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Court : Mumbai

Decided On : Apr-04-1917

Reported in : (1917)19BOMLR527

Judge : Batchelor and ;Shah, JJ.

Appeal No. : Criminal Application for Revision No. 37 of 1917

Appellant : Emperor

Respondent : Manuel Philip

Judgement :

Batchelor, J.

1. This is an application in revision against a conviction recorded by the First Class Magistrate of Bandra and confirmed on appeal before the Sessions Judge of Thana. The applicants have been convicted of being members of an unlawful assembly under Section 143 of the Indian Penal Code and of mischief under Section 426 of the Penal Code in that they with common intent to cause wrongful loss to the complainant pulled up certain fishing stakes which he had put down in the sea at a distance of five or six miles beyond low water-mark.

2. On the merits it is contended by Mr, Gupte that no offence is proved to have been committed inasmuch as the applicants were protected by the existence of a

certain custom among these fishermen, which had been infringed by the complainant. It appears to me, however, that on this point the finding of the learned Sessions Judge puts the defence out of Court. For the finding is that this violent uprooting of the complainant's stakes had nothing to do with any supposed violation of custom by the complainant, but was intended to injure the complainant because the complainant's wife was reputed to be a witch. Moreover it is held, in regard to this custom, that the applicants had excommunicated the complainant and had excluded him from having any such chance as the custom would have afforded him of putting down his stakes in the locality in question. On these grounds there is in my judgment no substance in the defence based upon the alleged custom.

3. Then it was said that inasmuch as the offence was committed on the high seas, it was outside the jurisdiction of the Bandra Court. The learned counsel admitted that the only ground upon which tills objection could be put was that under Section 188 of the Criminal Procedure Code the prosecution was not entertainable by the Magistrate without the sanction of the Local Government. No such sanction was in fact obtained. It was expressly admitted that if this objection was overruled, no other objection to the jurisdiction could be made. Now it seems to me that Section 188 has no concern with such facts as are here before us. Section 188 occurs in a Chapter of the Code which deals with the jurisdiction of the Courts. It provides for the liability of native Indian subjects of His Majesty who commit offences 'at any place without or beyond the limits of British India ' to be dealt with in respect of such an offence as if it had been committed at any place within British India at which the subject may be found. Now it is quite true that the words ' any place without or beyond the limits of British India ' may, as a mere matter of the meaning of the English words, be read to include a place situate on the high seas between Bombay and Aden. But whether that be the true meaning or not, seems to me to be immaterial, in as much as the objection which we are considering is based only on the first proviso to the section and that proviso is, I think, limited to territorial jurisdiction and has no bearing upon the question of jurisdiction to try an offence committed on the high seas. For the proviso enacts that no charge as to any offence shall be inquired into in British India unless the Political Agent, if there is one ' for the territory in which the offence is alleged to have been committed,'

certifies that the charge ought to be inquired into in British India; that is to say, the offence which the proviso contemplates is, I think, an offence contemplated to have been committed within some territory. This word, territory, in my view, excludes the notion of the high seas and it occurs in the earlier paragraphs of the section where it is confined to the territories of a Native Prince or Chief in India. Mr. Gupte contends that the words as to territory are not repeated in the latter limb of this proviso which was added by the Code of 1898 and which consists of the words 'and where there is no Political Agent, the sanction of the Local Government shall be required.' But the omission of the words as to territory from this limb of the proviso does not in my opinion alter the case. The words 'where there is no Political Agent' would mean in their context where there is no Political Agent for the territory in which the offence is alleged to have been committed, so that in all cases the contemplation of the Legislature is that the offence shall have been committed in some territory or other. There is no reason whatever to suppose that the words added in the Code of 1898 were intended to limit the meaning of the words as to territory already occurring in the proviso. Indeed there is good reason to think that the addition of the words in 1898 was intended to remove the difficulty which had previously existed in cases where offences had been committed, for instance, in such places as Goa, where there is no Political Agent: see *Queen-Empress v. Daya Bhima* I.L.R. (1895) Bom. 147.

4. On these grounds I am of opinion that the objection to jurisdiction fails. The rule, therefore, must be discharged, the convictions and sentences being confirmed.

Shah, J.

5. I agree. I desire to add that I accept the interpretation put by my learned brother upon the first proviso to Section 188 of the Code of Criminal Procedure, upon which Mr. Gupte has relied. I am clear that the proviso refers only to offences which are said to have been committed in any territory and not to offences committed on the high seas. In coming to this conclusion I assume that the word 'place' in the first paragraph of the section includes high seas within its ambit. The construction of the proviso is in no way dependent upon the meaning of the word 'place' in the beginning of the section. I wish to make it clear that in holding that

the proviso does not apply to offences said to have been committed on the high seas, I do not suggest that the first paragraph of the section would not apply to such offences.

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