

Kundan Lal Vs. Emperor

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Court : Allahabad

Decided On : Dec-16-1930

Reported in : AIR1931All315

Appellant : Kundan Lal

Respondent : Emperor

Judgement :

Mears, C.J.

1. Kundan Lal applies in revision against an order of Mr. Badhwar who on 2nd April 1929, declared Kundan Lal to be a tout. It appears that the Bar Association of Dehra Dun appointed an enquiry committee and eventually passed a resolution giving the names of seven persons who were asserted to be touts. We note from the resolution which was eventually submitted to Mr. Ansari and considered by him, that two members of the association voted in favour of Kundan Lal on the ground that he was not a tout but 18 voted against him. When the matter came up before Mr. Ansari, Kundan Lal called certain witnesses as to character, whose evidence cannot have been believed by Mr. Ansari nor by Mr. Badhwar when this matter came before the latter Judge. It transpired that between 1923 and 1926 Kundan Lal had been in trouble over an embezzlement of moneys belonging to the client of a lawyer and he had also been sentenced to eight months' imprisonment, apparently for abduction. Those two matters were discussed by Mr. Ansari who regarded Kundan Lal as an undesirable person. That may be true, he may be a

dishonest, undesirable person, but it did not carry the question of whether he was, in fact, a tout any further. The convictions may have clouded both the judgments of Mr. Ansari and Mr. Badhwar.

2. Another ground of complaint taken is that a witness, Gajpat Saran, was called, who spoke to conversations held with Kundan Lal six years before, i. e., as far back as 1923. The evidence is rather vague but no doubt was intended to convey to the mind of the Judge that Kundan Lal was hoping to have made touting arrangements with Gajpat Saran. The complaint of Kundan Lal is that that evidence was received last of all and after he had given evidence and he wanted to rebut and, in fact, destroy the evidence by proving from the records of the criminal cases that he had not been in Dehra Dun at the time spoken to by Mr. Gajpat Saran. Mr. Gajpat Saran was, in fact, very vague as to the date of the interview. We have allowed counsel considerable latitude in this matter, but it seems to us that it would not have been of advantage to Kundan Lal to call for the record. All that it would have proved would have been that Kundan Lal was not at Dehra Dun at certain months in the year 1923. It would by no means exclude the possibility of his having been there in the early part of the year or in the first half of the year. Moreover, in the application to summon this record Kundan Lal did not say, as any man would have said, that he had never at any time in his life had an interview with Mr. Gajpat Saran such as Gajpat Saran was fastening on to him. We therefore think that although there may have been an irregularity in that matter it was not such an irregularity which in fact operated to the detriment of Kundan Lal. The real difficulty in Kundan Lal's way are the provisions of Section 36, Act 18 of 1879 and the amendment which was made by Act 15 of 1926. Section 36 (a) gives to various Courts power to publish lists of persons proved to their satisfaction by evidence of general reputation or otherwise habitually to act as touts.

3. Now, prior to 1926 the only way in which one could get evidence of general reputation was by putting witnesses into the box who would speak as to what they believed to be the general reputation of an alleged tout. But after the amendment of Act 18 of 1879 by Act 15 of 1926 a Bar Association had the power to pass a resolution by a majority of their members at a meeting specially convened for the purpose to declare certain persons as touts and on that declaration being duly

made and it being duly proved that that resolution' had been passed, any Court could accept that finding as evidence of general repute, which is the phrase used in Section 36 of the Act of 1879. The practical result therefore is that nowadays whilst a Court can still proceed under Section 36 in the old way and call evidence it can also avoid the calling of these witnesses once a resolution is presented to' it which satisfies the requirements of Act 15 of 1926, that is to say, the Court accepts that the resolution does prove that a person whose conduct has been enquired into by them is a tout by evidence of general repute. Therefore there being in this case a resolution of that character, both Mr. Ansari and Mr. Badhwar had a legal foundation upon which to proceed, and unsatisfactory as was the evidence of Gajpat Saran, nevertheless, in our opinion, we have no power to say that on a revisional application of this kind the order of Mr. Badhwar must be set aside. Mr. Ansari and Mr. Badhwar both acted and gave effect to the resolution and there was no evidence called in rebuttal by Kundan Lal which was believed by the lower Court or by Mr. Badhwar as sweeping away the legal effect of the resolution. This application in revision is therefore dismissed with costs and fees on the higher scale.