

**In Re: Govind Rao**

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**Court :** Andhra Pradesh

**Decided On :** Oct-31-1958

**Reported in :** AIR1959AP428; 1959CriLJ958

**Judge :** Munikannaiah, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 485A

**Appeal No. :** Criminal Revn. Case No. 312 of 1958 and Criminal Revn. Petn. No. 259 of 1958

**Appellant :** In Re: Govind Rao

**Advocate for Def. :** D.J. Jagannadha Raju, Adv. for ;Addl. Public Prosecutor

**Advocate for Pet/Ap. :** P. Shivashankar, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**Munikannaiah, J.**

1. The petitioner herein is a Revenue Inspector in Madak District. In Criminal Case No. 26/2 of 1957 pending before the Munsif-Magistrate's Court, Vikarabad, against another person for an offence under Section 447 of the Indian Penal Code, the

prosecution took out summons to the petitioner to figure as a witness. The summons was sent through a constable for service on the petitioner.

That constable went to Sangareddy and found the petitioner engaged with the Tahsildar as he was Helping the latter in his official work. The petitioner did not immediately come out and attend to the police constable and accept the service of summons, but wanted the police constable to wait as ho was busy assisting his boss. The constable left the place and reported that the petitioner refused to receive the summons.

On this the Munsif-Magistrate, Vikarabad. instituted proceedings under Section 485A of the Code of Criminal Procedure against the petitioner and convicted him of the offence and sentenced him to pay a fine of Rs. 50/- and in default to undergo simple imprisonment for 10 days. The petitioner herein preferred a revision application before the District Magistrate, Hyderabad, but the same was dismissed merely on the ground that as the factual points have been correctly determined by the Munsif-Magistrate, no interference is called for. Hence this revision-petition.

2. All the facts alleged and proved by the prosecution only go to establish that the police constable went to the petitioner who was engaged in his duties as Revenue Inspector before the Tahsildar and that as the petitioner did not pay attention immediately to the police constable, the latter thought it fit to record that the Revenue Inspector refused to receive the summons.

It is clear from the proved facts that the Revenue Inspector was confronted with a conflict of duties in relation to the Tahsildar and the police constable, and if he had decided to stay on a little longer with the Tahsildar to finish the work on hand, the constable should have waited. It is not enough in those circumstances that the report of the constable that the summons have been refused should be treated as sufficient; but the court should have insisted, before hauling the Revenue Inspector for that kind of contempt Cum disobedience contemplated in the offence created under Section 485-A of the Code of Criminal Procedure upon its being satisfied with proof of a written refusal by that Revenue Inspector.

That has not been done in this case. It should therefore be pointed out that action against the Revenue Inspector by the Munsif-Magistrate, Vikarabad, is rather uncalled for. The well-known principle that courts could not allow to be easily tickled with imagined affronts should not be observed only in its breach. Particular attention has been drawn by the observations of the Privy Council that courts should not be too sensitive for punishing for contempts and that this power should be used sparingly i.e. in serious cases only, vide *Debt Prasad Sharma v. Emperor* AIR 1943 PC 202; and *Parashurarn Detaram Shamdasani v. Emperor*, AIR 1945 PG 134.

It is therefore necessary that greater attention is paid by the court and more caution administered to itself while acting under a provision like Section 485-A, Criminal P. C. or dealing generally with persons for contempt before a court.

3. Section 485-A of the Code of Criminal Procedure is in these terms:

'(1) If any witness being summoned to appear before a criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such witness should be tried summarily the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to a fine not exceeding one hundred rupees. (2) xx xxx'

The Section is plain in making non-attendance of a witness summoned to appear before a Criminal Court as entailing the awarding of punishment. But the language of this section does not support the view that a person who has not received any summons and does not know when and where to appear could be brought before a Court as it cannot be said that the person accused of an offence, in those 'circumstances, has intentionally neglected or refused to attend the court at that particular place and time.

Therefore inasmuch as this section does not dispense with mens rea as an ingredient for the offence, it is necessary for courts to find whether the summons has been served and the accused had the knowledge of it and did disobey the summons thereafter. I should therefore hold that where the police constable takes the summons and is asked to wait for a while but he endorses on the summons that the summons has been refused, such a case would not fall within the purview of Section 455-A of the Code of Criminal Procedure.

4. For the aforesaid reasons, I find that the petitioner cannot be found guilty in the circumstances of this case under Section 485-A, Criminal P. C., and he is acquitted. The fine, if already paid by the accused, will be refunded to him.

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