

M.L. Bannerjee Vs. Emperor

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Court : Mumbai

Decided On : Dec-13-1944

Reported in : (1945)47BOMLR985

Judge : Patrick Spens, Kt., C.J., ;Varadachariar and ;Zafrulla khan, JJ.

Appellant : M.L. Bannerjee

Respondent : Emperor

Disposition : Appeal dismissed

Judgement :

Patrick Spens, Kt., C.J.

1. These two appeals may be disposed of together. The appellant, Bannerjee, was in December, 1942, officiating Goods and Yard Supervisor at Sealdah, which is the Calcutta terminus of the Bengal-Assam Railway, and the appellant Bhattacharjee was at that time Shed Inspector at Sealdah. Bannerjee was then holding an Emergency Commission as a Second Lieutenant and Bhattacharjee had been made a Warrant Officer. They were charged under Section 161 read with Section 34 of the Indian Penal Code, 1860, with having received from Dud Nath Pandey (P.W. 2) on December 31, 1942, the sum of Rs. 250 as a motive or reward for allotting to the firm on whose behalf Pandey represented himself to be acting, a wagon for the transportation of bales of cloth from Sealdah to Kisenganj. They were convicted by the Additional District Magistrate, 24-Purganas, and each

of them was sentenced to undergo one year's rigorous imprisonment and to pay a fine of Rs. 500, and in default of payment of fine to suffer further rigorous imprisonment for three months. Their appeals to the Sessions Judge, 24-Purganas, and their revision application to the Calcutta High Court were dismissed. From the judgment of the High Court these appeals were preferred, supported by the usual certificate under Section 205 of the Constitution Act.

2. The constitutional question raised on behalf of the appellants before the High Court under Section 270(1) of the Constitution Act was not sought to be re-agitated before us. It was conceded that it was concluded by the judgment of this Court in *Lieutenant Hector Thomas Huntley v. King-Emperor* [1944] F.C.R. 262. Some attempt, similar to that in *Afzalur Rahman v. King-Emperor*: *S.A. Nasim v. King-Emperor*: *Jubraj Prasad v. King-Emperor* [1943] F.C.R. 7 was made to raise a constitutional point on the construction of Sections 240 and 241 in order to support an argument really based on Section 197 of the Criminal Procedure Code, that the cases must fail for lack of the necessary sanction under that section, inasmuch as the appellants were public servants who were not removable from their office save by or with the sanction of an authority higher than a Provincial Government, and the offence with which they were charged was alleged to have been committed by them while acting or purporting to act in the discharge of their official duty.

3. The appellants have in our judgment failed to establish that they were public servants who could be removed from their office only by some authority higher than a Provincial Government. The only evidence on the record on that point is a statement by P.W. 4, Mozumdar, who is a District Traffic Superintendent on the Bengal-Assam Railway, to the effect that the Goods Supervisor and the Shed Inspector are subordinate to the Chief Transportation Manager and the Chief Commercial Manager who can jointly dismiss them. It was suggested that these officers, being officers of the Central Government, were 'an authority higher than a Provincial Government'. We are unable to accept this suggestion. To construe this expression as meaning any officer of the Central Government would lead to patent absurdities. Having regard to the juxtaposition in which this expression occurs in Section 197 of the Criminal Procedure Code and the history of the enactment, we

consider that the expression has reference to the Central Government, the Governor-General and the Secretary of State.

4. It was contended on behalf of Bannerjee that he had been given a Commission as Second Lieutenant by virtue of his position as a Goods and Yard Supervisor and that as he could be deprived of his Commission only by G.H.Q. he could not be removed from his office of Goods and Yard Supervisor except with the sanction of G.H.Q. which was an authority higher than a Provincial Government. Beyond the fact that in December, 1942, Bannerjee held an Emergency Commission as a Second lieutenant there is not a word on the record to indicate that he could not be dismissed from his office of Goods Supervisor without the sanction of G.H.Q. Nor are we inclined to accept the proposition that 'G.H.Q.' (whatever that expression might signify) is an authority higher than a Provincial Government within the meaning of Section 197 of the Criminal Procedure Code.

5. A similar contention was sought to be raised before us on behalf of Bhattacharjee, but counsel realising that his case could not in this respect stand on any higher footing than that of Bannerjee, did not press the point. That may also be the reason why this point was not taken on his behalf before the High Court.

6. In our judgment it has not been established that the appellants are within the class of public servants to whom the provisions of Section 197 of the Criminal Procedure Code would be applicable. In this view of the matter it is unnecessary to determine whether the offence with which they were charged was or was not alleged to have been committed by them while acting or purporting to act in the discharge of their official duty.

7. We were, with our leave, also addressed on behalf of the appellants on the merits, but nothing that was urged before us served to raise any doubt in our minds with regard to the correctness of the findings of the Courts below. The evidence clearly establishes the guilt of the appellants beyond any reasonable doubt and the sentences are, in our judgment, appropriate. These appeals are dismissed.

