
(1912) 12 BOM CK 0015
In the Bombay High Court
Case No : First Appeal No. 162 of 1910

Jusab Tharia

APPELLANT

Vs

G.S. Morrison

RESPONDENT

Date of Decision : 17-12-1912

Acts Referred:

Citation : (1913) 15 BOMLR 249

Hon'ble Judges : Rao, J;Batchelor, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Batchelor, J.—This is an appeal from a decision of the learned Judge at Zanzibar who has awarded plaintiff the sum of Rs. 1000 as damages for slander. The learned Judge has written an extremely careful judgment, and the only point upon which counsel for the appellant feels himself able to attack that judgment is in regard to the question of privilege. It is admittedly not possible to challenge the Judge's findings, if he is right in his view that the only privilege, which the defendant enjoyed in respect of the statement made to Crawley, was a qualified privilege. Counsel, however, contends that in the circumstances of the case the privilege should be regarded as absolute. Now the first answer to that is that that was a case which was never taken in the trial Court, where the utmost that the defence claimed was a qualified privilege. But the contention on its merits also must fail. It is sought to establish the absolute privilege by reference to the decision in *Watson v. M'Ewan* [1905] A.C. 480, the case which the learned Judge below himself cited and considered. The judgment of Lord Halsbury in that case admittedly carries the law as far as it has ever been carried, but his Lordship is careful to restrict the absolute privilege to cases where the statement has been made by an intended witness to his solicitor in a "proof" of the evidence which the speaker subsequently intends to give in a Court of justice ; and the reason for the thing, as his Lordship explains, is that if the witness is to enjoy complete immunity for the statement made in the witness-box, the same considerations of

public policy require that similar immunity should be extended to statement occurring in the witness's proof. There is, however, nothing on the record before us to bring the present case within the scope of those observations. There is nothing to show that the statement made by the defendant to Crawley was at that time intended to be made in a Court of justice, or was made at any step or stage of a judicial proceeding. On the contrary the witness Crawley says " I had nothing to do with the criminal charges against Morrison or with their investigation." It appears, therefore, that the statements made to Crawley were independent of the criminal prosecution or of any witness's evidence in that prosecution.

2. This is the only point which has been raised for the appellant, and we think that on the record before us it cannot be substantiated. We must, therefore, dismiss the appeal with costs.