passed its order, and that section 526A has not been contravened, and that this reason given for admitting to bail has not been substantiated. I see nothing special in the merits which ought to induce us to interfere with the execution of the sentence before we hear the appeal.

The prisoner has since forwarded two copies of a printed petition addressed to this Court. So far as this document is concerned with the case now before us on appeal, its allegations might be unobjectionable. But in this lengthy document the prisoner makes observations on the manner in which he says justice was administered by the learned Judges who heard his petition in this Court, which are so disrespectful and improper as to savour of contempt of Court. The document also contains allegations bearing cruelly upon the moral character of individuals, and not relevant to the subject. These ought to be struck out, and the Court has to see that this is done: see Lord Eldon's remarks in *Ex parte Simpson* ⁽¹⁾; *Cracknall v. Janson* ⁽²⁾. In Lofft's Reports there is a case where Lord Mansfield said that a defamatory affidavit is not to be endured.

The document also contains attacks, quite irrelevant to the case before us, upon the trying Magistrate, upon the personal and public character of other officers high in the service of the Government of India, and upon the impartiality of the tribunals which throughout India administer justice on behalf of the Crown. I am of opinion that what Mr. Justice Burrough said in *Butt v. Conant* ⁽³⁾ expresses a principle which we should apply now, namely, that the people "have a serious interest in the characters and conduct of the Judges and others, who are appointed to serve in high and important offices; and the individual men have a valuable property in their respective characters." It is the duty of the High Courts to set an example to all inferior tribunals; and I think we should follow the practice of the Courts

(1) 15 Ves., 476.

(2) L. R., 11 Ch. D., 1.

(3) 1 Bro. & Bing., at p. 587.

1889.

 IN RE
 CLIVE
 DURANT.

of Chancery and Queen's Bench for the reasons given by so great an authority as Story in section 270 of his Equity Pleadings (8th ed.). He says: "Scandal is calculated to do great and permanent injury to all persons, whom it affects, by making the records of the Court the means of perpetuating libellous and malignant slanders; and the Court, in aid of the public morals, is bound to interfere to suppress such indecencies, which may stain the reputation and wound the feelings of the parties and their relatives and friends."

When a few months ago a petition of one Ganesh Sâthe came before us in our revising jurisdiction, we informed the pleader that as it contained somewhat scandalous and irrelevant expressions concerning the Government and a District Magistrate, we declined to receive it until the scandalous matter was struck out.

The present petition is more objectionable, and being of opinion that we ought not to allow it to defile our records, we must reject it, and order its return to the prisoner.

Petition rejected.

APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS v. FAKIRA'PA AND OTHERS.*

1890,

 January 23.

Criminal Procedure Code (Act X of 1882), Secs. 235 and 239—Joinder of charges—Offences committed by different accused against different persons at different times—Joint trial—Charge.

If, in any case, either the accused are likely to be bewildered in their defence by having to meet many disconnected charges, or the prospect of a fair trial likely to be endangered by the production of a mass of evidence directed to many different matters and tending by its mere accumulation to induce an undue suspicion against the accused, then the propriety of combining the charges may well be questioned.

* Criminal Appeal, No. 241 of 1889.