

In Re: Howard

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Court : Mumbai

Decided On : Aug-25-1887

Reported in : (1889)ILR12Bom167

Judge : West and ;Birdwood, JJ.

Appellant : In Re: Howard

Judgement :

West, J.

1. It appears from the decision of the Magistrate in disposing of the case, though the matter is not brought out with absolute clearness, that he was under the impression that when a previous publication of the alleged defamatory matter had occurred, the subsequent republication could not properly be made the subject of prosecution until that course had been taken with regard to the earlier publication. This, however, is not law. The Indian Penal Code makes no exception in favour of a second or third publication as compared with a first and such an exception would obviously be made a means of defeating the principal provision of the law of defamation. In England it is not allowed to a defendant to prove that a statement, similar to the one for which he is indicted, has been previously published by persons who have not been prosecuted (see Reg. v. Holt 8 Cox. C.C. 411); and the repetition of a common rumour, however prevalent, is not received as an excuse for its further promulgation (Waithman v. Weaver 11 Price, 257, note; nor,

according to the English law, is the recovery of damages against one journal accepted even as mitigation in an action against another journal for a repetition of the libel (Reg. v. Kerr 8 C. & P., .177). It will be necessary, and we direct the Chief Presidency Magistrate to resume the consideration of the complaint in this case, directing his attention to the particulars thereof with reference to the principles we have indicated, and he will thereon give his decision on the complaint with regard to the following points: 1, the veracity and good faith of the complaint; 2, the legal responsibility of the persons accused, and each of them; 3, as to the fact of publication; and, 4, with regard to the nature of the publication as penally defamatory or otherwise. The order of the Magistrate dismissing the complaint is reversed, in order that he may proceed in the course we have thus prescribed.

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