

There other persons,
he cannot be said



There are four explanations to this section: (1) To impute anything to a dead person may in certain circumstances amount to the offence.

(2) An imputation concerning a company, etc. amounts to the offence. (3) An imputation in the form of an alternative or expressed ironically may amount to the offence.

(4) Unless a person falls lower in the estimate of other persons, he cannot be said to be defamed. Illustrations: (i) A draws a picture of Y running away with B's watch, intending it to be believed that V stole B's watch. This is defamation, unless it falls within one of the exceptions.

(ii) A says, " Y is an honest man, he never stole B's watch" intending to cause it to be believed that Y did steal B's watch. This is defamation unless it falls within one of the exceptions. (iii) A is asked who stole B's watch. A points to Y, intending to cause it to be believed that Y stole B's watch. This is defamation unless it falls within one of the exceptions. Exceptions: We have seen what amounts to defamation. We may now see what does not amount. Section 499 provides ten exceptions.

The question as to the applicability of the exceptions can arise only after the commencement of the trial and at the stage of inquiry. Whether prima facie case is made out on the basis of the complaint. (1) Imputation of anything true, if it be for the public good to make it is not defamation.

If one chooses to write, print, and publish libels imputing the commission by the complainant of a criminal offence, he must be prepared to prove that all he has said is true in substance, and in fact. It is an onerous burden and the

accused has to discharge it. The privilege of a party to make a defamatory statement in proceedings in Court or to make defamatory suggestions to witness is not an absolute one under the I. P.

C., as the First Exception requires that it should be true and for the public good. The accused who makes the false accusations without any good faith cannot claim the privilege. In order to come within the First Exception, 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 lies on the accused. The complainant Bishan Kaur, a Nurse (Dai), filed a complaint for defamation against the appellant who was President, Municipal Committee, Sujampur in the District of Gurdaspur. The appellant had made defamatory remarks against her character at a public meeting and repeated the same allegations before the Civil Surgeon. The Supreme Court held the appellant was guilty of defamation and was not entitled to have the benefit of the first Exception. But truth is no justification whatsoever against the defamation of the state known as sedition and against one's religion (Sec. 298, I. P.

C.) (2) It is not defamation to express in good faith any opinion respecting the conduct of a public servant in the discharge of his public functions, or respecting his character; so far as his character appears in that conduct and no further; Opinion respecting the conduct of public servant: The first exception deals with the allegations of facts while this exception deals with expression of opinion. In all exceptions except first what is protected is opinion and not assertion. It is no defamation to express in good faith any

opinion respecting the conduct of public servants in the discharge of their public functions or respecting their character so far as their character appears in their conduct. But if it exceeds, it would amount to defamation. It is certainly in public interest that anything shaky or unjust or improper in the conduct of a minister in making appointments should be brought to the notice of the country at large. It is, in fact, criticism without which any democratic system is doomed to failure, and ministers inevitably suffer absolute corruption by their unscrutinised exercise of power. (3) To express in good faith any opinion respecting the conduct of any person touching any public questions and respecting his character so far as it appears in that conduct, is not defamation: Criticism on public question: Whether the conduct of any particular individual should be publicly criticised and such criticism would be in public interest, would naturally vary with the circumstances of each case.

Though the editorial was per se defamatory it fell within the ambit of “ fair comment” and stood saved by the second and third exceptions to Section 499. The statement of facts and the expression of opinion were substantially true, free from malice and well founded; the prophecy hinted at in the editorial proved correct only after a few days. The expression of opinion was thus in good faith. The freedom available to a journalist is the same as that available to any other individual but he is subject to a sense of higher responsibility. If there is any material element of falsehood in the account given, the defence of fair comment or criticism will not be available for being based upon mis-statement of fact.

Fair comment applies only to expressions of opinion and not to assertions of fact. When the allegations of fact are defamatory and are not proved to be true, no defence of fair criticism can arise. 'Fair comment' cannot justify a defamatory statement which is untrue in fact nor can the comment based on such facts be said to be fair. Mere exaggeration or even gross-exaggeration does not make a comment unfair. Where the matter is of public interest the comment is not to be weighed in a fine scale and some allowance must be made for even intemperate language provided the writer keeps himself within the bounds of substantial truth and does not misrepresent or suppress facts. The rules which govern the criticism of public questions or persons in relation to such questions require that (i) if criticism be an expression of opinion merely, it must be fair and honest, but (ii) if it be alleged to be based upon a fact, that fact must be proved. It is, then no defence to say, that, though the fact was not proved, still the accused believed it bona fide.

(4) It is not defamation to publish a true report of proceedings of Court or of the result of such proceedings. In case of a newspaper report of judicial proceedings it is not necessary in law that the proceedings are to be published contemporaneously. All that is required in law is that the publication should be substantially a true report.

It need not be true absolutely word per word, but taking the whole thing it must be a substantially true account. Good faith has not been made an ingredient in Exception 4 to Section 499. Absolute privilege which the accused are entitled to under this exception is not confined to judgments and order of Courts, but it stretches to complaints and pleadings made by parties.

If the complaint contained anything which was not relevant or should not have been continued therein, it would not for that reason, have caused the proceedings to lose their judicial character or their protection by absolute privilege. The accused while publishing the news report did not travel beyond the contents of the complaint and the statement made in the court of law. He was protected by this Exception.

(5) It is no offence to express in good faith any opinion on the merits of a case decided in Court or on the conduct of witnesses and other concerned or respecting the character of such persons so far as it appears in that conduct. Literary Criticism: It is no defamation to express an opinion in good faith on the merits of literary work. The object of this exception is that the public should be aided by comment in its judgments of the public performance submitted to its judgment.

All kinds of performances in public may be truly criticised, provided the comments are made in good faith. (7) It is no offence for a person having lawful authority over another to pass censure in good faith. Ingredients: In order to establish a defence under Exception 8 the accused would have to prove that the person to whom the complaint was made had lawful authority over the person complained against, in respect of the subject-matter of the accusation. The accused and one Mst. Ram Rakhi were neighbours. The defamatory matter was contained in an application addressed by the accused who was a member of the police force to the District Panchayat Officer, Ludhiana. In his application the accused alleged that Mst. Ram Rakhi was a woman of loose character who was having illicit connection with

goondas, her paramours coming to her frequently at nights and her immoral activities reflected badly on the locality in which the accused lived.

It was held that this was grossly defamatory of Ram Rakhi since the district Panchayat Officer was (9) It is no offence if an imputation is made in good faith by a person, for the protection of his or others interest. Ingredients: The ingredients of this Exception are: (i) That the imputation must be made in good faith, and (ii) That the imputation must be for the protection of the interest of the person making it or of any other person or for public good. It is for the accused to plead and prove good faith which implies the exercise of due care and caution and to show that the attack on the character was for the public good.

In this regard no special privilege is given to Journalists. The person claiming the benefit of this Exception has to establish both, good faith and public good. He has at first to establish good faith, for, on the failure to prove good faith, the benefit of this Exception would be denied to the accused even if the requirement of public good is satisfied. It is well settled that to establish good faith the accused should be able to satisfy that he made bona fide inquiry before making the publication in his paper. He should be able to indicate that he acted with due care and attention, and was satisfied that the imputation was true.

By calling a man the most-hated man in the locality no public interest or public good could be served. In the case of Smt. Pratibha Gultana v. State of Maharashtra, the High Court upheld that any act done or fact published in good faith for the protection of public interest, cannot be made responsible

for defamation even though the publication is defamatory. The present case belongs to chief Medical Officer Nagpur (Lady) where in a newspaper published in Marathi elaborately, the corruption done by the lady doctor in her official capacity. She made a complaint against editor and manager of the newspaper.

They took the justification of good faith. As complainant was unable to prove this properly, so the accused were acquitted. Where to the charge of defamation the accused invokes the aid of Exception 9 to Section 499, good faith and public good have both to be established. The failure to prove good faith would exclude the application of Ninth Exception in favour of the accused even if the requirement of public good is satisfied. Whether or not good faith has been proved by an accused person who pleads in his defence this Exception is a question of fact. There is a consensus of judicial opinion in favour of the view that where the burden of an issue lies upon the accused he is not in reasonable doubt. Law treats the onus as discharged if he succeeds in proving a preponderance of probability. Good faith is defined in Section 52, I.

P. C., whereby nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention. Under the General Clauses Act, "A thing shall be deemed to be done in good faith where it is in fact done, honestly whether it is done negligently or not". The element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition of the Code.

There is no doubt that the mere plea that accused believed that what he stated was true by itself, will not sustain his good faith under the Ninth Exception. Simple belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role. If it appears that before making the statement the accused did not show due care and attention that would defeat his plea of good faith. But it must be remembered that good faith does not require logical infallibility. In dealing with the question of good faith, the proper point to be decided is not whether the allegations put forward by the accused in support of the defamation are in substance true. But whether he was informed and had good reason after due care and attention to believe that such allegations were true.

The insistence is upon the exercise of due care and attention. Recklessness and negligence are ruled out. The standard of care and attention of course varies from case to case. In the case of the publication of a defamatory matter, actual source of information on which the accused has acted ought to be considered.

The question of good faith is to be proved by the accused. Where the publication is based upon flimsy materials and there is no evidence that the accused made any enquiries before publication, the publication cannot be said to have been made in good faith. Exception 9 points that the person ' to whom the communication is made has an interest in protecting the person making the accusation. In other words, beside the bona fide of the person making the imputation, the person to whom the imputation is conveyed must

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have a common interest with the person making it which is served by the communication.

(10) It is no offence to convey a caution intended for the good of the person to whom it was conveyed or for public good. It is true that the Constitution does not recognise caste but social customs have not changed notwithstanding the provisions of the Constitution and if a person, in good faith, publishes any letter containing defamatory matter in the interest of the other members of his caste, he cannot be held guilty of defamation. If a member is ex-communicated for some social offence by the members of his own caste, the Mukhias of his village are, duty bound to report this fact to the other prominent members of their caste, in the interest of all of them. Under these circumstances their good faith is apparent and Exceptions 9 and 10 would apply.