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Mumtaz HusaIn Vs. A.E. Lewis

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Court : Allahabad

Decided On : Feb-11-1910

Reported in : 5Ind.Cas.467

Judge : John Stanley, C.J. and ;Banerji, J.

Appellant : Mumtaz Husain

Respondent : A.E. Lewis

Judgement :

1. The plaintiff-appellant is a Sub-overseer in the Betwa Canal department, Jhansi Division, and the defendant is an Assistant Engineer of the same Division, under whom the plaintiff-appellant works. On the 23rd of March 1907, the defendant went to the place where earth-works were being carried out and began to check and measure the earth work. It is said that the defendant complained of inaccuracies in the entries of the plaintiff and was annoyed at the assertion of the plaintiff that the entries were correct and, therefore, used insulting language to the plaintiff and struck him with a cane. Other allegations of improper conduct on the part of the defendant are also alleged. The defendant in his written statement, denied the allegations of the plaintiff and, amongst other defences, set up a defence under Section 424 of the Code of Civil Procedure, Act XLV of 1882, alleging that all that happened was in the discharge by the defendant of Government duties and in the capacity of a Government servant.

2. The Court of first instance decreed the plaintiff's claim and gave substantial damages. On appeal the learned District Judge reversed the decision of the Court below and dismissed the plaintiff's suit on the ground that the defendant was protected by the provisions of Section 424 of the Code. That section provides that no suit shall be instituted against, amongst others, a public officer in respect of an act purporting to be done by him in his official capacity until the expiration of two months next after notice in writing has been delivered to such officer, or left at his Office, stating the cause of action and the name and place of abode of the intended plaintiff and the relief which he claims. The act or acts which are complained of in this case clearly were not acts purporting to be done by the defendant-respondent in his official capacity. A Public Officer has no right to use insulting language to his subordinates and he has no right to commit assaults upon them. If he exceeds his rights and uses defamatory language which is actionable or assaults or beats a subordinate, he is responsible in damages as any ordinary person would be liable. The Court below was entirely in error in the view which it took that a Public Officer was entitled to notice of an action for any such assault or defamation as is alleged in this case. We, therefore, must allow the appeal. As the appeal was decided by the lower appellate Court upon the question of notice alone and we overrule that Court upon this question, we remand the case under the provisions of Order 41, Rule 23, of the Code of Civil Procedure, to the lower appellate Court h directions that, it be re-listed in the file of pending appeals and be disposed of on the merits according to Law. The defendant-respondent must pay the costs of this appeal. All other costs will abide the event. The costs in this Court will include fees on the higher scale.

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