
(1902) 03 CAL CK 0021
In the Calcutta High Court
Case No : Rev. No. 996 of 1901

Bidhu Bhusan Bose

APPELLANT

Vs

Hari Nath Chakravarti

RESPONDENT

Date of Decision : 05-03-1902

Acts Referred:

Citation : (1902) 03 CAL CK 0021

Judgement

1. The Appellant in this case is the head sorter in the Railway Mail Office at 85, Lower Circular Road. He was charged before the Honorary Presidency Magistrate of the town of Calcutta with an offence under sec. 500 of the I. P. C., in having (and now follow the words of the charge) "made a petition wherein (sic) you said that Hari Nath Chakravarti negligently and purposely and intentionally misdirected the letters though there are full distinct correct English directions to throw the blame and responsibility on the new man and the said Hari Nath Chakravarti drank heavily and became insensible so much so that he had no cloth on and was quite naked." On this charge the Appellant was convicted and fined Rs. 50. The complainant Hari Nath Chakravarti was a sorter employed in the Railway Mail Service under the Appellant. The petition referred to in the charge was in fact a complaint made to the Superintendent of the Railway Mail Service by a superior officer as to the conduct of a person employed under him in the office. A rule calling on the Chief Presidency Magistrate to show cause why the conviction and sentence should not be set aside was granted on two grounds (1) that the report in question was not admissible in evidence, and (2) that the question whether the Appellant made the report honestly believing it to be true and in the course of his duty was not decided.

2. On the last ground it was argued that the report came within the 8th exception to sec. 499 and was made on a privileged occasion and therefore the question whether it was made in the course of the Appellant's duty and in the honest belief of its truth ought to have been decided. Where a defamatory statement is made on a privileged occasion the complainant must show that there was malice in fact. In the present case a perusal of the record shows that

there was ill-feeling between the complainant and the Appellant and that the Appellant's case was that the misconduct of which he accused the complainant had taken place in his presence, and that he had personal knowledge of the matter. When the Magistrate found his allegations to be false, it of necessity followed in the absence of any evidence as to mistake, and no such suggestion was made, that the complainant had proved facts which took the case out of the 8th exception and rebutted the presumption which would arise from the occasion being privileged.

3. On the second ground it is argued that the report was not admissible in evidence that there was no charge of any publication other than in the report to Mr. Hogan, and that the conviction could not be sustained, there being no publication.

4. The charge curiously omits the name of the person to whom the publication was made, but it must be taken as alleging only a publication to Mr. Hogan, to whom the petition was addressed.

5. It appears that in the course of the trial Mr. Hogan claimed a right under sec. 124 of the Evidence Act to refuse to disclose the petition in question, but this claim was overruled and he was compelled to produce it. Sec. 124 follows the English law as laid down by the majority of the Court in *Beatson v. Skene* 5 H. & N. 838 (1860) instead of the view of Martin, B., in that case and of Field, J., in *Hennessy v. Wright* 21 Q. B. D. 509 (1888) and makes the public officer the judge of whether a communication made to him in official confidence should or should not be disclosed.

6. Mr. Hogan was the person entitled to decide whether the public interests would suffer by the production, and if he considered they would, to refuse to produce the complaint.

7. Now a perusal of the record shows that Mr. Hogan when claiming privilege under sec. 124 alleged that the publication "might cause a scandal in the office." If that was Mr. Hogan's ground--and there is no affidavit from him to say that his ground was that the public interests would suffer--it is difficult to see how he could come within sec. 124 which only enables him to refuse to disclose communications made to him in official confidence when he considers that the public interests would suffer. In the present case he does not appear to have considered that the public interests would suffer. If indeed he stated, as it appears he did, that his ground for claiming privilege was "that there might be a scandal in the office," then in our opinion he was not within sec. 124 for it would be difficult for him to say that he considered that the public interests would suffer when all he apprehended was that there might be scandal in the office. We think therefore that the objections to the conviction fail and the rule must be discharged.