

**Bundoo and ors. Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Aug-07-1942

**Reported in :** AIR1943All15

**Appellant :** Bundoo and ors.

**Respondent :** Emperor

**Judgement :**

ORDER

**Mulla, J.**

1. This is an application in revision by four Muslim residents of village Pilkhua in the district of Meerut praying that certain criminal proceedings started against them should be quashed as being without any legal justification. The facts put of which this application arises may briefly be stated as follows : The principal applicant Bundoo sacrificed a cow on the occasion of the Bakr-Id festival in the year 1941 and in that proceeding he was admittedly assisted by the other three applicants, Mohammad Asad Ullah, Sheikh Mohammad Yamin and Master Mohammad Sulaiman. It appears, however, that in the year 1940, Bundoo filed a representative suit in the civil Court for a declaration that the Muslim residents of Pilkhua were entitled to perform cow sacrifice on the occasion of the Bakr-Id festival. The cause of action for that suit apparently was that the local authorities used to prohibit cow sacrifice in village Pilkhua even on the Bakr-Id occasion

presumably because they feared that such a sacrifice was likely to cause a breach of peace between the Hindu and Muslim residents of village. It was therefore in order to assert the right of the Muslims to perform cow sacrifice, on the occasion of the Bakr-Id festival that the representative suit referred to above was filed in the civil Court. It is admitted that the suit was decreed on 13th May 1940. Having thus obtained a declaration from the civil Court, it appears that the applicant Bundoo asserted the right given to him by the civil Court decree and sacrificed a cow on the occasion of the Bakr-Id festival in the year 1941. It is also admitted that no prohibition of any kind was issued by the local authorities that year. On behalf of Bundoo it is alleged that he performed the sacrifice quietly within his house so that no Hindu resident of the village could see it and there was consequently no fear of the feelings of the Hindu residents being injured by the act. The sacrifice was performed in the early hours of the morning. In order to be on the safe side Bundoo proceeded to the thana and made a report there telling the police that he had performed the sacrifice. He was immediately put under arrest under Section 107, Clause (3), Criminal P. C. It is not alleged that the Hindu residents were aware of the sacrifice performed by Bundoo at the time when the act was committed but it is said that the next day the Hindu residents declared a hartal in the village and the local authorities had to pacify them. In these circumstances the District Magistrate of Meerut passed the following order :

It has been reported to me that during Id one Bundoo urf Buniad Ali of Pilkhua slaughtered a cow against the custom of Pilkhua. In this he was instigated by the following persons. Dr. Asad Ullah, Master Mohammad Suleman, Mohammad Yamin. The Magistrate on duty and the police officer had to pacify the Hindus who subsequently, I understand, had a short 'hartal.' It is quite clear that the above mentioned action has stirred up communal feeling in the vicinity. The stirring up of such feelings promotes enmity between Hindus and Muslims, causes fear and alarm to the public and at a time like this can have a very direct bearing on the prosecution of the war, since such actions create panic. I, therefore, order the immediate arrest and trial of the persons named below under the sections of the law specified against each.

Bundoo.

Section 38(1)(a) read with Section 34(6)(f), (g) and (p), Defence of India Rules.

Asadullah. Mohd. Yamin. Master Suleman.

Under the same sections of the Defence of India Rules read with Section 121, D. I. R.

2. In accordance with this order passed by the District Magistrate the four applicants were prosecuted and put on their trial before a Magistrate of the first class who on 7th March 1942 framed the following charge against the applicant Bundoo:

That you on or about the 31st day of December 1911 before sunrise killed a cow in your house in village Pilkhua knowing it was likely to promote feelings of hatred and enmity between Muslims and Hindus and cause fear and alarm to the public and thereby committed a prejudicial act as defined in Rule 34(6)(f) and (g) and punishable under Rule 38, Defence of India Rules....

3. The other three applicants were charged with having abetted that offence. Against this proceeding, the applicants went up in revision to the learned Sessions Judge of Meerut who summarily rejected their application. They have now come up in revision to this Court. Two points have been urged on behalf of the applicants, firstly, that the Defence of India Rules apply only to such acts as fall directly or indirectly within the purview of the preamble to the Defence of India Act, or in other words acts which have any consequential bearing upon the prosecution of the war, secondly, that even upon the facts as they stand the applicants cannot possibly be convicted of an offence under Rule 38, Defence of India Rules, which runs as follows: 'No person shall without lawful authority or excuse(a) do any prejudicial act.'

4. In the first place, it is contended that it was not the intention of the applicants to promote any feeling of enmity and hatred between different classes of His Majesty's subjects as required by Clause (f) of Rule 34, or to cause fear or alarm to the public or to any section of the public as required by Clause (g) of the same rule, and secondly, it is argued that the act performed by the applicants which is

the subject of the charge against them was done with lawful authority and with a lawful excuse. As regards the first contention, I need only say that I would much rather confine myself to the purely legal aspect of the case and would leave it to the local authorities to decide whether a certain act has or has not some consequential bearing upon the prosecution of the war. There can be little doubt in my judgment that the act with which the applicants are charged, would, standing by itself, have fallen either under Clause (f) or Clause (g) of Rule 34, Defence of India Rules, because intention is not a necessary ingredient of a prejudicial act as contemplated by Rule 34(6)(f) and (g). It is enough that the prejudicial act is likely to promote feelings of enmity and hatred between different classes of His Majesty's subjects or is likely to cause fear or alarm to the public or to any section of the public. I would not, therefore, accede to the first contention raised on behalf of the applicants.

5. The second ground on which the application is pressed is, however, well founded and in my judgment must prevail, It is evident that the prosecution is bound to prove that the act committed by the applicants which is the basis of the charge against them, was committed without lawful authority or excuse and upon the admitted facts of the case, there can be no doubt that the prosecution cannot prove that essential ingredient of the offence under Rule 38, Defence of India Rules. It is admitted that the applicant Bundoo had obtained a decree from the civil Court for a declaration that he and other Muslims of village Pilkhua had a right to sacrifice a cow on the occasion of the Bakr-id festival. He had, therefore, lawful authority for performing the act which he did perform. It may also be reasonably contended that he had lawful excuse because it was the occasion of the Bakr-id festival and as a Muslim he was performing a religious act. It is also significant to note in this connection that in the year 1941 the local authorities did not issue any prohibition against cow sacrifice as they used to do in previous years. If the local authorities felt that such an act would amount to a prejudicial act within the meaning of the Defence of India Rules, they could have prohibited the commission of such an act by issuing a notice in the ordinary course as they used to do in the previous years.

6. Upon the facts of the case, I am satisfied that there was lawful authority for the act committed by the applicants and, therefore, they cannot possibly be said to have committed an offence under Rule 38, Defence of India Rules. The result, therefore, is that I allow this application and quash the whole criminal proceeding initiated against the applicants.

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