

Gur Din Vs. Emperor

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Court : Allahabad

Decided On : Mar-15-1919

Reported in : AIR1919All158; 50Ind.Cas.992

Judge : Henry Richards, C.J.

Appellant : Gur Din

Respondent : Emperor

Judgement :

Henry Richards, C.J.

1. This is a reference by the learned Sessions Judge of Dehra Dun recommending under Section 438 of the Code of Criminal Procedure that the conviction and sentence passed against Gurdin should be set aside. It appears that some shrubs in the compound of a house formed an obstruction at a certain corner of a public road which was considered dangerous to motorists and others using that road. The Officer Commanding the station wrote to the Cantonment Magistrate suggesting that steps should be taken to remove the obstruction. The learned Cantonment Magistrate gave a verbal order to a Mali to lop the shrubs. The Mali said that he would speak to the head Mali and the head Mali was the accused Gurdin. It is proved that this verbal order was communicated to Gurdin who disobeyed or disregarded the order, probably acting under instructions from the owner of the compound. Thereupon a charge was made against Gurdin under

Section 288 of the Cantonment Code for not having complied with the order to lop the shrubs. Gurdin was convicted and fined Bs. 3. The learned Sessions Judge has pointed out that under the provisions of the Cantonment Code before anyone could be convicted, it was necessary that a written notice should have been given requiring the trees to be lopped. It is admitted that no such written notice was given.

2. The Cantonment Magistrate has explained that the proceedings were under Section 103A, and not under Section 103B. He says there is nothing about a written notice in Section 103A, but he admits that if Section 103B applies, then a written notice was necessary and the conviction was bad. A reference to Section 103A will show that this clause gives the Cantonment Magistrate authority to cause trees to be lopped or trimmed standing on land belonging to Government. It may possibly be that the Cantonment authority might, have themselves cause the trees to be lopped or trimmed, provided the land on which they were standing was Government property. But Gurdin was being proceeded against because he had not complied with an alleged order. The proceedings against him were clearly purported to be under Section 103B and not under Section 103A.

3. There is another reference connected with this. It appears that Gurdin appeared to answer the charge to which I have just referred, The case was not taken up that day and Gurdin gave a bond that he would appear upon a future day to answer the charge. He did not appear on that day, although he did on a subsequent day when he explained that he had not attended because his master had told him not to. The learned Sessions Judge considers that inasmuch as the conviction was illegal and could not be sustained, that therefore all the rest of the proceedings were ultra vires. I do not think that this contention is good. A man may be charged with an offence, and he may be able to show that he is not guilty of the offence; but while the charge is pending, the Magistrate is certainly entitled to require the accused to give a bond for his attendance and the accused person, whether guilty or not, is bound to obey the terms of the bond and to appear to answer the charge.

4. I set aside the conviction and sentence. The fine, if paid, will be refunded. The record may be returned.

