

ALLAHABAD HIGH COURT

Panchanan Banerji

Vs.

Upendra Nath Bhattacharji

(Sulaiman, J.)

02.10.1926

JUDGMENT

Sulaiman, J.

1. 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 judgment, which are against the complainant's character, should be expunged.

2. 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.

3. 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 judgment 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 expressed the view that such jurisdiction existed.

4. In *Lachhu v. Emperor*² Lindsay, J.C., sitting in the Oudh Judicial Commissioner's Court, distinctly held that he had such jurisdiction and ordered certain remarks in the judgments 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*³ held that the High Court had power to make an amendment of an effective order of the Court below and not of expunging passages, which do not commend

¹[1912] 5 B.L.T. 20 and *Ma Kya v. Kin Lat Gyi* [1911] 4 B.L.T. 173 ³A.I.R. 1922 All. 107

²[1914] 1 O.L.J. 141

to it. At the end of the Judgment 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.

5. In the new Code Section 561(A) 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.

6. Had it been permissible to refer to the statement of 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.

7. 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 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 *Muhammad Qarim v. Anwar Khan*:⁴ recognized that under Section 561(A) 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.

8. The passage in the judgment which is objected to is follows:

It is true that the complainant may have a big income, but I have no doubt whatever that he is a profligate. His letters, the genuineness of which he has admitted, prove this to the

hilt.

9. As the accused was not represented before me I refrained from making any formal order without making it sure that there was no legitimate foundation for characterizing the complainant as a profligate. I accordingly ordered the learned vakil for the applicant to certify after examining the whole record that there was no legal evidence to support the remark. He has after inspection given the necessary certificate.

⁴ AIR 1926 Lah 382

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

.