SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Mohammad HussaIn Vs. Emperor

Mohammad HussaIn Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/450270

Court : Allahabad

Decided On : Jul-19-1945

Reported in : AIR1946All146

Appellant : Mohammad Hussain

Respondent : Emperor

Judgement :

Sinha, J.

1. This is a reference by the learned Sessions Judge of Benares with the recommendation that the sentence passed, upon Mohammad Husain be set aside and the fine, if paid by him, be refunded. The-learned Magistrate sentenced him to a fine of Rs. 25 or in the alternative, to eight days simple imprisonment. On 25th July 19ii, a report was made by Mohammad Husain in which he described the complainant, Mohammad Qasim, as a gunda and a badmash. Mohammad Qasim thereupon filed a complaint under Section 500, Penal Code, and the-learned Magistrate has passed the sentence already mentioned.

2. Mohammad Qasim's case was that he was a respectable man and not a gunda or a badmash. Mohammad Husain admitted the report but denied having described Mohammad Qasim as a gunda and a badmash. The learned Magistrate found that the report was recorded in the words of Mohammad Husain and he had described Mohammad Qasim in the terms already mentioned. On an application in

revision it was argued before the learned Sessions Judge that it was open to the applicant, even though he had not taken such a plea, to contend that Mohammad Qasim was a bad character and that the description was made in good faith. In support of it reliance was placed upon Mohammad Gul v. Hazi Fazley Karim : AIR1929 Cal346 and Abdul Aziz v. Fazal Rahman ('28) 15 A.I.R. 1928 Rang. 167 in which it was held that, even where the accused had denied having made the statement alleged to be defamatory, he was entitled to adduce evidence to prove that the allegation was within one of the exceptions of the section. It was also pointed out on behalf of Mohammad Husain that the complainant had admitted in his statement that his house was once searched by the police in connection with a burglary and that Hakim Ullah, head constable, had stated that he was a history sheeter of the active class and was under police surveillance. This meant that Mohammad Husain honestly believed that Mohammad Qasim was a man of bad character and that the description was made in good faith. I agree with the learned Sessions Judge that, even though the plea was not taken, it was open to Mohammad Husain to take this stand. I also agree with him that, in the circumstances, the plea of good faith has been amply made out. I, therefore, accept the recommendation, quash the conviction and direct the fine, if paid, to be refunded.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com