

Emperor Vs. Bhaga Mana

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Court : Mumbai

Decided On : Dec-20-1927

Reported in : (1928)30BOMLR364

Judge : Fawcett and ;Mirza, JJ.

Appeal No. : Criminal Revision Application No. 350 of 1927

Appellant : Emperor

Respondent : Bhaga Mana

Judgement :

Fawcett, J.

1. In this case the Magistrate has convicted the petitioner of an offence under Section 186, Indian Penal Code. The facts found are that a Circle Inspector had gone to the wada of the petitioner, under orders of the District Deputy Collector, with a Panch in order to remove an alleged encroachment. He took with him one Lalia, who is the son of a village servant (avethia). This Lalia was asked to remove a portion of a hedge, as being part of the encroachment. As soon as Lalia put his scythe in the hedge to do this, the accused came out from his house and caught hold of the scythe and said 'I will see who will remove the encroachment.' Lalia was thus stopped from doing the work, and the Circle Inspector and the Panch, being afraid that if they persisted some mischief might result, went away.

2. The petitioner was held thereby to have been guilty of obstructing a public servant, namely, the Circle Inspector, in discharge of his public functions under Section 186, Indian Penal Code, and was sentenced to pay a fine of Rs. 40.

3. It is contended that there was no obstruction within the meaning of Section 183, and that in any case there was no obstruction to a public servant in the discharge of his public function under that section.

4. As regards the first point as to whether there was any obstruction, the act of the accused in actually laying hold of the scythe with an indication that he would prevent the scythe being used to remove the hedge, is certainly an act of physical obstruction which would, in my opinion, come under the section. There is a difference between a case like this and one where a person merely dissuades other people from rendering certain services to a public servant, or spreads false reports so as to prevent parents bringing children for vaccination, and so on, in regard to which there are authorities for saying that there is no obstruction within the meaning of Section 186. In this case the accused did not merely try to dissuade Lalia from starting to remove the hedge, but took physical action with a view to prevent it. Therefore, I think there is no substance in the first point.

5. The main question is whether, inasmuch as the obstruction was offered, not to any action of the Circle Inspector himself but to Lalia, who was himself not a public servant, the case falls under Section 186. In my opinion the case is one where the maxim *qui facit per alium facit per se* can be properly applied. In the case of removing an encroachment, a public servant has ordinarily only to see that the encroachment is removed. He is not, either by law or practice, required to do the whole act of removing the encroachment by his own hands. He can employ agents for such a manual task, and Lilia was so employed. If the agent is obstructed in doing what he is legitimately required to do by a public servant actually present at the time of the removal, then there is an obstruction offered to the public servant himself, because what he is doing by the hand of that agent is really, in eyes of the law, something he is actually doing himself.

6. We have been referred to a decision of the Lahore High Court in *Matu Ram v. Emperor* (1922) 24 Cr. L.J. 594 as an authority for the contrary view. In that case a

Naib-Tahsildar visited the village of the accused, where he was told by the Lambardar, who I understand is a village servant, that the accused kept several shops and ought to be assessed to income-tax. A dispute took place between the Lambardar and the accused, and in the course of the quarrel the latter beat the former, who as a result declined to render any help to the Naib-Tahsildar in his investigation. The accused were convicted under Section 186 on the ground that they had obstructed the Naib-Tahsildar in the execution of his duty. But the Chief Justice of the Lahore High Court held that this view was not justified, He says (p. 595):-

The learned Magistrate does not find that the petitioners either assaulted the Naib Tahsildar or made any gestures, and I am not prepared to hold that the mere fact that the Lambardar who was assaulted, declined to render any help to the Naib-Tahsildar in his investigation can be viewed as an obstruction caused by the petitioners.

7. I agree with the Government Pleader that that is a different sort of case to the present, Here an act of obstruction was done to a person, who was not merely one who might assist a public servant, if he is willing, but a person who was actually doing something at the request of a public servant in execution of a particular duty which that public servant had to perform. The other case is very analogous to those about dissuading people from assisting public servants before they have actually started to perform a duty, such as I have already referred to (cf. *Emperor v. Ram Ghulam Singh* I.L.R (1925) All. 579. If the Lahore ruling is intended to go further, then I respectfully dissent from it. Therefore, I think that the facts found justify the conviction of the accused. I would dismiss the application.

Mirza, J.

8. I agree