

**Mohammad Nazir Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Mar-20-1928

**Reported in :** AIR1928All321

**Appellant :** Mohammad Nazir

**Respondent :** Emperor

**Judgement :**

Mears, C.J.

1. One Mohammad Nazir was, on 9th October 1927, sentenced to six months' imprisonment under Sections 500 and 502, I.P.C., such sentences to run concurrently, and ordered to pay a fine of Rs. 100 under each section. He appealed to the Sessions Judge, who dismissed his appeal, and he applied in revision here. During the hearing of the revision it became obvious that the sentence of six months' imprisonment might reasonably be considered inadequate, and further that neither Courts had considered the circumstances of aggravation by which Mohammad Nazir had enhanced the seriousness of his original offence. A notice to show cause why sentence should not be enhanced was addressed to Mohammad Nazir, and he has appeared to-day represented by Mr. Mahommad Husain. This is the third case in the last few months which has come before this Bench in which the character of an innocent and harmless person has been rocklessly and grievously assailed. One of these cases was that of Emperor v. Jhabba Mal : AIR1928 All222 . This, like the case just mentioned, is

also a matter of considerable importance to the public, the press and to the profession.

2. On 28th May there was a jalsa in connexion with the opening ceremony of the Islamia School at Mawana. One Moulvi Shabbir Ahmad Usmani was to deliver lectures on 30th and 31st May. In the town of Mawana, in the Meerut District, there was residing a highly respected gentleman by name Har Swaroop, and he had a son by name Daya Swaroop. That boy was about 17 years old. His father was president of the Mawana Arya Samaj, treasurer of another religious society, and the son, Daya Swaroop himself, was secretary of the Arya Kumar Sabha and was also the president of the Arya Bal Sabha. On 28th and 29th May this young man Daya Swaroop went to the jalsa but fell ill on the night of 29th May. From that evening until his death he was unable and did not in fact leave the house. He was attended by three doctors, Pandit Raghunath Sahai of Mawana, Dr. Raghunandan Prasad of Mawana and Dr. Prabhoo Nath Banerji of Meerut. He was said to be suffering from typhoid, and he died at about 5 a.m., on the morning of 10th June 1927. Some 200 to 225 people joined in his funeral procession, which started at about 8 in the morning and which went by the ordinary route passing the thana to the ordinary cremation ground. The cremation was carried out according to Vedic rituals with ghee, sandalwood, camphor and fuel. Certain Hindi and Urdu papers recorded the death of this young man of seventeen in appropriate and sympathetic language, and there the matter rested. The position was that a respected citizen of Mawana had lost a young boy of seventeen years of age who was himself well-known and respected in Mawana and an ardent believer and follower of the Hindu religion. On 24th June 1927, Mohammad Nazir, a Mohammedan, published in a Meerut paper, the 'Risalat,' an article about which it is difficult to speak with restraint. The article, to be appreciated must be set out in full. It was in the following terms:

Was a Hindu boy killed when he expressed his intention of embracing Islam?

It has been heard and there is a strong rumour that at the opening ceremony of a school for Mohamedan boys in tahsil Mawana, District Meerut, which function was attended by the Ulmas of Delhi, Deoband and Meerut and at which were present

prominent Christians, Hindus and Arya Samajists who had come to hear the speech of Shabair Ahmad Usmani, there was a boy, son of Lala Har Swaroop, Honorary Magistrate, Rais and zemindar of Mawana Kalan, who was also listening to the speech. On hearing the speech the truth in Islam was fully impressed upon the mind of the boy. He expressed to his relatives and parents his intention of embracing Islam. Thereupon all his relatives became angry and showed to him in all possible ways that Islam was a false and Hinduism a true religion. The boy said: 'On the occasion (of a face to face discussion) you and your advocates slip away and when the other side is absent you praise your religion. I am determined to embrace Islam and will not listen to anyone.' When the boy said like that, a watch began to be kept on him. When, in spite of the watch, his idea remained the same, something was administered to him and his dead body was, for fear of the police, taken, not to the cremation ground, but to a lonely place, and was burnt there, and tins of ghee were used instead of wood. When the people began to talk of the affair and the police made an investigation, true facts were concealed, proof of sudden death was furnished through a doctor who was a tenant living close by and another doctor and on their testimony the matter was hushed up. In Mowana-Kalan, and the neighbouring villages as well as in Meerut the affair is known like that. It is not known why the police hushed up the matter; they did so probably because no other proof was available.

3. The summary, which we have given above, as to the illness and death of this young man was proved in Court as conclusively as it could be, and it is now necessary to compare what were the undoubted facts with the abominable article published by the Risalat. The article opens thus: 'Was a Hindu boy killed when he expressed his intention of embracing Islam'? The answer to that question was 'No,' and that answer could have been found out most readily by Mohammad Nazir if he had taken the trouble to institute the slightest enquiries in good faith. The least enquiries would have demonstrated that the boy had been ill for ten or eleven days, had never heard the speech of Moulvi Shabbir Ahmad Usmani, that three well-known local doctors had been in attendance with him, that the boy died about 5 a.m., that the funeral procession started at the usual time and passed along the customary route, that the cremation had taken place on the customary spot, and that there was no doubt whatever that the boy had died from typhoid and that the

police had never in the slightest degree interested themselves in the cause of death, and further that there never was any inclination on the part of this young man to embrace Islam.

4. As part of the defence Mohammad Nazir did put up a man, whom we regard as having given deliberately lying evidence when he says he went to Mawana. His name is Bashir Ahmad Khan and he says that he went, on the 22nd June 1927, to enquire about the story. He said he did not know the name of a single person who confirmed the rumour. When pressed in cross-examination he says:

I cannot even name one man of Mawana who confirmed the rumour given to me by the accused.

5. He is a man of obviously no character and no position in life. His story is that Mohammad Nazir gave him Rs. 2 to go from Meerut to Mawana to make the enquiry. This evidence is completely worthless, and we do not believe that any enquiry was instituted before the publication of this article. The case which Mohammad Nazir has set up, and on which in the revision he hoped to succeed, was that Lala Har Swaroop, the complainant, was not indicated by the article, and was not a sufficiently defined person to come forward as a complainant. One has only to read the article to see how unarguable such a suggestion is. We agree that the first step that complainant must take when commencing a prosecution or civil suit for defamation is to satisfy the Court that he is the person indicated and aimed at by the article complained of. The learned Sessions Judge has summarized the whole matter in a sentence. We are in complete agreement with him that the article undoubtedly meant that the relatives of the boy, including the father, having failed to dissuade him from embracing Islam, had murdered him by poison and hurriedly cremated him. The name of the father, as will be seen, appears in the offending article as does also the statement that the boy expressed to his relatives and parents his intention of embracing Islam, and that thereupon they all became angry. The suggestion that the father is not indicated as one of the murderers of his son was so farfetched that Mr. Mohammad Husain, who conducted this matter on the original hearing of the revision and to-day with (considerable tact and discretion, felt himself unable to adduce the slightest argument in support of the

contention. We have no doubt whatever that the complainant was right in law when he commenced proceedings under Sections 500 and 502, alleging himself to be one of the persons defamed by this publication.

6. We now come to matters of aggravation which to a large extent were overlooked in the lower Courts. Lala Har Swaroop in evidence said that several people came to him asking him what the publication in the Risalat meant, and, on 4th July 1927, he wrote a letter to Mohammad Nazir in which he set out forcibly, but quite properly, his feelings at the false, and malicious and defamatory attack which had been made upon him and the members of his family. He set out certain conditions upon which he would refrain from seeking his remedy against Mohammad Nazir in the civil and criminal Courts, and the whole of the letter was a letter couched in an eminently proper tone but indicating the pain and grief that the unfounded accusation had caused him. Thereupon, Mohammad Nazir, who seems to have regarded an editor as a person invested with authority to destroy anybody's character without any personal responsibility resting on himself, wrote a letter which forms the first of the matters of aggravation which, in addition to the gravity of the original offence, induce us to increase the sentence of imprisonment. It is not without significance to notice that this article was published at a time when Hindu-Mahomedan differences were every acute.

7. We now propose to consider step by step the points which seem to us to require the attention of editors of papers of this character as also of members of the legal profession and of the public generally. We may, therefore, go back for a moment to the opening sentence where the article is said to be based upon rumour. Mohammad Nazir has sheltered himself under what he thought to be the protection of some unnamed third party, that is to say, in his notice of appeal from the conviction he was relying upon the plea, amongst others, that all that he had done was to publish an article communicated to him by a third person, and that all that he had said in it about the matter was that it was merely a rumour that the father and his relatives had murdered the young man. For more than 60 years it has been settled law that the publication of a defamatory 'rumour' is as actionable as if the statement were published without qualification. The matter was considered in the case of McPherson v. Daniels 10 B. & C. 263 (272) and later in

Watkins v. Hall [1868] 3 Q.B. 395 (401). Those cases lay down in clear terms the proposition that it is no defence to a civil suit that the person who published the libel or slander did not originate it but heard it or received it from another, nor is it a defence that it was a current rumour and the person publishing it bona fide believed it to be true. As was said in McPherson v. Daniels 10 B. & C. 263 (272):

As great an injury may accrue from the wrongful repetition as from the first publication of slander; the first utterer may have been a person insane or of bad character. The person who repeats it gives greater weight to the slander.

8. Similarly Chief Justice Best, in DeCrespigny v. Wellesley 5 Bing. 392 (482) shows how the editor of a newspaper is as much responsible for a defamatory letter published in his columns as if he had originally penned it. The fact that it is a letter communicated by a member of the public, with a request that it shall be published in the paper, is no exoneration to the editor who thereby disseminates defamatory matter. The suggestion, therefore, of Mohammad Nazir that this tissue of malice and lies was communicated to him by some third person as a rumour to be published in the paper cannot be urged as a defence. Mohammed Nazir, therefore is in every way as responsible, civilly and criminally, as if he had invented the whole story from beginning to end. His conceptions of his duty to himself and the public are to be gathered from his reply to the letter sent to him by Lala Har Swaroop. He says:

I have to write that the news referred to, which was published in the correspondence column of the newspaper Risalat, dated 24th June 1927, begins with the words: 'It is heard and there is a strong rumour' and on account of the said words no reader can take the news as based on truth.

9. That, therefore, shows that Mohammad Nazir thought himself entitled to publish under the guise of a rumour any defamatory matter that he pleased. McPherson v. Daniels 10 B. & C. 263 (272), Watkins v. Hall [1868] 3 Q.B. 395 (401), DeCrespigny v. Wellesley 5 Bing. 392 (482) and the terms of Section 499, I.P.C. dispel that view. He continues:

Moreover it is the duty of a newspaper and its editor, as a representative of the public, to publish every piece of public interest which is sent to it or to him.

10. We pause to point out that the duty of a newspaper and its editor is nothing of the kind. We did endeavour in the case of *Emperor v. Jhabba Mul* : AIR1928 All222 to define very shortly the broad duties of an editor in respect of publications received by him from a third party. The duty of an editor is clear. He should be most watchful not to publish defamatory attacks upon individuals unless he first takes reasonable pains to ascertain that there are strong and cogent grounds for believing the information, which is sent to him, to be true, that proof is readily available and that, in the particular, circumstances, his duty to the public requires him to make the facts known.

11. Mohammad Nazir then takes the point that the said piece of news' was not published maliciously. Malicious publication, in the sense of active ill-will against the person defamed, is not a necessary constituent of the offence of defamation. Then he really returns to the challenge and repeats in another form the innuendo which ran through the article, namely that Lala Har Swaroop had indeed been a party to the murder of his son. Mohammad Nazir says:

I certainly have this complaint against you that, while using the phrases regarding defamation, etc., you did not at all write anything regarding the death of the deceased: the illness or the shock the deceased died of, the reason why his body was cremated at a less known place and the enquiries, if any, made by the police and the basis on which they made the same, etc.

12. That is a scandalous passage and amounts to a repetition of and persistence in the original libel. He continues:

This might have, as you yourself say, thrown a light on the real facts and the communication might have been published verbatim in the same manner (as the news).

13. Then he refers again to the total misconception of his duty which he had mentioned before.

It was my duty to publish the said news and it is also my duty to publish your letter on the same subject. But I am sorry you did not give any expression to that matter. I inform you that you should soon write a correct account of the incident, so that the same may be at once published in the newspaper and the information may be supplied to the public, so that it might draw its own inference after weighing the two items of news.

14. Therefore, we have Mohammad Nazir inviting Lala Har Swaroop to tell his own side of the story so that the public might draw its own inference after 'weighing the two items of news' and assuming that by Har Swaroop's silence he (Mohammad Nazir) was to some extent the aggrieved party, Lala Har Swaroop took the most sensible course and at once commenced criminal proceedings against Mohammad Nazir.

15. The defendant in proceedings for defamation, whether in a suit or under Section 500, I.P.C., is usually in a delicate and difficult position. The duties of counsel are no less delicate and difficult. The first step to consider is what is the exact nature of the defence which can reasonably be set up. In a criminal case Section 499, I.P.C., should be studied with the greatest care. The defence must depend upon the facts of each particular case, and by facts we mean facts which the defendant is certain can be proved by him or his witnesses. If there is no substantial defence, an immediate apology in the widest and most unreserved terms may fairly be presumed to decrease the damages and lessen the punishment under Section 500, I.P.C. The facts may be so strong that occasionally it may happen that counsel can advise the client to 'justify' See Excep. 1, Section 499, I.P.C.) That most dangerous plea should never be put forward unless there is practical certainty of success. By that we mean that the defendant and his witnesses can prove facts of so damaging a character relevant to the article complained of, that the article can thereby be shown to have been true in substance or in fact. There may also of course be the strongest evidence for cross-examination as to credit which can be called in aid.

16. If, however, prudence dictates, as it will in the great majority of cases, that the plea of justification must be ruled out as being too dangerous then it is of the

utmost importance that nothing should be said or done by counsel or client which can in any way be laid hold of as an attempted justification. Moreover, Mohammad Nazir was unaware of or disregarded the rule applicable to both civil and criminal cases of defamation, that the whole conduct of the defendant or accused from the time of publishing the libel to the verdict or sentence has to be taken into account in assessing damages or imposing punishment.

17. This case affords an excellent illustration of how to misconduct a case. Mohammad Nazir, not having one single fact which he could prove which would support any part of the defamatory article, should have behaved with the utmost discretion. When the truth of the article was challenged, he should have expressed at once, by a personal letter to Har Swaroop and in his paper, the utmost regret for its publication, and though these apologies would not in our opinion by any means have saved him from imprisonment, they would no doubt have been taken into account when the question of the quantum of sentence arose in the Magistrate's mind. As we have seen, far from apologizing, he wrote a provocative letter. When proceedings commenced under Section 500, he did something much worse. He actually filed a list of 148 witnesses intending thereby to indicate to the complaint that he proposed to attempt to justify the wicked and baseless charges that he had made. He called one witness only. He also aggravated the case against him by putting questions in cross-examination which showed a desire on his part to justify the article. We refer particularly to the questions put to several witnesses as to whether the funeral procession did not start at the unusual hour of 5 o'clock in the morning. This conduct in listing 148 witnesses, whom there was no honest intention to call, and cross-examining about the alleged unusual hour of the funeral procession, were in direct violation of that most important rule which counsel and client must never forget, that if no justification can be pleaded, no act shall be done and no question shall be put tending towards justification. We emphasize this because the records which come to this Court show a disregard of this rule, and in case after case a defendant, who has no possibility whatever of justifying the whole or a substantial part of the matter complained of, nevertheless 'nibbles at justification' and thereby makes the case against him much more serious. The proper course for the accused in this case would have been for him at once to apologize in the manner we have indicated and to have proved that apology in

Court. He should not have cross-examined any of the witnesses called by the complainant as they were obviously men of respectability who were telling the truth. He should not have called even the one witness which he did. Whilst this course would not have saved him in our opinion from undergoing a period of imprisonment, it would certainly have lessened the imprisonment which he must now undergo.

18. His personal conduct towards the Court was in keeping with his behaviour towards the complainant, but we must not and do not take that into account in our sentence.

19. The Magistrate had no difficulty whatever, after hearing the evidence, in pronouncing that the whole story was a gross and wicked fabrication without any single word of truth to support it. Mohammad Nazir behaved in Court just as one would expect. Twice he made applications for transfer and twice the application was rejected by the District Magistrate. On a third occasion he put in an application before the Magistrate that he had sent his transfer application to the High Court. That eventually turned out to be a falsehood. After the accused had produced one witness he was asked to call the next. He asked if he might go out of Court for five minutes and that request was refused. There upon, Mohammad Nazir took out a stamped and written application from his pocket, saying that he expected no justice from the Court, that he would not produce any other witness on account of the Court's attitude of hostility towards the first witness. That is to say, before the first witness had been put into the box, Mohammad Nazir had already drafted out an application stating that he intended to call none of the further 147 witnesses because of the Court's hostility towards the witness called by him.

20. In considering the course he should take the learned Magistrate had no difficulty whatever in coming to the conclusion that this was a defamatory article indicating and implicating the complainant and entitling him to take criminal proceedings, but he does not appear to have realized the gravity of the attack upon the character of the complainant. It is almost impossible to imagine a worse attack upon a man than that to which Lala Har Swaroop was subjected. Here was

a man, Lala Swaroop, of perfectly good character, perfectly good reputation, respected in Mawana, a man of position and a man very closely identified with the activities of the Hindu religion, who suddenly found himself charged with having poisoned his own son in complicity with other relatives, and that he had done that because the son had wished to become a convert to Islam. It is difficult to imagine a more wicked and dangerous statement, wicked and cruel as far as Har Swaroop and his relatives were concerned and wicked and inflammatory as regards the community. Also the article, as the Magistrate points out, clearly implicated relatives and all the three doctors, who were in attendance on him. We are of opinion that the learned Magistrate should have passed a more severe sentence, and that the sentence of six months' simple imprisonment is not in any degree adequate to the offence committed by Mohammad Nazir. It has been said on behalf of Mohammad Nazir that he is an ignorant, inexperienced man of no position or education and a man who under no circumstances should ever have been the editor of any paper however insignificant. That is all very well: but if people, with no education and no conception of responsibility, choose to become editors of papers, they must at least acquaint themselves with the elementary rules of law which govern their profession and keep within such rules. We come to the conclusion that the sentence of six months must be swept away and that instead of that period Mohammad Nazir must serve a sentence of eighteen months' simple imprisonment to run concurrently under Sections 500 and 502, and that in addition he must pay the two sums of Rs. 100 which he was ordered to do by the Magistrate on 19th October 1927, and that if he fails to pay those two sums, his imprisonment must continue for a further period of two months in respect of each sum of Rs. 100. It is to be hoped that this case and that of Emperor v. Jhabba Mal : AIR1928 All222 will receive attention from the less educated and inexperienced editors in the province and that they will, before publishing an article of a grossly personal and defamatory character, ask themselves how far they could, if called upon, justify the allegations or otherwise claim protection under Section 499, I.P.C. If an editor, before publishing the letter of a correspondent or a manifestly libellous item of alleged news, asks himself by what evidence he could, if challenged, prove that the statements were true in substance and in fact, he would find that a safeguard which would protect him, at all events, in the great

majority of cases. One of the first duties of the law is to protect personal reputation and adequately to punish those who falsely and maliciously attempt to destroy it without legal justification or excuse

21. We, therefore, dismiss the revision, and whilst confirming the conviction pronounced against Mohammad Nazir by the Magistrate and Sessions Judge, set aside the sentence of six months' simple imprisonment and substitute for it simple imprisonment for eighteen months to run concurrently under Sections 500 and 502 together with the fines already mentioned, and the alternative imprisonment if the fines be not paid. We think that Mr. Pathak, the Magistrate, deserves to be commanded for the restraint which he showed when Mohammad Nazir treated him and the Court with disrespect.

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