

Anwar Ullah Vs. Emperor

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Court : Allahabad

Decided On : Sep-12-1933

Reported in : AIR1934All173

Appellant : Anwar Ullah

Respondent : Emperor

Judgement :

Bennet, J.

1. This is a criminal appeal on behalf of one Anwar Ullah who has been sentenced to five years' Rule I. concurrently on three charges under section 409, Penal Code, and sentenced to pay certain fines. The accused was a clerk in the District Board Office at Azamgarh, and the charges are that on 11th December 1928, he drew a cheque for Rs. 2,490 from the treasury in cash, and on 16th April 1929, he drew a cheque for Rs. 1,130 in cash, and on 20th April 1929, he drew a cheque for Rs. 644 in cash, and that he committed criminal breach of trust of all these amounts. The first argument which was addressed to me was that sanction of the Local Government was necessary for this prosecution under Section 197, Criminal P.C. That section lays down that sanction is necessary in the case of a public servant who is not removable from his office save by or with the sanction of the Local Government or some higher authority and who is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of

his official duty. The lower Court has followed certain rulings and held that the actions in question were a breach of official duty and could not be said to be committed in the discharge of official duty. That question has not been argued before me 'because the previous question has been argued whether the accused is removable only with the sanction of the Local Government. The accused was originally a clerk in the office of the Collector, and it has been assumed that a clerk in the office of a Collector is only removable with the sanction of the Local Government, but no authority has been shown for that proposition. Learned Counsel argued that the accused, who is a clerk in the District Board Office, is on transfer from the Collector's Office. Learned Counsel referred to Section 85, U. P. District Boards Act, 20 of 1922, which states that a board shall contribute to the pension and leave allowances of any servant whose services are lent or transferred by the Government to the board ; and under the same section it is provided in Sub-section (3) that in the case of such a servant the board shall not, without the assent of Government, dispense with the services of, reduce the pay of, or punish any such servant. This section is headed 'special provisions as to certain servants.'

2. In Section 86 there is a provision made for the ordinary servants of the board that the board is entitled to establish and maintain a provident fund on behalf of its servants. Learned Counsel argued that the words 'lent or transferred' indicated either a temporary loan of a Government servant or a permanent transfer. I do not consider that this meaning can be applied to the word 'transfer' in this section. The word 'transfer' is used in the Financial Handbook, Vol. 2, Part, 7, Chap. 12, for Government servants who are transferred to Foreign Service. 'Foreign Service' is defined in Chap. 2, Section 9(7) as service in which a Government servant receives his substantive pay with the sanction of Government from any source other than the general revenues of India. It will be noted that for Foreign Service there must be a sanction of Government. There is no such sanction in the case of the present accused. In my opinion, Chap. 12 of the Fundamental Rules in the Financial Handbook dealing with Foreign Service refers to the case of Government servants who are transferred to Foreign Service where the transfer is not permanent. In the case of Government servants who are transferred permanently from the service of Government there is no connexion which remains between

such a servant and Government. Examples of this will be found in the case of certain officers of Government who have left the service of Government in India and who are now employed in the service of the Colonial Office in Africa or elsewhere. It is of course possible that such officers might be sent on transfer under the conditions of Chap. 12, but there are cases in which such transfers are not under Chap. 12 and are permanent.

3. An exactly similar case arises from the use of the word 'transfer' in the Transfer of Property Act. A transfer may be one which is permanent, such as a sale-deed, in which case after the transfer the subject of the transfer has no longer any connexion with the former owner. On the other hand the transfer may be for a limited time, such as the case of a lease. The transfer which is contemplated by the Financial Hand book, Chap. 12, and by Section 85, District Boards Act, is a transfer which is not of a permanent nature. For that reason I consider that the word 'lent' is added to the word 'transfer.' The word 'lent' is not a word which is found in the Financial Hand book or in the Civil Service Regulations. It is apparently introduced into the Act to indicate that the word 'transfer' is used in the Act in the sense of a temporary transfer. Before leaving these Manuals I will point out that the Civil Service Regulations, para. 802, provides for contributions for pensions from the administrators of the local fund for their permanent employees. It was under this rule that the contributions from the accused have been taken according to an entry in his own handwriting in his service book. On the other hand a contribution in the case of persons transferred is levied under Article 770 of the Civil Service Regulations. Further in the annual list of the District Board employees the accused has been shown as a permanent employee. On the other hand the name of the accused does not appear in the list of permanent employees in the Collector's Office. I would also refer to the orders which were passed for the appointment of this accused. At the time of the appointment of the accused on 6th April 1914 the District Board was a branch of the Local Government's administration. The Chairman of the District Board was also the Collector. There is a note dated 29th August 1914, made by the Collector to the General Superintendent of his office as follows:

The Secretary, District Board, wishes to get rid of Chandra bhushan Lai who has been working very badly of late. He would like an English-knowing man. Gould he be exchanged with' M. Anwarullah without inconvenience?

4. On this the office took objection to Chandrabhushan Lal, and the Collector asked for another arrangement. Another arrangement was then suggested. In that other arrangement the General Superintendent referred to the 'transfer' of Anwarullah. On this learned Counsel argued that a temporary transfer was intended. But I consider that there was no-intention of a temporary transfer because the Collector has noted that he is to come-in the place of a man who was no longer wanted by the Board. The final order of the Collector is: 'Approved. Orders maybe issued accordingly: 6th September 1914.' This shows that the Collector approved of the permanent appointment of the accused in the District Board. There? was no question of a temporary appointment or the services of the accused being lent. Now a change was introduced in the District Boards Act in 1922 and by virtue of that Act the District Board ceased to be a branch of the Local Government's administration, and the District Board become a local body merely under the control of the Local Government. The clerks who were in the District Board ceased to be servants of the Local Government. For these reasons I consider that in the present case the accused does not come under Section 197, Criminal P.C., and no sanction of the Local Government is necessary for his prosecution. As regards the merits of the case, the defence put forward by learned Counsel on behalf of the accused was that he was told by the Secretary of the District Board to draw these cheques and that he drew the cheques and gave the money to the Secretary of the District Board in cash. It is admitted that there is no evidence for the claim of the accused that he paid cash to the Secretary of the District Board. There is evidence that the accused made alterations in the cashbook and other records and also erasures. (After discussing the evidence, His Lordship held that the convictions were undoubtedly correct and proceeded). The last point on which I was addressed was the question of sentence The amount of embezzlement in the three charge is large. The accused was person who had many years service and was in a position of trust. He is not a young man who might have been led away easily. Under these circumstance I consider that the sentences are not to severe and I dismiss this appeal. The accused must

surrender to his bail here and undergo the rest of his sentence.

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