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Badri Prasad and ors. Vs. State

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Court : Allahabad

Decided On : Oct-21-1952

Reported in : AIR1953All494

Judge : Kaul, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 21, 21(9) and 353

Appeal No. : Criminal Revn. No. 12 of 1952

Appellant : Badri Prasad and ors.

Respondent : State

Advocate for Def. : B.L. Kaul, Adv. for ;Deputy Govt. Adv.

Advocate for Pet/Ap. : S. Mohd. Hussain, Adv.

Judgement :
ORDER

Kaul, J.

1. Badri Prasad, Gur Prasad, Jagannath, Ram Prasad, Ram Singh and Mohammad Yakub were convicted by the Judicial Magistrate, Rae Bareili, for offence under Sections 147, 341/149 and 353/149, Penal Code. Under Section 147 they were sentenced to six months' rigorous imprisonment, under Section

341/149 to a fine of Rs. 50/- or one month's imprisonment each and under Section 353/149 to nine months' rigorous imprisonment each. On appeal the Sessions Judge of Rae Bareili acquitted Mohammad Yaqub of ell the charges. The other convicted persons were also acquitted of the offence under Section 341/149, Penal Code. Their convictions under Sections 147 and 353/149 were, however, confirmed. The sentence under Section 147, Penal Code was reduced to two months' rigorous imprisonment and that under Section 353/149 to three months' rigorous imprisonment. The sentences were to run concurrently.

2. Badri Prasad, Gur Prasad, Ram Singh, Jagannath and Ram Prasad have preferred this revision application against their convictions and sentences passed upon them.

3. The material facts lie within a short compass. Canal Kulaba No. 23 is at mile 2 of Maharajganj Road in Rae Bareili district. A gul pertaining to this kulaba was removed from its original place and put in a different position by persons belonging to village Rasulpur at the instance of the Gaon Sabha. Under orders from Radha Mohan Canal Overseer, Canal Mate Manohar Lal went to Rasulpur village with some labourers, and when he was trying to remove the gul and place it again at its old position, the petitioners surrounded him and threatened to prevent him by show of force. Manohar Lal and the labourers got frightened and had to leave the place. On these findings, the petitioners were convicted and sentenced as already stated.

4. There was only one point worth consideration which was raised on behalf of the petitioners. It was contended that Canal Mate Manohar Lal was not a public servant, within the meaning of that term as defined in the Indian Penal Code. An attempt was made to show that it was not his duty to remove the gul to its proper place. I am clear that the contention is without substance. Under Section 21 (9) every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duties is a public servant. It cannot be disputed that a Canal Mate is employed by the Government and receives a salary for the performance of certain public duties. Section 14, Northern India Canal and Drainage Act, provides:

'Any Canal Officer or other person acting under the general or special order of a Canal Officer, may enter, upon any land, building, or watercourse on account of which any water-rate is chargeable, for the purpose of inspecting or regulating the use of the water, supplied and of doing all things necessary for the proper regulation and management of such canal.'

Regulation of the supply of canal water by keeping the guls and kulabas at their proper place is obviously a public duty under the Act and Manohar Lal, while discharging this duty, cannot be held to be a public servant. The full scope of the duties of a canal Mate is not clear, but we may take it that it was his duty to carry out the orders of his official superiors and in that capacity to assist the canal overseer in the performance of public duties of his office. As was observed by Princep and Handley JJ. in -- 'Nazamuddin v. Queen-Empress', 28 Cal 344 (A): 'In that sense he would be an officer of Government although he might not possibly exercise 'any delegated function of the Government'. Still his duties would be 'immediately auxiliary to those of the Superintendent who is so armed'. We think that an 'officer in the terms of Section 21, Penal Code, is one who is appointed to some office for the performance of some public duty. In this sense the peon would come within Section 21, Clause 9.' In '--'Public Prosecutor, Madras v. K. Annam Nayudu', AIR 1925 Mad 1093 (B) a P. W. D. lascar was held to be a public servant within the meaning of Section 353, Penal Code and persons, guilty of assaulting him while he was engaged in distributing water from an irrigation channel were held liable to be convicted under that section. It is, therefore, clear that the petitioners were rightly convicted.

5. It has been stated that the gul had beenplaced in the field of Kandhaiya Baba underthe orders of the Gaon Sabha and not improbably the petitioners considered that the orderof the Gaon Sabha should be respected andwhatever they did was done by them in thezeal to uphold the order of the Gaon Sabhawhich is an authority recognised under theU. P. Panchayat Raj Act. Having regard tothese circumstances, I am of opinion that theends of justice will be met if we take a lightview of the case and reduce the sentence passed upon the petitioners to the period alreadyundergone. Ordered accordingly. If they are onbail they need not surrender thereto.

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