

M. Banerjee Vs. Emperor

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Court : Kolkata

Decided On : May-06-1927

Reported in : AIR1927Cal823

Appellant : M. Banerjee

Respondent : Emperor

Judgement :

C.C. Ghose, J.

1. This rule was issued by my learned brothers Mr. Justice Cuming and Mr. Justice Mallik, calling upon the District Magistrate of the 21 Parganas and also on the complainant Babu Anukul Chandra Mitter to show cause why the proceedings against the petitioner, who is a barrister-at-law and an advocate of this Court, now pending in the Court of the Sub-Divisional Magistrate in Diamond Harbour, should not be quashed on these grounds namely : first, that the petition of complaint did not disclose any offence committed by the petitioner, secondly, that on the allegations made by the complainant in his petition of complaint, no prima facie case has been made out against the petitioner; and thirdly, that in view of the admission of the complainant that the alleged defamatory question was put by the petitioner in cross-examination on instructions from the mukhtear, no charge could in law be sustained.

2. In order to understand the precise significance of the three grounds upon which the present rule was issued, it is necessary to state shortly the circumstances giving rise to the present application. The petitioner before us was engaged to defend one Heramat Ali, who was charged with having committed an offence punishable under Section 504, I.P.C., i.e. Rule with having intentionally insulted a certain person with intent to provoke a breach of the peace before the Deputy Magistrate, Diamond Harbour. It appears from the record that the case against the said Heramat Ali ended in his conviction. At the trial of Heramat Ali, a person of the name of Satish Chandra Bose, who is a mukhtear practising in the Court at Diamond Harbour instructed the present petitioner on behalf of Heramat Ali. One of the witnesses for the prosecution was the present opposite party Babu Anukul Chandra Mitter. After he had been examined-in-chief, he was cross-examined by the present petitioner, who asked him whether it was not a fact that he was low born and untrustworthy, and that his mother had led a life of shame in Calcutta. It is admitted by the opposite party that the question referred to was asked on the express instructions of the mukhtear and the petitioner's contention is that the question was asked in entire good faith and with the bona fide object' of shaking the credit of the witness Anukul Chandra Mitter and to discover his position in life, and that he honestly believed that the imputation involved in the said question was well founded. The offensive question was asked in cross-examination on the 5th February 1927. On the 8th February 1927 the witness Anukul preferred a complaint against the present petitioner and two others under Section 500, I.P.C., with having defamed him. The learned Magistrate issued process against Mr. Banerjee.

3. Mr. Langford James, who appears on behalf of the petitioner, has contended before us that on the grounds on which the present rule has been issued, it should be made absolute and that it is right and proper that the proceedings against the petitioner should be quashed, While insisting that the proceedings should be quashed, Mr. James, on the instruction of his client, has expressed his clients deep regret that he should have asked a question, even in good faith which has given pain to the opposite party and has apologized on behalf of Mr. Banerjea. In view of what has taken place in Court, it is unnecessary for us to refer in detail to the state of the law in this matter in England or in India. So far as the English law

is concerned, it is settled that advocates have absolute and unqualified privilege in respect of questions asked in cross-examination. So far as advocates in this country are concerned - by which expression I include vakils as well as pleaders - they have not such unqualified and absolute privilege as is accorded to their brethren in England : see in this connexion *Sullivan v. Norton* [1886] 10 Mad. 28 (F.B.), *In re Venkata Reddy* [1912] 36 Mad. 216, *In re Nagarkhi Trikamji* [1895] 19 Bom. 34; *Bhaishankar v. L.M. Wadia* [1900] 2 Bom. L.R. 3, *Emperor v. Purshottamdas* : (1907)9BOMLR1287 ; *Upendra Nath v. Emperor* [1909] 36 Cal. 375; *Nikunja Bhan v. Harendra Chandra* [1914] 41 Cal. 514, *McDonnell v. Emperor* A.I.R. 1925 Rang. 345. It is not defamatory to make imputation on the character and position in life of a witness, provided that the imputation is made in good faith and for the protection of the client who has engaged the advocate : see Excep. 9 Section 499, I.P.C. The presumption, therefore, is that a question asked in cross-examination making an imputation as regards a witness affords no ground ordinarily for a criminal prosecution and that it is the duty of a Court when complaint is made against an advocate for having used defamatory words that it should ordinarily be presumed that the remark on question objected to was made on instructions and in entire good faith. No doubt there maybe circumstances which may show that the question or remark objected to was made wantonly, or from malice or from private motive, but the greatest care ought to be taken to enquire into the circumstances and, as stated in the Rangoon case A.I.R. 1925 Rang. 345, an opportunity should be given to the party accused of such offence to offer explanations before summons is issued. In this view of the matter, and having regard to the state of the record before us, we accept the statement that the offensive question in this case was asked in entire good faith and on instructions from the mukbear instructing the learned advocate. At the same time there cannot be any doubt that while Mr. Banerjee may have acted from a sense of duty towards his client and in entire good faith, he certainly failed to exercise his own discretion before he put the question to Babu Anukul Chandra Mitter. It cannot be too strongly insisted upon that while counsel have their privileges they have also their responsibilities and they ought never to abuse their position or their privilege. We are glad that Mr. Banerjee has expressed his deep regret that he should have caused any pain to the witness Anukul Babu, and we are equally glad

that Anukul Babu, who has been present in Court before us, has through his learned vakil accepted Mr. Banerjee's apology. In this view of the matter we think the proceedings against Mr. Banerjee should be quashed, and we accordingly make the rule absolute.

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