

**Ramdeo Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Jan-23-1935

**Reported in :** AIR1935All516

**Appellant :** Ramdeo

**Respondent :** Emperor

**Judgement :**

ORDER

**Bajpai, J.**

1. The applicant Ramdeo was convicted by a Tahsildar Magistrate of an offence under Section 353, Penal Code, and sentenced to a fine of Rs. 200. His appeal was dismissed by the District Magistrate and in revision the learned Sessions Judge refused to submit the case to the High Court with a recommendation for the setting aside of the conviction and the sentence. He has therefore come up to this Court in revision and his main contention is that Wakalat Husain, the Constable against whom criminal force is said to have been used was not a public servant discharging his duty at that particular time.

2. The facts are that the police authorities at Mirzapur were informed that gambling was going on near the house of Ramdeo Underneath an Imlī tree which was a public thoroughfare and three constables, Bindeshri Rai, Amir Bahadur Singh and Ram Narain Singh, were sent to effect the arrest of the gamblers. On 5th

November 1933, the said three constables were going towards the house of Ramdeo when they met Wakalat Husain, the complainant in the present case, and asked him to accompany them and assist in arresting the gamblers. When the party was about 50 or 60 paces from, the place where the gambling was going on Ramdeo rushed forward and grappled with Wakalat Husain shouting all the time to his companions to run away. Courts below have believed this portion of the prosecution story and have convicted Ramdeo as stated above.

3. The contention is that while it is true that Wakalat Husain was a constable and as such a public servant yet when he accompanied the constables to arrest the gamblers he was not in the execution of his duty and that he was not discharging any duty as a public servant. He was just like any other private citizen whom the raiding party may have taken in confidence and from whom the raiding party might have sought assistance. Reliance is placed on the case of Mukhatar Ahmad v. Emperor 1915 All. 208, where Piggot, J., held that an Excise Inspector who had no warrant authorising a search and was assaulted by a person whose wall was attempted to be scaled in order to effect an entry in the house was not a public servant acting in the discharge of his duty and the accused who had assaulted the Inspector was not guilty under Section 330, Penal Code. My attention was also drawn to the case of Madho Smar v. Emperor 1915 All. 442, where the same learned Judge held that where the Sub-Inspector of a Police Station sent an intimation to the Sub-Inspector of another Police Station that he intended to search a house within the jurisdiction of the latter officer and secured the presence of a constable to help him in carrying on the search but the constable had no authority from his Sub-Inspector either verbal or in writing, the provisions of Sections 165 and 166, Criminal P.C., were not complied with, and a person resisting the search was not guilty of an offence under Section 353, Penal Code. In both of these cases the officer in question was a public servant, but inasmuch as he was not armed with a warrant of authority to do the thing which he intended to do it was rightly held that the accused did not prevent or deter a public servant from discharging his duty. As a matter of fact the officer concerned was exceeding his duty. In the present case Wakalat Husain was informed by certain constables that gambling was going on in a public place Wakalat Husain had every reason to believe that the information was correct. Wakalat Husain was therefore proceeding

in the direction which had been pointed out to him. Under Section 13, Public Gambling Act, a Police officer may apprehend without warrant any person gambling on a public street, place or thoroughfare, etc. etc. Wakalat Husain was a Police officer, he had received information that gambling was going on in a public thoroughfare and he would under the law be entitled to apprehend the gamblers without warrant. He was prevented by Ramdeo from proceeding in that direction by use of criminal force and Ramdeo thus deterred Wakalat Husain from discharging his duty which was to arrest the gamblers.

4. I am therefore of the opinion that there is no force in the argument advanced by learned Counsel for the applicant. It is then said that the sentence of Rs. 200 as fine is very severe. The adequacy of sentence is always a matter of some trouble to the Revisional Court which is not in a position to Judge of the local conditions or of the peculiar circumstances attending a particular case. In the present case the Courts below were satisfied that the sentence was not severe and they took into consideration the fact that the police authorities were on several previous occasions balked in their attempt to apprehend Ramdeo's gang. It is not possible for me to say that the sentence is so severe that I should interfere in my revisional jurisdiction. I dismiss this application.

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