

Lalmohan Singh Vs. the King

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Court : Kolkata

Decided On : Nov-07-1949

Reported in : AIR1950Cal339

Judge : Harries, C.J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 499 and 500

Appeal No. : Criminal Revn. Petn. No. 744 of 1949

Appellant : Lalmohan Singh

Respondent : The King

Advocate for Pet/Ap. : Ajit Kumar Dutta, ; Satis Chandra Ray and ;Dwijendra Krishna Dutt, Advs.

Judgement :

ORDER

Harries, C.J.

1. This is a petition for revision of an order of the learned Chief Presidency Magistrate convicting the petitioner of an offence under Section 500, Penal Code, and sentencing him to pay a fine of Rs. 200 and in default of payment of the fine, to simple imprisonment for one month.

2. The charge arose out of a letter which the petitioner wrote to the Editor of the Newspaper Swaraj, for the purpose of publication. To understand the allegations in the letter it will be necessary shortly to set out the facts of the case.

3. The complainant was the owner of a certain premises No. 24, Hyat Khan Lane, Calcutta. It appears that one Amar Guha had somehow obtained possession of part of these premises, but it is common ground that later he was treated as a tenant. Amar Guha was an evacuee from East Bengal. Later, one Sitanath with the assistance of Amar Guha came into these premises and took possession of part of them, but it is clear from the findings of the learned Magistrate that the complainant never recognised Sitanath as a tenant. Eventually Sitanath and Amar Guha fell out and an incident took place in these premises which gave rise to the letter to which I have referred. It seems that in the absence of Sitanath, Amar Guha with a number of other persons tried to occupy by force the part of the premises occupied by Sitanath and that they manhandled Sitanath's wife and daughter and caused considerable damage to movable property of Sitanath.

4. That some such incident did take place seems to be clear. But the suggestion in the letter which the petitioner wrote to the Swaraj Newspaper is that the landlord, the complainant in the case, was behind this attack by Amar Guha on Sitanath, and that the attack was made as a result of a conspiracy between them. This was a serious allegation against the complainant.

5. Attempts were made in the Court of the Presidency Magistrate to prove that the complainant must have been a party to this attack on Sitanath's premises, but the learned Chief Presidency Magistrate has, I think, rightly held that the evidence does not show that the complainant was a party to these proceedings at all. In other words, the evidence which went to show that the allegations in this letter to the Swaraj were true, utterly failed.

6. The first defence put forward was the defence raised in Exception 1 to Section 499 which is the defence of justification. As I have said, the learned Magistrate held that the evidence which went to justify the allegations failed. Mr. Dutta has argued that his client would still be entitled to an acquittal even though his evidence failed to prove the truth of the allegations, if the evidence had raised a

reasonable doubt as to the truth of the allegations. He has relied upon the well known Full Bench case of the Allahabad High Court dealing with the onus of proof in the case of Exceptions.

7. It is to be observed that Exception 1 requires that the allegation is true and if Mr. Dutta's argument is accepted Exception 1 should read : 'It is not defamation to impute anything which may or may not be true.' I do not think that the principle of the Allahabad Full Bench case can be made to apply in the present case. To say something of a person which holds him to contempt is defamatory. If what is said is true then that is a defence. On the other hand if there is a doubt as to whether it is true or not, there is no defence at all and as the matter tends to bring the person defamed into contempt it is defamatory under Section 500, Penal Code. It seems to me quite clear that the plea of justification wholly failed in this case and no reliance can be placed on Exception 1 to Section 499.

8. It was then suggested that Exception 9 to Section 499 afforded a defence. That Exception reads :

'It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.'

9. Assuming that these allegations were made in good faith which is at least doubtful, they were certainly not made for the protection of the petitioner who wrote the letter. How could they be said to have been made for the protection of Sitanath And it certainly was not for the public good that such a charge should have been made. I do not think that Exception 9 could have any application at all. This letter was clearly written to try and force the landlord's hands and if that is so there can be no question that Exception 9 can ever apply.

10. It seems to me that this is a clear case and the petitioner was rightly convicted. The sentence is by no means severe and I would affirm the conviction and sentence and discharge the rule. The order staying the fine is vacated.