

Mahadeo Singh Vs. Emperor

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Court : Allahabad

Decided On : May-18-1926

Reported in : AIR1926All704

Appellant : Mahadeo Singh

Respondent : Emperor

Advocate for Pet/Ap. : Mr. Nehal Chand

Judgement :

Banerji, J.

1. This is an application in revision by one Mahadeo Singh, who has been convicted by a Magistrate of the First Class of Benares under Section 426, Indian P.C.

2. In Benares, adjoining the railway lines, there is a mosque called Lal Bhairo Mosque, and over the chabutra of the mosque there is an image of a Hindu god, which is surrounded by a wall. On a particular day every year, a ceremony called the marriage of Sri Lal Bhairo Ji is performed there. A day before the celebration of the marriage of Sri Lal Bhairo Ji, viz., on the 1st September 1925, the petitioner and another man widened the doorway in the south wall of the compound round the image of the idol by demolishing part of the wall on both sides of the doorway. Thereupon a complaint was made by the Muhammadans, which resulted in the

prosecution of Mahadeo Singh, the petitioner, under Section 426, Indian P.C. The Court of first instance has very clearly, upon materials which were laid before it, come to the conclusion that the wall round the image was the property of the Muhammadans and that the Hindus whitewashed the wall from the outside. The learned Magistrate, Mr. Upadhyaya, went to the spot, inspected the locality himself and came to the conclusion that I have set out at above. Mahadeo Singh went up in appeal before the Sessions Judge. I cannot say that the finding of the learned Sessions Judge was as clear as that of the learned Deputy Magistrate. He, however, dismissed the appeal.

3. It is contended on behalf of Mahadeo Singh before me that the matter involved is of a civil nature and, in view of the case reported in *Empress v. Shankar Lall* (1887) AWN 101 I ought to set aside the conviction and direct the parties to seek relief in the civil Court. Mr. Nehal Chand counsel for the applicant, has also referred me to certain cases of the Lahore High Court. I am of opinion that the principle laid down in those cases cannot apply to this case. Had Mahadeo Singh been interested in the temple or had he anything to do with the management of the temple, I might have adopted the course suggested by Mr. Nehal Chand. It is next urged that the remarks of the learned Judge

that the ownership of the wall appears to rest rather with the Muhammadans than with the Hindus, and probably the lower Court has come to a right conclusion.

4. Show that he had neither applied his mind to the case nor come to any definite finding. I have no doubt that the learned Judge has been unable to state clearly and categorically what his opinion was; but I am of opinion that the sentence next to the one referred to above shows that he accepted as a fact the finding of the Court below that by breaking the wall the petitioner caused wrongful loss to the Muhammadan public by taking out the bricks of the wall. That being so, I do not think I shall be justified in ignoring the conclusion arrived at by the learned Judge. This is not a case in which the finding of a Court between a Hindu telephone operator at Ramnagar and the Muhammadan manager of the mosque can possibly amount to a judicial determination of the question relating to the wall between the Hindu and Muhammadan communities.

5. I see no justification in the act of this accused in interfering with the property which did not belong to him. I therefore, dismiss his application. The accused is a telephone operator getting a small pay. I therefore, reduce the fine from that of Rs. 100 to a fine of Rs. 20. The surplus amount of the fine if paid may be refunded to the accused.

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