

(1938) 07 CAL CK 0013

Calcutta High Court

Case No: None

Rev. Father P. Mesaric

APPELLANT

Vs

Rai Ramani Mohan
Banerjee Bahadur,
Advocate

RESPONDENT

Date of Decision: July 19, 1938

Acts Referred:

- Evidence Act, 1872 - Section 146

Citation: AIR 1938 Cal 766

Hon'ble Judges: Derbyshire, C.J; Costello, J; B.K. Mukherjea, J

Bench: Full Bench

Judgement

Derbyshire, C.J.

Mr. Surita on behalf of Father Mesaric has told us that he does not flow dispute the findings of the Bar Council. We were taken through the report of the Bar Council yesterday and a considerable amount of material was placed before us relating to the matter. Doubtless if the matter had gone further there would have been other materials placed before us. On what has already been placed before us and having regard to Mr. Surita's acceptance of it, we can only confirm the findings of the Bar Council. I wish to read the conclusion of their report:

The questions complained against are prima facie defamatory and scandalous. There was no definite charge of sexual immorality against Father Mesaric except, perhaps, in the portion "keeping an asylum of similarly collected girls". There can be no question and as we have already found that the Rai Bahadur, (i.e. the opposite party) had in his hands statements containing allegations of gross sexual immorality against the Father and if having those instructions in his hands he did put those questions, we are not prepared to say that the questions were wholly irrelevant. The question as to under what circumstances a counsel or pleader is justified in asking defamatory or scandalous questions has engaged the attention of the Calcutta High

Court in several cases, viz. *Uppendra Nath Bagchi v. F.A. Savi* (1909) 36 Cal 375 *Weston v. Peary Mohan Das* AIR (1914) Cal 396 [Fakir Prasad Ghose Vs. Kripasindhu Pal Bhuti](#), and [M. Banerjee Vs. Emperor](#), . We have also to consider the provisions of Sections 146 and 148, Evidence Act, in this connexion and we have also to bear in mind the fact that unlike in England the privilege of a counsel in this country is qualified. But at the same time there can be no question that a counsel or advocate, provided he has instruction, has a large amount of discretion in the matter of putting questions in cross-examination. In the interests of his client, in the interest of justice, and in order to discredit the witness he is cross-examining, the advocate is entitled to put questions within the limits his good sense might dictate or indicate. In the present case one may not support the conduct of the learned advocate in putting those questions, but it would be impossible to say that he has been guilty of professional misconduct in putting those questions. We have no doubt whatever that the respondent was not actuated by any malice. We are clearly of opinion that he was acting in good faith all along. We find therefore that the respondent has not been guilty of any professional misconduct in putting the questions complained against in cross-examination. There is no question of any other misconduct involved in this case. We have to note, in conclusion, that Mr. H. D. Bose on behalf of the respondent has tendered his apology to Father Mesaric and has expressed sincere regret for any pain that might have been caused to the Reverend Father on account of these questions.

2. From what I have seen of the case that seems to be a fair and proper report and is confirmed by this Bench. The applicant in this case is ordered to pay the costs of the advocate both in the enquiry and in the application before us. He must also pay the fees of the shorthand writer and the interpreter in the equity before the Bar Council. The costs will be taxed by the Registrar of the Original Side as of a hearing.

Costello, J.

3. I agree.

B.K. Mukherjea, J.

4. I agree.