

MISCELLANEOUS CRIMINAL

Before Mr. Justice Radha Krishna Srivastava

GOKARAN PRASAD GUPTA (APPLICANT) v. EMPEROR
(COMPLAINANT-OPPOSITE-PARTY)*

1939
September, 14

*Criminal Procedure Code (Act V of 1898) (as amended in 1923)
section 561-A—Disparaging remarks against witnesses in
Judgment—Court's power to make disparaging remarks—High
Court's power to expunge disparaging remarks from lower
court's judgment.*

It is in the interests of proper administration of justice that the courts should perform their functions freely and fearlessly and comment upon the statements of witnesses in so far as those statements are relevant to the case, but the courts should not make disparaging remarks upon persons who appear either as witnesses during the course of trial of a case or whose names are mentioned. It is not open to a court to condemn a witness merely on conjectures or materials not before it in the shape of evidence. Before passing adverse remarks against a witness on the basis of certain facts, those facts must be established by evidence on the record of the case.

The High Court has jurisdiction under the provisions of section 561-A, Criminal Procedure Code, to expunge irrelevant and offensive remarks against a witness in the judgment. *Panchanan Banerji v. Upendra Nath Bhattacharji* (1), *Amar Nath v. The Crown* (2). *In the matter of H. Daly* (3) and *Rishi Lal v. King-Emperor* (4), referred to and relied upon.

Akhtar Husain, for applicant.

RADHA KRISHNA, J. :—This is an application by Babu Gokaran Prasad under section 561-A of the Code of Criminal Procedure praying that certain remarks mentioned in his application and made in the judgment in Criminal Case No. 168 of 1939, by Mr. R. Ahmad, Tahsildar and Magistrate, Second Class, Lakhimpur, be expunged.

The circumstances under which this application arises are that one Jhao and one Hira Lal filed two complaints against Babu Ram, assistant patwari, under section 323

*Miscellaneous Application No. 92 of 1939, for expunging certain remarks in the judgment passed by Mr. R. Ahmad, Tahsildar and Magistrate, Second Class, tahsil Lakhimpur, district Kheri.

(1) (1927) I.L.R., 49 All., 254. (2) (1924) I.L.R., 5 Lah., 476.

(3) (1927) I.L.R., 9 Lah., 269. (4) (1937) O.W.N., 258.

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of the Indian Penal Code. In Hira Lal's complaint one Ram Prasad was also joined as an accused. Jhao's complaint was numbered as Criminal Case No. 168 and Hira Lal's complaint numbered as Criminal Case No. 186. In Criminal Case No. 168 the complainant examined five witnesses. The accused was examined and he produced in his defence only one witness, i.e., one Sadho Ram, the head patwari. It is curious to note that although Sadho Ram was produced as a defence witness he supported the case of the prosecution in a large measure. The learned Magistrate thought it proper to examine Babu Gokaran Prasad as a witness in the case under section 540 of the Code of Criminal Procedure. Babu Gokaran Prasad was subjected to a long examination and cross-examination both by the complainant and the accused.

The defence of the accused in the main was that he was not on good terms with Babu Gokaran Prasad and the complaint had been filed at his instance and was entirely false. In the result the learned Magistrate dismissed the complaint and acquitted the accused.

In the application made before this Court the petitioner Gokaran Prasad prays for the expunging of remarks in the judgment of the learned Magistrate mentioned in paragraph 13 (a) to (i) of his application on the ground that those remarks are irrelevant, offensive and disparaging to his character and they were made without an opportunity to him to explain them, and further the remarks had lowered him in the estimation of others and caused him considerable pain.

It is an elementary principle of justice that no man should be condemned unless he has had opportunity of defending himself.

Nobody can dispute that in the interests of proper administration of justice the courts should be allowed to perform their functions freely and fearlessly and to comment upon the statements of witnesses in so far as those statements are relevant to the case, but it is equally necessary that the courts should not be allowed to make

disparaging remarks upon persons who appear either as witnesses during the course of trial of a case or whose names are mentioned. It is not open to a court to condemn a witness merely on conjectures or materials not before it in the shape of evidence. Before passing adverse remarks against a witness on the basis of certain facts, those facts must be established by evidence on the record of the case.

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As regards the power vesting in the High Court to expunge irrelevant, inadmissible and offensive remarks against a witness or a person named in the case, there can be little doubt. Section 561-A of the Code of Criminal Procedure is to the following effect:

“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.”

It has been held by almost every High Court in India that the High Court would be quite justified in expunging such remarks in the exercise of its power under section 561-A. The learned counsel for the applicant has cited the following cases in support of his argument that this Court has jurisdiction under the provisions of section 561-A to expunge irrelevant and offensive remarks against a witness in the judgment. Those cases are: *Panchanan Banerji v. Upendra Nath Bhattacharji* (1). *Amar Nath v. the Crown* (2), *In the Matter of Daly and others* (3) and *Rishi Lal v. King-Emperor* (4).

In all these cases the view that I have stated above was taken.

Now it has to be seen if the petitioner in the present case has made out his case with respect to any of the remarks in the judgment complained of by him as irrelevant, inadmissible and offensive. I have gone through the record of the Criminal Case No. 168, and read the statement of Babu Gokaran Prasad under section 540 of the Code of Criminal Procedure, the

(1) (1927) I.L.R., 49 All., 254.

(2) (1924) I.L.R., 5 Lah., 476.

(3) (1927) I.L.R., 9 Lah., 269.

(4) (1937) O.W.N., 253.

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judgment of the learned Magistrate, and the explanation submitted by him. I will now proceed to express my opinion in respect of the remarks in the order in which they are mentioned in paragraph 13 of the application.

In examining the remarks complained of two things have to be borne out: Firstly, that the defence of the accused was that the complaint had been filed against him falsely at the instance of Babu Gokaran Prasad. Secondly, that the question of ejection of certain of his tenants by Babu Gokaran Prasad and the members of his family for establishing a farm and whether such tenants had validly relinquished their lands or not were matters wholly foreign to the criminal case.

Now the passages mentioned at (a) and (b) of paragraph 13 are not in the nature of remarks upon the testimony or the character of the applicant. In my opinion in this part of the judgment the learned Magistrate was only summing up the case of the accused as to why the complaint had been filed against him. These cannot therefore be expunged.

The remarks mentioned in clauses (c), (d) and (e) must be expunged as they refer to a matter which was wholly irrelevant to the case. Babu Gokaran Prasad was not on trial before the learned Magistrate in respect of his having taken possession forcibly of lands in the cultivation of certain tenants, and the observations made in these passages bear directly or indirectly upon the merits of the question whether Babu Gokaran Prasad and the members of his family had taken possession of the land after securing proper relinquishments from them or had dispossessed them unlawfully. As against the evidence of Babu Gokaran Prasad there was no evidence of any kind whatsoever on the point. These passages are further unnecessarily disparaging to his character.

The statement in clause (f) relates to the value to be attached to the statement of Sadho Ram, D. W. 1, and the question whether the suggestion made by the accused that the complaint had been filed on account of the ill-

will was correct or not, and in my opinion this statement must stand.

Clauses (g) and (h) must be expunged. They cause unmerited slur upon Babu Gokaran Prasad and are irrelevant to the points involved in the case and reflect upon the question whether the lands in the possession of tenants were rightly taken possession of by Babu Gokaran Prasad or not.

Clause (i) is a statement which relates to the defence taken up by the accused that the complaint had arisen out of his ill-feeling with the zamindar and must stand.

In the result I allow the application to this extent that the statements in the judgment of the learned Magistrate mentioned at items (c), (d), (e), (g) and (h) of paragraph 13 of the application be expunged. As regards the remaining passages the application is dismissed.

A copy of this order, with a copy of the application, will be forwarded to the District Magistrate, Kheri, for compliance.

Application partly allowed.

APPELLATE CIVIL

Before Mr. Justice J. R. W. Bennett

FIRDOS JAHAN, Mst. (PLAINTIFF-APPELLANT) v. MOHAMMAD YUNUS AND OTHERS (DEFENDANTS-RESPONDENTS)*

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Transfer of Property Act (IV of 1882), section 53-A—Civil Procedure Code (Act V of 1908), Order XXI, rule 103—Section 53-A, requirements of—Receipt of earnest money giving essential terms of contract of sale, whether sufficient for purposes of section 53-A—Delivery of possession to transferee whether necessary to be proved—Suit under Order XXI, rule 103, Civil Procedure Code—Plaintiff in suit under Order XXI, rule 103, whether can avail of section 53-A—Restoration of possession, whether can be allowed in such a suit.

It is not necessary under section 53-A of the Transfer of Property Act to show that the transferor has delivered posses-

*Second Civil Appeal No. 3 of 1939, against the decree, dated the 8th December, 1938, passed by W. Y. Madeley, Esq., District Judge, Lucknow.

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