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giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold." The provision contained in this section seems to be similar in scope to sections 96 and 97 of the Transfer of Property Act.

For these reasons we are of opinion that the decree of the Court below in dismissing the suit of the plaintiffs is erroneous. The plaintiffs in our judgment are entitled to have an order for sale of the mortgaged property subject to the lien of the prior incumbrancer, and we direct that the usual mortgage decree be drawn up in accordance with the Transfer of Property Act.

No order as to costs.

J. V. W.

Appeal allowed.

CRIMINAL REVISION.

Before Mr. Justice Beverley and Mr. Justice Banerjee.

BASUMATI ADHIKARINI (PETITIONER) v. BUDRAM KOLITA
 (OPPOSITE PARTY.)^a

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 July 5.

Defamation—Good Faith—Privilege—Letter written by Guru outcasting member of his caste—Penal Code, ss. 499, 500.

B, the *guru* or spiritual guide of the caste to which *K* belonged, issued a letter or *ajna patra* to *K*'s fellow-villagers to the effect that as *K*'s wife had been caught with a man of a lower caste, no one of her co-religionists should have any social intercourse with her, and in effect that she should be outcasted. *K* proceeded against *B* for defamation, and *B* pleaded that the statements contained in the letter were privileged, having been made in good faith and for the public good, and that the case came within one of the exceptions to section 499. It was admitted by *K* that *B* had no enmity towards him or his wife, and that it was the custom of the *guru* to settle such matters as those that had arisen in connection with his wife, and it was proved that the letter was issued after *B* had made an enquiry into the truth of the allegation. The lower Court convicted.

Held, that the conviction was wrong, it being clear that the statements contained in the letter had been made in good faith for the protection of the social and spiritual interests of the community of which *B* was the *guru*,

^a Criminal Revision No. 196 of 1894, against the order passed by A. L. Medlicott, Esq., Assistant Commissioner of Goalpara, dated the 24th of February 1894.

and that so far as they implied a censure on the conduct of *K's* wife, they were justified by the authority with which *B* was vested as spiritual head of the community, and that therefore the case came within the seventh exception to section 499.

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THE accused in this case was charged with defamation, and was tried before the Assistant Commissioner of Goalpara, and convicted and sentenced under section 500 of the Penal Code to a fine of Rs. 50.

The accused was the *guru* of the caste to which the complainant belonged, and the charge arose out of a letter or *ajna patra* outcasting the wife of the complainant which was circulated amongst his fellow-villagers. The main defence in the case was that the statements contained in the letter were privileged, being true and having been made in good faith and for the public good.

The facts of the case are fully stated in the judgments of the Assistant Commissioner and of the High Court.

The judgment of the Assistant Commissioner was as follows :—

“ In this case the accused has been charged with defamation under section 499. The facts of the case are as follows :—

“The complainant is one Budram, the accused one Basumati Adhikarini. Some time ago the accused, who is the *guru* of the plaintiff's caste, wrote and circulated among the complainant's fellow-villagers a letter prohibiting any of the people of his caste from eating with him. In fact, he was outcasted. The grounds for outcasting him were that the complainant's wife had had illicit connection with a man of another and lower caste. As a result of this order the complainant's wife and the complainant himself have been outcasted.

“The *nished patra* is filed and contains the defamation complained of. It was urged on behalf of the accused that the complainant's wife should be the complainant, as it was about her that the defamatory statement was made. It has been decided by the High Court that the husband, as he has been outcasted owing to the order, may fairly claim to have been defamed, so that argument is disposed of. The accused who admits having written the order filed next defends herself by saying that the statement was true, and that it was for the public good that the imputation should be published. I do not consider that this is proved. Considering the effect an order of this kind from a *guru* has, and how it entirely spoils a man's life if he is outcasted, I think there is too much disparity between the good to be gained by publishing such a story though true and the misery caused to the person outcasted. The effect of the order in this case is a striking instance of this. It is not asserted that the complainant has done anything worthy of censure. Yet

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because his wife has been outcasted he has been outcasted also, and, though perfectly innocent, has had to suffer as much as she. It is argued that the seventh exception of the section applies. The accused pleads that her statement was privileged, inasmuch as she possessed authority resembling that specified in exception 7. Whether this be so or not may be disputed, but at any rate any statement made by a person in authority must be made in good faith, that is, with due care and attention. I do not think that the accused has showed that she made the statement with due care and attention. We have a story told by two men, who say they saw the complainant's wife and another man in the act of committing adultery. The matter was reported to her, but she takes no steps to find out the truth then, but a year after holds an enquiry and passes an order outcasting the woman.

"It was also argued that the ninth exception applies, namely, that the imputation was made in good faith for the protection of the interests of the *somaj*. This, I hold, not to apply on the same grounds that the seventh does not apply.

"In this case the complainant has suffered greatly from the action of the accused. In my opinion people in the accused's position, wielding such a power as they do, cannot be too soon made aware that they must not use their power without due consideration. Unless the complainant in such cases can prove defamation, he has no remedy and his whole life may be ruined by a careless word from some one whom he regards as his religious superior.

"In my opinion the accused is guilty of defamation, and I accordingly convict her under that section and sentence her to pay a fine of fifty rupees, which will be paid to the complainant as compensation."

Against that judgment the accused moved the High Court, the main grounds being that the lower Court had erred in holding that the defamation was not published in good faith, and that its reasons for so holding were erroneous, and that the publication was privileged. Other grounds were taken, but they are not material for the purpose of this report. A rule was issued on that application, which came on for hearing on July 5th, 1894.

Babu *Basant Kumar Bose* for the petitioner, in support of the rule.

No one appeared to show cause.

The judgment of the High Court (*BEVERLEY and BANERJEE, JJ.*) was as follows:—

The question raised in this case is whether the conviction of the petitioner Basumati Adhikarini, under section 500 of the Indian Penal Code, is legal.

The facts of the case are shortly these: The petitioner, who is the *guru* or spiritual guide of the caste to which the complainant Budram Kolita belongs, issued to the complainant's fellow-villagers a letter styled an *ajna patra* or order of the Dalipur *satra*, or religious fraternity, to the effect that, whereas two persons named Jayram and Narayan of the village came and informed the petitioner that a woman named Kutibari of that village had been caught with a man of the Jugi caste, the letter of prohibition was issued that, until the decision of her case, no barber, *Brahmin*, relation or co-religionist should have social intercourse with her, and that if they had such intercourse they would be guilty of the five sins and of rebellion against their *guru*. Some time after the issue of this letter Budram, the husband of Kutibari, as one of the persons aggrieved, complained against the petitioner for having defamed his wife by publishing the letter of prohibition. The defence was that the statement contained in that letter was privileged, it being true and having been made in good faith for the public good, and that the case came under one of the exceptions to section 499 of the Penal Code. The Court below has found the accused guilty of defamation, and the contention on her behalf is that the conviction is wrong.

The main ground upon which the correctness of the conviction is questioned before us is that the alleged defamatory statement is privileged, and that it comes within one or other of the last four exceptions to section 499 of the Penal Code, and we think that ground is well sustained.

It is admitted by the complainant himself that the accused has no enmity towards him or his wife, and that it is the custom for the *guru* to settle matters like those that arose in connection with his wife. It is also proved by the evidence of Jayram and Narayan, who are referred to as informants in the letter of prohibition and who allege to be eye-witnesses to the improper conduct of the complainant's wife, that the accused issued the prohibition after making an enquiry as to the truth of the accusation; and the learned Assistant Commissioner in his explanation says: "The nature of the enquiry had been already satisfactorily proved before that Court, and in making my judgment I accepted

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the account of that enquiry given by the witnesses for the accused." We are, therefore, fully satisfied that the statement contained in the letter issued by the accused was made in good faith for the protection of the social and spiritual interests of the community of which the accused was the *guru*; and so far as it implies a censure on the conduct of the complainant's wife it was justified by the authority which the accused is vested with as the spiritual head of the community. The case, therefore, in our opinion, comes within the ninth and also within the seventh exception to section 499 of the Indian Penal Code. This view is fully in accordance with the decision of the Bombay High Court in the case of *Reg. v. Kashinath Buchaji Bagul* (1), and also with the opinion of Turner, C.J., and Muttasami Ayyar, J., in *The Queen v. Sankara* (2). In this latter case the learned Judges held that statements similar to those made in the case now before us were privileged, though they found the accused guilty of defamation by reason of the indiscriminate way in which the statement was published.

For the reasons given above we think the accused has been improperly convicted, and we, therefore, set aside the conviction and sentence and direct that the fine, if levied, be refunded to the accused.

H. T. H.

Conviction: quashed.

CRIMINAL REFERENCE.

Before Mr. Justice Beverley and Mr. Justice Banerjee.

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 July 17.

THE QUEEN-EMPRESS v. JAGAT CHANDRA MALI AND ANOTHER
 (ACCUSED.)*

Pardon, Withdrawal of—Conditional Pardon to Prisoner—Power of Sessions Court to try person not committed—Approver, Evidence of—Criminal Procedure Code, ss. 162, 193, 337, 339, 374—Evidence Act, ss. 24, 30.

Two persons, J and U, were charged with the murder of U's husband, and in the course of the police enquiry made certain statements to the police. They were then sent up by the police to a Deputy Magistrate for

* Criminal Reference No. 15 of 1894, in Criminal Appeal No. 391 of 1894, made by H. Cox, Esq., Sessions Judge of Tipperah, dated the 5th June 1894.

(1) 5 Bom. H. C., Cr., 168.

(2) 1 L. R., 6 Mad., 381.