

## State vs Gulab Singh And Ors. on 16 January, 1953

**Equivalent citations: AIR1953ALL483, AIR 1953 ALLAHABAD 483**

### JUDGMENT

Agarwala, J.

1. These are two cases, one is an appeal by the Government against the acquittal of the respondents who were prosecuted under Section 3(iv), U.P. Removal of Social Disabilities Act, 1,947, and the other is a reference by the District Magistrate, Garhwal, for the enhancement of the sentence imposed on one Bhajan Singh under Section 3(iv) of the said Act. Section 3 referred to above lays down :

"No person shall, notwithstanding anything contained in any instrument or any custom or usage to the contrary ..... (iv) make a bride or bridegroom belonging to a scheduled caste, alight from a dola-palki at any public place, road or pathway or prevent such dola-palki from passing through any such place, road or pathway ....."

2. One Gopal Singh, a shilpkar, belonging to a scheduled caste, resident of village Rain, was to be married to Smt. Darshani, sister of Thep Lal, in village Gwar, Patti Chalansyun, in the Garhwal district, on 7-5-1950. On 3-5-1950, Gopal Singh's brother, Bharosey Lal, who was a clerk in the P. W. D. office, in Pauri-Garhwal, made an application to the Pradhan of the Group Panchayat of village Gwar requesting him to see that there should be no dispute about their carrying the bridegroom in dola-palki. Another application was made by Gopal Singh himself to the Ilaqa Officer, Barahsyun, with the same object. The Ilaqa Officer ordered the Sub-Inspector of police station Srinagar to send a constable with the Barat party so that there may not be any disturbance. Accordingly on the date of the marriage, the Barat party proceeded from village Rain to village Gwar with constable Bachi Singh as also with the Patwari Ghananand Dhandyal. When the marriage party was at a distance of one mile from village Gwar, they were stopped by one Bhajan Singh who said that the dola-palki could not be taken any further. The constable and the Patwari explained the matter to him and he kept quiet. The Barat proceeded further to the village. When they were near the village habitation one Belam Singh told them that his own Barat was coming and that it might be allowed to pass before the Barat of Gopal Singh was to be taken by that route. According to the prosecution, certain villagers collected at the place and stopped the Barat from proceeding further unless the bridegroom got down from the 'palki'. Brickbats were thrown at the Baratis and some damage to property was also done. The prosecution case was that the bridegroom had to alight from the dola-palki and go on foot to the house of the bride leaving the dola-palki outside the village. Consequently, Bhajan Singh and ten other persons were prosecuted. The Magistrate held that so far as the damage to the articles belonging to the Baratis and throwing of stones at them were concerned, nobody had been recognised and, therefore, nobody was guilty for those acts. He found that there was a custom' in the village Gwar under which no one, whether belonging to a high caste or to a scheduled caste, could go

through the village habitation in a dola-palki. He further found that Bhajan Singh did interfere with the Barat party a mile away from the village which he had no right to do, but that the other accused did not do anything except that they told the Barat party about the custom, whereupon the Baratis themselves agreed to observe the custom and the bride groom alighted from the dola-palki of his own accord and proceeded to the house of the bride on foot. The Magistrate, therefore, convicted Bhajan Singh for having unnecessarily interfered with the Barat party and sentenced him to pay a fine of Rs. 10/-, and acquitted the other accused. Bhajan Singh appealed but his appeal was dismissed.

3. The complainant, however, applied in revision both against Bhajan Singh and the other accused. He prayed for enhancement of sentence imposed on Bhajan Singh and for recommendation to the State Government to file an appeal against the order of acquittal of the other accused. The District Magistrate of Garhwal rejected the prayer for a recommendation that an appeal be filed against the order of acquittal but made a reference to this Court for enhancement of sentence imposed on Bhajan Singh. The Government has, however, filed an appeal against the acquittal of the respondents. Both these cases are before us for disposal.

4. We have gone through the evidence on the record and have come to the conclusion that the learned Magistrate was right in holding that no offence was committed by the respondents. Kalam Singh brother of the bridegroom, Buchi Singh constable and Ghana Nand Dhandyal Patwari admit that the villagers merely explained the custom and did not force any one to get down from the dola-palki and that the Baratis themselves agreed to abide by the custom. The question then is whether the mere fact that the respondents told the Baratis about the custom amounts to an offence in the circumstances of the case. We are of opinion that it does not. In Section 3(iv) of the Act, the phrase "make a bridegroom alight from a dola-palki" implies that the bridegroom has been made to alight from the dola-palki against his wishes. The phrase imports an element of compulsion. Where the bridegroom himself alights from the dola-palki because he wishes to observe the custom of the village, the action of a person, who tells him of the custom and persuades him in observing it but does not impose any restriction in the way of the bridegroom proceeding in a dola-palki if he so wished, does not make him liable for the punishment of an offence under the section. As already stated, the respondent merely brought to the notice of the Baratis the custom prevailing in the village and entreated them to follow it, whereupon the Baratis including the bridegroom agreed to follow the custom. In the circumstances, no offence can be said to have been committed.

5. It may be mentioned that the mere fact that the custom applied both to the higher as well as to the scheduled caste is immaterial. If we were of opinion that the respondents had compelled the bridegroom to alight from the dola-palki against his wishes, it would have been no justification for the respondent to urge that the custom was one which equally applied to the upper as well as to the scheduled caste. Though Section 3(iv) of the Act refers to a scheduled caste alone, it is not confined to a custom restricted to scheduled castes alone. The reason apparently is that the Legislature thought that the upper castes can take care of themselves and it was not necessary to protect them. For that reason the Legislature enacted a protection for the scheduled castes alone.

6. The conviction of Bhajan Singh also appears to us to be unjustified. He merely attempted to stop the dola-palki but acquiesced when the Patwari and the constable explained matters to him under the new law. The action of Bhajan Singh at the most amounted to an attempt to commit an offence punishable under the U.P. Removal of Social Disabilities Act. His attempt did not bear fruit and he was not able to make the bridegroom alight from the dola-palki. A mere attempt has not been made punishable under the Act. Not having committed any offence under Section 3(iv), we are unable to hold that Bhajan Singh committed any offence.

7. We may, however, note an argument which was addressed to us on behalf of Bhajan Singh. It was urged that the U.P. Removal of Social Disabilities Act, 1947, has become void after the commencement of the Constitution by virtue of Article 13 read with Articles 17 and 35 of the Constitution. This argument has no force. Article 17 prohibits untouchability and practice in any form and lays down that "the enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law."

Article 35 lays down that "Parliament and not the Legislature of a State shall have power to make laws with respect to prescribing punishment for acts which are declared to be offences under the Constitution."

It follows, therefore, that after the commencement of the Constitution it is the Parliament alone and not any State which can prescribe punishment for the enforcement of any disability arising out of untouchability. Assuming, without deciding, that the U.P. Removal of Social Disabilities Act deals with disability arising out of untouchability, it may be observed that the Act is an Act which was already on the statute book before the Constitution came into force. Article 35 withdraws from the States the power of making any enactment relating to acts which are declared to be offences under the Constitution after the commencement of the Constitution. Article 35 is not retrospective in operation.

8. Article 13 renders void past legislation in so far as it is inconsistent with the provisions of Part 3. Inasmuch as Article 35 refers to future legislation, it cannot be said that anything in the U.P. Removal of Social Disabilities Act which was already on the statute book is inconsistent with the provisions of Part 3 of the Constitution. It may be noted that Article 372 declares that all laws immediately before the commencement of the Constitution shall continue in force until altered or repealed or amended by a competent legislature or other competent authority. The U.P. Removal of Social Disabilities Act, therefore, still remains in force and has not become void by anything contained in the Constitution.

9. Instead of accepting the reference we must, in the exercise of our revisional jurisdiction, acquit Bhajan Singh. We are seized of the whole case and we have power to make an order of acquittal. We accordingly quash the conviction of Bhajan Singh and acquit him. The fine, if paid, shall be refunded to him.

10. We dismiss the Government appeal and reject the reference.