INDIAN HIGH COURT JUDGMENT

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of justice that courts should be allowed to perform their functions freely and fearlessly and without undue interference by this Court and because in weighing evidence and in arriving at conclusions on questions of fact, lower courts have often to make remarks which reflect adversely on the character of witnesses.

The judgments in *Amar Nath* v. *Crown* (I.L.R.5 Lah. 476). *Janarsi Das* v. *Crown* (I.L.R.6 Lath. 166) and in the *matter of Daly* to which reference has been made above indicate the principles upon which this Court has acted in expunging objectionable passages. In the case *Amar Nath* v. *Crown* a Sessions Judge had observed in his judgment that a witness, a police officer, had been guilty of perjury. The remark was based upon a police diary which was not properly upon the record and in ordering the passage containing it to be expunged Fforde J, observed that a judge had no right to test evidence in court by material which has not been properly made legal evidence and that if the Judge considered that the witness had lied he should have asked him for an explanation before charging him with the crime of perjury.

In *Danarsi Das v. Crown*, which was also decided by Fforde J, a passage in the judgment of a magistrate was expunged on the grounds that it would be a denial of justice to allow the reflections made upon the character of a person to stand where the person is neither a witness nor a party to the proceedings, and has had no opportunity of being heard and where the reflections are based upon no legal evidence. In the matter of Daly a magistrate had remarked in judgment that he was convinced that Daly, and other clerks employed with him had been sharing misappropriated money and that Daly had been neglecting his duties in a reckless manner Daly had been in the witness-box and cross-examined at great length and no question had been put to him by either counsel or by the Court from which it could be inferred that he was privy to the offence for which the accused was being tried. The learned Judge found that there was no justification for holding that Daly had shared the money with the accused and other clerks and he expunged the remarks to this effect. He found on the other hand that there was evidence from which the inference that Daly was grossly negligent in the discharge of his duties could have been drawn, and he declined to expunge the Magistrate's remark about his carelessness, observing that he could only order its expunction if he came to the conclusion that it was wholly unwarranted by the record, which he was unable to do. A similar view was expressed by Sulaiman J, in *Pancharran Daneryi* v. *Upendra Nath Chattacharya* (I. L.R. 49 All. 254) in ordering certain objectionable words to be expunged from the judgment of a Sessions Judge. While observing that he saw no reason why the inherent power possessed by the High Court emphasized by Section 561-A of the Procedure Code, 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 learned Judge went on to add that such jurisdiction can be exercised only when there is no foundation whatsoever for the remark objected to, and not where it is a matter of inference from evidence. The question what principles should be applied in dealing with an application by a witness to have certain remarks against his character made by a Sessions Judge expunged from the judgment was discussed by a Division Bench of the Sind Judicial Commissioners' Court in *K.S. Mohammad Hussain v. Emperor* (118 I.C. (746). The application had been made by a Deputy Superintendant of Police. The conclusions arrived at by the Bench were expressed as follows:—'Obviously if an unjustifiable attack be made on a person who has had no opportunity of being heard in his own defence, and his remark is irrelevant and separable, it can and should be expunged, especially if he is neither a party nor a witness. But it is not so easy to expunge remarks which, though unjustified are relevant, and we do not think that it is possible to delete them unless they are separable, that is to say, if they form an intergral part of the argument. A Judge or Magistrate is bound to record reasons for his decision and even in the interests of justice we cannot delete those reasons and leave the decision without its reasoned basis. We must operate, but we must not kill the patient. The production sought to prove a confession and the production of property and if that evidence had been accepted the Court was bound to convict. The learned Sessions Judge refused to believe the Zamindar who swore to the confession, and gave his reasons. But the Zamindar's word was confirmed by that of the Deputy Superintendent of Police who had heard the confession and seen the production. Logically, then the Sessions Judge was bound to express his opinion of the Deputy Superintendent of Police and he did so. We do not agree with his view, but since we cannot say that the remarks were irrelevant or expunge the passage without ruining the argument we cannot legitimately interfere. . . . .we think we are justified in taking the view that passages must only be deleted if they are irrelevant and do not form an integral part of the judgment". In dismissing the application the learned Judges expressed the opinon that the remarks made againt the applicant were wholy unjustified.

In 1923, another Division Bench of the Sind Court, in dismissing a similar application allowed the judgment to stand subject to the comment that, in its opinion, the strictures made in the passage objected to exceeded anything which had been justified by the record and ought not to have been made until an explanation of the person adversely affected had first been heard. The learned Judges also observed that the learned Additional Sessions Judge had permitted himself to use language which was injudicious and uncalled for. (*Taju Mal Narain Das v. Emperor*. A.I.R. 1933 Sind 91.)

These judgments are ample authority for holding that it is the duty of the High Court in order to prevent abuse of the process of the Courts and secure the ends of justice, to delete passages commenting adversely upon a person who is not a party to the proceedings and has not had a fair opportunity of being heard and also to delete such passages when they are based upon no evidence, or evidence not properly upon the record. But with due respect to the learned Judges whose judgments indicate that the power to expunge is limited to such cases, and while agreeing, again with due respect, with the view expressed by Ferrers J.C., in the case last cited that it is desirable that a judgment once delivered should remain in the shape in which it was originally published, and averse as I am from extending in practice the exercise of our peculiar power beyond the limits adopted hitherto I must say that there appears to me no good reason why it should not be used to delete passages which though based on evidence damage the character of a person, are wholly irrelevant to any point in issue and which a Court has unnecessarily gone out of its way to include in a judgment. Further I have no doubt at all that where its notice has been drawn to a judgment which appears to it to be couched in language injudicious and uncalled for, this Court can, and ought to, express its opinion in the matter whether any passage is or is not ultimately expunged.

Unfair and Exaggerated

The language of the judgment in the present case is in some places such as must tend to raise a doubt whether the learned Judge approached the case from a perfectly fair point of view. Much of it is exaggerated. This is clear from some of the passages to which objection has been taken. As an instance, he describes the Qadiani creed in the beginning of the judgment, where it sets forth some facts which in the opinion of the Judge have a bearing on the points at issue as 'new fangled'. The merits or demerits of the Qadiani beliefs were not and could not in this case be a matter for the Court's consideration. This is unfortunate, and the more to be regretted because the circumstances of the time (and this is a matter of common knowledge) are such as to necessitate especial care that, in cases which have assumed a communal aspect the proceedings in courts and the language of their judgments should not themselves promote the feelings of enmity the promotion of which by others it is their duty to punish under the law.

Passages against Government

I come now to deal with the passages which the Court has been asked to expunge. I take first the petition submitted by the learned Government Advocate.

After referring to the death of one Mohamemad Amin, who was killed in an affray in Qadian, the judgment proceeds :—

First, "No Action"

"A report was made to the police but no action whatever was taken. It is idle to argue that the murderer was acting in self-defence for this is a matter which can only be determined by the trial Court. Ch. Fateh Mohommad has, curiously enough, admitted in Court on solemn affirmation that he killed Mohammad Amin. The Police, however, could not take any action in the matter and it is suggested that so great is the power of the Mirza that no witnesses dared come forward and state the truth".

That Mohammad Amin died in a fight with Fateh Mohammad, (D.W.21) the President of the Sadr Anjuman Ahmadiyya in Qadian is in evidence. According to Fateh Mohammad, Mohammad Amin had made a murderous attack upon him, that is to say, he was killed while Fateh Mohammad was defending himself. It appears that the learned Sessions Judge had based his observation that no action whatever was taken solely on the fact that Fateh Mohammad was not sent for trial. Now there is no evidence that no action was taken. It is possible as the learned Judge has himself suggested that this was because witnesses were afraid of the power of the Mirza. In any case the fact that there was no prosecution in Court is not evidence that no action whatever was taken. The police officer whose duty it was to investigate the case was not, it seems, examined. The executive authorities were not on trial and there was no reason why they should in this case call evidence to show that investigation was made, unaware as they were of the inference which the appellate court was going to draw from Fateh Mohammad's evidence. The Chief Secretary's affidavit shows that it is untrue that no action was taken by the local authorities at Gurdaspur in connection with Mohammad Amin's death. There being no evidence to support it the remark that no action whatever was taken might properly be deleted. The removal of these words will, however, mutilate the judgment so as to render meaningless the rest of the passage which I am asked to expunge, but for the expunging of which there is no good reason apparent. I, therefore, leave the passage in the judgment with these comments which I have no doubt will satisfy the learned Government Advocate.

Second, 'Paralysis'

The next passage to which the petition relates runs as follows (the learned Sessions Judge is referring to the state of affairs in Qadian).

"The authorities appear to have been affected by an extraordinary degree of paralysis an the supreme authority of the Mirza in matters secular as well as religious was never questioned. Complaints were on different occasions made to the local officials, but no redress was forthcoming. There are on record one or two such complaints but it is needless to refer to their contents and it is sufficient for the purpose of this case to state that definite allegations of tyranny prevailing in Qadian were made and no notice appears to have been taken of them".

These remarks the learned Sessions Judge based upon evidence that criminal and civil cases were tried by courts constituted by the Qadiani community in Qadian, the procedure of which Courts was based on that followed by British Indian Courts, that a Qadiani volunteer corps had been organised, and upon the absence of evidence that notice of complaints against the Qadianis was taken by the authorities.

Here again it is contended by the learned Government Advocate that the remarks throwing discredit on the executive authorities are not only baseless, but that such evidence as is on the record relating to their behaviour proves the action was taken when cognizable cases were reported. The Chief Secretary's affidavit is to the effect that complaints and allegations have always been made the subject of enquiry, and Government have constantly endeavoured to enforce the law without fear or favour, that on receipt of information that so-called Courts had been set up in Qadian by the Ahmadi community, they had the legal position examined, that they were advised that the proceedings in criminal cases were not open to legal objection so long as they related to the settlement of cognizable *(sic)* and compoundable cases by consent of the parties and that so far as civil cases were concerned they were not open to legal objection so long as the reference to the Court was by consent of the parties and of the nature of arbitration. Government caused the Ahmadiyya community to be informed that the proceedings would be open to legal objection if they referred to cognizable criminal cases or if the so-called criminal courts assumed powers of inflicting punishment which would bring them within the mischief of the law and it was also made clear to them that any complaint that any of the so-called Courts had come within the mischief of the law would be fully investigated. The community was also advised that these so-called Courts should not use summonses or other forms which closely resembled those in use in Government Courts. The affidavit

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