

1924.

*Present : Garvin A.J.*

FERNANDO *v.* FERNANDO.

115—*C. R. Kalutara, 9,917.*

*Defamation—Words of vulgar abuse.*

Mere words of angry vulgar abuse were held not to be defamatory and not actionable.

“ Such words (son of a whore) may well be defamatory and actionable as such, when the circumstances in which they were used show that they were intended to impute base birth to the plaintiff.”

**T**HE plaintiff, appellant, sued the defendant for defamation.  
The plaint was as follows :—

At about 11 A.M. on May 17, 1923, the defendant above named at Hena in Marakkalahawatta, within the jurisdiction of this Court, did falsely and maliciously and to the great detriment of the plaintiff and his children and relatives use the following expressions referring to and concerning the plaintiff in the presence of the local Police Vidane and a large number of other persons : *Andappu, vesige puta, mehata wara, thota honda wedak koranda,* ” meaning thereby “ Andappu, son of a whore, come here, I shall do a nice thing to you,” and further abused him using indecent words.

The use of such expressions and such language in reference to the plaintiff caused him great pain of mind, and thereby the plaintiff suffered damages which he assessed at Rs. 500, but the plaintiff restricts his claim to Rs. 300 to enable him to bring this case in this Court.

ON the date of trial the respondent's counsel raised a legal objection, namely, that the action was not maintainable as the words complained of were mere words of abuse. 1924.  
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The learned Commissioner (W. H. B. Carbery, Esq.), by his judgment dated March 28, 1924, upheld respondent's counsel's contention, and without hearing evidence of the plaintiff and his witnesses dismissed the action. The judgment of the Commissioner was as follows:—

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On issue 3 I dismiss the plaintiff's action. It is a most frivolous one; the words alleged used are "Andappu, you son of a whore, come here, and I will do something nice to you."

The only word of the so-called abuse in the whole of this sentence is the word "son of a whore;" it is mere vulgar abuse, and, moreover, is, to my knowledge, a term used among uneducated native parents of this country every hour of the day towards their own children when the latter are naughty or disobedient. The Courts cannot be made use of to waste their time in going into such matters. The plaintiff actually claims Rs. 300 for the so-called slander. Even if he were to succeed on the facts, I would not be inclined to give him more than one cent.

I answer issue 3 in the negative and dismiss plaintiff's action. No costs.

*D. P. Fernando*, for appellant.

June 5, 1924. GARVIN A. J.—

This is an action for slander. The cause of action set out in the plaint is as follows:—The defendant above-named . . . . . did falsely and maliciously and to the great detriment of the plaintiff . . . . . use the following expressions referring to and concerning the plaintiff in the presence of the local Police Vidane and a large number of other persons: "*Andappu, vésige putha, mehata wara, thota honda wedak koranda,*" meaning thereby "Andappu, son of a whore, come here, I shall do a nice thing to you," and further abused him using indecent words.

The defendant denied that he spoke the words attributed to him, and on the assumption that the words were uttered by him, he pleaded that they were not actionable. On the preliminary issue raised by the defendant's plea that the words alleged to have been used were not actionable, the learned Commissioner upheld the defendant's plea and dismissed the plaintiff's action.

The plaintiff appeals. It is contended that to say of a man that he is the son of a whore is defamatory. Such words may well be defamatory and actionable as such, when the circumstances in which they were used show that they were intended to impute base birth to the plaintiff. But the words alleged to have been spoken,

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when taken as a whole, show, as the Commissioner has found, that they were mere words of angry vulgar abuse. Indeed, the very language of the plaint state that these words form part of the abuse in indecent words to which the plaintiff says he was subjected. In view of this admission there is no need to send this case back to determine whether the words were mere words of vulgar abuse; or whether they were intended to impute base birth to the plaintiff.

This Court has repeatedly stated that the bringing of actions for alleged defamation consisting in the use of words of common abuse should be discouraged, *vide Philip v. Barthelot*.<sup>1</sup>

The expression "son of a whore" is a common abusive epithet, and as the Commissioner has observed, is regularly used without any meaning or intention beyond giving vent to anger or annoyance.

As far back as 1839, as a judgment of this Court reported in *Austin's Reports at pp. 13 and 14*, this Court affirmed the judgment of the District Judge dismissing an action for defamation founded upon use of abusive language, and on page 17 of the same volume of the above reports, this Court again affirmed a judgment of the Court below dismissing the plaintiff's action with the following remarks:—

"The words used were those of daily application on the slightest offence given about the merest trifles, and can only be considered as the ebullition of a vulgar and ungovernable temper, reflecting more disgrace on the person using them than on the person to whom they are directed."

In the case of *Goonetilleke v. Geronis Perera*<sup>2</sup> Burnside C.J. expressed himself in terms which leave no doubt that in his view words of mere abuse were not actionable. The citations which I have already made are clearly applicable to the case under consideration, and I therefore agree with the order of the Commissioner of Requests which is affirmed.

*Appeal dismissed.*

<sup>1</sup> (*Ram. Rep.*, 1863 —68, p. 189.

<sup>2</sup> *S. C. C.* 154.