

**Queen-empress Vs. Appayya**

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**Court :** Chennai

**Decided On :** Oct-15-1891

**Reported in :** (1891)ILR14Mad484

**Judge :** Arthur J.H. Collins, Kt., C.J. and ;Wilkinson, J.

**Appellant :** Queen-empress

**Respondent :** Appayya

**Judgement :**

1. The appellant, a Deputy Tahsildar named Dwarapu Chinna Appayya Naidu, was convicted under Section 177 of the Indian Penal Code by the Acting Sessions Judge of Ganjam.
2. The Acting Advocate-General appeared for the Appellant and the Government Pleader in support of the conviction.
3. The facts are admitted. On the 22nd November 1890, the appellant submitted to his official superior a false 'nil' return of lands in his enjoyment, and also on the 5th Decembar 1890 made a false statement to the same effect in a revenue inquiry before the Principal Assistant Collector. It was argued by the Counsel for the appellant that no criminal offence had been committed, that appellant was not legally bound to furnish the information required of him within the definition of 'legally bound' in Section 43 of the Indian Penal Code, and further that no order of the Revenue Board directing officers of the status of appellant to furnish such

returns has been legally proved to exist, It is also contended that the cases upon this section decided by the High Court and reported in Weir's Criminal Rulings, pages 64, 65 and 66, are wrong.

4. The Government Pleader admits that no civil suit would lie against the appellant for his act ( Section 43), and he is unable to point out any section that makes such an act per se an offence, or any law by which such act is prohibited, but relies on the cases reported in Weir's Criminal Rulings and contends that the Court is bound by those decisions. It is also admitted that the only orders of the Board of Revenue, which were put in, were orders dated 27th January 1890, which directed that certain returns should be made on 15th January 1891.

5. The main question which we have to decide is whether the appellant has been guilty of a criminal offence or is merely guilty of breach of departmental rules. It is clear that for a long series of years this High Court has held that Section 177 applies to cases not to be distinguished from that of the appellant. In 1862, in High Court Proceedings, 20th November, the Court considered that the terms of Section 177 were unrestricted and that they therefore embraced every case in which a subordinate officer may seek to impose false information upon his superior. This decision is not reported in the Madras Reports, and we think for a very good reason, as if the terms of Section 177 are really unrestricted, any falsehood which a subordinate officer may tell his superior would be a criminal offence. In Proceedings, dated 21st December 1871 6 M.H.C.R. App. 48, the Court, 'upon reading a letter from the Sessions Judge of Salem,' ruled that 'the defendants were public servants and part of the duties they undertook was to make true returns to their official superior. To make false returns was therefore an offence' under Section 177. It is not certain whether these decisions were delivered in Court, and no one appeared to argue the case for the party accused.

6. The third and most important case is Virasami Mudali v. The Queen I.L.R. 4 Mad. 144, before Kindersley and Muttusami Ayyar, JJ. This case was apparently argued by an Advocate for the accused, although the points of his argument are not given, and the Court said that, 'following the Proceedings of the 20th November 1862 and 21st December 1871, we hold that the accused was legally

bound to furnish information to his superior officer on the subject on which he furnished false information and that the offence was punishable under Section 177.' The same point was also decided in the same way in High Court Proceedings, No. 2599 of 1877.

7. With the very greatest respect to the learned Judges who gave these decisions, we are constrained to differ from them, It is a remarkable fact that no reference is made in any one of these cases to the definition given in Section 43 of the words 'legally bound,' and we are therefore of opinion that the present point has never been decided. Section 43 defines the word 'illegal' as follows: 'The word 'illegal' is applicable to everything which is an offence (see Section 40 of the Indian Penal Code), or which is prohibited by law, or which furnishes ground for a civil action, and a person is said to be 'legally bound to do' whatever it is illegal in him to omit.' Now was it 'illegal' as defined by Section 43 for the appellant to furnish a false return? It is no offence, it is not prohibited by law, and it furnishes no ground for a civil action. Take for instance this case. An official is bound by the rules of his superior to be at his office at 10 o'clock a.m. and to enter his name in a book kept for that purpose; he falsely enters his arrival at 10 when he in fact arrived at 11 o'clock; can it be said that he has committed an offence? and yet if we are to accept the High Court Proceedings, November 1862, as correct, the above act would be an offence as it is said the terms of Section 177 are 'unrestricted.' In the Proceedings, 1871, the Court thought the question to be--does Section 177 apply to a duty arising out of a contract of service, and because the defendants in that case were guilty of a breach of duty, therefore they were, it was held, guilty of an offence; and in *Virasami Mudah v. The Queer* I.L.R. 4 Mad. 144, the Judges ground their decision on the fact that because there was a departmental order which the defendants were bound to obey, a breach of that departmental order was a criminal offence. We are of opinion that the sending in the false 'nil' return and the appellant's subsequent falsehood that he held no land does not bring the appellant within the provisions of Section 177 of the Indian Penal Code and was not a case contemplated by the Code; he was doubtless guilty of breach of a departmental order, but we consider he was not legally bound to furnish such information within the definition given in Section 43 of the Indian Penal Code.

8. We are also of opinion that there was no evidence before the Court that the appellant was bound to furnish the information found to be false, the Board of Revenue Proceedings (with the exception of those already alluded to which do not affect this case) not having been put in--see High Court Proceedings, 213 of 1880 (Weir's Cri. Rul., 66).

9. We set aside the conviction and sentence and direct the appellant to be acquitted.

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