

**Emperor Vs. Umed Singh**

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**Court :** Allahabad

**Decided On :** Jul-23-1923

**Reported in :** (1924)ILR46All64

**Judge :** Walsh, J.

**Appellant :** Emperor

**Respondent :** Umed Singh

**Judgement :**

**Walsh, J.**

1. This is an exceptionally difficult matter to Know what to do with, but I have come' to a sort of rough conclusion which I think will conform to the procedure laid down by this Court in other cases, and, possibly in the end, be more satisfactory to both parties than the present state of things. One Uchhab Singh complained before a Special Magistrate, at Naini Tal, that he had been slandered by the accused Umed Singh by reason of a statement made by Umed Singh to the effect that Uchhab Singh had suffered the penalty of being outcasted by reason of his social relations with one Lachhi, who himself was an outcaste. The matter had already assumed considerable proportions before it reached the Magistrate. Nothing else could account for the extremely elaborate judgment in which he has dealt with the matter, and although he describes it as a trifling matter (he is an Indian and ought to know better than I do, but I think that these caste questions in

Tillage communities are very far from being trifling matters), such an agitation was caused that 50 villages have been affected directly and 100 villages indirectly within a short time. It sounds more like the description of an incurable epidemic, and so serious has it become that marriage parties have been put under the ban. Yet, says the Magistrate in his finding, the allegation is false, and if that is so, it would seem to follow that the accused is a man of enormous influence, because it certainly is a startling thing that by the mere repetition of a false accusation which ought to be able to be proved or disproved by the brotherhood without much difficulty, he has nonetheless been able to affect 100 villages. The mere fact that 100 villages are affected for good or for evil, confirms me in my view that it is really a public question. I cannot help thinking that there is something out of the ordinary in this finding by the Magistrate. In the result, finding that the accused had uttered a false statement, which means of course false to his knowledge, and if defamatory, one of the worst turns which one man can do to another in the same society, the Magistrate sentenced him to the somewhat mild punishment of one month's simple imprisonment. The matter came before the learned Sessions Judge of Kumaun in revision. Dr. Katju, upholding in one sense the order of the learned Sessions Judge, while at the same time he asks me to ignore it and to hold that it was made without jurisdiction because his only jurisdiction was to refer the question to this Court, has argued that the learned Judge had no right to go behind a finding of fact. I cannot agree with that statement framed in that bold way. In the ordinary course of things, findings of fact are accepted by a revisional court as binding upon it; but revision would be an idle farce if the revisional court had not the power, which has been exercised a hundred, possibly a thousand, times throughout the High Courts in India, to look into the evidence for itself and see if these findings can be justified by what appears upon the record. A revisional court does not decide the balance of credibility between two conflicting sets of witnesses or two conflicting issues of fact, but it may be compelled to dissent from a finding of fact which is either perverse or has been arrived at contrary to well established principles of law. In this case, so far as the finding is concerned, it does seem that the learned Judge was abundantly justified. He says that it seems that in January Uchhab Singh was outcasted, and Dr. Agarwala for the applicants has drawn my attention to a written panchayatnama signed by several of the brotherhood, by

which the brotherhood decided that he was outcaste, and did it in January, whereas the statement complained of, made by the accused, was not until March. But though the finding of fact by the Sessions Judge on this documentary evidence seems prima facie justified, it does not seem to have been arrived at according to law. The learned Judge did not issue notice, never heard the complainant, and having his attention drawn to this document, assumed against the complainant that he had been outcasted, although in all human probability the only reason why the complainant brought the charge at all was to clear himself and stop these ugly statements being made about him. So that the order of the learned Judge, although in one sense in favour of the complainant, becomes an injustice, because it overrules the Magistrate on a fundamental issue of fact without giving the other side a chance of being heard. But, further, the order of the learned Sessions Judge meets with my strong disapproval on a totally different ground. In vulgar parlance he seems to have given each party a slap in the face. Turning to the accused the learned Judge has said that he did not plead justification before the Magistrate, and that, therefore, although the statement about the complainant having been outcasted might be true, he has nonetheless got to go to jail. A touch of humour is added by the fact that the accused has already gone to jail, has served the full term of imprisonment and that what I am doing is really almost idle and superfluous. But I dissent totally from the proposition that in a criminal case an accused person is to be judged by how he pleads or fails to plead in the proceeding. Much injustice may be done by applying to criminal proceedings the precise and pedantic requirements of civil procedure. It is quite true that in dealing with defamation the Penal Code has introduced a series of provisions, adopted partly from the old common law, in the nature of defences, but it has not altered the fundamental principle of the criminal law that the complainant or prosecution must prove the accused to be guilty, or, in other words, the absence of such facts as happen to bring the case within either of the defences or exceptions laid down in the section. There is no such language as pleadings in a criminal court. The subsequent conduct or statement of an accused person may effect his credibility. It cannot destroy his right to be assumed an innocent person until his guilt has been established without any reasonable doubt. The view of the learned Judge that the accused did not plead justification is in this

case doubly fallacious, because in fact the Magistrate had framed an issue on that very question and had decided it adversely to the accused. But, in my opinion, the complainant was bound to prove that the statement was false, and, further, that if it was true, it was not for the public good. What is for the public good is a question of fact, but until I am corrected I should hold that if a person really was outcasted a statement to the members of the brotherhood that he was outcasted was the kind of statement contemplated by the expression 'for the public good.' So long as caste prevails and it must be remembered that it is sanctified by religious and by racial tradition going back for centuries and forming one of the fundamental characteristics of social life in India, any attempt to minimize, ignore or brush on one side existing regulations, existing sanctions, or respect for existing decisions, must be regarded from the Indian point of view as contrary to the public good. If it is not from the Indian point of view for the public good, caste ought to be abolished. It seems to me that there is no way out of that dilemma, and, therefore, to justify this conviction it was necessary to hold, not merely that the statement was untrue, but that if, as the Sessions Judge thought, it was true, that it was a statement not honestly made for the benefit of the brotherhood. Unfortunately that does not conclude the difficulties raised by this order of the Sessions Judge. Dr. Katju himself, who appeared for the complainant to defend it, while at the same time somewhat illogically asking me to ignore it, pointed out to me that it was passed without jurisdiction. Strictly speaking, he is right. On the matter coming before the Sessions Judge under Section 435, his duty, if any question arose which he thought ought to be further dealt with, was to refer the matter to the High Court under Section 438. It may be said in answer to this that the learned Judge did not think that there was anything to refer, because ex parte he was so satisfied with the Magistrate's order. But the difficulty in taking that view is that, as I have pointed out, even the learned Judge has fallen into two fundamental errors, and one of them is a finding of fact adverse to the complainant without a hearing. My attention has been drawn to the important decision in the case of *Sharif Ahmad v. Qabul Singh* (1921) I.L.R. 43 All. 497 (500), also a case of defamation and a case having an important bearing on the case now before me, in which the Chief Justice has approved the following dicta of Mr. Justice Piggott:

It is obviously advisable that this Court should make it a rule of practice that a person dissatisfied with any order or proceeding in a court of inferior jurisdiction to that of the Sessions Judge or of the District Magistrate should, in the first instance, obtain the opinion of the Sessions Judge or of the District Magistrate on the matter in question, before invoking the jurisdiction of this Court. Such a procedure tends to prevent the time of this Court from being wasted over frivolous or unsustainable applications. It also ensures the further advantage that, if the matter eventually comes before this Court, it comes upon a record containing an expression of opinion by a court of superior jurisdiction, such as that of the Sessions Judge or of the District Magistrate.

2. The value of that practice is of course entirely discounted if the opinion of the Sessions Judge therein mentioned as desirable to be laid before the High Court, is arrived at by an *ex parte* finding. The result is that, owing to a chapter of accidents, I really am unable to come to a satisfactory conclusion in this case. One party wants me to quash the order, the other party wants me to ignore it. It struck me that I might deal with it by certain dicta and leave the accused in this case to repeat the slander and the complainant to fight it out with him in civil court, where the matter can be finally and more satisfactorily determined, but that might be a hardship on the parties who possibly are not anxious to spend large sums on litigation, and as they have chosen this tribunal, I think it more satisfactory to ensure that they get a full adjudication in it. Holding myself, therefore, empowered to deal with it with a free hand, I allow the revision and I refer the whole matter back to the learned Judge to deal with the original revision application made to him by the accused according to law after hearing both parties and going into the evidence, and referring any question to the High Court which he thinks fit to do, if on a reconsideration of the matter he should come to; the conclusion that the conviction of the accused was not according to law.