Ram Nath Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/474398

Court : Allahabad

Decided On : Mar-19-1924

Reported in : AIR1924All684; (1924)ILR46All611

Judge : Walsh and ;Ryves, JJ.

Appellant : Ram Nath

Respondent : Emperor

Judgement :

Walsh and Ryves, JJ.

1. This is an application in revision under circumstances which we trust are exceptional, and which the order made in the present case by the learned Commissioner will render less frequent in future. In the course of an election petition--there are in fact three cases but it is only necessary to mention one, because the matter has been argued as one, each case being typical of the rest--the Commissioner, in a judgment which is not before us, came to the conclusion that the election was void, and that the candidate had been guilty of such misfeasance that it was necessary to disfranchise him from elections for a period of five years. In addition to that he found that the person who is now the applicant before us had falsely personated a voter on the electoral roll, who may of course have been dead, or ill and unable to vote, or unwilling to take part in the election, and that the candidate had aided and abetted. That in itself, as Dr. Katju has

rightly argued, is made an offence by chapter 9A, a new provision in the Penal Code dealing with electoral offences, and, for reasons which were no doubt desirable, the Legislature has required that the sanction of the Local Government should be given to any criminal proceedings for offences under that new chapter. But it so happened, and the sooner it is generally known and appreciated by persons who claim to take part in the Government of the country and to send representatives to the Legislature or Municipal Assembly the better, that a person cannot, in consequence of the machinery which has been provided, successfully personate and obtain the necessary voting paper of another individual without signing, what purports to be his name, or affixing what purports to be his thumb-impression, and prima facie, in accordance with the provisions of Section 463 of the Indian Penal Code, whoever makes a false document with a paper impressed with the pretended thumb-impression of the person who did not put his thumb-impression there, with intention to cause damage to the public, commits forgery. We can imagine nothing more fraudulent in election matters and, therefore, damaging to the public, unless election matters are to be considered so trivial as to be of no moral importance whatever, than deliberately to utilize the machinery intended to provide an honest result for the purpose of deception and of securing a result which is not the true result, and may not represent the wishes of the majority of the constituents. Such conduct is bad enough in the case of an illiterate voter who must know quite well that he is lending himself to fraud, but in the case of a candidate, who is presumed to have some measure of education and poses before the public as a person claiming to represent the view of a particular faction, such conduct is highly criminal and ought to be punished with the utmost severity. Some electoral offences like wearing badges, spending a. little too much money on excitement and tamashas, using undue influence with a voter, or even sometimes exceeding the law in endeavouring to give a correct description of what you believe to be the character of your opponent, and things of that sort, are matters which arise out of heat and party conflict, and may be regarded as things which are ephemeral and do not strike deep into the roots of public policy. These are offences which, as Dr. Kdtju has pointed out, require the sanction of the Local Government. But there is a wide difference between these and offences which are deliberate offences against the general law of the land. We have dwelt upon this

aspect of the merits because it has been strongly urged upon us that in any event we ought to stop this prosecution at its birth on the ground, as far as we can follow it, that if a man only commits an electoral offence within chapter 9A of the Indian Penal Code, it does not matter what other crime he commits and that he ought not to be prosecuted for it. We think the sooner this view is declared to be fallacious and against public policy, the better. Strictly speaking it is a view rather for the criminal courts than it is for us, but inasmuch as it has been vigorously argued, it seems necessary to deal with it by way of explaining how the matter arises before us. It was further contended that, assuming that any prima facie evidence of an offence under Section 463 of the Indian Penal Code or its cognate provisions could be suggested, the Commissioner in this particular case exceeded his jurisdiction because he was neither a Civil nor a Criminal nor a Revenue Court, and therefore, did not come within the provisions of Section 195 of the Code of Criminal Procedure, nor of Section 476 of the same Code. When we talk of the Code of Criminal Procedure we are of course speaking of the Code as it was in July, 1923, before the amending Act came into force. For reasons which we will state in a moment, it is not necessary for us to express an opinion on this subject, nor was the argument very much pressed before us for the reason that it was a little difficult to apply to this Court in revision, at any rate under Section 115, and at the same time to deny that the Commissioner sitting as an election tribunal was a civil court. All we have to say about that is this, that without coming to any final decision on the point, it seems to us clear from the Municipalities Act of 1916 that he is a court of some kind. He is not described in that Act as a civil court, but merely as entitled to exercise the powers of a civil court. But when one is construing the word 'civil' in contradistinction to criminal and revenue, one is driven to ask oneself whether the attributes of an election tribunal cannot be said with confidence not to come within the definition either of criminal or revenue, but to come within that of a civil court. Elections are certainly civil matters, an election dispute is certainly a civil dispute, and as we have said, an election tribunal is at any rate not a criminal or revenue court. It is not without importance in considering this matter that, until the recent legislation, namely the Municipalities Act of 1916, these disputes were always raised in and decided by the ordinary civil court. This brings us to the main question which we have to determine now. Assuming that an

election dispute of this kind ought not to be prosecuted under the ordinary provisions of the Penal Code for forgery, and that the Commissioner had no jurisdiction to make a written complaint in the way in which he has done for further inquiry before a magistrate, has this Court the right to interfere in revision? We think that question must be decided according to the true interpretation of Sub-section (3) of Section 23 of the said Municipalities Act. Nowhere is the relation of an election court to the High Court denned. A Commissioner, independently of any special legislation about an election petition, is certainly not amenable to the jurisdiction of this Court in any court in which he sits, and we, therefore, ought to find in the Act a definite statutory provision from which we may infer that it was intended to preserve intact the-ordinary civil revisional jurisdiction of this Court which is exercised under Section 115 of the Code of Civil Procedure. The provision in question is quite clear. It says a court may refer a question of law to the High Court under Order XLVI of the first schedule of the Code of Civil Procedure, and it is said that it has already been held in certain cases that where a. power of reference exists, there is that relationship which may be described as either subordinate, or at any rate sufficient to justify Article application in revision. But the section in question goes on to say:

there shall be no appeal either on a question of law or fact, and no application in revision against the decision of the court.

2. Prima facie that prohibition, namely, against an appeal or revision, is fatal to the contention, and indicates that it was the intention by Section 23 to confine, the High Court's power merely to advising and answering questions of law referred specially to it. This was challenged by Dr. Katju by reason of the presence of the word 'the' in the expression 'the decision.' 'The decision,' he contended, could only mean such decision us by reference to the other sections of the Act could be found to have been prescribed as part of the duties of the election tribunal, and of course directing a prosecution is not amongst the things so prescribed. This is a possible view, but on the whole we have arrived at the conclusion that it is not the correct view. The definite article 'the' is frequently used in legislation in the same sense as the Greek 'tis,' and the next clause, namely (f), rather tends to suggest that the Legislature was considering a variety of matters which an election court

might have to decide, and so gave the parties a month within which they could go back to the court and ask it to review its decision on any point. Any legislative body or draftsman who attempted to foresee any point which would arise in an election petition, would be a very far-seeing person, and it would be an unusual, if not an impossible, task for a draftsman to insert in the Act an explicit statement of all the matters which an election tribunal ought to decide. Dr. Katju's argument infers this view, namely, that the Legislature ought to give a complete statement of all the points which a Commissioner would have to decide, and that he can decide nothing which is not in the statement. We think this is a reductio ad absurdum of the argument, and sufficient to show that all matters which arise in the course of an election petition which he has disposed of one way or another, are matters which are within his jurisdiction.

3. We, therefore, reject this and the connected applications in revision.