

Waris Ali Vs. Emperor

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Court : Allahabad

Decided On : Jul-26-1916

Reported in : AIR1916All96; 36Ind.Cas.151

Judge : P.C. Banerji, J.

Appellant : Waris Ali

Respondent : Emperor

Judgement :

P.C. Banerji, J.

1. This is an application for revision of an order of the Joint Magistrate of Bareilly whereby he convicted the applicant under Section 174 of the Indian Penal Code and sentenced him to one month's simple imprisonment. The facts are these: An application for partition was made before an Assistant Collector. On the 12th of May 1916 he recorded a 'partition proceeding' in accordance with the provisions of Section 114 of the Land Revenue Act. As directed by the last paragraph of that section he submitted the proceeding to the Collector for confirmation. It may be mentioned that under Section 133 of the Act an appeal lay from this order and the period of limitation for the appeal as prescribed by Section 214 was thirty days from the date of the order, An appeal could, therefore, be preferred from the order of the Assistant Collector on or before the 12th of June 1916. No appeal, however, had been filed when the proceedings now in question took place. On the 23rd of

May 1916, the Collector of the district issued a summons to the accused directing him to attend on the 25th of May. In the summons it was stated that the attendance of the accused was required in order to ascertain the facts of the case (waste in kish of muqaddama). The case set forth in the notice was the partition case. The summons purported to have been issued under Section 193 of the Act. The accused refused to accept the summons and did not attend the Court on the 25th of May. On the 26th of May the Collector called upon him to show cause why proceedings should not be taken against him under Section 174 of the Indian Penal Code and on the 31st of May he ordered his prosecution.

2. Under Section 174 the accused should be convicted if he did not attend in obedience to a summons, notice, order or proclamation proceeding from a public servant 'legally competent, as such public servant, to issue the same.' The question, therefore, is, was the Collector legally competent to issue the summons in obedience to which the accused did not attend the Collector's Court? Under Section 193 of the Land Revenue Act any Revenue Court may summon any person whose attendance it considers necessary for the purpose of any investigation, suit or other business before it, and all persons so summoned are bound to attend, either in person or by an authorised agent, as such Court may direct. I have, therefore, to consider whether there was any investigation, suit, or other business before the Collector at the time when he issued the summons. As I have said above, the case referred to in the summons was the partition case. In that case the Assistant Collector had only submitted what was called the 'partition proceeding' recorded under Section 114. Section 132 provides that when a partition proceeding has been submitted to the Collector for confirmation under Section 114, the Collector can decide all appeals against orders passed by the Assistant Collector, and all appeals against the partition proceeding itself only after the expiry of the period allowed for appeal against a partition proceeding. In this case, as has been pointed out above, the period of appeal had not expired and, therefore, the Collector could not take any proceeding or make any investigation in connection with the partition case until the expiry of the period of appeal. Therefore it is clear that there was no suit or other business before the Collector for the investigation of which the attendance of the accused was necessary, and the Collector was not legally competent under Section 193 of the Land Revenue

Act to issue a summons to the accused to attend. The order of the Collector dated the 31st of May shows that he proceeded to decide the question of the confirmation of the partition proceeding before the expiry of the term of appeal. It was clear, therefore, that the summons which was issued was not for the purpose of an investigation, suit or other business which the Collector could have made or decided or performed at the time when he issued the summons. In my opinion, as the Collector was not legally competent to issue the summons which the accused disobeyed, his conviction under Section 174 of the Indian Penal Code was illegal. I accordingly allow the application, set aside the conviction of the applicant and the sentence passed on him and acquit him of the offence of which he was convicted. The bail-bond, furnished by the applicant, is cancelled.

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