

Ambika Prasad and ors. Vs. Emperor

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Court : Allahabad

Decided On : Feb-10-1932

Reported in : 139Ind.Cas.106

Judge : Boys, J.

Appellant : Ambika Prasad and ors.

Respondent : Emperor

Judgement :

ORDER

Boys, J.

1. I was responsible myself for the admission of this reference for hearing as I thought the case required looking into. The applicants have been convicted under Section 187 of the Indian Penal Code, and released under Section 562 of the Code of Criminal, Procedure after a warning. Two of the men are a patwari and a mukhia respectively, and the conviction is naturally of some importance to them as they are likely to lose their positions. The case has, therefore, required some thought, for it arises also under unusual circumstances. Two constables and two chaukidars went to arrest a man in a riot case. The man was working in his fields. He was arrested in the ordinary sense of the term, and there is no reason for applying any other, by securing his hands with a pagree, for the Policemen had no handcuffe. On being thus arrested he lay down on the ground and refused to

move. Now, the findings of fact are that the evidence of the two constables is believed that they asked the assistance of the accused person n who not only refused it but showed their sympathy with the man who had been arrested. It is suggested here that there is nothing on the record to show what form of assistance the constables specifically demanded. But it is more than possible that their demand for assistance did not take a specific form, and naturally so because on the findings, immediately on their demanding assistance at all the accused showed their sympathy with the man who had been arrested. It is again suggested that there was no need for the demand for assistance, and it is suggested that the demand was unreasonable. It is impossible to be at all sure of this. The constables may have realised that if left to themselves they could with the assistance of the chowkidars tackle the recalcitrant and take him to the thana, but that it was another matter if people were collected round who were his sympathisers. They may well, therefore, have desired to have the is actual physical assistance of patwari and the mukhia as being persons of influence in the village. The learned Judge has, I think, taken too narrow a view of the law. I propose to apply it step by step. There can be no question of the correctness of the conviction under Section 87, Indian Penal Code, if Section 42, Criminal Procedure Code, is properly applicable. That section reads:

Every person is bound to assist a Police Officer reasonably demanding his aid.

(A) in the taking or preventing the escape....

2. I am only leaving out the immaterial words about which there is no dispute.

3. I think it may be accepted that the man Chandrama had been 'taken', that is, arrested. Now, to consider whether he was endeavouring to escape, although he was only lying down on the ground, what was his object in so lying down? There can be no other answer but that he was lying down in order to secure his eventual escape from being taken to the thana. He could not have possibly had any other object. The assistance, then, that was demanded was demanded in order to prevent his escape. It is suggested to me that there may have been something underlying the whole incident which has not come out. It may be so, and if it is so, it is no doubt a matter which the district authorities will

consider when they have to determine whether action should be taken against the patwari and the mukhia in respect of their offices. It may be that morally speaking there is some explanation of their action, and that the present proceedings may be considered as sufficient warning, but there is nothing of which I can judicially take notice, and it is a matter for the authorities.

4. The reference is rejected. Let the record be returned.

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