

In Re: Dayal Kanji

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Court : Mumbai

Decided On : Jun-18-1908

Reported in : (1908)10BOMLR630

Judge : Basil Scott, C.J. and ;Knight, J.

Appeal No. : Criminal Application for Revision No. 31 of 1908

Appellant : In Re: Dayal Kanji

Disposition : Appeal allowed

Judgement :

Basil Scott, C.J.

1. This is an application to us in revision in which the petitioner asks the Court to set aside an order of the Districts Magistrate made on the 27th November 1907.
2. The order was made with reference to a complaint for abuses which was proceeding before the Police Patel of Vengurla under? the jurisdiction vested in him by Section 14 of the Bombay Village Police Act VIII of 1867.
3. The order which we are asked to set aside is as follows:-'As the Police Patel of Vengurla seems to be concerned more or less in this case, I, therefore, under Section 6 Act VIII of 1867, forbid him to try it. The complainant can go to the Third Class Magistrate Ratnagiri.'

4. It is therefore clear that the Magistrate considered that he had authority to stop the proceedings in a case which had already commenced by virtue of the provisions of Section 6 of the Village Police Act. That section provides that ' the Police Patel shall subject to the orders of the Magistrate of the District, act under the orders of the Magistrate within whose local jurisdiction his village is situated, whom he shall furnish with any re-turns or information called for, and keep constantly informed as to the state of crime, and all matters connected with the Village Police, the health and general condition of the community, in his village. He shall also afford all Police Officers every assistance in his power when called upon by them for assistance in the performance of their duty. He shall further promptly obey and execute all orders and warrants issued to him by a Magistrate or Police Officer, shall collect and communicate to the District Police intelligence affecting the public peace, shall prevent within the limits of his village the commission of offences and public nuisances, and shall detect and bring offenders therein to justice.'

5. The duties which are enumerated in that section appear to us to be the executive duties of the Police Patel, and they are duties imposed upon him quite independently of the authority which he has given to him under Section 14 to try and punish in cases of petty assault and abuse. The authority given to him by Section 14 is a judicial and not an executive authority, and we think that Section 6 does not justify the Magistrate in stopping the judicial proceeding which was already in progress before the Police Patel.

6. We have been referred by the Government Pleader to Section 3 of the Act which says that 'the administration of the Village Police throughout each District shall, under the control and direction of the Commissioner, be exercised by the Magistrate of the District'. But there again it appears to us that the section relates to the executive administration of the Village Police, and does not relate to the special judicial functions created by Section 14.

7. With reference to those judicial functions there is a special section in the Act, namely, Section 17, and that section does not provide that the Magistrate shall have any authority to stop proceedings which have already commenced under

Section 14.

8. It is also clear that the Magistrate has no power under the Criminal Procedure Code by way of transferring the case, because S; 1 of the Criminal Procedure Code provides that 'it shall not apply to Village Police Officers in the Presidency of Bombay.'

9. In our opinion apart from the power expressly conferred by the Act upon the Magistrate in that connection the only right of superintendence over the judicial functions of the Police Patel created by Act VIII of 1867 is vested in the High Court by Clauses 26 and 27 of the Letters Patent. It has frequently been held that Police Patel's in exercising their judicial functions are subject to the superintendence of this Court.

10. Being therefore of opinion that the Magistrate had no power to make the order to which exception is taken, we set the order aside.

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