1922.

BACHUBAI v. IBRAHIM.

of the suit to the board should be heard on its merits by the Subordinate Judge. We think that plaintiff should have an opportunity of arguing before the Subordinate Judge that the opinion he has expressed in his previous judgment that the suit had been decided *ex parte* was wrong. Costs of the application will abide the result of the application before the Subordinate Judge.

Rule made absolute.

J. G. R.

CRIMINAL REVISION.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Kanga.

DINSHAW EDALJI KARKARIA (ORIGINAL ACCUSED), APPLICANT v. JEHANGIR COWASJI MISTRI (ORIGINAL COMPLAINANT), OPPONENT*.

1922.

March 23.

Indian Penal Code (Act XLV of 1860), section 499, Exception 9—Defamation —Defamatory statement made by complainant—Privilege.

A complainant who, on being asked by a Magistrate to state his grievance, deliberately makes a defamatory statement without the slightest justification, does not enjoy the protection given upon principles of public policy to an ordinary witness. The provisions of the Indian Penal Code apply strictly to him.

THIS was an application under the Criminal Revisional Jurisdiction of the High Court against a conviction and sentence passed by D. N. D. Khandalavalla, Additional Presidency Magistrate of Bombay.

The applicant had filed a complaint for insult and assault against the opponent, his wife, a friend of his and a servant. The servant was convicted on his own plea of guilty: the remaining persons were discharged. While the case was going on the trying Magistrate asked both the parties to state their grievances. The

*Criminal Application for Revision No. 61 of 1922.

1922.

DINSHAW EDALJI v. JEHANGIR COWASJI.

opponent made his statement. The complainant next made his statement in which he suggested immoral relations between the opponent's wife and his friend.

The opponent lodged a complaint of defamation against the applicant for making the above defamatory statement. He was convicted and sentenced to pay a fine of Rs. 50.

The applicant applied to the High Court. The application was heard by Macleod C. J. and Kanga J., for a rule.

Ratanlal Ranchhoddas, for the applicant.

PER CURIAM :—The present applicant has been convicted by the Additional Presidency Magistrate under section 500 of the Indian Penal Code and directed to pay a fine of Rs. 50. He had filed a complaint in the Court of the Presidency Magistrate at Girgaum against the opponent Jehangir, his wife Hirabai, his servant Jiva Rupa and his friend Jamshetji for the offences of insult and assault. Jiva Rupa was convicted on his own plea of guilty, while the other persons were discharged. In the course of the hearing the Magistrate asked the complainant to go into the witness-box and state his grievance, and also asked the opponent to do likewise in order that he might see whether a settlement of the case could be arrived at. The opponent made a statement first. Then, when the complainant was making his statement on invitation by the Magistrate, in answer to a question from the Bench, he said "that Jamshetji was kept by Hirabai", the innuendo being that there were immoral relations between Jamshetji and Hirabai. Accordingly the opponent, after the proceedings were finished, filed a complaint against the original complainant for defamation. When the case came on before the Magistrate, the accused's pleader said that he was going to prove that the words

complained of were true in substance and in fact. He was unable to prove that.

Then the line of defence was altered, and the accused tried to make out that he had never used the words. But the Magistrate found on the evidence that the accused had made a defamatory statement; and the only question was whether he was protected by Exception 9 to section 499 of the Indian Penal Code. That Exception can only afford protection when the defamatory statement has been made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good. It is clear, therefore, that the accused cannot possibly bring himself within that Exception, because it cannot be said that the statement he made was made in good faith for the protection of himself or of any other person or for the public good.

Then it is suggested that we should disregard the 9th Exception to section 499, Indian Penal Code, and consider whether the occasion on which the statement was made was not absolutely privileged. No doubt it has been held by this Court in *Queen-Empress* v. *Babaji*[1] and *Queen-Empress* v. *Balkrishna Vithal*[2] that a witness cannot be prosecuted for defamation in respect of statements made by him when giving evidence in a judicial proceeding, although in the latter case Telang J. was of a contrary opinion but was constrained to follow the decision in the former case. I do not, however, think that the protection which may be given upon principles of public policy to a witness can be given to a complainant who when asked by the Magistrate to state his grievance deliberately makes a defamatory statement without the slightest justification. In my opinion the provisions of the Indian Penal Code are strictly applicable to this case, so that we cannot say

(1) (1892) 17 Bom. 127. (2) (1893) 17 Bom. 573.

1922.

DINSHAW EDALJI v. JEHANGIR COWASJI.

that under the law prevailing the occasion was absolutely privileged, or that the accused was at liberty to make any defamatory statement he chose with regard to the opponents who were before the Court. The conviction, therefore, was right and there is no reason to interfere in revision. The application is, therefore, rejected.

Application rejected.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1922.

March 23.

THE EAST INDIAN RAILWAY COMPANY (ORIGINAL DEFENDANTS), APPELLANTS *v.* DAYABHAI VANMALIDAS SHA (ORIGINAL PLAINTIFF), RESPONDENT*.

Indian Railways Act (IX of 1890), sections 72 and 75, Schedule II, clause (m) —"*Shawls*"—*Interpretation.*

Having regard to the reason of the rule in section 75 of the Indian Railways Act, and in view of the fact that the word "Shawl" appearing in the Second Schedule to the Act is a word of Indian origin and of extensive use in India as an Indian word, the Court is entitled to draw the inference that the word is there used in the restricted sense in which it is understood in India as an article of special value and not in the more comprehensive sense generally given to it in the English language.

Held, therefore, that articles of cheap manufacture known as *Malidas* are not "Shawls" within the meaning of the said Schedule.

Sarat Chandra Bose v. *Secretary of State for India* (1), followed.

Sudarshan Maharaj Nandram v. *East Indian Railway Company* (2), not followed.

SECOND appeal from the decision of T. R. Kotwal, Assistant Judge of Ahmedabad, confirming the decree passed by M. N. Choksi, First Class Subordinate Judge at Ahmedabad.

* Second Appeal No. 329 of 1921.

(1) (1912) 39 Cal. 1029. (2) (1919) 42 All. 76.