

Abdus Samad Vs. Yusuf

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Court : Allahabad

Decided On : Oct-29-1920

Reported in : AIR1921All285; (1921)ILR43All281

Judge : Piggott and ;Walsh, JJ.

Appellant : Abdus Samad

Respondent : Yusuf

Judgement :

Piggott and Walsh, JJ.

1. In this case the complainant, a master, made a complaint before a magistrate of the first class against a young workman under Section 2 of Act No, XIII of 1859 alleging that he had been guilty of a breach of contract inasmuch as he had failed to continue to work, although payment for his labour had been made under the contract in advance by the master. A magistrate of the first class dealt with the case summarily and dismissed it on the merits. The matter came up before the Sessions Judge who raised the question whether the proceeding was a proper one on the ground that the magistrate had no jurisdiction to try the case summarily. The learned Sessions Judge has set out his view in a clearly reasoned statement referring to the authorities, and the magistrate who tried the case has submitted his explanation in an equally clear statement, maintaining his original view that he had jurisdiction to dispose of the case summarily.

2. The question turns upon the interpretation to be given to Section 260 of the Code of Criminal Procedure. A magistrate of the first class has jurisdiction to try in a summary way offences not punishable with imprisonment for a term exceeding six months. The question which we have to decide is whether there is a punishable offence within the meaning of that section. In the ordinary colloquial sense of the term it certainly is not; but when reference is made to the definition of offence provided by Section 4(o) of the same Code, it is found to mean any act made punishable by any law for the time being in force. The Act under which, this complaint was brought authorizes a magistrate to pass, certain orders if a breach of contract is proved, and in the preamble, which does not conflict in any way with the enacting portion of the Act, it is provided that it is just and proper that persons guilty of such breach of contract shall be subject to punishment. Inasmuch as the Legislature has described the order which a Magistrate is authorized to make against a workman, in a case proved, as 'punishment,' we find it impossible to say that the act, if proved, is not an offence punishable by law within the meaning of Section 4(o) and therefore within the meaning of Section 260. It is unfortunate that we should find ourselves in conflict on this point with both ancient and modern authorities of other High Courts. The Madras High Court in the case of *Pollard v. Mothial* (1881) I.L.R. 4 Mad. 234 look another view; but, as pointed out in the case of *Queen Empress v. Kattayan* (1897) I.L.R. 20 Mad. 235 (238), the definition in the Code of Criminal Procedure on which we base our decision is subsequent in date to that authority. As regards Bombay, there is a quite recent authority, following a previous authority, both of which are to be found in the same volume, namely, *Emperor v. Dhondu* (1904) I.L.R. 33 Bom. 22 and *Emperor v. Balu Saluji* (1908) I.L.R. 33 Bom. 25, in which the Bombay High Court, following an English authority which deals with the question of a penalty, has emphatically taken the other view, without, however, noticing the use of the word 'punishable' in Act No. XIII of 1859. On the other hand, there is a clear dictum by a Judge of this Court, reported in the case of *Queen-Empress v. Indarjit* (1889) I.L.R. 11 All. 262, which has never been questioned and which must be taken to have been for all these years the guiding principle in this province. We have come to the conclusion that we are compelled by the force of language to follow this ruling, and we hold that this offence is triable summarily by a magistrate of, the first class. Let the record

be returned.

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