

*Privy Council Appeal No. 11 of 1916.*

*Allahabad Appeal No. 19 of 1914.*

**Gobind Das** - - - - - *Appellant,*

*v.*

**Bishambhar Das** - - - - - *Respondent,*

FROM

**THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN  
PROVINCES, ALLAHABAD.**

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 23RD MAY, 1917.**

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*Present at the Hearing:*

VISCOUNT HALDANE.

LORD ATKINSON.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by MR. AMEER ALI.*]

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This appeal arises out of an action for libel brought by the plaintiff in the Court of the Subordinate Judge of Benares, where the parties reside and carry on business. Both belong to the Agarwala Vaishya caste of Hindus, and both appear to occupy an influential position in their community.

The Agarwalas of Benares are divided into two *Tarsor* sections, one called the *Purbia* or "Eastern," the other *Pachhain* or "Western"; but in doctrinal matters and caste observances there seems to be no difference between them. The inter-communal government of each section is vested in a *Panchayat* composed of the general body of its members, which so far as appears on the record, has the authority to enforce the due observance of the caste rules. In this connection it should be mentioned that there are numbers of Agarwalas in the neighbouring towns of Mirzapore and Chunar with whom the Benares Agarwalas maintain close social relations.

The proceedings in this case show that many of the Agarwalas of Benares take a much stricter view of the doctrines of their religion than most of their fellow-castemen,

especially in Western India; and in no respect is the difference more pronounced than on the question of a sea voyage undertaken by a Hindu. Whilst other Hindus, including Agarwalas, hold that a purification ceremony technically called *Prayaschitta* absolves the sin incurred by a voyage across the seas, the Benares Agarwala holds firmly to the doctrine that the taint the offender contracts is beyond absolution. In recent years, however, a strong body of public opinion has been growing up which considers this extreme view to be not only illiberal and opposed to the spirit of the times, but also as unwarranted by the *Shastras*. The plaintiff seems to be the protagonist of this school of thought. The controversy between what may be called for the purposes of this judgment the orthodox section, and the comparatively smaller body of reformers assumed an acute character with the return to India in May 1910 of one Babu Laksmi Chand, also an Agarwala belonging to the "Western" section. He appears to have been sent to England as a Government scholar, and to have had in this country a meritorious career. On his arrival, however, at home he was promptly put out of the caste by the *Panchayat* of his section. His academical distinctions in England were appreciated by the advanced and liberal-minded people of his community, who received him with marks of esteem and respect; and after he had gone through the *Prayaschitta* ceremony they gave a dinner in his honour, at which several of the younger members of the plaintiff's family are said to have been present. This seems to have offended the religious feelings of the orthodox; a *chittha*, or "declaration of faith," was drawn up, it is said, at the instance of the defendant (whose position in the *Panchayat* will be explained later on) and circulated for signature among the members of the caste. It is alleged by the defence, but denied by the plaintiff, that this document was presented to him, and that he declined to attach his name to it. On his side, he issued to his caste-people and others a public appeal, in which he pleaded for toleration and a more liberal interpretation of the religious doctrines of the sect. In this leaflet he also gave expression to certain strictures on other members of the caste, apparently to show the inconsistency of their attitude towards moral delinquency. This was regarded by a majority of the caste-people as implying a reflection on them, and they decided on holding a meeting of the *Panchayat* to consider the matter in relation to the plaintiff and his brother Bhagwan Das. The meeting was accordingly held on the 19th June, 1910; whether it was convened in accordance with the rules of the *Panchayat*, and whether plaintiff had notice of the meeting will be discussed shortly. The sitting of the *Panchayat* is said to have lasted from eight in the evening until next morning; so the debate must have been prolonged, and it may fairly be presumed that persons interested in the proceedings had ample opportunity

to put in an appearance. Finally, as the plaintiff was in Calcutta and could not attend, and his brother Bhagwan Das did not or would not do so, the *Panchayat* passed a resolution, the publication of which forms the libel charged against the defendant in this action.

The resolution is in these terms:—

“It was settled by the ‘*panches*’ that since B. Gobind Das and B. Bhagwan Das publicly circulated among the ‘*bradris*,’ and the non-‘*bradris*’ a pamphlet about the ‘*bradri*’ against the practices of the ‘*bradri*’ and did not attend the ‘*Panchayat*’ on being called to do so, these facts show that these gentlemen circulated the pamphlet simply to disgrace the ‘*bradri*,’ and their not signing the ‘*chittha*’ shows that their views are against the ‘*Panchayat*’; therefore, it is ordered that until B. Gobind Das and B. Bhagwan Das clear themselves, the family of B. Madho Das be ‘*baratao-hund*.’”

In the plaint the order recorded by the defendant is given more briefly. Whether the whole resolution or only the substance, as given in the plaint was communicated, the kernel of the publication was the decision to suspend social relations with the plaintiff. The communication was made by the defendant Bishmabhur Das in his capacity of *Chowdhri*, or chairman, of the *Purbia Panchayat* to the ‘Western’ section, who were, it is not disputed, interested in the result of the proceedings, and to other members of the caste in Benares, Mirzapore, and Chunar. The plaintiff on his return from Calcutta sent a registered letter to the defendant asking for particulars regarding the resolution and the facts on which it purported to be based. This letter was submitted to a smaller gathering of the community called a *baithak*, which apparently deals with minor matters affecting the caste; and it was decided to give no reply.

On the 24th August, 1910, the plaintiff brought the present suit. The main allegations on which the action is based are that the meeting of the *Panchayat* at which the resolution was adopted was not held in “good faith;” that it was composed of defendant’s friends, “who were under his influence,” and in effect it was a sham meeting; that no opportunity was given to him “to get up a defence;” and that in sending the resolution to the *Chowdhri* of the Pachhain section and the caste-people generally the defendant was actuated by malice and ill-will. The plaintiff further alleged that by this act of the defendant, which virtually declares him to be an “outcaste,” he has been disgraced and humiliated in the eyes of the members of the caste as well as the public at large and prejudicially affected in his religious and communal rights and that he has also suffered mentally; and he claimed 11,000 rupees as damages for the injury caused to him.

The defendant joined issue on all the material allegations; he alleged that the meeting was regularly held, that the proceedings were *bona fide*, that due notice in accordance

with the rules of the *Panchayat* was given to the plaintiff and the other members of his family ; he further pleaded privilege, alleging that in sending a copy of the resolution to the *Pachhain Panchayat* and others he acted in discharge of his duty ; and he denied that his action was the outcome of malice or ill-will.

The Subordinate Judge held that a meeting of the *Panchayat* was in fact held on the 19th June, 1910, and that the defendant was "as much liable for the resolution passed at that meeting as any other member" of the *Panchayat*. He held further that the conduct of the defendant (in publishing the resolution) was not privileged, inasmuch as "no notice of the meeting was given to the plaintiff, nor was he told with what offence he was charged. The defendant, therefore, has done an act which constitutes malicious defamation of the plaintiff." In another part of his judgment he says as follows :—

"It was the duty of the *Chowdhri* to publish the resolution complained of, and there is no malice in such publication. The legal malice consisted in not giving opportunity to the plaintiff to defend himself, and in passing that order behind his back. The publication of the order cannot be called malicious."

Their Lordships have referred to these findings of the trial Judge, as they form the sheet-anchor of the plaintiff's case on this appeal.

Proceeding on these grounds, and after an elaborate exposition of the Hindu doctrines relating to the lawfulness of sea voyages, he made a decree in favour of the plaintiff, awarding him a small sum as damages, as he considered he had merely a sentimental cause of action.

The defendant appealed to the High Court of Allahabad, which reversed the decree of the Subordinate Judge and dismissed the action, holding that the communication made by the defendant was privileged, and that there was no evidence of express malice.

On the present appeal, which is by the plaintiff to His Majesty in Council, the arguments have travelled over a rather wide area. In their Lordships' opinion, however, upon the facts proved or admitted in the case, the only points for determination are those on which the High Court proceeded, namely, whether the occasion on which the communication was made by the defendant to the *Chowdhri* of the *Pachhain* section and members of the caste interested in the matter was privileged ; and if it was, whether he has forfeited it by reason of the fact that in making the communication he was actuated by what is called in law express malice. The onus of establishing this fact that his conduct was the outcome of some improper motive or private spite rests on the plaintiff.

The principles relating to both these questions are well settled and require no examination. Their Lordships need

only refer to *Toogood v. Spyring* (1 C. M. & R. 181), in which Baron Parke enunciated the rule as to privilege which has been accepted in subsequent cases as furnishing the guiding principle on the subject; and to the case of the *London Association for the Protection of Trade v. Greenlands (Limited)*, 2 A. C. (1916), p. 15: and the recent case of *Adams v. Ward* in the House of Lords, not yet reported.

The allegation of the plaintiff that the meeting at which the resolution was passed was not a *bonâ fide* meeting of the *Panchayat* has been clearly disproved; the High Court has expressly found that the *Panchayat* was regularly convened, and that the proceedings were in conformity with its rules, and there is nothing in the Subordinate Judge's judgment to suggest or support a contrary view. The defendant, it is proved, is one of the two *Chowdri*s of the *Panchayat*. Their Lordships gather that he is the principal *Chowdri*; anyhow, it is his duty to give effect to the decisions of the *Panchayat*, and to communicate the result of its proceedings to parties interested in the same. Along with the general body of the caste, the *Pachhain* section was interested in the decision of the *Purbia Panchayat* as it might seriously affect their own attitude with regard to the controversy. The resolution suspends provisionally social relations of the caste-people with the plaintiff and his family. The defendant denies that this amounts to "outcasting" the plaintiff; but assuming that it conveys the innuendo he charges, their Lordships are clearly of opinion that the defendant acted in discharge of the duty imposed on him in making the communication to the *Chowdhri* of the other section, and to the caste-people generally, and that the occasion was privileged.

The plaintiff's case, both in his plaint and on the evidence, was that the action of the defendant was the outcome of private spite. Again, the High Court has found that the defendant acted in good faith in the execution of his duty, and that it was not shown that he was "actuated by ill-will or ulterior or improper motive," nor does the Subordinate Judge hold the contrary. The trial Judge inferred what he calls "legal malice" from the failure of the defendant to give a sufficient personal notice to the plaintiff. Their Lordships do not understand what the learned Judge means by legal malice. To defeat or rebut privilege, the law does not recognise anything short of actual or express malice in the publication of the matter which is charged to be libellous. They find no ground for supposing there was any duty imposed on the defendant beyond properly and duly giving effect to the rules of the *Panchayat*; the inference of "legal" malice from his not doing something more seems to their Lordships quite unwarranted.

But it has been contended that the absence of proper notice to enable the plaintiff to attend the meeting and exculpate himself, being contrary to the principles of natural

justice, vitiates the whole proceeding and affects the *bona fides* of the defendant's action. This contention seems to confuse two distinct considerations. Whatever may be the effect of the absence of such a notice with regard to the adjudication of the matter, unless it can be shown that the defendant was bound to examine into the regularity and correctness of the *Panchayat's* decision before issuing a copy of the resolution to parties interested in the question, it would be absurd to say that the privilege is affected or rebutted by want of notice.

It is clear, however, that a notice in accordance with the rules and practice of the *Panchayat* was given in fact to the plaintiff's family, and at the family residence standing in the *Panchayat* register. He no doubt was absent in Calcutta, but the question that was to be debated affected all the members of the family, and any one of them could have attended, if not to answer the charge, at least to ask for an adjournment.

The finding of the Subordinate Judge on this point is distinct. He says :—

“The defendant gave notice to the plaintiff in the usual manner, namely, by sending the barber to the Kothi house in the city. It is not denied that the barber gave notice of the meeting to the plaintiff's *gumashta* Debi Parsaad. For all ordinary *Panchayat* purposes such notice would have been enough. No notice ever was given by the plaintiff to the defendant that the four brothers are separated, and that in the *Panchayat* register, instead of one name, four names should be entered, and that in future all notices should be sent to the different residential houses of the plaintiff and his brothers, and not to their joint house in the city.”

Their Lordships are of opinion that this appeal fails; they will accordingly humbly advise His Majesty that it should be dismissed with costs.

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In the Privy Council.

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GOBIND DAS

v.

BISHAMBHAR DAS.

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DELIVERED BY MR. AMEER ALI.