

Queen-empress Vs. Tulsiram

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Court : Mumbai

Decided On : May-03-1888

Reported in : (1889)ILR13Bom168

Judge : Birdwood and; Parsons, JJ.

Appellant : Queen-empress

Respondent : Tulsiram

Judgement :

Birdwood, J.

1. The accused in this case has been convicted of voluntarily obstructing a public servant in the discharge of his public functions. He obstructed a surveyor who was sent by the Collector to measure off rice land in the possession of the accused and to give possession of it to the decree-holder in a suit brought against the accused is the Mamlatdar's Court under Bombay Act III of 1876. The Mamlatdar had found some difficulty in executing the decree in the manner contemplated in the Act, as the village officers had reported that there was no land corresponding to the boundaries specified in the plaint, and that the parties were joint owners and in joint occupation of the land in a suit. The decree-holder had sued for a certain specific portion of land, not for partition. Indeed, he could not have brought a suit for partition in the Mamlatdar's Court nor could the Mamlatdar have decreed partition. In the difficulty in which the Mamlatdar found himself, he asked for advice

and instructions from the Collector, who sent for the papers in the case and issued an order to the surveyor to execute the decree. That order was one which the Collector had no authority to issue. He was not asked by the Mamlatdar to execute his decree. Indeed, the Mamlatdar valid not legally have asked him to do so. The surveyor acting under the Collector's orders was not, therefore, discharging a public function, and the act of the accused could not have been an offence against Section 186 of the Penal Code. It is argued by the Government Pleader that the surveyor was protected by the first paragraph of Section 99 of the Code, and that there was no right of private defence against any act done by him in good faith under colour of his office. But that was not so; for the protection given by that section to a public officer, who, acting in good faith under colour of his office, does an act not causing the apprehension of death or grievous hurt which may not be strictly justifiable in law, does not extend to an officer whose act is altogether illegal. Nor was the surveyor protected by the second paragraph of Section 99; for though he was acting by the direction of the Collector, still the Collector's order was so entirely ultra vires as to leave no room for the operation of the section. We must, therefore, reverse the conviction and sentence recorded against the accused, and direct that the fine to which he has been sentenced be refunded.

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