

**Saifln Rasul Vs. Emperor**

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**Court :** Mumbai

**Decided On :** Feb-07-1924

**Reported in :** AIR1924Bom385; 83Ind.Cas.342

**Judge :** Norman Macleod, C.J. and ;Lallubhai Shah, J.

**Appellant :** Saifln Rasul

**Respondent :** Emperor

**Judgement :**

Norman Macleod, C.J.

1. The accused was charged with two offences, one under Section 42 of the Prisons Act IX of 1894, read with Article 485 of the Bombay Jail Manual, 1911, the other under Section 161, Indian Penal Code. There can be no doubt on the facts found by the Magistrate that the accused had taken a bundle of newspapers from one of the prisoners on a request that he should deliver the newspapers outside the Jail premises. That would be an offence under Section 42 of the Prisons Act, taken in conjunction with Article 485 of the Bombay Jail Manual, 1911, and there can be no doubt that the conviction under that charge was correct. Although that was not accepted when the rule was applied for, it is now conceded.

2. Then the accused was charged with having accepted a rupee for taking the newspapers outside the Jail premisses which, according to a chit found in his possession, the prisoner had given to him in order to get change. Even if that story

was true, it would be an offence against one of the rules. It has been urged before us that the accused was not a public servant. Clearly he comes under Section 21 (7), Indian Penal Code, being a person who holds his office by virtue of which he is empowered to place or keep any person in confinement. Under Article 203 (1) of the Bombay Jail Manual the duty of a warder is to see that the prisoners in Jail are kept within the Jail precincts and to prevent any attempt to escape. In *Queen v. Kallachand Moitree* 7 W.R. 99 Cr. the question arose whether a convict warder was a public servant, and the argument seems to have been that because a convict warder himself was kept in confinement, therefore, he would not be empowered to keep his fellow prisoners in confinement. But the Court held that undoubtedly even a convict warder was an officer empowered to keep persons in confinement. The point is so simple that it hardly requires any argument to support it.

3. Then it was urged that Section 161, Indian Penal Code, does not apply because the accused did not receive the gratification as a motive for not doing what he ought to have done or as a reward for doing what he ought not to have done. Clearly it was his duty to report that the prisoner was in possession of smuggled papers. Instead of that he accepted a rupee as a gratification not only for concealing that fact, but also for smuggling the papers outside the Jail. It is perfectly clear, therefore, that the conviction under Section 161, Indian Penal Code, is correct. We discharge the Rule.

4. On the question of sentence we have considered whether some of the sentence should be remitted. The sentence itself is not too severe, in my opinion, considering the seriousness of the offence, and on general principles, speaking for myself, I dislike interfering with the sentences passed by the lower Courts unless there is very good reason for thinking that proper discretion has not been exercised.

**Lallubhai Shah, J.**

5. I agree. I desire to add a word with regard to the sentence. In this case two separate sentences have been passed in respect of two offences which appear to

arise out of one and the same act. I am not clear whether two separate sentences are justified under the circumstances. But the total sentence does not exceed the sentence which could be legally inflicted under either of the sections under which the accused has been convicted, nor is it in excess of the powers of the Trial Magistrate. I do not, therefore consider it necessary to interfere, in revision.

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