

own acts in mixing up his private affairs with those of the partnership and his omission to keep clear accounts of any kind, he has made it impossible even to conjecture what those expenses are. Their Lordships will humbly advise Her Majesty to dismiss this appeal, and the appellants must pay the costs.

Appeal dismissed.

Solicitors for the appellants: Messrs. *A. H. Arnold & Son.*

Solicitors for the respondents: Messrs. *Richardson & Co.*

28 C. 63.

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Stanley.

GOBINDA PERSHAD PANDAY AND ANOTHER (*Petitioners*) v. G. L. GARTH (*Opposite Party*).^{*} [27th March, 1900.]

Defamation—Proof necessary in charge of defamation—Penal Code (Act XLV of 1860) ss. 471, 499 and 500—Conviction of offence without charge—Re-trial, order of, by Appellate Court—Code of Criminal Procedure (Act V of 1898), ss. 232 and 428.

To constitute the offence of defamation as defined in s. 493 of the Penal Code, it is not necessary that the evidence should show that the complainant has been injuriously affected by such alleged defamation. The law requires merely that there should be an intent that the person who makes or publishes any imputation should do so intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person.

Where an accused was charged under s. 471 of the Penal Code of dishonestly using as genuine a false document, and the Magistrate convicted him under s. 500 of that Code of defamation, of which offence there was no charge framed against him.

Held, that the Sessions Judge, if he thought a new trial necessary, should have proceeded under s. 232 of the Criminal Procedure Code, under which an Appellate Court is competent to direct a re-trial, and not, as he did, under s. 428.

[64] *Quere*. Whether an Appellate Court has under s. 423 of the Code general power to order a new trial.

In this case on the 27th July complainant filed a complaint before the District Magistrate of Dacca, charging the accused with having, with intent to cause injury to complainant, used as genuine a certain letter which they knew to be a forged document. The offence of defamation was also alleged. The District Magistrate after a preliminary inquiry summoned accused under s. 471 of the Penal Code, and the case was sent to the Joint Magistrate for disposal, who, after hearing the witnesses for the prosecution, framed a charge under s. 471 of the Penal Code against the accused. Eventually the accused were convicted of defamation under s. 500 of the Penal Code, although no charge with regard to that section had ever been framed against them.

The accused appealed to the Sessions Judge of Dacca, who, on the 18th of January 1900, set aside the conviction of the accused under s. 500 of the Penal Code, and under s. 423 (b) of the Code of Criminal Procedure

^{*} Criminal Revision, No. 95 of 1900, made against the order passed by S. J. Douglas, Esq., Sessions Judge of Dacca, dated the 18th of January 1900.

1900
MARCH 27.
CRIMINAL
REVISION.
28 C. 63.

ordered the re-trial of the accused for defamation under s. 500 of the Penal Code.

Babu *Dwarka Nath Mitter*, for the petitioner.

Mr. *C. R. Dass* (with him *Babu Gyanendra Mohan Dass*), for the Crown.

1900, MARCH 27. The judgment of the Court (PRINSEP and STANLEY, JJ.) was delivered by.

PRINSEP, J.—The Magistrate had before him a complaint of defamation as well as of dishonestly using a forged document under s. 471, Indian Penal Code. The alleged forgery consisted in affixing a false signature to a letter on which the charge of defamation proceeded. At the trial, the evidence was, no doubt, principally directed to the charge under s. 471, and it appears that, at the close of the trial, the Magistrate suddenly turned round and convicted the accused of defamation, having no charge before him of that offence. On appeal, the Sessions Judge very properly found fault with such a proceeding. He seems, however, to have followed the Magistrate into an error regarding the evidence necessary to prove the offence of defamation, for he points out that there is no evidence to show that the complainant [65] has been injuriously affected by such alleged defamation. That, however, is not necessary to constitute an offence of defamation as defined in s. 499, Indian Penal Code. The law requires merely that there should be an intent that the person who makes or publishes any imputation should do so intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person. The Sessions Judge, after considering the irregularity in the trial from the absence of any charge, seems to have held that it seriously prejudiced the accused so as to have in fact occasioned a failure of justice, and he also seems to have considered that the evidence on the record was not sufficient to establish that offence. He, therefore, under s. 423 (b), Code of Criminal Procedure, held that he had authority to order a new trial, and he accordingly passed an order to that effect. We are inclined to think that s. 232, Code of Criminal Procedure, applies to this case rather than s. 423. It may be doubted, but on this point we express no opinion, whether an Appellate Court has under s. 423 (b) general power to order a new trial. In our opinion s. 232 applies completely to the present case, and we think that under it the Sessions Judge was competent to direct a new trial. But it remains for us, on this rule, to consider whether, under s. 232 (2), we should not order further proceedings to be stayed, because we are not shown that any valid charge could be preferred against the accused. We have heard the letter in which defamation is alleged to be contained, and we cannot find that there is anything which can reasonably be held to amount to such an offence. We, therefore, direct that further proceedings be stayed.