

Emperor Vs. Tika Ram

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Court : Allahabad

Decided On : Jun-08-1928

Reported in : AIR1928All680

Appellant : Emperor

Respondent : Tika Ram

Judgement :

Boys, J.

1. This is an appeal on behalf of the Local Government. A citation, Ex. A in the case, under 8. 147, U.P. Land Revenue Act of 1901, was served upon Tika Ram the opposite party in the present case. He failed to appear on the date fixed, 11th March at noon and the criminal prosecution out of which these proceedings arose was instituted against him under the first part of Section 174, I.P.C. The citation was dated 25th February 1927, but admittedly it was not served on the accused until 5 p.m. on 10th March 1927. Tika Ram admitted that the citation was served on him but stated that his village was 15 kos from the tahsil and that he fell ill of the evening of 10th March and could not attend or pay the revenue. He tendered no proof that he was ill, and, so far as the evidence on the record goes the process server stated that he was not ill at 5.p.m. on 10th March. Tika Ram further did not offer any proof that his village was 15 kos distant from the tahsil, nor, except by implication, did he suggest that the distance was the real cause of his

failure to attend. He probably intended the statement that his village was 15 kos distant to be read with his statement that he was ill as accounting for his failure to attend at the tahsil. It is not denied by the Crown that the statement as to the distance is accurate; it is only urged that it was for the accused to lead evidence on the point. So far as the facts go we may take it as unlikely that the accused would have wrongly stated the distance of his village from the tahsil when the truth as to that fact was not merely easily ascertainable in the Court of the Magistrate, but must have been very well known to everybody in the locality.

2. In the view, however, that we take of the case the point is only of minor importance. The essential facts are that the citation read as follows:

Whereas arrears... are due by you... you are hereby directed to present yourself personally in this Court on 11th March 1927, at noon in case the entire arrears together with the process fee for this sum are not paid very soon.

3. It is manifest that in view of the fact that though the citation was issued on 25th February it was not served till 10th March 1927, at 5 p.m., and called on the accused to be present at noon on 11th March 'in case the entire arrears... are not paid very soon' no conviction under 8. 174 could possibly stand. Whether the distance was a full 15 kos or not the village was clearly a long way from the tahsil, and it would be most unreasonable to serve a notice on a person at 5 p.m. one day that he was to be present with the money on the next day by noon at a distant place. Moreover, it is manifest that the accused was entitled to the benefit of the condition implied in the words 'in case the entire arrears are not paid very soon.' In view of that condition he would clearly be entitled to expect a reasonable time within which to make the necessary arrangement. Clearly the citation was phrased on the basis that it would be served upon him in good time for him to take the necessary action and it was issued apparently in good time, but through no fault of Tika Ram it was not served on him till 5 p.m. on 10th March.

4. The Magistrate did not acquit on these grounds but following the rulings of this Court in Emperor v. Bhirgu : AIR1927 All122 and Bonwari Lal v. Emperor : AIR1927 All49 .

5. It having appeared not as a result of any argument on behalf of Tika Ram or of any evidence read before us on his behalf, but on the simple statement of the case for Crown that no conviction could follow on the face of it this appeal must fail. The learned Government Advocate urged us to proceed notwithstanding and to consider the correctness or otherwise of the two rulings we have quoted. This we have felt it impossible to do. The learned Government Advocate had to admit and frankly admitted that if this case was before a single Judge he would not feel justified in asking for an obiter dictum when the case had already been declared to fail on its merits. It there is no justification for a single Judge deliberately proceeding to decide an issue which no longer arises, there is no justification for five Judges adopting such a course. The decision would be none the less obiter. The principle involved is simple. Our function whether sitting singly or sitting as a Bench whether a Division a Full Bench is limited to deciding 'some issue in being between two parties' [per Lord Sumner in the Russian Commercial Bank case [1921] A.C. 438.] If the case for the Crown had not failed on the mere statement of the facts alleged by the Crown it might have been necessary to enter into the question of the correctness or otherwise of the decisions referred to, but the moment that it appeared that the appeal must fail on the merits of the case as stated by the Crown there was an end of it, and the opposite-party could not be called upon to argue an issue which was no longer alive.

6. The appeal failing it is dismissed.

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