

Budhua Vs. Emperor

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Court : Allahabad

Decided On : Oct-28-1927

Reported in : AIR1928All118

Appellant : Budhua

Respondent : Emperor

Judgement :

Walsh, J.

1. This case has been referred to the High Court on a question of what may or may not constitute 'intentionally preventing service on himself' of a summons within the meaning of Section 173, I.P.C., and it has been referred in consequence of a decision by the late Mr. Justice Knox in the case of Sahadeo Rai v. Emperor [1918]J 40 All. 577, that inasmuch as a tender or summons is sufficient, a refusal to receive it does not amount to preventing service. If the decision of my late brother goes as far as that was contended before the District Magistrate I find myself unable to agree, greatly as I respect every decision, especially on a question of criminal procedure, by that distinguished and experienced member of this Court. There is a similar decision reported in The Queen v. Punamalai Nadan [1882] 5 Mad. 199. I think that these decisions are liable to be misunderstood. The reasoning is based upon the method of service prescribed by Section 69, Criminal P.C. Sub-section 1 deals with personal service where it is practicable. Personal

service may be made either by delivering or tendering, but it seems to me that the tender must be a real tender of a document which is understood by the person to be served, and he must have voluntarily waived actual delivery and indicated in some way that a tender was sufficient. I think, therefore, the offence of preventing personal service must be in each case a question of fact. A man might be so busily engaged or his hands, for example, might be so dirty that he might say to the server: 'All right, put it down on that spot.' On the other hand he might say: 'it is no good delivering it, I cannot read, tell me what it says and that will satisfy me.' No doubt if the man to be served gives the server an adequate opportunity of tendering the summons, the serving officer need not deliver it.

2. In the particular case it has been found that the person to be served, not only refused to receive it, but actually shut the door of his house in the face of the officer, showing clearly an intention to refuse to accept service, and an intention inconsistent with a tender. By Sub-section 2, Section 69, the person to whom the summons has been tendered may be required to sign a receipt on the back of one of the duplicates, and if he runs away and shuts himself in his house, he clearly cannot be asked to sign a receipt, and he shows his intention to prevent service. These arguments have been submitted to the High Court in the Magistrate's referring order, and I agree with them. My brother Knox in the case referred to pointed out that a mere refusal to receive a summons is not an offence. He did not deal with a case where the conduct is clearly intentional and prevents either form of service.

3. In the Madras case the report says as so often happens in India, 'that the facts will appear from the judgment,' whereas in truth they do not. It merely appears that the accused refused to receive the summons, but it does not say what the tender was, nor whether they signed the receipt. The Court on that occasion followed a previous case but the facts in that case were different, because the summons was actually served upon the accused and he threw it down afterwards, and therefore, could not be said to have prevented service. I think a man who gets away from the serving officer with the obvious intention of not allowing him to hold any communication with him at all and shuts himself in his house, is intentionally preventing service either by tender or by delivery, and that the accused in this

case was rightly convicted and fined. Let the record be returned.

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