

Emperor Vs. Suleman Abba

Emperor Vs. Suleman Abba

SooperKanoon Citation : sooperkanoon.com/335298

Court : Mumbai

Decided On : Sep-14-1934

Reported in : AIR1935Bom24; (1934)36BOMLR1124

Judge : Murphy and ;Sen, JJ.

Appeal No. : Criminal Reference No. 92 of 1934

Appellant : Emperor

Respondent : Suleman Abba

Judgement :

Murphy, J.

1. This is a reference from the Sessions Judge of Kaira, who has submitted the case to this Court on the ground that failure of justice has been occasioned by the accused having been tried for more than three offences of the same kind committed within the space of twelve months ; he also holds that the case involves important points of law which require to be decided by this Court.

2. The applicant in this case has been convicted under Section 186 of the Indian Penal Code by the Magistrate, First Class, Kaira, in that between July 3 and 8, 1933, both days inclusive, he drove his motor bus through the Vasana checking toll bar at Vasana without stopping. He avoided the main toll bar on the

abovementioned dates by taking the ' Nal road' and driving through the Vasana checking bar without stopping to pay the toll, although the toll collector signalled to him to do so. The applicant is a licensed driver who runs a motor bus between Ahmedabad and Radu.

3. The three points raised by the learned Sessions Judge are : (1) whether the toll contractor was a public servant within the meaning of Section 186 ; (2) whether the applicant voluntarily obstructed the toll collector in the discharge of his duties; and (3) whether there was a misjoinder of six distinct acts committed by the applicant on six different dates.

4. With regard to the first point, under Section 11 of the Tolls on Roads and Bridges Act (Bom. III of 1875) ' every person employed by the lessee as his agent for collecting the tolls shall be deemed to be persons appointed to collect tolls under the Act'. The definition of 'public servant' under Section 21 of the Indian Penal Code includes, under Clause (10) of the definition, ' every officer, whose duty it is, as such officer, to levy any rate or tax for any secular common purpose of any village, town, or district.' We hold that reading these two sections together the toll contractor as well as his servant must be held to be public servants as defined in the Indian Penal Code.

5. On the second point the learned Government Pleader, who has been instructed to appear, has found no reported case analogous to the present one, but there is an English case, *Betts v. Stevens* [1910] I.K.B. 1, in which on a certain occasion certain police constables were on duty observing and timing the speed of motor cars driven along a certain road with a view to the prosecution of the drivers of such cars as should be travelling at an illegal speed. The accused warned the drivers of cars which were approaching the measured distance of the presence of the constables and the purpose for which they were there. As a result the drivers slackened their speed and proceeded over the measured distance at a lawful speed.

6. It was held that the accused had wilfully obstructed the constables in the execution of their duty within the meaning of Crimes Amendment Act; the gist of the offence lay in the intention of the accused, which was interference with or

prevention of the policemen's discharge of duty. In our opinion the same line of reasoning would apply to the facts of this case, and such conduct as the trial Court has found him guilty of would mean that he prevented the toll contractor or his servant from collecting the dues under the provisions of the Tolls on Roads and Bridges Act, and thus obstructed him in the discharge of his duty.

7. As regards the third point, the complaint mentions that offences were committed by the accused on six different dates, viz., from July 3 to 8, 1933, amounting in all to six offences, and the accused has been convicted by the learned Magistrate under Section 186 of the Indian Penal Code, only one sentence of a fine of Rs. 50 having been imposed on him. We do not, however, find anywhere in the judgment of the learned Magistrate any mention of the number of offences with which the accused was charged or of which he had been convicted. There is no doubt that each evasion of the toll was a separate act, and as the complaint mentions six offences, the accused was presumably tried for all those six offences. The conviction also must accordingly be held to be in respect of those offences, no particular offences being clearly specified by the Magistrate. In this view of the matter we are obliged to hold that the conviction was bad as contravening the provisions of Section 234 of the Criminal Procedure Code. This irregularity cannot be regarded as one not material and not having prejudiced the accused at the trial.

8. We, therefore, set aside the conviction and the sentence and order a re-trial of the accused, as it seems to us that a prima facie case has been made out against the accused.