

Behari Lal Vs. Emperor

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Court : Allahabad

Decided On : Oct-01-1920

Reported in : AIR1920All304; 59Ind.Cas.335

Judge : Gokal Prasad, J.

Appellant : Behari Lal

Respondent : Emperor

Judgement :

Gokal Prasad, J.

1. The facts of this case are out of the common. It appears that on the 13th of October 1919 one Mianji Ali Khan presented an application to the Sub Divisional Magistrate of Najibabad complaining that one Behari Lai had constructed a temple in connection with a Dharmasala and that this temple was objected to by the Muhammadans owing to its proximity to a certain mosque and a cemetery. This application did not mention any section under the two Criminal Codes but suggested that the construction was likely to lead to a breach of the peace. The Sub Divisional Magistrate, instead of proceeding under Section 107 of the Code of Criminal Procedure, which was the obvious course, sent the papers to the Tahsildar of Najibabad directing him to make inquiries from Behari Lal and his agent Makhan Lal; to record their statements and send them to him for orders. This order, too, curiously enough does not mention any section of the Penal or

Criminal Procedure Code. On receipt of this order the Tahsildar issued an order to a Chaprasi directing him to inform Behari Lal and Makhan Lal to present themselves before the Tahsildar on the next day, that is, the 28th of October 1919. The Chaprasi made a return to the effect that he had informed Behari Lal but could not find Makhan Lal, who was reported to have gone to Nagina and that he could not find out when the said Makhan Lal would return. Neither of these persons appeared before the Tahsildar on the 28th of October and he then issued summonses to them for their appearance on the 5th of November 1919. These summonses did not purport to be issued under any section of the Code of Criminal Procedure but were written on forms provided for issue of notices under Section 193 of the Land Revenue Act. Behari Lal and Makhan Lal again failed to appear on the 5th of November and on the 20th of November proceedings were instituted against Behari Lal under Section 174 of the Indian Penal Code. This was in connection with his non-appearance on the 5th of November. He was convicted of the offence on the 24th of January 1920. On the same date proceedings were instituted against him under the same section for failing to appear on the 28th October 1919 and he was convicted under that section on the 19th of March 1920. So far as Makhan Lal was concerned, he was convicted on the same day under Section 174 of the Indian Penal Code because he had not appeared on the 5th of November 1919. The same Magistrate convicted Behari Lal on the 7th of February 1920 under certain sections of the Municipalities Act, the proceedings having been started on the 21st of November 1919. Applications in revision were put in before the Sessions Judge in all the four cases and he referred the case in which Behari Lal was convicted under the Municipalities Act for the orders of this Court and that order has, I am informed, been set aside by this Court. The learned Judge has confirmed the conviction and sentence passed on Behari Lal relating to his non-appearance on the 5th of November. He has recommended the setting aside of the conviction for the offence alleged to have been committed on the 28th of October on the ground that no case has been made out against Behari Lal on which he could be legally convicted. He has come to the conclusion that the starting of the proceedings regarding his non appearance on the 28th of October after he had already been convicted with regard to the events of the 5th of November savoured of prosecution. I am in full accord with his opinion. The

learned Sessions Judge came to the conclusion that the mere fact that the summonses issued were written on a form provided for cases under Section 193 of the Land Revenue Act was not at all material and was an irregularity. Having regard to all the facts which I have stated above, I cannot but come to the conclusion that the whole proceedings were illegal from the very beginning. There was no complaint of any particular offence and the order of the Sub-Divisional Magistrate on the petition put in by Mianji Ali Khan to call for an inquiry through the Tahsildar was ultra vires. If there was any complaint at all it was a complaint under Section 107 of the Code of Criminal Procedure and the only course opened under the law to the Sub-Divisional Magistrate was to issue a notice himself to the accused to show cause why he should not be bound down to keep the peace. I cannot understand under what provision of law the Sub-Divisional Magistrate directed the Tahsildar to send for Behari Lal and Makhan Lal and record their statements and forward them to him. The whole action of the learned Sub-Divisional Magistrate seems to have been without authority and is quite inexplicable. The result is, that there was no summons issued according to law against the accused and, therefore, he could not be convicted of an offence under Section 174 of the Indian Penal Code. I, therefore, set aside the conviction and sentence and direct that the fine, if paid, be refunded to the accused.

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