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EMPEROR v. BIHARI.

We, therefore, think that the ends of justice will be met by reducing the sentence to one of transportation for life. We accordingly uphold the conviction but reduce the sentence to one of transportation for life.

Conviction upheld.

REVISIONAL CRIMINAL.

Before Mr. Justice Sulaiman.

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October, 2.

PANCHANAN BANERJI *v.* UPENDRA NATH BHATTACHARJI.*

Criminal Procedure Code, section 561A—"Inherent powers" of a High Court—Power to direct expungement of objectionable remarks from judgement of a subordinate court.

The inherent power of a High Court referred to in section 561A of the Code of Criminal Procedure must be deemed to include a power to order the deletion from the record of a subordinate court of passages which are either irrelevant or inadmissible and which adversely affect the character of persons before the court. Such jurisdiction, however, can only be exercised when there is no foundation whatsoever for the remark objected to and not where it is a matter of inference from evidence.

Emperor v. *Thomas Pellako* (1), *Ma Kya* v. *Kin Lat Gyi* (2), *Emperor* v. *C. Dunn* (3) and *Mohammad Qasam* v. *Anwar Khan* (4), referred to.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Babu *Sailanath Mukerji*, for the applicant.

The Assistant Government Advocate (Dr. *M. Wali-ullah*), for the Crown.

* Criminal Revision No. 303 of 1926, from an order of K. A. H. Sams, Sessions Judge of Benares, dated the 19th of January, 1926.

(1) (1911) 14 Indian Cases, 643. (2) (1911) 11 Indian Cases, 1000.
(3) (1922) I.L.R., 44 All., 401. (4) (1926) A.I.R. (Lahore), 382.

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SULAIMAN, J. :—This is an application praying that the acquittal of the accused by the Sessions Judge should be set aside and that certain passages in the judgement, which are against the complainant's character, should be expunged.

Although the High Court has undoubtedly jurisdiction to set aside an order of acquittal, that power is exercised in rare and exceptional cases. In this case the learned Sessions Judge has come to the conclusion that the case was a very troublesome and difficult one, and that there was the evidence of one of the prosecution witnesses of a partnership between the accused and the complainant and as no report was made to the police, the Judge was not satisfied that the accused was bound by any contract to dispose of the articles entrusted to him as declared by the complainant. He is of opinion that the dispute is really a fit one for the civil courts. The inference drawn by the Judge from a number of letters and the oral evidence is an inference of fact and it is impossible to say that his conclusion is perverse or even wrong. I cannot, therefore, accede to the prayer for setting aside the acquittal.

As regards the question of expunction, the learned Government Advocate has urged before me that this Court has no jurisdiction to make any such order and cut out the portions from the judgement of the appellate court. In the Code of Criminal Procedure such power is not conferred in express terms. The question is whether it is within the inherent jurisdiction of the High Court to make such an order. Under the old Code there was some conflict of opinion. The Burma Chief Court had in two cases, *Emperor* v. *Thomas Pellako* (1) and *Ma Kya* v. *Kin Lat Gyi* (2) expressed the view that such jurisdiction existed.

(1) (1911) 14 Indian Cases, 643 (2) (1911) 11 Indian Cases, 1000.

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In *Emperor* v. *Lachhu* (1) LINDSAY, J. C. sitting in the Oudh Judicial Commissioner's Court, distinctly held that he had such jurisdiction and ordered certain remarks in the judgements of the courts below against a counsel who had appeared in the case to be expunged from the record. On the other hand, GOKUL PRASAD and STUART, JJ., in the case of *Emperor* v. *C. Dunn* (2), held that the High Court had power to make an amendment of an effective order of the court below, and not that of expunging passages which do not commend themselves to it. At the end of the judgement they, however, remarked :—

"If it be held that the grievances of persons, who are unjustly criticized by courts of law in circumstances which obviate the effective orders of the courts coming before Superior Courts in appeal or revision, are so great as to require a special enactment for their protection, the matter is one for the consideration of the Legislature, but as the law stands, we are satisfied that we have no authority."

In the new Code, section 561A has been added and it says :—

"Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

Had it been permissible to refer to the statement of the objects and reasons, the intention of the Legislature would have been at once clear. Courts, however, cannot take into account the view of a select committee. But the section emphasizes the wide inherent power which a High Court possesses to "prevent abuse of the process of any court or otherwise to secure the ends of justice." I see no reason why such an inherent power should not comprise a power to order a deletion of passages which are either irrelevant or inadmissible and which adversely affect

(1) (1914) 24 Indian Cases, 156. (2) (1922) I.L.R., 44 All., 401.

the character of persons before the court. The High Court as the Supreme Court of revision must be deemed to have power to see that courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it. SHADI LAL, C. J., in the case of *Mohammad Qasam* v. *Anwar Khan* (1) recognized that under section 561A there is an inherent power of the High Court to delete objectionable remarks against witnesses or accused persons. Such jurisdiction, however, can only be exercised when there is no foundation whatsoever for the remark objected to and not where it is a matter of inference from evidence.

[Here His Lordship referred to the passage in the judgement which was sought to be expunged and held that there was no evidence to justify the language employed in the judgement.]

I accordingly order that the words which are objected to should be expunged from the judgement of the Sessions Judge. The other prayer asked for in the application is not granted.

APPELLATE CIVIL.

Before Mr. Justice Dalal and Mr. Justice Pullan.

THE PUNJAB NATIONAL BANK (PLAINTIFF) *v.* TAJAMMUL HUSAIN, BISHESHAR NATH AND OTHERS (DEFENDANTS).* 1926 *October*, 19.

Act No. XXVI of 1881 *(Negotiable Instruments Act), sections 27 and 82—Hundi—Renewal of hundi after acceptance—Liability of acceptor on first bill.*

On the 2nd of November, 1921, two hundis were drawn by Tajammul Husain, Bisheshar Nath, in favour of the Punjab National Bank, the drawees being the firm of Moti Lal, Bisheshar Nath of Calcutta, by which they were accepted.

* First Appeal No. 23 of 1924, from a decree of Syed Iftikhar Husain, First Subordinate Judge of Cawnpore, dated the 21st of September, 1923.

(1) (1926) A.I.R. (Lahore), 382.