

Sukhdeo Vs. Emperor

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Court : Allahabad

Decided On : Aug-07-1934

Reported in : AIR1934All978; 153Ind.Cas.403

Judge : Bajpai, J.

Appellant : Sukhdeo

Respondent : Emperor

Judgement :

ORDER

Bajpai, J.

1. The petitioner was a witness in the Court of Rai Kishanji Saheb, Special Magistrate of Benares, and the complaint of the petitioner is that while he was in the witness box the aforesaid Magistrate used insulting language towards the witness. The words alleged to be used are 'Haramjade Badmash Baiman.' The petitioner therefore filed a complaint in the Court of the City Magistrate of Benares against Rai Kishanji Saheb under Section 504, Penal Code. The City Magistrate was of the opinion that the complaint should not be entertained without the sanction of the Government. The learned Sessions Judge was also of the opinion that under Section 197, Criminal P.C., no complaint against the Magistrate could be entertained without the previous sanction of the Local Government. On a question of fact it was admitted by learned Counsel for the applicant before the

learned Sessions Judge that the act of the Magistrate complained took place while he was acting as a Magistrate.

2. It is contended before me that under circumstances like these the absence of a sanction is no bar to the City Magistrate taking cognizance of the complaint. From what have stated before there can be no doubt that the allegation in the complaint is that the insulting language was used by Rai Kishanji Saheb, the Magistrate, while he was holding his Court and while the complainant was in the witness box. It is however argued that it is no part of the policy of the legislature to set an official above the common law and that if such an official commits a common offence he should have no peculiar privilege. I have however got to interpret Section 197, Criminal P.C. Cases which were decided before Act 18 of 1923 (Criminal Procedure Amendment Act) can be of no help because the section has been completely redrafted but there is by no means unanimity of opinion even after the amendment and no useful purpose will therefore be served by discussing the case law. I am however of the opinion that the legislature has now given a greater protection to the officers concerned than it did under the old section. Ex-hypothesi the officer concerned should be accused of having committed an offence and the offence is obviously a wrongful act which must prima facie be beyond his official rights and duties and therefore if the safeguard of a sanction is not available to the officer then the protection offered by Section 197, Criminal P.C., and the wisdom underlying the protection would vanish. All that the Court should see in a case like this is whether the officer concerned has been accused of having committed the offence complained of when he was acting or purporting to act in the discharge of his official duty. In the present case there can be no doubt; that Rai Kishanji was acting or at least purporting to act in the discharge of his official duty, when it is said that he used insulting language to the petitioner. The test is whether the officer at that particular moment was actually engaged in or purporting to be engaged in the discharge of his official duty. For the reasons given above there is no force in this revision. The application is dismissed.