

Emperor Vs. R.K. Naik

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Court : Mumbai

Decided On : Aug-04-1939

Reported in : (1939)41BOMLR1227

Judge : John Beaumont, Kt., C.J. and ;Sen, J.

Appeal No. : Criminal Application for Revision No. 190 of 1939

Appellant : Emperor

Respondent : R.K. Naik

Disposition : Application dismissed

Judgement :

John Beaumont, Kt., C.J.

1. This is a revision application from an order of the District Judge of Dharwar. The applicant was appointed Administrative Officer of the district local board of Dharwar, and it was part of his duty to inspect schools under the local board. He was entitled to draw travelling allowance under the Bombay Civil Service Regulations, and if in his travels he hired a motor car he was entitled to draw travelling allowance at the rate of four annas a mile, but if on the other hand he used; his own car the rate was only three annas a mile.

2. The charge against him is that he delivered travelling bills claiming allowance at the rate of four annas a mile, that is in effect representing that he had travelled in a hired car, whereas in fact he had travelled in his own car. He is charged under Section 420 of the Indian Penal Code with cheating by delivering a bill representing that he travelled in a hired car suppressing the fact that he had travelled in his own car.

3. He claims that the charge against him must be dismissed under Section 136 of the Bombay Local Boards Act, 1923, which provides so far as material that 'No prosecution shall be commenced against any local board, or any officer of a local board, for anything done, or purporting to have been done, in pursuance of this Act, or any other law for the time being in force which entitles or requires a local board, or officer, or other person so acting to exercise any powers or perform any duties' without giving the notice therein specified, which admittedly has not been given. For the purpose of this application we must assume that the charge is well founded, though naturally we express no opinion upon that point.

4. Looking at the matter apart from authority, I must confess that I should have thought that it was impossible to say that an officer of the Board delivering a false bill deliberately was acting or purporting to act in pursuance of the Act. His duty under the Act would be at the highest to deliver a true bill, and when he proceeded to deliver a false bill, he was not acting under the Act, nor, I should have thought, purporting to act under the Act. In my view these protection clauses, which are so commonly inserted in Acts conferring powers on public authorities or their officers, were never intended to protect a dishonest rascal from the consequences of his rascality. They are only intended to protect people who from excess of zeal, or

negligence, or other cause exceed their powers. I think that view of sections of this nature has prevailed in England, see particularly the law as stated in the 26th Volume of the 2nd Edition of Halsbury's Laws of England, p. 296, and the cases cited by Sir Lawrence Jenkins in *Ranchordas Morarji v. The Municipal Commissioner for the City of Bombay* I.L.R. (1901) Bom. 387 : 3 Bom. L.R. 158 in which case the learned Chief Justice followed the English view. It is, however, true that every case of this nature must ultimately turn upon the construction of the particular Act by which the protection is given.

5. Dewan Bahadur Shingne on behalf of the applicant has referred us to a recent decision of the Federal Court in *Hori Ram Singh v. Emperor* in which the protection afforded by Section 270 of the Government of India Act, 1935, was considered. There were two charges in that case to which it was alleged that the protection applied, one under Section 409 of the Indian Penal Code for criminal breach of trust, and the other under Section 477A, for falsification of a register. The Court held that in respect of the charge under Section 409 the protection did not apply because the whole of the act of criminal breach of trust was not necessarily performed by the accused in his official capacity, but they held that as the whole of the act complained of under Section 477A was performed by the accused in his official capacity, the protection applied to the charge under that section. So that the Federal Court, differing from the High Court of Lahore from which the appeal was preferred, considered that a deliberate falsification of accounts was an act done in purported execution of a statutory duty. The decision of the Federal Court does not govern the present case, because the Court there was dealing with Section 270 of the Government of India Act, whereas this case arises under Section 136 of the Bombay Local Boards Act, 1923, and the charges in that case were not under Section 420, Indian Penal Code. Assuming, however, that the reasoning in respect of the charge under Section 477A of the Federal Court is correct, it does not apply to the present case for two reasons. In the first place the accused was not bound to claim any travelling allowance at all. If he did claim a travelling allowance he was bound to put in a bill, but any public servant who chooses to do so can use his own car for official work without claiming to be paid for so doing. On this point the applicant relies on Rule 31(2) of the Bombay Primary Education Rules, 1924, which provides:

At the first meeting of the School Board in each month, there shall be placed before the meeting for its approval statements of the movements on duty of the chairman and of members who have performed journeys on duty under the orders of the School Board and the official diary of the Administrative Officer with their travelling allowance bills..

It is argued that the rule makes it compulsory upon the Administrative Officer to deliver a travelling allowance bill. But, in my opinion, the rule only means that the travelling allowance bill must be delivered if travelling allowance is being claimed. There is nothing in the rules which compels the Administrative Officer to claim travelling allowance if he does not desire to do so. Therefore the delivery of his travelling allowance bill was not a duty imposed upon him by the Act. In the second place it seems to me clear that the charge of cheating by suppression of the fact that the accused owned a motor car involves an act outside the accused's official duties. He was not under any statutory duty to refrain from stating to the board that he possessed and used his own car. The charge is more analogous to a charge under Section 409 than to a charge under Section 477A, because a part of the ingredients of the charge is not in any way concerned with the official duties of the officer.

6. In our opinion the judgment of the learned Sessions judge refusing to stop the prosecution was right, and the application must be dismissed.

Sen, J.

I agree.