

In Re: Rakhmaji

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Court : Mumbai

Decided On : Jul-06-1885

Reported in : (1885)ILR9Bom558

Judge : Nanabhai Haridas, ;W. Wedderburn and Bart, JJ.

Appellant : In Re: Rakhmaji

Judgement :

Nanabhai Haridas, J.

1. It appears to the Court that the peon in this case was not only not acting in the execution of his duty as a public servant, but apparently in contravention of section, 374, Indian Penal Code; and, therefore, the conviction of the accused under Section 353, Indian Penal Code, ought to be set aside, unless the rules at pages 26 and 27 of Nairne's Hand-Book (3rd ed.) have the force of law, and the proceedings were taken lawfully under them. Notice to be given to the Government Pleader to enable him to ascertain under what law the above rules were made. Record the proceedings to be shown to him.

2. That was accordingly done, and the Government Pleader, having received instructions to appear for the Crown, did so on the 6th July, 1885.

3. Hon. V.N. Mandlik for the Crown.-The sepoy was not seizing the cart for his use, but under order from the settlement officer. The rules or executive orders

printed at pp. 26 and 27 of Mr. Nairne's Revenue Hand-Book justify such seizure of carts, and the sepoy, therefore, was executing his duty as a public servant, and he was assaulted by the petitioner. Should the executive orders be not recognized as law, the conviction for assault ought to be upheld.

4. After hearing the Government Pleader we are of opinion that the rules or executive orders of Government, printed at pages 26 and 27 of Mr. Nairne's Revenue Hand-Book, have not the force of law. The peon, therefore, who, according to his own evidence, was deputed by the forest settlement officer 'to impress fifteen carts for his use,' was not acting in the execution of his duty as a public servant when he seized the accused's cart, and the conviction under Section 353 of the Penal Code must, therefore, be set aside. The only offence of which, upon the evidence, the accused was guilty, is that of simple assault under Section 352 of the Penal Code, and we think, under the circumstances, a few rupees' fine would have sufficed. As, however, he has already suffered a week's imprisonment, we remit the unexpired portion of his sentence, he having been released on bail.

5. We are surprised to find that the First Class Magistrate considered that to be lawful, which is expressly prohibited by Section 374 of the Penal Code.