

Madho and anr. Vs. Emperor

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Court : Allahabad

Decided On : Aug-13-1917

Reported in : AIR1918All238(2); 42Ind.Cas.917

Judge : P. C. Banerji, J.

Appellant : Madho and anr.

Respondent : Emperor

Judgement :

1. The two applicants, Madho and Ramanand, have been convicted under Section 332 of the Indian Penal Code, for having caused simple hurt to a constable named Ram Partit and each of them has been sentenced to nine months' rigorous imprisonment. They have also been bound' down to keep the peace for one year under Section 1C6 of the Code of Criminal Procedure The facts as found are these. The two men with a third man named Mataphal Were returning from the Cantonment Magis. trate's Court and when they were nearing the pontoon bridge the constable Ram Partit, who was on duty, found that they were all armed with what the Magistrate calls formidable lathis. The constable enquired who they were and on being told that they were servants of a pragwal, he asked them to give up their lathis if they were not prepared to go to the thana. The men refused to surrender their lathis. The constable then told them that he would not allow them to proceed. Thereupon Madho attacked, him with a lathi and struck him several times. Ram Partit rushed at Madho and seized him by the waist and the two

grappled with each other. Ramanand then struck Ram Partit with his fists until another constable appeared on the scene. For this offence the two applicants have been convicted and sentenced as stated above.

2. It is contended that the conviction under Section 332 of the Indian Penal Code is illegal, inasmuch as the constable Ram Partit who was undoubtedly a public servant Was not in the discharge of his duty as such public servant when hurt was caused to him. It appears that in August 1914, the District Magistrate of Allahabad issued an order (which appears to have been published in December 1914), to the effect that no pragwals or their servants should carry lathis within the Municipal limits of Allahabad or the Cantonment or the riverside and that the Police had instructions to seize any lathis or dandas found in the possession of pragwals or their servants. It is in pursuance of this order' that the constable ' is said to¹ have been acting. If the order was a legal order and was in force at the time when the occurrence in the present case took place the applicants have been rightly convicted. The only authority, as far as I am aware (and I have not been referred to any other) under which the order could legally have been passed, is paragraph 3 of Section 144 of the Code of Criminal Procedure, being an order, issued to the public generally and not to any individual. Under paragraph 5 of the same Section no order passed under the section shall remain in force for more than two months from the making thereof, unless in certain cases the Local Government by notification in the official Gazette otherwise directs. If the order in the present case was made under Section 144, it ceased to have operation after the expiry of two months from the date of it. It has not been stated or shown on behalf of the Crown that this order was repeated at any subsequent time and, therefore, I must take it that it ceased to have force at the time when the offence in the present case was committed. In the case of *Queen-Empress v. Dalip* 18 A. 240: A. W. N. (1896) 48: 8 Ind. Dec. (N. S.) 871. which was in some respects similar to the present case, it was held that the words "in the discharge of his' duty as such public servant' in Section 332 of the Indian Penal Code mean in the discharge of a duty imposed by law on such public servant in the particular case. If the order issued by the District Magistrate in August 1914 ceased to have effect after the expiry of two months from the date of issue, the constable in carrying out the order could not be said to have been acting in the discharge of a duty imposed by law on him. The learned

Government Pleader has referred to Section 23 of the Police Act (V of 1861) and has contended that it was the duty of the constable to obey and carry out the order issued by the District Magistrate, no matter whether that order was justified by law or not. The answer to this contention is afforded by the language of Section 23 itself, which provides that it shall be the duty of every Police Officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority. The word 'lawfully' governs both 'orders' and 'warrants', so that an order which a subordinate Police Officer is bound to obey must be an order which was lawfully issued. If the order passed by the District Magistrate could not be lawfully issued by him, it was not the duty of the constable to obey that order. Therefore when he was carrying out that order, he cannot be said to have been discharging his duty as a public servant. The case of *Queen-Empress v. Nand Kishore A. W. N. (1892) 1* was referred to but that case seems to be distinguishable. In my opinion the constable in calling upon the accused to surrender their lathis was not acting in the discharge of his duty as a public servant and, therefore, the accused could not be legally convicted under Section 332, Indian Penal Code. They were certainly guilty of causing simple hurt and were liable to conviction under Section 323 of the Indian Penal Code.

3. Having regard to the character of the men who committed the assault on the constable and the necessity of having proper control over men of this class, specially when they commit assaults on Police constables who are entitled to protection, I think that a somewhat severe sentence was called for. The sentence of nine months' rigorous imprisonment is, however, unduly severe for a simple assault of this kind. I, therefore, alter the conviction from one under Section 332 to one under Section 323 of the Indian Penal Code and reduce the sentence to one of four (4) months' rigorous imprisonment. The order passed under Section 106 of the Code of Criminal Procedure binding down the applicants to keep the peace will stand. The applicants must surrender to their bail and serve out the remainder of their sentence.

4. Conviction altered.