

(1888) 01 CAL CK 0006
In the Calcutta High Court

Bhikumber Singh

APPELLANT

Vs

Becharam Sircar and Goti Kristo Das

RESPONDENT

Date of Decision : 27-01-1888

Acts Referred:

Citation : (1888) ILR (Cal) 264

Hon'ble Judges : Norris, J;Beverley, J

Bench : Division Bench

Judgement

Norris, J.—These are appeals from the decisions of Mr. Porter, the Judicial Commissioner of Chota Nagpur.

2. The plaintiff brought two separate suits against the two defendants to recover damages for slander. His cause of action he alleged to be this, that the defendants being summoned as witnesses on behalf of a Police Sub-Inspector, who was being prosecuted for extortion, used, in the course of giving their evidence, one of them, that is, the defendant in No. 702, the words: "Of all the persons living within the police jurisdiction of this district the Tekait's (meaning the plaintiff's) character is the worst," and the other, the defendant in No. 703, the words: "The Tekait received stolen property and committed murder." The plaintiff alleged that these statements were made in the Police Court of zillah Manbhoom on the 14th September 1885. He alleged that they were made maliciously; that the defendants bore the plaintiff a grudge; and it was to give vent to that grudge and to injure the plaintiff's reputation that the words in question were uttered.

3. The written statements alleged that the defendants were cited as. witnesses in the Police Court, and were bound to appear there as such witnesses, and to give true evidence, which they did. They also denied that the words were used maliciously. They denied the existence of any enmity between the plaintiff and defendants; and they also denied that the plaintiff had sustained any damages by reason of the words being used.

4. The Deputy Commissioner, before whom the case came on for trial in the first instance, framed the following issues: "First, whether or not the suit can proceed without previous notice? Second, whether or not the defendant as a witness giving evidence in a judicial proceeding is absolutely protected from a suit for the damages? Third, whether plaintiff has sustained substantial injury by reason of false statements maliciously made by defendant, and is entitled to recover damages; if so, to what amount? Or whether the defendant, having made the said statements bona fide, and being bound to make them as a witness, is not liable to a suit for damages, and is entitled to his costs?"

5. The Judicial Commissioner in the course of his judgment; says:

These statements (that is to say, the statements made by the defendants) were undoubtedly made in answer to questions put to the witnesses by the accused or his pleader, and allowed by the Court as relevant to the case.

6. It has been objected on second appeal that there is absolutely no evidence on the record to warrant this conclusion arrived at by the Judicial Commissioner.

7. It appears to us that the plaint as framed discloses no cause of action. The case *Seaman v. Netherclift* L.R. 2 C.P.D. 53 lays down that "a witness in a Court of Justice is absolutely privileged as to anything he may say as a witness having reference to the enquiry on which he is called as a witness." And we think that the allegation in the plaint that the alleged slanders were uttered by the defendants in giving their evidence in the Police Court shows that the words in question were made use of by the defendants as witnesses in a Court of Justice with reference to the enquiry on which they were called as witnesses. That being so, the plaint discloses no cause of action.

8. Secondly, we are of opinion that the proceedings show that the parties went to trial upon the basis of the assumption that the alleged slanderous statements were made in the witness box, and were made by the defendants in giving their evidence in the course of judicial enquiry to which they were properly summoned. And we think that there can be no doubt that the Judicial Commissioner must have had before him, if not actual evidence, at any rate admissions of the parties at the time the appeals were argued in this Court which would justify him in the observations he has made with regard to the circumstances under which the alleged slanders were uttered.

9. For these reasons we are of opinion that there is no ground for interfering with the judgment of the lower appellate Court in either of these cases. We accordingly dismiss the appeals with costs.