

**In Re: P. Venkata Reddy**

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**Court :** Chennai

**Decided On :** Mar-15-1911

**Reported in :** (1913)ILR36Mad216

**Judge :** Charles Arnold White, C.J., ;Sankaran Nair and ;Ayling, JJ.

**Appellant :** In Re: P. Venkata Reddy

**Judgement :**

Charles Arnold White, C.J.

1. The question which has been referred to us is this--'Is the statement of a person charged with an offence in answer to a question by the Court trying him 'What have you to say,' an absolutely privileged statement so as to make him not liable to be punished for an offence under Section 499, Indian Penal Code, in respect of the statement?' There can be no question that under the law of England the occasion would have been absolutely privileged. Mr. Rozario, who argued in support of the view that under the law of this country the statement was not privileged unless the prisoner could show that it was made in good faith within the meaning of the ninth exception to Section 499 of the Indian Penal Code, has conceded this. The law of England is that there are occasions when it is for the public interest that persons should not be in any way fettered in their statements. In this case the privilege is absolute and no action lies for words spoken. The occasions are (1) Parliamentary Proceedings, (2) Judicial Proceedings and (3) Naval and Military affairs, and the affairs of State generally. See Odgers on 'Libel

and Slander,' 5th Edition, page 230.

2. With regard to the absolute privilege in the case of judicial proceedings under the English law, I need only refer to the leading case of *Dawkins v. Lord Rokeby* L.R., 7 H.L., 744; (1878) L.R., 8 Q.B., 255, and the judgment of Lopes, L.J., in *Royal Aquarium and Summer and Winter Garden Society v. Parkinson* (1892) 1 Q.B., 431, The Lord Justice said 'The authorities established beyond all question this: that neither party, witness, counsel, jury nor judge can be put to answer civilly or criminally for words spoken in office; that no action for libel or slander lies, whether against judges, counsel, witnesses or parties, for words written or spoken in the course of any proceeding before any Court recognised by law, and this though the words written or spoken were written or spoken maliciously, without any justification or excuse, and from personal ill-will and anger against the person defamed.'

3. The question we have to determine is whether this Common law doctrine of absolute privilege is part of the law of this country, or whether on the true construction of Section 499, Indian Penal Code, the law of defamation as laid down in that section excludes the application of this doctrine. The contention in support of the latter view was that the law of defamation, so far as this country was concerned, was created by Section 499, and inasmuch as that section contains no reference to this English common law doctrine of absolute privilege, it should be inferred that it was the intention of the legislature that it should form no part of the law of this country. In my opinion, it does not necessarily follow that, because this doctrine is not expressly recognised in the section, it was the intention of the legislature to exclude its application from the law of this country. The provisions of the Indian Penal Code and also those of the Evidence Act of 1872 are mainly based upon the English law and it is to be observed that, whenever the legislature in this country intended to depart from the English law, they made their intention clear by express enactment. As regards the Evidence Act, I may refer to Section 132 and Section 167. As regards Section 499 of the Penal Code, the legislature has made it clear, by express enactment, that in certain respects they intended to depart from the English law of libel and slander. For instance, under the Penal Code, slander of a private person is a criminal offence: it is not so in England. It is

not to be supposed that the framers of the Penal Code had not before their minds the doctrine of the English law with regard to the question of absolute privilege; and it seems to me that in dealing with a matter of such importance, if they had intended to exclude its application, they would have made their intention clear and would not have left it to be a matter of negative inference, Mr. Rozario argued that only a qualified privilege existed in connection with the occasion of judicial proceedings and that the plea of privilege was only open to counsel, party, witness; or prisoner subject to the obligation of proving that the imputation conveyed by the defamatory statement was made in good faith within the meaning of the ninth exception to Section 499. If this were so, one would have expected to find amongst the exceptions and illustrations in Section 499 some reference to a case of qualified privilege in connection with a statement made in the course of judicial proceedings. Not only do we find no reference to a case of absolute privilege as recognised by the law of England, but we find no reference to any case of qualified privilege in connection with judicial proceedings. The inference which I should draw from this would be that it was not the intention of the legislature to exclude the application of this doctrine of the English Common law from the law of defamation in India. The exceptions would seem to have been drafted with reference to the occasions of qualified privilege as recognised by the law of England, omitting all reference to the question of privilege in connection with statements made in judicial proceedings or to the other classes of absolute privilege recognised by the law of England. There may be said to be five groups of exceptions to the section, all relating to occasions as to which qualified privilege is recognised. Exception I corresponds to the plea of justification. Exceptions II, III, V and VI correspond to the plea of fair comment, on a matter of public interest. Exceptions VII and VIII cover the cases of censure by a lawful authority passed in good faith, and accusation made to a person in lawful authority in good faith. Exceptions IX and X cover the cases of imputation made in good faith by a person for the protection of his interests or for the public good, and the case of caution intended for the good of the person to whom it is conveyed or for the public good. Exception IV covers the plea of fair report of public proceedings.

4. I do not think that the canons of construction laid down by Lord Herchell in *Bank of England v. Vagliano Brothers* (1811) A.C., 107 are applicable here. His Lordship

said 'I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.' Now the English Bills of Exchange Act, which was the subject of Lord Herchell's observations, was a statute passed with the object of codifying the law as it then stood. The object of Section 499 of the Code was to constitute defamation a criminal offence on lines which, generally speaking, follow the English law of libel and slander. It was not intended to codify existing law but to create new law so far as this country was concerned.

5. This being so, in considering the intention of the legislature I think we are certainly warranted in taking into consideration what the law of England was at the time the Indian enactment was passed. If we are to seek for protection of witnesses and prisoners only within the four corners of Section 499 of the Indian Penal Code or within the four corners of that enactment and the Provisions of the Evidence Act, it seems to me that rather startling results would follow. In Section 132 of the Evidence Act the legislature departed from the English law and enacted that a witness should not be excused from answering a relevant question on the ground that the answer would tend to criminate him, with the proviso that no such answer which a witness is compelled to give shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer. The protection given by the proviso is limited to criminal proceedings. If we are to look to the statute law of this country alone, the result would be that, unless a witness could prove good faith he would, if compelled to answer, be protected from a prosecution in respect of an incriminating statement, but he would not be protected against a suit for damages. Mr. Rozario contended that the words of the proviso were wide enough to include civil, as well as criminal, proceedings. But, in my opinion, they are not. Again, if the privilege of a prisoner is to be ascertained by reference, and only by reference, to the provisions of Section 499 of the Penal Code, a prisoner who stated, in answer to a question put to him by the Court, that the witnesses for the prosecution had not spoken the truth, would, unless he could discharge the onus of showing that

he made the statement in good faith, be liable to be prosecuted for the statement, and 'would also be liable to suits for damages at the hands of all the witnesses to whom he had imputed the giving of false evidence. It might even be said, if the occasion is not absolutely privileged and the question of privilege is to be considered only with reference to the provisions of Section 499, a prisoner who pleaded not guilty, unless he could show that his plea was made in good faith, would be subject to criminal or civil proceedings. I cannot bring myself to believe that the legislature in enacting Section 499 intended to bring about such a result as this.

6. As regards the authorities in this country, conflicting views have been taken. Speaking generally, the trend of the decisions in the Madras and Bombay High Courts is that the occasion is absolutely privileged. The trend of the Allahabad and Calcutta decisions is the other way. We have, however, a decision of the Privy Council which is reported in *Baboo Gunnesh Dutt Singh v. Mugneeram Chowdhry* (1873) 11 Beng. L.R., 321 . 21 Mad.--29 which clearly recognises the rule of the English Common law as applicable in this country. In that case their Lordships pointed out that the suit, though called a suit for defamation, was in substance an action for malicious prosecution. The judgment runs: 'Their Lordships are of opinion, with the High Court, that if it had been, strictly speaking, such an action, it could not have been maintained; for they agree with that Court that witnesses cannot be sued in a Civil Court for damages, in respect of evidence given by them upon oath in a judicial proceeding. Their Lordships hold this maxim which certainly has been recognised by all the Courts of this country, to be one based upon principles of public policy. The ground of it is this, that it concerns the public and the administration of justice that witnesses giving their evidence on oath in a Court of Justice should not have before their eyes the fear of being harassed by suits for damages; but that the only penalty which they should incur if they give evidence falsely should be indictment for perjury.'

7. It is true that this opinion was expressed with reference to a civil action for damages and there is no reference to criminal proceedings. But as regards the question of principle this, as it seems to me, makes no difference. As to this, see the judgment of Sheppard, J., in *Manjaya v. Sesha Shetti* I.L.R., (1888) Mad., 477.

It is no doubt true that when the trial in which the question arose was held in 1866 the law of evidence had not been codified. But I do not think this has much bearing on the question that we have to decide, since Section 499 of the Penal Code was in existence when this question arose for consideration before the Privy Council. Although their Lordships do not refer to the section, it, of course, cannot be assumed that they did not consider its effect. The passage in the judgment above set out is, to my mind, a clear pronouncement to the effect that the English Common law doctrine applies in India. Their Lordships describe the doctrine as 'recognised by all the Courts of this country,' and 'one based upon principles of public policy.' As regards Madras decisions, in *Murugesu Pillai v. Papathi Ammal* (1897) 1 Weir Criminal 612 a statement made by a prisoner that the complainant was kept by him as his concubine some years and was afterwards in the keeping of another person was held to be privileged. The ground of the decision, however, was that the statement was true and fell within exception IX to Section 499, In *Nadu Gounden v. Nadu Gounden* (1889) 1 Weir Criminal 589, it was found that the defamatory statement made by the accused in answer to a question if he had anything to say, was false and not made in good faith, Moore, J., was of opinion that the question of privilege must be decided with reference to the provisions of Section 499. Subrahmanai Ayyar, J., was of opinion that the occasion was absolutely privileged. In *Manjaya v. Sesha Shetti* I.L.R., (1888) Mad., 477 it was held that the statement of a witness while under cross-examination before a Criminal Court was absolutely privileged. In the case of *Hayes v. Christian* I.L.R., (1892) Mad., 414 this Court held that where a person who was defended by counsel on a criminal charge interfered in the examination of a witness and made a defamatory statement with regard to his character, the occasion was not privileged. The Judge no doubt took the view that the question should be considered with reference to the provisions of section, 499. But they pointed out in connection with the English law that the words complained of could not be said to have been used in the ordinary course of a legal proceeding. In *In the matter of Alraja Naidu* I.L.R., (1907) Mad., 222 the statement by a prisoner was considered to be absolutely privileged. The same view was taken in *Pachaiperumal Chettiar v. Dasi Thangam* I.L.R., (1908) Mad., 400, but there, there seems to have been a finding by the Judge who tried the case, that the questions which constituted the

defamation were put in good faith. In the case of *Pudmarazu Pantulu v. Venkatramana Aiyar* (1909) 19 M.L.J., 217, where the questions had been put in cross-examination by a vakil and the client who instructed the vakil was charged with defamation, the privilege was held to be absolute, In *Adapala Adivaramma v. Rabala Ramachendra Reddy* (1910) M.W.N., 155, where a suit for damages was brought in respect of a statement in an affidavit, the statement was held to be absolutely privileged. In the last reported Calcutta case, *Golap Jan v. Bhola Nath Khetry* I.L.R., (1911) Calc., 880, the learned Judges with reference to a complaint to a magistrate, held that even if the complaint was defamatory, 'the complainant was entitled to protection from suit, and this protection was the absolute privilege accorded in the public interest to those who make statements to the courts in the course of, and in relation to, judicial proceedings.' The protection thus described is certainly not to be found within the four corners of Section 499 of the Penal Code. I do not think that this view can be reconciled with the view taken in some of the earlier Calcutta cases. See for instance *Queen v. Pursoram Doss* (1865) 3 W.R. (Cr. R.), 45, and *Augada Ram Shaha v. Nemai Chand and Shaha* I.L.R., (1896) Calc., 867 where it was held that a defamatory statement made in the pleadings in an action is not absolutely privileged, and the cases reported in *Greene v. Delanney* (1870) 14 W.R. 27. As regards Bombay, it was held in *Nathji Muleshvar v. Lalbhai Ravidat* I.L.R., (1890) Bom., 97, that no action for slander lies on any statement in the pleadings or during the conduct of suit against a party or witness. Sargent, C.J., held that the rule of the English Common law was applicable and be observed 'we doubt whether there is anything in the circumstances of this country which makes it less desirable from the point of view 'of public policy as concerning the public and administration of justice' as it is expressed by the Privy Council in *Baboo Gunnessh Dutt Singh v. Mugneeram Chowdhry* (1873) 11 Beng. L.R., 821 (the case above cited), that such statements, though false and malicious, should in no case be made the subject of the civil action quite independently of the question as to their being criminally punishable.'

8. The same view was taken by the Bombay High Court where the witness was prosecuted for defamation in the case of *Queen Empress v. Sabaji* I.L.R., (1893) Bom., 127. In *In re Nagarji Tricumji* I.L.R., (1895) Bom., 340, the Court would seem to have been of opinion that the question of privilege must be decided with

reference to the provisions of the Penal Code. As regards Allahabad, as I have said, the trend of authority is in the direction of holding that the occasion is not absolutely privileged. I may refer to the cases of Abdul Hakim v. Tej Chandar Mukarji I.L.R. (1881) All., 815, Dawn Singh v. Mahip Singh I.L.R. (1888) All., 425 Emperor v. Ganga Prasad I.L.R. (1907) All., 685, and Isuri Prasad Singh v. Umrao Singh I.L.R., (1900) All, 234.

9. I agree with the conclusion arrived at by Mr. Justice Richards (now Richards, C.J.) who dissented from Knox, J., in the case of Emperor v. Ganga Prasad I.L.R., (1907) All., 685. This judgment is in accordance with the Madras authorities and seems to me to be based on sound principles. I would accordingly answer the question which has been referred to us in the affirmative.

**Sankaran Nair, J.**

10. I concur.

**Ayling, J.**

11. I concur.

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