

**Emperor Vs. Behari Lal**

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**SooperKanoon Citation :** [sooperkanoon.com/459721](http://sooperkanoon.com/459721)

**Court :** Allahabad

**Decided On :** Jul-17-1928

**Reported in :** AIR1928All588

**Appellant :** Emperor

**Respondent :** Behari Lal

**Judgement :**

Dalal, J

1. One Behari Lal sued Dwarka Prasad in the Munsif's Court at Etawah by suit No. 478 of 1925. The dispute was about some land within the municipality, and the defendant filed a plan of the municipality of date 1922 showing that his brother Thakur Das was in possession of a certain plot of land. The plaintiff Bihari Lal tiled another copy in which the words added were that it was land of Mt. Gobindi. The suit was dismissed in default of parties. The District Magistrate naturally held an inquiry on hearing that two different copies of the same document were given to two parties by the municipality. He came to the conclusion that the copy filed by Bihari Lal was a forgery. He thereupon drew the attention of the Government, who directed him to inform the Court concerned of his suspicion. He did so by a petition dated 14th July 1927, in which he narrated the facts and informed the Court that the Local Government had directed him to draw the attention of the original civil Court to the suspicion of forgery. I think that the Collector and District Magistrate would have been better advised if he had written an official letter instead of putting

in a stamped application. Possibly he was badly advised by the local Crown officers of law. The District Magistrate was no party to the suit and drew attention of the Court as he had reason to suspect that a crime had been committed. The Munsif held an inquiry and wrote a judgment which may be called a judgment facing both ways. He quotes a lot of law, but has not the courage to record any conviction as to whether the document was really a forgery or not. He ends up in doubt and therefore refuses to order prosecution. He dismissed the application of the District Magistrate, and awarded costs against the District Magistrate.

2. The District Magistrate has come here in revision. It may be noted that in the decree the costs are awarded against the King-Emperor through the District Magistrate of Etawah and not against the District Magistrate by name.

3. The first question raised on behalf of the respondent was that no application in revision would lie. This objection is not warranted by the words of Section 115, Civil P. C, which are:

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court in which no appeal lies thereto.

4. An application in revision is barred only in those cases in which an appeal lies to this Court. In the present case an appeal lay to the Court of the Subordinate Judge or District Judge. It was argued that there has been a practice in this Court not to permit revision when any other remedy is open to the applicant in revision. A single Judge case, *Ganga Charan v. Baddel* [1913] 19 I.C. 736, was quoted. No reasons are given by the learned Judge for his opinion. As regards long-standing practice there is a judgment of another single Judge in *Debi Das v. Ejaz Hussain* [1906] 28 All, 73, in which it was held that the High Court is competent to call for the record of a civil case and pass such orders as it thinks fit and the exercise of its powers of revision on the civil side will not invariably be confined to matters in which no other remedy is open to the party aggrieved. The learned Judge observed in this matter:

It is next urged that this Court cannot interfere, inasmuch as there is another remedy which the opposite party can avail themselves of.... Ordinarily, I am

prepared to subscribe to that, but in this matter each case must be judged upon the circumstances peculiar to it.

5. There is no invariable rule of this Court under which an application for revision would be refused where any other remedy is open. Of course, as I have already observed, the provisions of the law are to be followed, and in cases where an appeal lies to this Court a revision would not lie.

6. The next question is whether the Court had jurisdiction to award costs against the King-Emperor acting through the District Magistrate. The order of the Munsif is exceedingly injudicious having regard to the fact that he himself was doubtful whether a forgery was committed or not. He was of opinion that words 'land of Mt. Gobindi' were undoubtedly written' subsequently. The only meaning of this opinion can be that they were an interpolation. Under the circumstances the District Magistrate's suspicion was fully justified. In a case of doubtful matter when the Court must have known that the District Magistrate had no bias but was acting in the interest of justice it is amazing to me that the Munsif should have gone out of his way to award costs against the District Magistrate. Further, in my opinion, the Munsif had no jurisdiction. The Government was not a party to the litigation and was not acting in any personal capacity. If the Court did not desire, it was not bound to hold any inquiry. It was for the benefit of the Court itself, where no forged documents should be presented, that an inquiry was rendered necessary. It is true that in proceedings under Section 476, Criminal P.C., where the Munsif takes action he acts as a civil Court. At the same time there is no provision in Ch. 35, Criminal P. C, as to the grant of costs to any party. Under these circumstances the civil Court would have jurisdiction to award costs to one or the other party in a case where the parties were the same as those in the civil litigation. In the present case, as already pointed out, neither the King-Emperor nor the District Magistrate by himself was a party in the civil litigation, and therefore the Munsif had no jurisdiction to award costs in the proceedings under Section 476.

7. In the result I set aside the order of the Munsif as regards casts in his order dated 5th March 1928. I make no order as to costs here.

