

Bhagwandas Vs. the King

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Court : Mumbai

Decided On : Apr-06-1949

Reported in : (1949)51BOMLR970

Judge : Oaksey,; Madhavan Nair,; John Beaumont and; Malcolm Macnaghten, JJ.

Appellant : Bhagwandas

Respondent : The King

Disposition : Appeal dismissed

Judgement :

Oaksey, J.

1. Special leave to appeal was granted in this case without their Lordships being acquainted with the necessary documents, which were no doubt not available. Leave was granted limited to the question of whether or not the proceedings were valid having regard to the fact that the appeal was signed and filed in the High Court by the Advocate General and not by the Public Prosecutor.

2. The relevant documents have now been produced before their Lordships, and the facts are as follows.

3. By the Government of India Act, 1935, it was provided by Section 55 that every Province was to have an Advocate-General. On April 1, 1987, the Government of

India Act came into force. On April 3, 1937, a notification in the Gazette provided that in exercise of the powers conferred on him by Section 492 of the Code of Criminal Procedure) 1898, the Governor of the Punjab is pleased to appoint the Advocate General of the Punjab to be a Public Prosecutor generally for the Punjab. On April 5, 1937, two days later, Mr. Rarn Lall was appointed Advocate General. On February 9, 1938, he was appointed a Judge. On February 11, 1938, Mr. Sleem, the officer who filed the appeal to the High Court in these proceedings, was appointed Advocate General.

4. In their Lordships' view, by his appointment as Advocate General, he became a Public Prosecutor under the provisions of the notification in the Gazette of April 3, 1937.

5. In 1940 Mr. Basant Kishen was appointed an assistant to Mr. Sleem as Advocate General, and by a notification in the Gazette on November 11, 1940, he was appointed a Public Prosecutor.

6. Those are the relevant documents. In those circumstances, it 'appears clear to their Lordships that Mr. Sleem, the Advocate General, was a Public Prosecutor and was entitled to file this appeal.

7. It was submitted on behalf of the appellant that under Section 492 of the Code of Criminal Procedure, Sub-section (1), which provides that 'That Provincial Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors,' the Governor of the Punjab had no power to appoint the Advocate General to be a Public Prosecutor under that section because the Governor was not the Provincial Government for that purpose.

8. The attention of counsel for the appellant was drawn to Section 49 of the Government of India Act, 1935. He submitted that it was no part of the executive authority of a province to appoint Public Prosecutors within the meaning of Section 492 of the Code of Criminal Procedure and that, therefore, the Governor had no power under the provisions of Section 49 of the Government of India Act to make this appointment.

9. Their Lordships are unable to accept this argument. It appears to them that it was a part of the executive authority of the province to make appointments to the post of Public Prosecutor and that, the executive authority of the province being vested by Section 49 of the Government of India Act in the Governor, he was entitled to appoint the Advocate General a Public Prosecutor.

10. For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed.

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