

Parshotam Das Vs. Emperor

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Court : Allahabad

Decided On : Jan-15-1919

Reported in : AIR1919All125; 50Ind.Cas.494

Judge : George Knox, J.

Appellant : Parshotam Das

Respondent : Emperor

Judgement :

George Knox, J.

1. Parshottam Das has been convicted by a Magistrate of the first class at Mirzapur of an offence which is set out in the judgment as violating the provisions of Rule 53(c) of the Water Supply Rules in throwing vegetables in the water whereby the water was likely to be fouled. He has applied to this Court in revision against his conviction, and one of the grounds on which he bases his application is that the only officer who could have made a regular complaint was the Secretary of the Municipal Board and the Inspector of Water Works had no authority to start a prosecution. The Water Works Act of 1891 has been repealed by the Local Act II of 1916. Section 314 of that Act says that unless otherwise expressly provided, no Court shall take cognizance of any of the offences punishable under that Act except on the complaint of or upon information received from the Board or some person authorized by the Board by general or special order in this behalf. It has

not been shown to me that the prosecution in this case has been instituted by the Board or any person authorized by them in this behalf. The Board in this question is the Municipal Board. This objection is fatal and the conviction and sentence must be and are hereby set aside. The fine or any portion of it, if paid, must be refunded.

2. But I wish to point out that possibly this need not have been the result if the learned Assistant Government Advocate who has appeared on behalf of the Municipal Board had received proper instructions. The point taken by the learned Counsel in this connection has been clearly set out in the portion for criminal revision. A copy of that petition was sent down to the District Magistrate of Mirzapur and he was asked for instructions in the case. I have seen the instructions that were furnished to the Assistant Government Advocate. They run as follows: 'Seen, no instructions necessary.' Then there are the initials of some person; who that person may be I cannot say. Now if ever there was a case in which special instructions were called for, this was one. The record of the learned Magistrate who tried the case teems with difficulties. The case is not an ordinary case. From the record it appears that the complaint against Parshottam Das was that he with several members of his family, ladies and children, visited the storage reservoir at Tanda, that the Chaukidar of that place asked the accused not to enter the gravity main or the valve-tower. He is said to have been answered sharply. As I have virtually set aside the proceedings as being unauthorized, I do not wish it to be understood that I endorse all that has been said by the witnesses in the case. The case has not been properly tried and no judicial record can be made upon the evidence as it stands, but the learned Magistrate who tried the case had before him allegations which were of a very serious nature I repeat them here simply to show what the allegations in the case were. I Parshottam Das or any other person did, On the 28th August, enter this reservoir or part of the reservoir and did compel the Chaukidar as alleged, he was guilty of a very reprehensible act and an act that might have endangered the health of Mirzapur. If he has not been convicted the fault appears to me to be to a great extent with the District Magistrate of Mirzapur. He should undoubtedly have sent instructions to enable the Assistant Government Advocate to properly plead the case. We really do not know what place was invaded, how far the invasion of the place was an offence

Hinder the Water Supply Rules and are do not know whether any person authorized by the Board did institute this case. There is on the record a letter marked Exhibit I of the 10th of October 1918. It purports to be a report made by one H. Chatterji to the Chairman of the Municipal Board of Mirzapur. It was a very proper report to have been made. It is endorsed apparently by the District Magistrate of Mirzapur. The District Magistrate may or may not be authorized to institute prosecutions. If he was, he should have supplied the Assistant Government Advocate with this information and with the notification by which this fact could have been verified. The endorsement is apparently to the Sub-Divisional Officer and runs thus, 'case instituted for act prejudicial to public health by fouling the town supply reservoir, instituted against Parshottam Das and sent to you for trial.' If nothing more transpired then there appears to be no institution by the Board under Section 314 of the Local Act II of 1916 complaining of any offence under the Act, The Sub-Divisional Offence apparently entertained this view of the case, for on his record the offence complained of is set out as Section 277 of the Indian Penal Code and Section 47(b), Water Works Act. An explanation of this matter should undoubtedly have been furnished to the, Assistant Government Advocate. I will not, allude to the other irregularities which, have taken place and I make this special. mention in the hope that District Magistrates will take care to supply the Assistant Government Advocate with full and proper instructions when they are asked for them. If they do not and this is not the first time that this has occurred and the Assistant Government Advocate is, therefore, unable to supply necessary information, it is they who are responsible for miscarriages of justice, if any, do occur.

3. I did at one time think of sending the case back for retrial but I felt that to make any such order would entail hardship upon the accused to which he ought not to be put.