

*Stewart*<sup>(1)</sup> and *Bird v. Gammon*<sup>(2)</sup> are instances of the same kind. See *Birkmyr v. Darnell*<sup>(3)</sup>. Whether, therefore, the promise of Lakshmibái contained in her bond be voidable or void, the result is the same. Shripat in either case was liable.

So far as the defendant Rámchandra Shripat's son is concerned, we must set aside the decree of the District Court, and restore that of the Subordinate Judge, with costs throughout on the defendant Rámchandra. The decree of the District Court in so far as it dismisses the suit against the defendant Lakshmibái will be affirmed, with costs.

(1) 11 M. and W., 857.

(2) 3 Bing., N. C., 883.

(3) Smith L. C., Vol. I, p. 336.

## CRIMINAL REVISION.

*Before Mr. Justice Jardine and Mr. Justice Ranade.*

QUEEN-EMPRESS *v.* JANA'RDHAN DA'MODHAR DIKSHIT.\*

*Penal Code (Act XLV of 1860), Sec. 499—Defamation—Publication—Mode of publication defamatory though the imputation be true.*

Under section 499 of the Indian Penal Code (Act XLV of 1860) the person who publishes, and the person who makes, an imputation are alike guilty of defamation.

A Court may find that an imputation is true and made for the public good, but on considering the manner of the publication, (*ex. gr.*, in a newspaper), it may hold that the particular publication is not for the public good, and is, therefore, not privileged.

THIS was an application by the accused for the exercise of the High Court's Revisional Jurisdiction under section 439 of the Code of Criminal Procedure (Act X of 1882).

The accused had been convicted of defamation under the following circumstances:—

The complainant, Hari Vináyak, was an inspector in the service of the Thána Municipality. The accused, who was a Municipal Commissioner, sent a letter, dated the 8th November, 1893, to the Municipal Secretary, the material portion of which was to the following effect:—

\*Criminal Application for Revision, No. 269 of 1894.

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"Hari Vináyak, Inspector, is a dismissed servant of the Local Board, and it is understood that he is also dismissed from the Forest Department, and that the said Inspector is also fined by the Local Board. Has this fact come to the notice of the (Municipal) Committee? If so, why is a man of such a questionable character employed by the Municipality? Are not other men available? If the fact has come to the notice of the Municipality, is anything being done about it?"

Before the Municipality could take any action on the matter, the accused published the letter in a newspaper called the *Suryodaya* in its issue of the 27th November, 1893. The complainant thereupon prosecuted him for defamation both for sending the above letter to the Municipality and for publishing it in the newspaper.

The accused pleaded that the statements in the letter were true, made in good faith, and for the public good; and were, therefore, protected by exceptions 1, 3, 8, and 9 to section 499 of the Penal Code.

The First Class Magistrate, who tried the case, convicted the accused under section 500 of the Penal Code.

On appeal the Sessions Judge held that the imputations, complained of, were true and made in good faith, and in so far as they were communicated to the Municipal Committee were protected by exception I to section 499 of the Penal Code; but he was of opinion that there was no justification for publishing the letter in a newspaper, and he, therefore, confirmed the conviction.

The following extract from the Sessions Judge's judgment gives his reasons:—

"But in dealing with the publication in a newspaper a different set of considerations come in. The accused, who was himself a Municipal Commissioner, was justified in bringing to the notice of the governing body of the Municipality facts going to show that one of their employes was undeserving of their trust. Some persons indeed would hold, it was his duty to do this. But was he justified in publishing the same facts in a newspaper? What is the public good in a case of this kind? Is it merely that the Municipality, the men's employers, should know of his character? Or that the general public should know of it? I cannot see that the public good is served by spreading abroad facts harmful to a man's reputation more widely than is necessary. It is argued that his employers are the general public of Thána; but this is not so. It is the municipal body and not the general local public that engages and dismisses municipal servants. It is well that the municipal governing body should know the character of their servants, but no good purpose is served by a

general knowledge in the public that a municipal servant is not of good character, unless the governing body, being acquainted with that fact, has determined to retain his services, when they ought not to be retained. If that be the case, and it is not the case here, it may be for the public good that the public should know. Otherwise an extension of such knowledge beyond the governing body is far more of an injury to the servant than of a benefit to the public. On this point I refer to the second edition of Odger's Digest of the Law of Libel and Slander, pages 243 to 246. In *Purcell v. Sowler* it was held that the charge against the medical officer of a poor law union ought to be confined, in the first instance, to those whose duty it is to investigate the charges. In the case of *Simpson v. Downs* it was held that 'a letter sent to a newspaper by members of the Town Council and published therein, charging certain contractors for the erection of the borough jail with "scamping" their work, is not privileged: although preferring the same charge at a meeting of the Town Council probably would have been.'

"The general principle appears to be that the mode and extent of a privileged communication should not be more injurious than need be. The interests of the individual are entitled to protection as well as the interests of the public. It is for the public interest that a Municipality should not be served by an unworthy man, but that public interest would probably be sufficiently secured by informing the Municipality of the man's character; and to go beyond that, at least until it has been tried and failed in its object, is to injure a person more seriously than the public good requires.

"It is as well to note that the article in the *Suryodaya* complained of was not a report of proceedings at a municipal meeting. It states that a special general meeting was called for November 11th, but was not held, as there was no quorum; that the accused had given due notice of certain questions which were not put, as no meeting was held, but which are set out in the article as being of public interest. Amongst them of course is the question relating to Hari Vináyak. The others relate to other matters. Had the article been a full and true report of the proceedings of a meeting actually held, it would perhaps be privileged, but it was not this; it was not even a publication of the notice of questions. The insertion in an article of that kind of defamatory matter about an individual is not for the public good. To hold the contrary would be to give currency to a principle that would be a licence to scandal, an encouragement to prying and impertinent curiosity, and an infraction of the right that the privacy of a man's past shall not be needlessly invaded. Therefore, I hold that in publishing the article in the *Suryodaya* the accused was guilty of defamation."

The accused now moved the High Court under its revisional jurisdiction.

*Starling* (with *Naráyan Ganesh Chandávarkar*):—The Sessions Judge has found that the imputations complained of are true, and made in good faith, and for the public good so far as they were addressed to the Municipal Committee, but that their publication in a newspaper was not for the public good.

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The present case falls under exception I, which places no limitations upon the mode or manner of publication. The case of *Purcell v. Sowler*<sup>(1)</sup> does not apply. In that case the imputation was clearly false. Here the imputation is true. The reason why it was published in a newspaper was that the attendance at municipal meetings was generally insufficient to make a quorum. The accused, therefore, felt that it was his duty to bring the matter to the notice of the public: Odger on Libel and Slander, p. 243.

There was no appearance for the complainant.

JARDINE, J.:—Section 499 of the Indian Penal Code defines defamation. It brings under the criminal law the person who publishes as well as the person who makes the imputation. The same distinction is made in the first exception, the one pleaded for the accused by Mr. Starling. That exception exempts any imputation made or published for the public good, and concludes as follows—whether or not it is for the public good is a question of fact. The learned Sessions Judge dealing with the fact in appeal before him found that the imputations were true and made for the public good. But on consideration of the manner of the publication, *i.e.*, in a newspaper, he held that the publication was not for the public good and cited *Purcell v. Sowler*<sup>(1)</sup>. The reasons given show that the finding is substantially one on the facts, and, therefore, such as this Court, sitting in revision, is not inclined to interfere with, except for grave reason. We are of opinion, on the words of the sections, that the Sessions Judge was competent, while acquitting under the first exception as regards the mere making, to uphold the conviction on the ground that the publication, namely the particular publication in the newspaper, was not for the public good. We do not differ from his reasons. This interpretation of section 499 is in accord with the views as to the reasons of the enactment expressed in the *Queen v. Sankara*<sup>(2)</sup> and *Thiagaraya v. Krishna-swami*<sup>(3)</sup>.

*Application dismissed.*

(1) C. P. D., 215.

(2) I. L. R., 6 Mad., 381, 396.

(3) I. L. R., 15 Mad., 214, 217.