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## INDIAN HIGH COURT JUDGMENT

### Session Judge Severely Criticised

#### ACTIVITIES OF THE AHMADIYYA COMMUNITY

On July 24th "The Uganda Herald" published the text of a judgement delivered by His Honour Mr. Justice G. D. Khosla, Session Judge, Gurdaspur.

The following Judgment of the High Court of Appeal is reprinted from "The Sunrise", dated November 25th, 1935.

Orders were pronounced on November 11 by Mr. Justice Coldspring, of the Lahore High Court, on the petitions of the Punjab Government and of the Ahmadiyya community for the expungement of certain remarks passed in the course of the judgment by the Sessions Judge of Gurdaspur in the Appeal *Ata Ullah Shah Bukhari, v. Crown* against, on the one hand, the Punjab administration and, on the other, the activities of the Ahmadiyya community.

The original case arose out of the anti-Ahmadiyya activities of a party of non-Ahmadi Muslims called the Aharr, who held what was described as a *Tabligh* Conference, on the outskirts of Qadian the headquarters of the Ahmadiyya community, in October 1934. The President of this Conference, S. Ata Ullah Shah Bukhari, was prosecuted by the Crown for having made a speech which tended to create feelings of hatred and contempt between members of the Ahmadiyya community and other Muslims. The accused, after a lengthy trial, was convicted by the trying Magistrate and sentenced to undergo imprisonment for six months. On appeal the Sessions Judge reduced the sentence to one till the rising of the Court. In the course of the trial the accused had examined about 58 witnesses in his defence including the Head of the Ahmadiyya community the *Nazirs* of the Sadar Anjuman Ahmadiyya, and other Ahmadiyyas. The Sessions Judge's judgment adversely criticising the life, and character of the Founder of the Ahmadiyya Movement and of its present Head, and the general activities of the Ahmadiyya community, formed the subject of the present revision petition in the High Court. The Government petition took exception to certain remarks by the Sessions Judge against the police and against the general Government administration in so far as it related to Qadian.

The Government Advocate, Diwan Ram Lal argued the case of the Government, and the Rt. Hon'ble Sir Tej Bahadur Sapru came from Allahabad to argue the petition filed on behalf of Ahmadiyya community by Capt. Mirza Sharif Ahmed. Other counsel for the Ahmadiyya side were M. Sleem, Sh. Bashir Ahmad, Ch. Asadullah Khan, M. Ghulam Mohy-ud-din, Pir Akbar Ali, Advocates.

The Respondent, At Ullah Shah Bukhari, was represented by Sh. Mohammad Sharif, and M. Mazhar Ali Azhar, Advocates.

### The Judgment

The following is the full text of the High Court judgment.

This judgment will dispose of the two petitions for revision No. 182 and No. 225 of 1935.

In 1891, (I take the date and the following historical facts here stated from 'Chiefs and families of Note in the Punjab' published under the order of the Punjab Government) Mirza Ghulam Ahmad of Qadian in Gurdaspur District, a grandson of Ghulam Murtaza, a General, of the Sikh Darbar, founded a religious movement and proclaimed himself to be the promised Messiah of the Muslim Faith. He won over large number of people to his tenets and his followers, who were known as Qadianis Mirzais or Ahmadiis, numbered some hundreds of thousands in the Punjab and elsewhere. The Mirza was the author of many works in Arabic, Persian and Urdu in which he combated the doctrines of Jahand (see), 'His life,' to quote the book mentioned, was for many years a stormy one as he was constantly involved in dispute and litigation with his religious opponents. By the date of his death, which took place

in 1908 he had attained a position in which he commanded the respect even of those who disagreed with his views. He was succeeded as head of the sect by Maulvi Nurud-Din, on whose death in 1914, Mirza Ghulam Ahmad's son, Mirza Bashir-ud-Din Mahmud Ahmad, was elected as his spiritual successor, or Khalifa. The number of people professing the Qadiani creed has increased considerably. Their headquarters remain in Qadian, the whole of which according to the defence evidence, belongs to the Mirza Sahib's family in proprietary rights.

Of the population of Qadian, about 9,000, some 8,000 are said to be Qadianis by religion, the other Mohammadans numbering 400 or 500. The Khalifa and his disciples naturally exercise great influence in Qadian and are in a position to bring strong social pressure to bear upon individual residents of the Town.

It is not disputed that from the time when the new religion was founded the claim of the Mirza Sahib to be the promised Messiah has offended and been resented by the orthodox Mohammadans, between whom and the Qadianis there has been constant friction evidenced by published writings, often of an abusive character, on both sides. In 1923 there was a conference of orthodox Mohammadans at Qadian, which was brought to an end by rowdism.

### Ahrar Conference

In 1934 the Ahrars, a body of Mohammadans who take an active interest in the spread of their religion and some of whom had recently settled in Qadian decided to hold another conference in Qadian. At that time dissension between them and the Qadianis had reached an acute stage. The Ahrars obtained permission from one Ishar Singh, a resident of Qadian, to hold it on land in his possession, but the Qadianis prevented this by building a wall on the village land round the site. Unable to find another site in Qadian the Ahrars arranged for the conference to be held on the playground of the D.A.V. High School premises in Rajad, a village a mile from Qadian. Here the conference began on the 21st of October, 1934, on the evening of which day Sayad Ata Ullah Shah Bukhari, the president, addressed an audience of many thousands for five hours. For making this speech, which was a bitter attack in scurrilous language upon the Qadianis, their leaders and their religion, Sayad Ata Ullah Shah was prosecuted under Section 153-A, I. P. C. At his trial he pleaded that his speech had been wrongly reported and that his intention had been to spread the true religion of Islam.

### Irrelevant Evidence

It was pleaded by his counsel that his object was to put an end to a reign of terror prevailing in Qadian, where all sorts of crimes were being committed and where an independent administration had been set up by the Mirzais, who had their own courts of justice. Much evidence was produced to prove the truth of this assertion as well as evidence to show that Mirza Ghulam Ahmad had used abusive language towards those who combated his doctrines. Mirza Bashir-ud-Din Mahmud was called as a defence witness and subjected to a lengthy examination. A mass of wholly irrelevant evidence relating to the tenets of the two religions was brought on to the record, and in the pretence of a plea of justification, the attack upon the Qadianis and their religion was continued in Court.

### Wit of a Very Low Order

S. Ata Ullah Shah was convicted and sentenced to six months' rigorous imprisonment. He appealed. The learned Sessions Judge, Gurdaspur, found it proved that S. Ata Ullah Shah's intention had been to criticise the Mirza Sahib

and his followers and also to rouse his hearers to take action against the Qadianis and redress their own wrongs, but that he had "said things which could have no other effect, but to rouse hatred of the Ahmadiis in the minds of his hearers", that "the professions of peace in his speech alternated with abuse and wit of a very low order, which could only induce the audience to hate the Ahmadiis", and that he had gone beyond the bounds of legitimate criticism and was, therefore, liable under the law. It is to be presumed that he found that the explanation to Section 153-A had no application. At the same time he found that the speech contained passages "which might be called very just criticism of the doings of the Mirza". He maintained the conviction, but, to quote his judgment taking into account the conditions obtaining in Qadian and the extreme resentment which the millions of Mohammadans of India experienced on being called unbelievers and swines and their women being compared to bitches he considered that the offence committed was merely technical and reduced the sentence to imprisonment for the day.

In the course of his judgment the learned Judge referred to a number of incidents in Qadian about which evidence had been produced in defence to prove the truth of the allegation in the speech about the state of affairs in that place, and made observations derogatory to the Khalifa and his followers and condemning the behaviour of the Government authorities. He delivered judgment on the 6th June, 1935.

### Government's Petition

The Crown did not apply for an enhancement of the sentence, a course which would have laid the Sessions Judge's judgment open to revision from all points of view but, on the 8th August, the Government Advocate presented the petition No. 182 asking this Court, in exercise of its powers under Section 561-A of the Criminal Procedure Code, to expunge certain of these observations from the judgment on the ground that they were not based on evidence, were without foundation and were untrue in fact and cast a serious reflection upon Government.

The petition (petitioner?) also prayed that in any case, if necessary, the case be remitted for further enquiry so as to afford an opportunity to Government to show that the remarks of the learned Sessions Judge were without foundation and substance."

### Ahmadiyya Community's Petition

A month later Captain Mirza Sharif Ahmad, brother of Mirza Bashir-ud-Din Mahmud, submitted the petition No. 225 asking for a large portion of the judgment to be expunged on the ground that the retention of it would be an abuse of the process of the law, and a denial of justice to the petitioner, who was not a party to the case and was not in a position to produce evidence to rebut that put forward by Sayyad Ata Ullah Shah in defence. The petition No. 182 was accompanied by an affidavit by the Chief Secretary to Government denying the truth of the observations of the Sessions Judge and stating the true facts. The petition No. 225 was also accompanied by an affidavit by the petitioner disputing the correctness of the observations objected to and describing the judgment as more offensive than the speech for which Sayyad Ata Ullah Shah was prosecuted.

The Crown had given notice to Sayyad Ata Ullah Shah of its petition and as some of the passages sought to be expunged put forward grounds for the leniency with which he had been treated, his counsel was permitted to reply to the arguments addressed to me in support of both petitions.

### Law Discussed

That a High Court has an inherent power to expunge a portion of a judgment by an inferior Court is now beyond dispute and this power has been frequently exercised by this Court since Section 561-A was inserted in the Code of Criminal Procedure in 1923. The power is unbounded by the law, which expressly gives the Court authority to make "such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice".

On the other hand this jurisdiction has always been regarded by the High Courts as one of an extraordinary character to be exercised with care and caution in exceptional cases, because, as was observed by Tek Chand J. in the matter of Daly (I.L.R. 9 Lah. 269) it is of the utmost importance to the administration

(CONTD. ON PAGE 7)