

1932

SUNDAR LAL
v.
BALDEO SINGH.

TEK CHAND J.

MONROE J.

costs in both Courts. I would also direct the lower Court to appoint a local commissioner to have the partition effected

The additional prayer in the plaint that the defendants be called upon to render account of the income of the joint properties from 1911 to 1923 was not pressed before us and is disallowed.

MONROE J.—I agree.

A. N. C.

Appeal accepted.

REVISIONAL CRIMINAL.

Before Tek Chand J.

KANSHI RAM (COMPLAINANT) Petitioner

versus

FAZAL MOHAMMAD AND ANOTHER (ACCUSED)
Respondents.

Criminal Revision No. 1420 of 1931.

Indian Penal Code, Act XLV of 1860, Section 504: Intentional insult—to provoke breach of peace—not necessary for complainant to have been provoked in fact—Discharge of accused on erroneous view of the law—further inquiry.

Held, that if abusive language is used intentionally and is of such a nature as would, in the ordinary course of events, lead the person insulted to break the peace or to commit another offence under the law, the case is not taken out of the purview of section 504, merely because the insulted person exercised self-control, or being terrified by the insult, or overpowered by the personality of the offender, did not actually break the peace or commit another offence.

Emperor v. Jogayya (1), relied upon.

Petition for revision of the order of Mr. I. M. Lall, Sessions Judge, Ferozepore, dated the 14th November, 1931, affirming that of K. B. Zafar Alam, Magistrate, 1st Class, Ferozepore, dated the 4th September, 1931, dismissing the complaint.

BALWANT RAI, for Petitioner.

NEMO, for Respondents.

1932

KANSHI RAM

v.

FAZAL

MOHAMMAD.

TEK CHAND J.

TEK CHAND J.—On the 2nd January, 1931, the petitioner lodged a complaint under sections 500, 504 and 506, Indian Penal Code, against the respondents in the Court of the Sub-Divisional Magistrate, Moga, on the allegation that on the 25th December, 1930, when he appeared before respondent No. 1 in connection with a mutation relating to a dispute between him and respondent No. 2, both the respondents intentionally used insulting and provocative language towards him in the presence of the litigants and others and thereby committed offences under the aforesaid sections of the Code. The Sub-Divisional Magistrate held an enquiry under section 202, Criminal Procedure Code, partly himself and partly through a respectable person of the locality and appeared to be satisfied that the complaint was not frivolous and required investigation in accordance with law, but instead of summoning the respondents he referred the case to the District Magistrate for being sent to a Magistrate at the headquarters. The District Magistrate accordingly withdrew the case from the Court of the Sub-Divisional Magistrate at Moga, and assigned it to a stipendiary Magistrate at Ferozepore. Another summary enquiry under section 202 was held, and on the 4th September 1931 the learned Magistrate recorded an order holding that the evidence produced established a *prima facie* case that both the respondents had abused the complainant on the 25th December 1930, when the latter appeared before respondent No. 1, in connection with a dispute which he had with respondent No. 2 relating to the attestation of a mutation, but dismissed

1932

KANSHI RAM

v.

FAZAL
MOHAMMAD.

TEK CHAND J.

the complaint on the ground that the complainant was not actually provoked by the insulting language used by the respondents, but "merely stepped back and stood quiet."

Now, there can be no doubt that this is an entirely erroneous view of the law. As pointed out in *Emperor v. Jogayya* (1), "the law makes punishable the insulting provocation which, *under ordinary circumstances*, would cause a breach of the peace to be committed, and that the offender is not protected from the consequences of his acts, because the person insulted became too terrified to accept the provocation in the manner intended." If abusive language is used intentionally and is of such a nature as would, in the ordinary course of events lead the person insulted to break the peace or to commit another offence under the law, the case shall not be taken out of the purview of section 504, merely because the insulted person exercised self-control; or being terrified by the insult, or overawed by the personality of the offender, did not actually break the peace or commit another offence.

The judgment of the learned Magistrate is manifestly wrong, and the case is one which, in accordance with the rule laid down in the Full Bench decision in *Emperor v. Kiru* (2), must be sent back for further enquiry.

I accept the petition, set aside the order of the Lower Court and remit the case to the Sub-Divisional Magistrate at Moga for disposal in accordance with law.

It is much to be regretted that in a simple case of this kind, the summary enquiry in which five or six

(1) (1887) I. L. R. 10 Mad. 353. (2) 10 P. R. (Gr.) 1911. (F. B.).

witnesses only had to be examined was allowed to drag on for eight long months. It is hoped that the case will now be proceeded with with all convenient speed.

I wish to make it clear that this order should not be taken as an expression of my opinion on the merits of the complaint. That is a matter primarily for the Magistrate who will deal with the case and will form his own conclusion on the evidence.

N. F. E.

*Revision accepted;
Case remanded.*

APPELLATE CIVIL.

Before Tek Chand and Monroe JJ.

MUSSAMMAT LADO (PLAINTIFF) Appellant

versus

BANARSI DAS AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 3184 of 1927.

Custom—Succession—Jains of Delhi—whether widow of a co-parcener succeeds to her husband's interest in the joint family property—Hindu Law—Mitakshara.

Held, that Jains are governed by Hindu Law (Mitakshara) except in so far as a custom to the contrary may be established by cogent evidence.

And, that the plaintiff on whom the onus rested had failed to establish that among the Jains of Delhi a special custom exists under which the widow of a deceased co-parcener succeeds to her husband's interest in the joint family property.

Case law referred to.

First appeal from the decree of Sayyed Abdul Haq, Subordinate Judge, 1st class, Delhi, dated the 15th August, 1927, dismissing the plaintiff's suit.

1932

KANSHI RAM

v.

FAZAL
MOHAMMAD.

TEK CHAND J.

1932

May 23.