

The preliminary objection must, therefore, be overruled. On the merits, it has not been denied before us that the act complained of in the plaint of the applicant was done under the Resident's orders. If it was so done, the Resident is practically interested in the suit. We have no doubt that that circumstance is not likely to weigh with him in trying and deciding the case; but the decided cases show that if a party has reasonable grounds for apprehending that the Judge who is to try his case is likely to be biassed, he is entitled to a transfer of the case from that Judge. It is true that the applicant can have the suit referred to this Court under Act II of 1864; but I think that upon the whole the proper course to adopt is to order the transfer prayed for. Costs of this application to be costs in the cause.

Rule made absolute.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

NARASIMHA SHANKAR DESHPANDE (ORIGINAL PLAINTIFF),
APPELLANT, v. BALWANT LAKSHMAN (ORIGINAL DEFENDANT),
RESPONDENT.*

Libel—Privilege—Subordinate Government officer making a report to his superior—Imputations contained in the report—Protection.

The defendant, a Chief Constable of Police, in reply to a request from his superior for a report as to whether the plaintiff should be granted an additional license for arms, made in the course of his report certain imputations defamatory of the plaintiff, and recommended not only that no additional license should issue to the plaintiff, but that his old license should be cancelled. In an action of libel against the defendant:—

Held, that the defendant was not liable as his communication was protected by privilege. It was the duty of the defendant as a police officer to make reports about persons asking for and holding licenses for arms, and the communication complained of was made by him in the discharge of a public duty which he owed to his superior officer. The mere fact that the defendant made the communication for the purpose of getting the plaintiff's license cancelled, though his superior officer had never asked his opinion about the cancellation, is not sufficient to destroy the privilege, in the absence of any satisfactory evidence that the

* First Appeal No. 96 of 1902.

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defendant was actuated by malice, or that the opinion expressed, even if erroneous, was not honestly formed.

APPEAL from the decision of B. C. Kennedy, District Judge of Sholápur-Bijápur, at Sholápur.

Suit to recover damages for libel.

On the 1st October, 1900, plaintiff made an application to the District Magistrate, alleging that the Police were ineffective and that he wanted an additional gun for protection against dacoits. This application was forwarded to the District Superintendent of Police. The latter officer sent it to the Chief Constable (defendant) who forwarded it to the Thánadár of the village where the plaintiff lived.

The Thána Amaldar (officer) replied that the proposed issue of an additional gun was unnecessary. The statements of the plaintiff as to his unprotected condition were false and made because the police had searched his house in connection with the Chadchan highway robbery. There were two factions in the village, of one of which plaintiff was the head. On all these grounds no new license should be issued to plaintiff, but his old one should be taken away.

The Chief Constable forwarded the Thána Amaldar's report repeating the substance of it and then adding:—"The reasons given by the Thána Amaldar are correct; the applicant (plaintiff's) house was searched in the recent Deshmukh's case and then I learned what his character was. I concur with the recommendations of the Thána Amaldar."

The District Superintendent of Police forwarded the correspondence to the District Magistrate repeating the remarks of the Thánadár and Chief Constable and adding some remarks of his own.

The license of the plaintiff was in consequence cancelled.

Plaintiff filed a suit against defendant to recover damages, alleging that in the month of December, 1900, he falsely and wantonly reported that plaintiff was an associate of dacoits and caused his arms license to be cancelled, thereby injuring his reputation and causing him annoyance.

Defendant contended (*inter alia*) that the report was made honestly in the execution of his duty.

The lower Court found that the defendant did not report that the plaintiff was an accomplice of thieves and dacoits, and that the defendant was not liable to any damages.

Plaintiff appealed to the High Court.

D. A. Khare for the appellant (plaintiff) :—The defendant could at the most claim a qualified privilege to the statements made by him in the report: see *Odgers on Libel and Slander*, pages 206—232. Here the defendant was only called upon to report on the point whether a fresh license should issue; but he goes further and states not only that a fresh license should not issue to the plaintiff but his old license should be cancelled. The occasion, therefore, cannot be regarded as privileged. Again, the circumstances do not show that any duty was cast upon the defendant to make the imputations: the plea of qualified privilege, therefore, cannot avail him.

The *Government Pleader* for respondent (defendant) :—The occasion becomes privileged under section 51 of the Bombay District Police Act (Bombay Act IV of 1890). Again, in this case the plaintiff has not proved any malice on the part of the defendant: see also *Jehangir v. Secretary of State* ⁽¹⁾ and *Shepherd v. Trustees of the Port of Bombay*. ⁽²⁾

D. A. Khare, in reply :—Section 51 of the Bombay District Police Act (Bombay Act IV of 1890) does not authorize a police officer to perpetrate a libel and to gratuitously assail the character of a person.

CHANDAVARKAR, J.—The libel complained of in the plaint is that the defendant in his capacity of Chief Constable of Pandharpur sent in December, 1900, a false and malicious report to the District Superintendent of Police, Sholapur, recommending that the license held by the plaintiff for a gun under the Arms Act should be cancelled because he “was an associate of thieves and dacoits.” The report sent in by the defendant does not contain these words; but the language used in it is plainly defamatory of the plaintiff, though it may not suggest that he is an associate of dacoits. Moreover, the defendant in his deposition admits that

(1) See ante p. 189.

(2) (1875) 1 Bom. 132 & 477.

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he did give information to the District Superintendent that the plaintiff was "harbouring offenders" and that his report was based on his "fear that he" (the plaintiff) "associated with bad characters."

We cannot agree, therefore, in the District Judge's finding upon the evidence that the defendant did not report that the plaintiff was an accomplice of thieves and dacoits. But the material question in the case is whether the defendant's communication is not protected by privilege. As a Police officer it was his duty to make reports about persons asking for and holding licenses for arms, and the communication was made by him in the discharge of a public duty which he owed to his superior officer. The mere fact that the defendant made the communication for the purpose of getting the plaintiff's license cancelled, though his superior officer had never asked his opinion about the cancellation, is not sufficient to destroy the privilege, because as pointed out by Baron Parke in *Toogood v. Spyring* ⁽¹⁾ "such communications are protected for the common convenience and welfare of society; and the law has not restricted the right to make them within any narrow limits." But it was said that there was no truth whatever in the report sent and information given to the District Superintendent of Police and that there was no reasonable ground for the imputations on the plaintiff's character. The law as to such privileged communications is tersely summed up by the editors of Smith's Leading Cases in their notes to the leading case of *Ashby v. White* (page 263, 10th Edition), as follows:—"In such cases, generally speaking, however harsh, hasty, or untrue may be the language employed, so long as it is honestly believed by the speaker or writer to be true, it does not furnish a legal ground of action; see *Todd v. Hawkins*,⁽²⁾ per Willes, J.; and the definition of privileged communications in *Harrison v. Bush* ⁽³⁾; and provided he believed them to be true, it does not matter that he had no reasonable grounds for his belief: *Clark v. Molyneux*.⁽⁴⁾ Nor, it seems, is it essential, if the occasion be privileged, that the writer or speaker believe the statement to be true, provided he make it without malice in fact,

(1) (1834) 1 C. M. & R. 181.

(2) (1855) 5 E. & B. 344, 348.

(3) (1837) 8 C. & P. 88.

(4) (1877) 3 Q. B. D. 237.

for it may be his duty to communicate statements which he himself does not believe; *ib. per* Bramwell, L. J.; see *Jenoure v. Delmege*.⁽¹⁾ In *Clark v. Molyneux*, Bramwell, L. J., says:—"A person may honestly make on a particular occasion a defamatory statement without believing it to be true; because the statement may be of such a character as on that occasion it may be proper to communicate it to a particular person who ought to be informed of it.....If the defendant was actuated by some motive other than that which would alone excuse him, the jury may find for the plaintiff." In the present case it is alleged that the defendant was actuated by a malicious motive, and if there is satisfactory evidence leading to the conclusion that the defendant was actuated by malice in fact in making the communication to his superiors, the privilege would be destroyed. The evidence from which we are asked to infer malice is contained in the depositions of the plaintiff and the defendant. The plaintiff states that there have been two factions in the village, to one of which he belongs and the other is headed by the Police Patel, a *bhāuband* of his. The defendant admits this. According to the plaintiff he had sent petitions to the District Superintendent of Police and the District Magistrate against the Police in 1899 and the defendant suspected him of having sent an anonymous petition against him charging him with bribery. The defendant denies this. He states that the plaintiff "has an objection to the Police who are at Mandrup and visit there"; that in 1900 the plaintiff's house was searched by the Thánadár Gul Mahomed in connection with a robbery committed at Chadchan and that he always intrigued against the Police. All this evidence proves that the plaintiff was making complaints against the police officers and the police officers were reporting against him suspecting that he was intriguing against them and assisting bad characters. These complaints and counter-complaints did no doubt produce hostility between the plaintiff and the Police, but it was hostility brought about by the opinion already formed by the police officers against the plaintiff's character. There is nothing to show that that opinion, though erroneous, was not honestly formed; and the communication of that opinion by the defendant to his

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(1) (1891) A. C. 72.

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superiors cannot be held to have been actuated by any malicious motive when the evidence before us is equally consistent with the view that, honestly believing the plaintiff to be an intriguer, and having regard to the search of his house in connection with the Chadchan robbery, the defendant thought that it was his duty to inform the District Superintendent of Police of the opinion he had formed as to his character. "Communications of this kind," to borrow the language of Alderson B. in *Todd v. Hawkins* ⁽¹⁾, "should be viewed liberally," and unless it is proved clearly that they were made with the malicious intention of defaming the plaintiff, the verdict must be for the defendant. What is relied upon as evidence of malicious intention is evidence of occurrences and the mutual relations of the parties which led the defendant to entertain a bad opinion about the plaintiff and to report it to his superior officers in the discharge of his duty. The evidence of malice in fact is not, in our opinion, so clear and unequivocal as to destroy the privilege. We must confirm the decree with costs.

Decree confirmed.

(1) (1837) 8 C. & P. 88.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

1903. NARASIMHA SHANKAR DESHPANDE (ORIGINAL PLAINTIFF), APPELLANT,
 August 4. v. IMAM VALAD MAHAMAD (ORIGINAL DEFENDANT), RESPONDENT.*

Malicious search—Police Officer searching a house under orders for arms under a cancelled license—Acting in the discharge of duty—Dishonesty—Action.

On the 1st October, 1900, the plaintiff applied to the District Magistrate to renew his existing license for arms and for the issue of an additional license for fresh arms. The District Magistrate, however, cancelled the plaintiff's existing license and declined to grant him a license for fresh arms. This order was sent on to the defendant, the officer in charge of the Police Station at the village where plaintiff lived, with a direction that it should be communicated to the plaintiff and that such arms as there might be in his possession should be attached. The defendant accompanied by a Panch went to the plaintiff's house, communicated to him the contents of the order passed by the District Magistrate

* First Appeal No. 87 of 1902.