

(1942) 08 BOM CK 0020

In the Bombay High Court

Case No : Second Appeal No's. 590, 591 and 595 of 1940

Gangappagouda Gadigeppagouda Patil

APPELLANT

Vs

Basayya Shivarudrayya Lingad

RESPONDENT

Date of Decision : 13-08-1942

Acts Referred:

Citation : AIR 1943 Bom 167 : (1943) 45 BOMLR 215

Hon'ble Judges : Wassoodew, J; John Beaumont, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Beaumont, Kt., C.J.—These are second appeals from decisions of the District Judge of Bijapur, all raising the same point of law.

2. The plaintiff in all these suits was suing for damages for defamation, the statements made by the several defendants being substantially the same. The trial Judge decreed the plaintiff's suits, holding that the statements were defamatory, untrue and made maliciously. The learned District Judge in appeal set aside the decrees passed by the trial Judge on the ground that the statements, which he agreed were defamatory, untrue and malicious, were absolutely privileged, and the question we have to decide is whether that view of the law is right. We are, of course, bound by the findings of the lower Courts as to the facts that the statements were untrue and malicious, and there can be no question that they were defamatory in their nature : so that it is only on that basis that we have to consider whether they were privileged. No qualified privilege will help the defendants in view of the finding as to malice.

3. The way in which the question arises is this. The plaintiff at all material times was the police patil of a village called Kopp, and in 1937 the Sessions Judge of Bijapur in a criminal case, which he was trying, criticised the conduct of the plaintiff as having been negligent. Soon after that, namely, on October 12, 1937, the present defendants made a written application to the Assistant Collector of

Bijapur against the police patil making various grossly defamatory charges against him. The Assistant Collector sent the application to the Mahalkari for a report, and on November 16 the Mahalkari recorded the statements of two of the defendants, and on December 15 he recorded the statements of the other defendants. In those statements the defendants substantially repeated what they had said to the Assistant Collector. In the result, the Mahalkari reported that the statements were untrue, and the Assistant Collector in June, 1938, ordered the papers to be filed, and no action was taken against the police patil. These suits were filed within a year from the statements made by the defendants to the Mahalkari. They were filed more than a year after the statements made to the Assistant Collector, and, therefore, any suit based on those statements would be out of time. The question is whether the statements made to the Mahalkari are entitled to an absolute privilege. It is, of course, clear that any one, who considers that the conduct of a public official is not what it should be, has a duty to make a report to his superior officer, and there is no question that such a report would be entitled to qualified privilege. The maker of the report would be safe so long as he acted bona fide. But it is certainly not the duty of members of the public to make untrue and malicious reports against public servants, and it would be a very disastrous thing in this country if it were suggested that such a course could be taken with impunity.

4. The first question to decide is whether the Mahalkari in making this inquiry was acting in a judicial capacity. It is not disputed that the evidence of witnesses given in a Court of law is absolutely privileged, and the principle has been extended to evidence given before a tribunal, which has attributes similar to those of a Court of law. It is argued that the Mahalkari was in such a position, but I am clearly of opinion that he was not. The Mahalkari, as a subordinate officer of the Collector, had no power to take any action against the police patil. The police patil was a watandar patil, subject to the Watan Act of 1874, and he could be dismissed for misconduct by the Collector, with the consent of the Provincial Government, u/s 58, and under Sections 45 and 46 the Collector is required to remove him from office if, amongst other things, the police patil has been adjudged by the Collector after a summary inquiry held in accordance with the provisions relating to summary inquiries contained in the Bombay Land Revenue Code, 1879, to be of general bad character. But, in my opinion, it is perfectly clear that such an inquiry must be held by the Collector, and not by a subordinate. All that the Mahalkari was doing was holding a preliminary inquiry in order to report to the Collector, and satisfy the Collector as to whether there was a prima facie case which would require further action to be taken. It was a preliminary inquiry, which was not in any way essential, and was merely directed by the Collector for his own convenience, and I am clearly of opinion that it is impossible to hold that the Mahalkari was acting in a judicial capacity, or was exercising the attributes of a Court. On that point the two lower Courts were in agreement. They both held that the Mahalkari was not acting in a judicial capacity. But the learned District Judge held that the evidence given before the

Mahalkari was also absolutely privileged, because it was evidence which might be given subsequently in a judicial inquiry—a judicial inquiry either before the Collector whose inquiries under the Land Revenue Code are treated as "judicial proceedings" u/s 196 of the Code, or in criminal proceedings which might be taken against the police patil. The learned District Judge in reaching that conclusion relied on a decision of the House of Lords in *Watson v. M'Ewan*. [1905] A.C. 480. What the House of Lords held there was that, there being unquestionably an absolute privilege in respect of statements made by a witness in the witness-box, that privilege extended also to statements made by the witness to his solicitor as to what he was going to state in the witness box, that is to say, the House of Lords held that the privilege of a witness in the box extended to the proof which he gave to his solicitor preparatory to going into the box. As Lord Halsbury in his speech pointed out, if a witness was liable to be sued for damages in respect of statements contained in his proof, that would in practice largely destroy his privilege of not being sued for what he actually stated in Court. But, to my mind, it is an unjustifiable extension of the principle acted upon in that case to suggest that every statement of a potential witness, which may subsequently be repeated in the witness-box, is entitled to absolute privilege.

5. To my mind, the principle which the learned District Judge endeavoured to extract out of *Watson v. M'Ewan* (supra) is inconsistent with the decision of the Privy Council in *O'Connor v. Waldron* [1935] A.C. 76. In that case defamatory statements had been made before the Commissioner holding an inquiry under the Combines Investigation Act, a Canadian Statute, and the Privy Council held that the Commissioner holding the inquiry was not exercising the attributes of a Court of law. The Board relied largely on the fact that the Commissioner's conclusion was expressed in a report, that it determined no rights, nor the guilt or innocence of any one, and that it did not even initiate any proceedings, which had to be left to the ordinary criminal procedure. The Board, I think, held that *prima facie* an officer, who merely has to make a report to some other authority, is not exercising judicial functions, although the Board expressly recognized that there were some cases, for instance, a military Court of inquiry, or an investigation by an ecclesiastical commission, where there were conditions as to the way in which the tribunal exercised its functions, and as to the effect of its decisions which led to the conclusion that such tribunals had attributes similar to those of a Court of justice. That decision is relevant in this case on the question whether the Mahalkari was exercising the attributes of a Court of law, although I do not think that authority on that point is really necessary. But the real importance of the case for the present purpose is that the Commissioner in that case was holding an inquiry with a view to making a report showing whether an offence had been committed under the Combines Investigation Act, and it was not suggested either in the arguments, or in the judgment of the Board, that the evidence given before the Commissioner, although not given in any form of judicial proceeding, was nevertheless absolutely privileged, because the same

evidence might be given again in proceedings instituted as a result of the Commissioner's inquiry.

6. We were referred to a case of the Madras High Court, *Sanjivi Reddy v. Koneri Reddi* (1925) ILR 49 Mad. 315 in which the learned Chief Justice in giving judgment quoted a passage from Lord Halsbury's speech in *Watson v. M'Ewan* (supra) and said "I take that as clearly implying that all statements made by a potential witness as a preliminary to going into the witness-box are equally privileged with the statements made when actually in the box in Court." To my mind, that statement is too widely expressed. I think it should be confined to statements made by a potential witness in some preliminary essential to his going into the witness-box. That is the way in which the proposition is expressed in Halsbury's *Laws of England*, Vol. XX, paragraph 564, where the learned author says :-

The privilege attaches not merely to proceedings at the trial, but to proceedings which are essential steps in judicial proceedings, including statements in pleadings and communications passing between a solicitor and his client.

7. I am disposed to think that *Sanjiva Reddy v. Koneri Reddi* (supra) and the Calcutta case of *Madhab Chandra Ghosh v. Nirode Chandra Ghosh* [1939] 1 Cal. 574 to which we were also referred, go too far, and cannot be reconciled with the decision of the Privy Council in *O'Connor v. Waldron* (supra).

8. In my opinion, the learned District Judge was wrong in holding that these statements were entitled to an absolute privilege, and, in view of the finding that they were untrue and malicious, no qualified privilege can help.

9. The appeals, therefore, must be allowed, and the decisions of the Subordinate Judge restored, with costs throughout.

Wassoodew, J.

10. I agree.