

contention is sound, would be, on a misfeasance summons being directed against them, to apply to the court for the liquidator to provide security for their costs, as the company had no assets,—the fact that the company had no assets being entirely due to the fraud of the officers of the company themselves. This application is dismissed with costs. I fix counsel's fee at Rs.32.

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LIAQAT
HUSAIN
P.
OFFICIAL
LIQUIDATOR

REVISIONAL CRIMINAL

Before Mr. Justice Bajpai

EMPEROR v. SUKHDEO *

1932

December, 16

*Indian Penal Code, section 499—Defamation—Publication—
Reply to official notice issued by President of Notified Area
—Defamatory allegations against President contained in the
reply.*

A notice under section 185 of the Municipalities Act was issued by the President of a Notified Area to a certain person, who sent a reply containing defamatory allegations against the President. This reply was put on the official file by the President and it was read by the members of the Notified Area Committee. *Held*, there was publication of the defamation. The placing of the reply on the official file was not a gratuitous or a voluntary act on the part of the President but it was his duty to do so, and the accused knew or must have known that the contents of his reply would be necessarily communicated to the persons connected with the office of the Notified Area.

Queen-Empress v. Taki Husain, I. L. R., 7 All., 205, distinguished.

Mr. Savla Nath Mukerji, for the applicant.

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

BAJPAI, J. :—This is an application in revision against the conviction of the applicant Sukhdeo under

* Criminal Revision No. 700 of 1932, from an order of R. Dayal, Sessions Judge of Mirzapur, dated the 23rd of September, 1932.

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section 500 of the Indian Penal Code. The facts of the case are that a notice under section 185 of the 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, Babu Mathura Prasad. There can be no doubt that the contents of this reply are defamatory in the extreme inasmuch as they impute that Babu Mathura Prasad had sent the original notice under section 185 of the Municipalities Act because Sukhdeo had refused to accede to a demand of illegal gratification by Babu Mathura Prasad. In the ordinary course of official routine Babu Mathura Prasad put this reply on the records of the Committee and it was read by members of the Notified Area Committee. Babu Mathura Prasad filed a complaint on the 13th of September, 1928, upon which Sukhdeo was charged under section 500 and convicted and sentenced to three months' rigorous imprisonment and a fine of Rs.100. The said conviction and the sentence have been confirmed in appeal by the learned Sessions Judge.

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 Babu 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* (1). 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

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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 Baijnath 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 Babu 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 Babu 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 Babu 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 his 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 of the Indian Penal Code.

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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 of the Indian Penal Code the imprisonment cannot be rigorous, but needs must be simple. 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 be simple. It is not possible for me to reduce the term 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 Babu Mathura Prasad had really demanded illegal gratification through Mahadeo, chaprasi, and that that justified the imputation. With the above modification I dismiss this revision.

REVISIONAL CIVIL

Before Mr. Justice Kendall

1932
December, 19

KISHAN LAL BABU LAL (PLAINTIFF) v. RAM
CHANDRA (DEFENDANT) *

Civil Procedure Code, section 115; order VI, rule 17—Order refusing amendment of plaint—Revision—"Case decided"—Other remedy available.

In a suit for money due on account of certain business transactions between the parties the defendant took a plea that some of the items claimed were barred by limitation. Thereupon the plaintiff applied to amend the plaint by introducing a reference to an acknowledgment which the plaintiff alleged had been made by the defendant. The Munsif refused to allow the amendment on the ground that the application was unduly delayed and that it would be unfair to the defendant to allow it. In revision from the order of refusal—

Held that the revision was maintainable. The effect of the order being definitely to shut out a part of the plaintiff's claim, the order was a final decision of the court on that part of the case and so could be brought within the meaning of the words

* Civil Revision No. 441 of 1932.