A

CHAMAN LAL

v.

THE STATE OF PUNJAB

March 6, 1970

B [A. N. RAY AND I. D. DUA, JJ.]

Indian Penal Code, 1860, *ss.* 499 *and* 500—*Plea of justification under exceptions* 1, 8 *and* 9 *of s.* 499—*Scope of—When documents privileged,*

The appellant, who was the President of the local Municipal Committee, was convicted under Section 500 of the Indian Penal Code on a complaint that he had made defamatory remarks in respect of the character of the complainant, a Nurse attached to the Civil Dispensary, at a public meeting; that he wrote a letter to the Civil Surgeon which contained defamatory statements against her character and also repeated the defamatory allegations before the Civil Surgeon. The appellant's plea of justification under exceptions 1, 8 and 9 of s. 499 I.P.C. was rejected by the trial court and his appeal to the High Court was also dismissed. On appeal to this Court

D HELD : On the facts, the appeal must be dismissed.

In order to come within the First Exception to s. 499 it has to be established that what has been imputed concerning the respondent is true and the publication of the imputation is for the public good. The onus of proving these two ingredients was on the appellant but he totally failed to establish these pleas. On the contrary, the evidence showed that the imputation concerning the respondent was not true but was E motivated by animus of the appellant against the respondent. [917 H]

The Eighth Exception to s. 499 indicates that an accusation in good faith against the person to any of those who have lawful authority over that person with respect to the subject matter of the accusation is not defamation, but in the present case there was utter lack of good faith in the accusation. Good faith requires care and caution and prudence in F the background of context and circumstances. The position of the person making the imputation will regulate the standard of care and caution. [918 C]

The Ninth Exception provides that if the imputation is made in good faith for the protection of the person making it or for another person or for the public good it is not defamation. Apart from the lack of good faith there was no evidence to support the plea that the imputation was G for the public good. Furthermore the interest has to be real and legitimate when communication is made in protection of the interest of the person making it. [918 D]

The plea that the letter to the Civil Surgeon was privileged because as the President of the local Municipal Committee the appellant had to write to the Civil Surgeon about the work of the complaint was not taken at the trial and there was no evidence to support it. Furthermore, H the privilege extends only to a communication upon the subject with respect to which the privilege extends and the privilege can be claimed in exercise of the right or safeguard of the interest which creates the privilege. In the present case the concurrent findings of fact repel any suggestion

of protection of the interest of the appellant in making the insinuations against the respondent contained in the letter forming the subject matter of the complaint. [918 G] A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 138 of 1967.

Appeal by special leave from the judgment and order dated May 26, 1967 of the Punjab and Haryana High Court in Criminal Revision No. 675 of 1965. B

R. L. Kohli, for the appellant.

Harbans Singh and *R. N. Sachthey,* for the respondent.

C

The Judgment of the Court was delivered by

Ray, J. This appeal is by special leave from the judgment of the High Court of Punjab and Haryana dated 26 May, 1967.

The High Court upheld the conviction of the appellant under section 500 of the Indian Penal Code and sentenced him to three months simple imprisonment and imposed a fine of Rs. 1000 and in default thereof a further simple imprisonment for three months. D

The case started on a complaint filed by Bishan Kaur on 23 October, 1963. The complaint was that the appellant Chaman Lal who was at that time President of Municipal Committee, Sujanpur in the District of Gurdaspur had made defamatory remarks against her character at a public meeting held at Sujanpur on 29 July, 1962 and that he further wrote a letter on 2 August, 1962 to the Civil Surgeon, Gurdaspur which contained defamatory statements against her character and further that on 27 August, 1962 the appellant repeated those defamatory allegations before the Civil Surgeon. E F

The appellant pleaded justification under Exceptions 1, 8 and 9 to section 499 of the Indian Penal Code. The First Exception states that it is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact. The Eighth Exception states that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation. The Ninth Exception states that it is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good. G H

A The letter written by the appellant dated 2 August, 1962 which was marked as Exhibit P.W. 4/A, *inter alia*, states, "It is a matter of grave concern and consideration that Smt. Bishan Kaur, Nurse Dai attached with Civil Dispensary is earning very bad reputation having illegal relations with one Shri Prakash Chand, a cycle repairer of Sujanpur. A meeting of the Co-ordi-
B nate Civic-body of Sujanpur was convened, to create civic sense ....on 29 July at 8 A.M. in the Town Hall wherein leading men of all communities were present. The issue about the character of Smt. Bishan Kaur was discussed in open house and the public felt this point seriously. The matter has been brought to the notice of the worthy Deputy Commissioner, Gurdaspur personally
C by me on 1 August, 1962 and he assured to take immediate action against her. I feel my assumption to bring to your notice and request for immediate transfer of her in the public interest"

The appellant claimed that the residents of Ward-5 of Sujanpur had submitted a complaint in writing dated 25 July, 1962 against the serious misbehaviour of the respondent Bishan Kaur and that
D allegations were made against the character of Bishan Kaur in that application. The appellant further claimed that the said application marked Exhibit D.W. 1/A was read by the Secretary of the Municipal Committee, Sujanpur at the meeting on 29 July, 1962. The further defence of the appellant was that a resolution was passed at that meeting requesting the appellant to approach the higher
E authorities regarding the said application and it was pursuant to that resolution that the appellant wrote the letter dated 2 August, 1962 forming the subject matter of the complaint. The resolution on which the appellant relied was marked as Exhibit D.C.

Counsel for the appellant contended that good faith of the appellant was established by two features; first that as President
F he had to act in public interest, and, secondly, large number of people who signed the application and passed the resolution were present at the meeting on 29 July, 1962 and there were allegations against the respondent. It was, therefore, said by counsel for the appellant that the appellant acted not only in good faith but also for public good.

G Public good is a question of fact. Good faith has also to be established as a fact.

The concurrent findings of fact by the Sessions Court and the High Court with regard to meeting on 29 July 1962 are three fold; first that there was no record of the proceedings of the meeting
H alleged to have been held on 29 July, 1962 at the Town Hall of Sujanpur. It was not therefore dependable to rely only on the oral evidence of the complainant that the appellant had defamed the complainant at the meeting, and, therefore, benefit of doubt

was given to the appellant on that charge. The sceond finding is that the application dated 29 July, 1962 alleged to have been made by the residents of Sujanpur and further alleged to have been read over by the Secretary of the Municipal Committee at the meeting on 29 July, 1962 was a manufactured document. Thirdly, the resolution alleged by the appellant to have been passed by the residents of Sujanpur at the meeting on 29 July, 1962 was also a forged document. One of the reasons given by both the Courts for rejecting both the application and the resolution from consideration was that none of these alleged documents was put to any of the prosecution witnesses some of whom admittedly attended the meeting on 29 July, 1962. The genuineness of the documents was rightly disbelieved.

In the background of these findings of fact the plea of good faith of the appellant that he wrote the letter dated 2 August, 1962 pursuant to the application and the resolution of the residents of Sujanpur loses all force and has no foundation. In order to establish good faith and *bona fide* it has to be seen first the circumstance under which the letter was written or words were uttered: secondly, whether there was any malice; thirdly, whether the appellant made any enquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability that the appellant acted in good faith.

The appellant said that he verified the allegations and then wrote the letter forming the subject matter of the complaint. The appellant has not given any evidence as to what steps he took for verifying the allegations. On the contrary, it appears to be established on evidence that during five years preceding the letter written by the appellant to the Civil Surgeon there was not a single instance or occasion of any complaint against the respondent Bishan Kaur. The further finding is that the appellant in defence sought to produce witnesses who tried to establish that the respondent was a woman of doubtful virtues. Three of the witnesses on behalf of the appellant were a potato chop seller, a tongawala and a petty shop-keeper and they went to the extent of saying that they had illicit connections with her. These defence witnesses were disbelieved. That also proved that the appellant did not act in good faith. The appellant was the President of the Municipal Committee and it would not be an act of good faith or prudence and caution to rely on such persons as a tongawala or a petty shop-keeper in making allegations against the character of the respondent.

A Counsel for the appellant relied on Exhibits D.A. and D.B. and submitted that the High Court did not take these two letters into consideration in finding out the good faith of the appellant. Exhibit D.A. is dated 18 September, 1962 and is a letter addressed by the Civil Surgeon to the appellant. Exhibit D.B. is a memorandum by the residents of Sujanpur to the Civil Surgeon B and bears the date 27 August, 1962. In Exhibit D.B. the alleged signatories wrote to the Civil Surgeon that they had to attend the enquiry by the Civil Surgeon into the conduct of Bishan Kaur and that the enquiry was at the demand of the general public and further that there were complaints against the respondent and it was not desirable to retain such a person on the noble job of a C nurse. The letter of the Civil Surgeon dated 1 September, 1962 was that a large number of people were present and bulk of them expressed their views against Bishan Kaur and some of the persons met the Civil Surgeon subsequent to the enquiry at his office. The High Court found that some of the persons who submitted the alleged representation against the respondent to the Civil Surgeon later on controverted the allegations against the respon- D dent and this evidence established that the complainant was an ordinary nurse and that is how the appellant had manoeuvred discussion of the complainant's character at the enquiry before the Civil Surgeon on 27 August, 1962.

The appellant cannot rely on Exhibit D.B. dated 27 August, 1962 to establish good faith in writing the letter dated 1 August, E 1962. Furthermore, Exhibit D.B. which is alleged to have been written by the residents of Sujanpur was not proved by calling persons who are alleged to have signed. Documents do not prove themselves. Exhibit D.B. was not proved by the persons who are alleged to have signed the same nor was the truth of statements contained in Exhibit D.B. proved. The enquiry made by the Civil F Surgeon on 27 August, 1962 was found by the High Court to have been engineered by the private animus of the appellant against the respondent by sending some residents to the place of enquiry. This finding not only disproves good faith but establishes total lack of care and prudence on the part of the appellant.

The letter written by the appellant indicates that the appellant G was setting his seal of approval to matters contained in that letter. There is no proof that the appellant made any enquiry about the matters before he wrote the letter. There is no evidence that the appellant acted with reasonable care. On the contrary, circumstances suggest that the appellant acted without any sense of responsibility and propriety. The appellant was a President of the H Municipal Committee and there he was required to act with utmost prudence and caution.

In order to come within the First Exception to section 499 of the Indian Penal Code it has to be established that what has

been imputed concerning the respondent is true and the publication of the imputation is for the public good. The onus of proving these two ingredients, namely, truth of the imputation and the publication of the imputation for the public good is on the appellant. The appellant totally failed to establish these pleas. On the contrary, the evidence is that the imputation concerning the respondent is not true but is motivated by animus of the appellant against the respondent.

The Eighth Exception to section 499 of the Indian Penal Code indicates that accusation in good faith against the person to any of those who have lawful authority over that person with respect to the subject matter or the accusation is not defamation. We have already expressed the view that there is utter lack of good faith in accusation.

The Ninth Exception states that if the imputation is made in good faith for the protection of the person making it or for another person or for the public good it is not defamation. There is no evidence whatever to support the plea that the imputation was for the public good. The accusation was not also made in good faith. Good faith requires care and caution and prudence in the background of context and circumstances. The position of the person making the imputation will regulate the standard of care and caution. Under the Eighth Exception statement is made by a person to another who has authority to deal with the subject matter of the complaint whereas the Ninth Exception deals with the statement for the protection of the interest of the person making it. Interest of the person has to be real and legitimate when communication is made in protection of the interest of the person making it.

Counsel for the appellant contended that the communication to the Civil Surgeon was privileged, because as the President of the Municipal Committee he had to write to the Civil Surgeon about the work of the complainant. It will be a question of fact as to what the duty of the appellant was in relation to the work of the respondent in making a statement to the Civil Surgeon. This plea was not taken and there is no evidence to support it. Furthermore, the privilege extends only to a communication upon the subject with respect to which the privilege extends and the privilege can be claimed in exercise of the right or safeguard of the interest which creates the privilege. In the present case, the concurrent findings of fact repel any suggestion of protection of the interest of the appellant in making the insinuations contained in the letter forming the subject matter of the complaint. There is also no material to show as to how the letter was written by the appellant in protection of his interest.

A The letter written by the appellant contains imputations and insinuations against the character of the respondent. One of the allegations was that a cycle repairer was on intimate terms with the respondent. This was a serious allegation against the character of the respondent. The appellant made baseless and reckless allegations. They are baseless because they have not B been proved. They are reckless because the appellant claimed to be the President of the Municipal Committee but he acted in a totally irresponsible manner by having gone out of his way to make the allegations against the character of a poor and helpless widow. The appellant was a man of power and wealth. That is all the more why he should have acted with restraint and deco- C rum. He failed in both. There was no good faith. The appellant cannot be said to have acted in public good.

Counsel for the appellant submitted that if there was a reduction of sentence from three months to two months that would save him from disqualification. There is no merit in that submission. This is not a case where there should be a reduction of sentence D particularly when the Courts have found facts which dispel any semblance of good faith and indicate on the contrary lack of prudence and dignity with which a person occupying the office of the President should act.

The appeal, therefore, fails and is dismissed. The appellant is directed to surrender to the bail bond to undergo the unexpired E term of his imprisonment.

R.K.P.S. *Appeal dismissed.*