

(1954) 02 GUJ CK 0003
In the Gujarat High Court

Sanghvi Champaklal Lalchand

APPELLANT

Vs

Khushaldas Ratanshi and Another

RESPONDENT

Date of Decision : 22-02-1954

Acts Referred:

Penal Code, 1860 (IPC) — Section 211, 499, 500

Citation : (1955) CriLJ 259

Hon'ble Judges : Chhatpar, J;Baxi, J

Bench : Division Bench

Judgement

Baxi, J.

(1) The question raised in this revision is the nature of privilege which attaches to defamatory statements made in a complaint to the police u/s 154, Cr.PC

(2) The applicant made a report at the Police Station, Rajkot, on 9-8-1951 that a theft was committed in his shop during the previous night and a cream separator was stolen. The applicant stated in the complaint that he suspected both the opponents as thieves. The houses and the shops of the opponents were thereupon searched by the Sub-Inspector but nothing incriminating was recovered. Subsequently the police applied to the First Class Magistrate, Rajkot, for permission to keep the investigation on dormant file as they were unable to trace the offenders.

The opponents thereafter filed two separate complaints against the applicant charging him with the offence of defamation punishable u/s 500, IPC. The applicant's defence was that he had made the complaint against the opponents in good faith. He was however convicted by the First Class Magistrate and sentenced to pay a fine of Rs. 40/- in both cases. The applicant preferred revisions in both cases against his conviction and sentence to the Court of the Sessions Judge, Central Saurashtra Division, which were disposed of by him by a common judgment and by which he confirmed the applicant's convictions and sentences. The applicant has now approached this Court in revision against the

learned Sessions Judge's order.

(3) The applicant's learned advocate Mr. M. G. Sinroja first contended that the police investigation was pending and as the report u/s 173, Cr.PC was not made to the Court nor was a B summary asked for, the applicant could not be prosecuted for defamation while the investigation was not complete. He referred to the decision in ? "Appa Ragho v. Emperor" AIR 1915 Bom 80 referred to in ? "Chitaley'S Commentaries on Criminal Procedure Code, 4th Edition", contained in Note 2 to Section 173. The Note says that till final report under this section is made the investigation must be deemed to be pending and an informant cannot be prosecuted u/s 211 of the Penal Code. The Note however refers to prosecution for making a false complaint to Court which involves elements entirely different from the offence of defamation. But apart from that, in this case the investigation, so far as the opponents are concerned, must be deemed to have been complete as soon as the police after making an investigation and carrying out the searches found nothing incriminating in their possession and asked for permission to keep the investigation on dormant file. The offence is alleged to have been committed in August of 1951 and though a theoretical possibility, that something incriminating against the opponents might turn up after the passage of so many years, may not be ruled out, it is safe to presume that for all practical purposes the investigation was complete as far as they were concerned and the objection against the competency of the complaints must be rejected.

(4) Mr. Sinroja's next contention was that the applicant's statements in the first information report were absolutely privileged and he relied upon ? "Queen Empress v. Govinda Pillai", 16 Mad 235 (B); ? Parwari Vs. Emperor, : Parwari Vs. Emperor, and ? "Ganpatram Dinaram v. Mt, Rambai" AIR 1950 Nag 20 . These decisions have been noted and discussed by the learned Sessions Judge in his considered judgment. The principle decided in all these cases was that "e-famatory statements made In answer to questions put by an Investigating Officer during an investigation are absolutely privileged. A statement n the first information report however stands on a different footing and cannot enjoy that absolute immunity. Such statements fall within the 5th Exception of Section 499, IPC and the accused can claim privilege only if he can bring them within the purview of that Exception. That Exception says that accusations preferred in good faith against a person to any of those who have lawful authority over that person with respect to the subject matter of accusations will not amount to defamation. Good faith of the person making the accusations is therefore an essential condition of exemption from liability for defamation under this Exception. In this case the learned Sessions Judge has held that the applicant's statements in the first information report that he suspected the opponents lacked good faith. He has given detailed reasons for his finding and it is unnecessary to repeat them. The finding is one of fact and the applicant is concluded by it. The applicant no doubt did not make a definite charge of theft against the opponents and mere- ly expressed his suspicions against them but, as the learned .Sessions Judge has pointed o it, that would not make the imputation less defamatory.

Consequently the revision is ordered to be dismissed.