

Emperor Vs. Padam Singh

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Court : Allahabad

Decided On : Mar-18-1930

Reported in : AIR1930All490

Appellant : Emperor

Respondent : Padam Singh

Judgement :

Boys, J.

1. This is an appeal on behalf of the Local Government from the acquittal of Padam Singh, son of Mohan Singh, who had been found guilty by the trial Court under Section 193, I.P.C., and sentenced to nine months' rigorous imprisonment, but who had been acquitted by the learned Sessions Judge on the ground that the facts did not come, at any rate did not clearly come, within Sections 191 and 193, I.P.C. Before us two questions have been fully argued, one of law and the other of the merits, and it is incumbent on us to deal with both. The plaintiff in a civil suit was Sher Mohammad Khan. The defendant was the present opposite party, Padam Singh. The suit was brought on the basis of a promissory note said to have been executed by Padam Singh on 15th January 1926, supported by a receipt stated to have been taken from Padam Singh on the same date.

2. The suit was brought on 11th August 1928 and was decreed ex parte on 25th September 1928. An application for restoration made on 15th October 1928 was

allowed on 1st December 1928, and on the same date the defendant, Padam Singh, was directed to file a written statement. He filed the written statement and in it denied execution of the promissory note, denied owing any sum at all and at the end of the written statement he verified these denials stating that the paragraphs in which the denials were made were true to his personal knowledge. No question has been raised before us that the verification was not in the ordinary form called for by Order 6, Rule 15.

3. Having filed this written statement on 1st December 1928, Padam Singh three weeks later, on 20th December 1928, applied that the thumb-impressions on the promissory note and the receipt alleged to be his might be sent for examination.

4. Police Inspector Gorton of the Finger Print Bureau of the Criminal Investigation Department reported that the finger prints on the promissory note and receipt, which were the basis of the suit, were the finger prints of Padam Singh, the defendant. Padam Singh, having heard that the report was against him, again allowed the suit to be decreed in default. The learned Judge of the Court of Small Causes issued notice under Section 476, Criminal P.C., to Padam Singh to show cause why he should not be prosecuted under Section 193, I.P.C. Padam Singh appeared in response to the notice and threw himself on the mercy of the Court. We have not had his answer placed before us in detail, but it is common ground between the learned Government Advocate and the counsel for Padam Singh that he did not on that occasion do more than throw himself on the mercy of the Court, more especially he did not set up any defence of any sort that his finger impressions must have been taken from him while he was in a state of intoxication, which was his line of defence at the criminal trial which followed.

5. As we have said above, Padam Singh was convicted by the Magistrate and has been acquitted by the learned Judge. The Magistrate considered that the only question which he really had to determine was whether the thumb impressions of the accused had been obtained by fraud while the accused was drunk or whether the accused had deliberately perjured himself in the civil Court in order to evade the satisfaction of the loan. Rejecting the accused's defence, he held that Padam Singh was clearly guilty under Section 193, I.P.C., and there is nothing to show

that any question was raised before him that if the alleged facts were found against the accused, Section 193, I.P.C., was not applicable. The grounds of appeal to the learned Sessions Judge do not appear to have raised any question but one of fact, But the question of the applicability of Section 193 or, in the alternative, Section 199, I.P.C., was clearly raised before the learned Sessions Judge who was further referred to the decisions in *Queen Empress v. Meharban Singh* [1884] 6 All. 626 and *Emperor v. Janki Rai* : AIR1927 All383 . After mentioning these cases the learned Judge says:

In the present case the written statement of Padam Singh is merely a general denial of the claim of the plaintiff, Sher Mohammad Khan, and there is no specific denial of a specific and material fact constituting the plaintiff's claim.

6. We are unable to attribute any meaning to this statement in view of the actual written statement. The defendant, Padam Singh, began by not admitting the allegations in the plaint, but in his additional pleas he expressly denied that he had executed any pro-note in favour of the plaintiff or that any amount was due to the plaintiff. What more specific denial of a substantial and material fact constituting the plaintiff's claim there could possibly be, it is impossible to conceive. Again the learned Sessions Judge says:

On general grounds I am of the opinion that statements in the pleadings by themselves should not form the subject of a criminal prosecution.

7. Again it would seem to us that if 'general grounds' are entitled to any weight at all, it would prima facie be most desirable that if a party makes deliberately false statements to a Court intending the Court to be influenced thereby, he should be liable to a criminal prosecution. But it is not on any 'general grounds' that a judgment should be based in a matter of this description. It is the province of the legislature to declare in what circumstances a person shall be liable to punishment and it is the duty of the Court merely to determine whether the circumstances in the particular case come within the provisions enacted by the legislature. The learned Sessions Judge next says:

It is true that the Law Commissioners who drafted the Penal Code were anxious to depart from the rule of the English law on this subject.

8. The learned Judge has, therefore, quite rightly recognized that any practice that may be current in England can be of no weight in applying the law in this country, if the legislature in this country has in fact carried out its intention of declaring different laws. The learned Sessions Judge next says:

It is doubtful if the law as actually enacted provides for the punishment of a party making a false allegation in a pleading filed in a civil Court in India.

9. This is a conclusion to which he was entitled to come and, coming to that conclusion, he was bound to acquit the accused.

10. The Local Government asks us in this appeal to determine whether on this point the learned Judge was right. This question of law was the first to be argued at length by both sides. We are confident that it can be disposed of briefly. In addition to the two cases to which we have above referred the learned Government Advocate brought to our attention the case of *Lakhu Shah v. Queen Empress* [1894] 27 P.R. 1894 Cr., the case of *Trailokya Nath Banerji v. Bodaranjan* [1921] 25 C.W.N. 886, the case of *J.B. Ross and Co. v. C.R. Scriven* [1916] 43 Cal. 101 and the case of *Emperor v. Janki Rai* : AIR1927 All383 . No other case than these was referred to by counsel for Padam Singh. We do not propose to consider in detail the cases to which we have referred, and though there was on both sides frequent reference to the scope of Section 199, I.P.C., we do not feel that it is incumbent upon us in this case to say anything whatever as to what may be the scope of that section. We propose to confine ourselves to declaring our view of the meaning of Section 191, I.P.C. Its interpretation, in our view, gives no rise to serious difficulty. In the case before us we are not concerned with any affidavit or any statement taken from the parties or any oral evidence given by Padam Singh. We are concerned with the written statement, in which of course must be included the verification, and with that only. S. 191 says:

Whoever being legally bound by an oath or by express provision of law to state the truth... makes any statement which is false and which he either knows or believes

to be false or does not believe to be true, is said to give false evidence.

11. We are invited to rely, and we do rely, on the words:

bound... by express provision of law to state the truth.

12. It is contended by counsel for the opposite party that a defendant is not legally bound either by any express provision of law or in any other way to file a written statement at all. That of course must at once be conceded. But if he does desire to file a written answer to the plaint, he is by express provision of law bound to do something further. He is bound to attach the verification which is called for by Order 6, Rule 15, and his written statement is not, until that verification is attached, a written statement in law at all and could not be received for any purpose whatever. When, therefore, filing a written statement he is bound by express provision of law to verify the facts alleged in that written statement as being true either to his own knowledge or to the best of his belief. It is contended that when the law requires a defendant to verify his written statement it does not necessarily require him to tell the truth. This contention, in our view, is manifestly untenable. Words have a certain meaning and we have only to give them their plain and ordinary meaning, in the absence of any circumstances indicating that meaning is not permissible. The ordinary dictionary meaning of the word 'verify' used in the present circumstances is: 'to confirm the truth or truthfulness of.' It was further contended on behalf of the opposite party that the mere fact that in cases under the Income-tax Act and possibly other such Acts a false verification was expressly to be declared to be punishable under Section 177, I.P.C., or some other such section and the absence of any such enactment in connexion with Order 6, Rule 15, was sufficient to show that a false verification in accordance with Order 6, Rule 15 could be made with impunity.

13. In other words, we were asked to hold that the legislature orders a defendant to declare that his statements are true and, since it is further emphasised that the same legislature passed all the Acts, in the same breath says that it does not care whether the statements are true or not and that no penalty shall follow the making of a false verification. It is manifest that such an argument would be extremely dangerous. It is not possible for one moment to know what was in the minds of

particular individuals when they were considering whether it was necessary or whether it was merely desirable or whether it was undesirable to add a clause declaring under what section of the penal law a person infringing the law should be punishable. We confine ourselves, therefore, to the simple question whether the facts of the case come within Section 191. Here we find that there is an express provision of law requiring the defendant to confirm the truth of the statements made by him in the preceding clauses of his written statement, and if he does so, knowing that verification is false, he is declared by the legislature in Section 191 itself to be giving false evidence. Whatever may or may not be connoted by the word 'evidence' in other sections, there can be no doubt about the meaning in Section 191 and there can equally be no doubt that the words 'gives false evidence' in Section 193 are used in the same sense as the same words in Section 191, and it has not of course been contended that if Section 191 is applicable to the present case, Section 193 is not applicable. We are, therefore, of opinion that so far as the legal point is concerned the trial Court was right in holding that an offence had been committed under Section 193, I.P.C.

14. The next and only other question concerns the merits. The present being an appeal from an acquittal, it was open to counsel on behalf of Padam Singh to contend that on the merits his client should not have been convicted. The trial Court held that there could be no doubt that Padam Singh's defence that the thumb impressions taken from him were taken in a state of intoxication was false. The lower appellate Court, though it has not expressed its opinion so clearly, would at least seem to have been of the opinion that Padam Singh had not substantiated his defence. We have had to hear counsel on both sides on the merits. It is manifest that although the acquittal of Padam Singh by the appellate Court was not an acquittal on merits, it is for the Crown here in appeal to establish that the conviction of the accused on the merits ought to have been sustained, and it is for the Crown to establish that beyond any reasonable doubt. It would serve no useful purpose to enter into the details of the evidence, but we have no hesitation in saying that we are not satisfied beyond reasonable doubt that the conviction of Padam Singh was right. We need only mention one or two outstanding features of the case. When Padam Singh got the suit restored after the first occasion on which it had been decreed in default he forthwith applied for

expert examination of his finger prints. We are informed, and it is not denied, that such expert examination is always carried out by an official of the Criminal Investigation Department, there being no private experts in finger prints. So far then there is no reason for supposing that the accused's application was not bona fide, and this at any rate must stand to his credit. Next we have the fact that the particular promissory note and receipt in question are the only two documents which either side produced before the Court in which Padam Singh signed by means of a thumb impression rather than by his full signature in the Hindi script.

15. Obviously it might have been difficult for the plaintiff to produce documents on which the defendant had put his thumb impression, but the fact remains that we have several documents of a similar nature on all of which Padam Singh signed his full signature and there is no evidence of his ever having signed any similar document or any other document at all by affixing his thumb impression. Thirdly, there is evidence, which has been believed by the Court below, to the effect that Padam Singh was what may be described as a habitual drunkard. It is, therefore, at least not impossible that advantage might have been taken of him when he was in a state of intoxication. We do not of course suggest for one moment that he has established this, but he has established circumstances rendering his assertion at least not wholly improbable. Finally, there is no satisfactory reason suggested by the man who was plaintiff in the civil suit and is the principal witness for the Crown in the trial why Padam Singh should have on this one occasion signed by means of his thumb impression. In view of these facts we cannot hold it to be satisfactorily established that Padam Singh knew at the time that he filed his written statement that his denial of execution of the document was false denial. The result is that we are of opinion that the Local Government must succeed in its contention that Sections 191 and 193 are applicable to the case of deliberately false allegations in a written statement and false verification, but that in the particular case the appeal must fail on merits, and it is dismissed.