

George Anthony Monterio Vs. the State

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Court : Rajasthan

Decided On : Dec-10-1954

Reported in : 1955CriLJ608

Judge : Nigam, J.C.

Appellant : George Anthony Monterio

Respondent : The State

Judgement :

ORDER

Nigam, J.C.

1. George Anthony Monterio was sentenced by the Special Judsre, State of Ajmer, Under Section 161, Penal Code and Section 5(2) of Act 2 of 1947 to rigorous imprisonment for six months and one year respectively, it being directed that the two sentences were to run concurrently. He preferred an appeal to this Court which was dismissed on 27-11-1954. Now he has filed a petition under Ait. 134(1)(c) of the Constitution for grant of a certificate that the case is a fit one for appeal to the Hon'ble Supreme Court. In this petition, I have heard the learned Counsel for the applicant and the learned Assistant Public Prosecutor,

2. The learned Counsel for the applicant has urged that this Court has held that the accused was an 'officer' within the meaning of Clause 9 of Section 21, Penal Code. It is urged that there is a divergence of opinion between the High Courts as

to the true meaning that should be attached to the word 'officer' as used in the last part of Cl, 9. In my judgment, I held that even applying the test that the officer must have delegated to him some functions of the Government or be immediately auxiliary to a person armed with authority, the accused was an officer. On that point the learned Counsel has urged that the question whether a metal examiner can be deemed, merely because of the fact that he is a metal examiner, to be auxiliary to an officer is a question of general importance. I agree with the learned Counsel that the question as to who is to be deemed to be an 'officer' within the meaning of Clause 9 of Section 21, Penal Code and whether it is necessary for the prosecution to prove that the duties of the charged person are or are not auxiliary to an officer wielding authority is a substantial question requiring determination by the Supreme Court.

3. It is also, in my opinion, necessary that the question whether the provisions of Section 137(4), Railways Act, exclude all railway servants from the definition of public servants except for purposes of Chapter 9 of the Penal Code should also be authoritatively settled. Another substantial question of law which in my opinion is involved in this petition is whether Ex. P/51 could, in the circumstances of the case, be used to corroborate the oral evidence on the record,

4. I am not impressed by the contention that the identity of the application Ex. P/5 was not established or whether the corroboration available on the file was sufficient or whether Ratan Singh should have been examined as a witness. In my opinion all these questions are Questions of fact to be determined in each particular case on the particular facts of that case. I am also not impressed with the contention that in the charge under Clause 3 of Section 161, the name of the authority to be influenced is to be mentioned. There is no authority in support of the contention of the learned Counsel and there does not appear to be any conflict of decisions on the point.

5. In view of my finding that a substantial question of law is involved, the petitioner is certainly entitled to a certificate prayed for. Certificate is granted accordingly.