

Sukhdeo Vs. Emperor

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Court : Allahabad

Decided On : Dec-16-1932

Reported in : AIR1933All210; 145Ind.Cas.392

Appellant : Sukhdeo

Respondent : Emperor

Judgement :

ORDER

Bajpai, J.

1. This is an application in revision against the conviction of the applicant, Sukhdeo under Section 500, Penal Code. The facts of the case are that a notice under Section 185, Municipalities Act, was sent from the office of the Notified Area Chunar by which Sukhdeo was directed to close certain windows; and a door. Sukhdeo replied to that: notice and sent it to the President of the Notified Area, B. Mathura Prasad. There can be no doubt that the contents-of this notice are defamatory in the extreme inasmuch as they impute that B. Mathura Prasad had sent the original notice under Section 185, Municipalities. Act, because Sukhdeo had refused to accede to a demand of illegal gratification of B. Mathura Prasad. In the ordinary course of official routine B. Mathura Prasad put this reply on the records of the Committee and it was read by members of the Notified Area. Committee. B. Mathura Prasad filed a. complaint on 13th September 1928, upon

which Sukhdeo was charged under Section 500 and convicted and sentenced to three months R.I. and a fine of Rupees 100. The said conviction and the sentence has been confirmed in appeal by the learned Sessions Judge.

2. In revision it is argued before me that the notice is not defamatory, that there was no publication and that the sentence is illegal. As I stated at the very outset it is impossible to argue that the contents of the notice are not defamatory. They are scandalous in the extreme and there can be no doubt that they were intended to harm the reputation of B. Mathura Prasad. On the question of publication, reliance has been placed by the learned Counsel for the applicant on the case of *Queen-Empress v. Taki Husain* (1884) 7 All 205. In that case a certain notice containing defamatory matter was sent by the accused to the city kotwal. The notice was drafted by a lawyer and copied by the lawyer's clerk. The accused was charged in that case not with the publication of the defamatory matter to the lawyer or the lawyer's clerk but to the complainant and the case on behalf of the prosecution was that the complainant did. and had to show the notice to his superior officers and thus there was publication. It was held in that case that, it was not at all necessary for the complainant to have shown the notice to his superior officers and communication, of the defamatory matter to the complainant himself was not actionable in law. In the present case I do not base my decision on the publication of the contents of the notice to the lawyer or Baij Nath who actually scribed the notice because I find from the complaint that no grievance was made of that fact and the accused was not asked to defend himself on that point. It is however clear from the complaint that B. Mathura Prasad took exception to the fact that the notice had to be put on the official file, and was as a matter of fact put on the official file, with the result that it was communicated to others. The facts of this case therefore are clearly distinguishable from the Full Bench case mentioned before inasmuch as it was the duty of B. Mathura Prasad to place this notice on the record. It was not a gratuitous or a voluntary act on his part but it was an act which had to be done in the course of official routine. We have the evidence of B. Bindeshri Prasad a member of the Notified Area to the effect that the reply of Sukhdeo came into the office and was read by the members. For publication it is sufficient if the accused intentionally does an act which has the quality of communicating the alleged libel to a third person or persons generally. The

accused knew or must have known that the contents of this notice would be necessarily communicated to the persons connected with the office of the Notified Area. I am therefore of the opinion that there was publication within the meaning of Section 499, Penal Code.

3. The last contention that the sentence is illegal is undoubtedly valid. This matter seems to have escaped the notice of the trying Magistrate as well as the learned Sessions Judge. Under Section 500, Penal Code, the imprisonment cannot be rigorous, but needs must be simple, and I am sure the illegality could have been corrected by the learned Sessions Judge or would not have been committed by the trying Magistrate if it had been pointed out to them and it is only an oversight. The result is that I allow this application to this extent: that I alter the nature of the punishment and direct that the three months' imprisonment shall only be simple. It is not possible for me to reduce the terms of imprisonment or to remit the fine inasmuch as there is not the slightest doubt that the accused aggravated the offence by adducing evidence to show' that B. Mathura Prasad had really demanded illegal gratification through Mahadeo chaprasi, and that that justified the imputation. With the above modification I dismiss this revision. The accused is on bail. He must surrender and serve out the rest of the sentence.