

**Public Prosecutor Vs. Madhava Bhonjo Santos and Seven ors.**

**Public Prosecutor Vs. Madhava Bhonjo Santos and Seven ors.**

**SooperKanoon Citation :** [sooperkanoon.com/785739](http://sooperkanoon.com/785739)

**Court :** Chennai

**Decided On :** Jul-25-1916

**Reported in :** 36Ind.Cas.161; (1916)31MLJ305

**Appellant :** Public Prosecutor

**Respondent :** Madhava Bhonjo Santos and Seven ors.

**Judgement :**

**Oldfield, J.**

1. The Sub-divisional Magistrate dealt with this case in appeal in an unsatisfactory way without finding on the majority of questions of fact and with reference only to the law.

2. On such findings of fact as we have and on those which for the purpose of argument, we must assume, 1st prosecution witness, a surveyor empowered to survey the Biridi Estate under Section 17(a) of Act IV of 1897, put up some boundary marks on what he thought was the estate boundary and was engaged in taking measurements on what he thought was the estate land, when accused ' came across ' his chain and after, asking who he was, told him not to measure. Accused, who also removed the marks already set up, were charged with offences punishable under sections 186 and 434 of the Indian Penal Code.

3. The Magistrate has acquitted the accused of the latter offence on the ground that the marks were not fixed by a public authority, apparently because the marks were fixed on the land in dispute between the Biridi and the adjacent Palur estates and in the possession of the tenants of the latter and the notification empowering 1st prosecution witness did not authorise him to fix marks or enter on Palur. This finding however included nothing as to the ownership of the disputed land and on adjudication that it did not belong to Biridi and therefore, as it stands, was insufficient to support the decision. And further, Section 434 deals with all marks fixed by the authority of a public servant, such as 1st prosecution witness immediately was, without distinction between those fixed correctly and incorrectly and without reference to the propriety of his exercise of his authority in the particular case. This part of the decision would therefore in any event be unsustainable.

4. The Magistrate's reasoning as to Section 186 in accordance with which the case has been argued before us, is similarly founded, though it gains additional plausibility from the fact that prosecution witness's conduct in entering on accused's land, if it was accused's, was *prima facie* a trespass. It was then, however, a matter for decision whether accused had a right of private defence and whether it was taken away by Section 99 of the Indian Penal Code or whether, as it is argued, that section is applicable only when the public servant concerned has acted in strict accordance with law. On the first point, it is not clear how 1st prosecution witness's intention was among those enunciated in Section 441 of the Indian Penal Code and there is no finding that it corresponded with any of them. On the second point, it is in my opinion unnecessary to consider the cases from other Presidencies, which have been relied on before us, when the decisions of this High Court, *Queen Empress v. Pukot Kotu* I.L.R. (1896) M. 349, *Queen Empress v. Tiruchittambala Pattar* I.L.R. (1896) M. 78 and *Queen Empress v. Poomalai Udayan* I.L.R. (1398) M. 296, which we are bound to follow are available. They are against the view of the law for which accused contend. It is unnecessary therefore to say more regarding it than that the argument based on accused's possession of a right of private defence, gives no effect to the words in Section 99 'under colour of his office, though that Act may not be strictly justifiable by law'. The question which the Magistrate should have considered and must now

deal with, is whether 1st prosecution witness was acting in good faith, that is with due care and attention and the measure of due care and attention to be insisted on depends on the circumstances of the particular case and in this case has not yet been ascertained.

5. Though the utility of Prosecutions such as this depends largely on their promptitude, the present proceedings were not instituted for over 4 months after the occurrence they arose from; and the trial before the Sub-Magistrate ended over 18 months after it. It is particularly unfortunate that we cannot deal with the case finally. In the circumstances, however, we must set aside the lower appellate Court's decision and direct a rehearing of the appeal in the light of the foregoing with reference to good faith of the 1st prosecution witness and the other questions raised in the appeal grounds but not yet considered. The appeal will be reheard by the District Magistrate or any other first class Magistrate to whom he may transfer it for disposal, other than M.R. Ry. D. Umamaheswara Row.

**Sadasiva Aiyar, J.**

6. This is an' appeal by the Government against the acquittal of the accused who were charged under sections 186 and 434, Indian Penal Code with having obstructed a Government Surveyor from measuring a Banjar land situated in the boundary between the Biridi Zamin Estate and Palur Zamin Estate and with removing the field stones planted by the said surveyor along what he considered to be the boundary line.

7. The accused were convicted by the Tahsildar Magistrate of Chatrapur after a protracted trial and sentences of fine were imposed on the accused. I find that the date of the charge sheet is 3rd April 1914 and the date of Tahsildar's judgment is 28th March 1915 nearly a year later.

8. On appeal, the first class District Magistrate without going into the facts in detail quashed the convictions on the following conclusions:--1. 'The survey of the disputed land in the boundary between the two estates ' does not seem to be covered by the notification under Section 17(a) of Act IV of 1897 (The Survey and Boundaries Act) which relates only to the Biridi estate. '2. ' The action of the

surveyor in entering upon and surveying land which from the evidence appears to belong to Palur Estate, is not justified and authorised, there having been no attempt on the side of the prosecution in the case to prove clearly and beyond all possibility of doubt that this land belongs to Biridi estate and not Palur estate.' (I might add that the eight accused persons are the servants or tenants of the proprietor of the Palur Estate). I must say that the finding of the Deputy Magistrate on the question whether the lands belong to the Biridi or the Palur estate is not satisfactory. I, however, gather from his judgment that he intends to find that the lands which were attempted to be further surveyed by the Prosecution witness No. 1 (surveyor) and on which he had planted the stones in dispute did belong to the Palur estate,

9. The learned appellate Magistrate argues (see paragraph 6 of his judgment) that, the stones having been fixed on land which the surveyor was not authorised to survey, the land marks fixed by him do not come within the meaning of the words 'land marks' fixed 'by the authority of a public servant' found in Section 434 of the Indian Penal Code. He therefore acquitted the accused of the offence under Section 434 of the Indian Penal Code. Then he says in respect of the offence under Section 186, that 'the removal' (of the stones) 'was the obstruction for which the appellants were found guilty under Section 186 of the Indian Penal Code and that as the removal itself was not an offence under Section 434, it followed that there was no obstruction also under Section 186. The Deputy Magistrate seems to ignore the fact that there is evidence on the prosecution side not only about the removal of the demarcation stones but also about the fact that the surveyor was obstructed from taking measurements by some of the accused standing across the measuring chain and preventing the surveyor from taking measurements. The Tahsildar Magistrate also has not kept the two facts separately in his mind when writing the concluding portions of his judgment. Section 434 of the Indian Penal Code uses the words, 'the authority of a public servant.' Section 186 uses the expression, 'any public servant in the discharge of his public functions.' An analogous Section 183 uses the words 'the lawful authority of any public servant.' The Deputy Magistrate was evidently of opinion that unless the surveyor was legally authorised and was discharging the functions as surveyor legally and under such due authorisation, the removal of the land

marks fixed by him would not be the removal of the marks fixed by ' authority of the public servant' and that obstruction to his acts would not be obstruction to his ' discharge of his public functions ' and hence the acts of the accused would not fall under Section 434 and 186 of the Indian Penal Code.

10. So far as Section 186 of the Indian Penal Code is concerned, there are no doubt, several Calcutta decisions ; (See *Abdur Gafur v. Queen Empress* I.L.R. (1894) C. 286 and in the Matter of *Baroda Kanto Paramanick and Anr* 2 in support of the view of the Deputy Magistrate. That Court has taken a similar view as regards offences under Section 183 also. (See *Gunga Narain Poddar v. Beboo Mundal* (1867) 7 W.R. CrL. 12, *Lilla Singh v. Queen Empress* I.L.R. (1894) C. 286, *Adhar Midday v. The Empress* (1900) 5 O. W.N. 391 The Bombay High Court in *Beg v. Vyankatray Shrinivas* (1870) 7 Bom H.C.R. 50 held that if a public servant bona fide believed that he was discharging his public functions within the scope of his authority even though he was mistaken as to the extent of his powers, an obstruction caused to him would be punishable under Section 186 of the Indian Penal Code. This decision was approved of in *Bhawar Jivaji v. Moolii* I.L.R. (1888) B. 377. In *Queen Empress v. Tulsiram* I.L.R. (1888) B. 168 however, it was held that though a public servant, that is, a surveyor acted in good faith under the orders of a Collector in trying to measure a land, as the Collector's order was wholly illegal and entirely ultra vires, the obstruction caused by the accused to the survey would not amount to an offence under Section 186 of the Indian Penal Code.

11. It was held in *Queen Empress v. Janki Prasad* I.L.R. (1886) A. 293 that obstruction to the execution of a warrant which was sealed but which was only initialled by the officer issuing the warrant (instead of being signed) did render the obstruction punishable under Section 186 of the Indian Penal Code if the officer executing the warrant acted in ' good faith.

12. In Madras it has been held consistently as regards offences both under sections 183 and 186 of the Indian Penal Code that the good faith of the public servant would render the accused's act an offence, though the public servant was acting illegally. See *Weir* 1st Vol. pp. 127 to 129, *Queen Empress v. Pukot Kotu*

and Ors. I.L.R. (1896) M. 349, Queen Empress v. Poomalai Udayan I.L.R. (1398) M. 296, Queen Empress v. Tiruchittambala Pattan (1867) 7 W.R. CrL. 12 and Queen Empress v. Ramayya I.L.R. (1894) C. 286. No doubt Mr. Justice Shephard in I.L.R. 21 M. 78 distinguishes the case in Lilla Singh v. Queen Empress I.L.R. (1894) C. 286 and does not dissent therefrom, but I am of opinion that the decision in Queen Empress v. Poomalai Udayan I.L.R. (1398) M. 296 is wholly irreconcilable with the Calcutta decisions. At page 298, it is said that if the act of the public servant, 'however irregular and illegal it may have been,' was done in good faith under the colour of his office, the offence under Section 186 would be committed if he was obstructed.

13. The Deputy Magistrate has not applied his mind to the question whether the surveyor acted in good faith. Section 99 Clause (2) of the Indian Penal Code, no doubt in terms applies only to the right of private defence against the act of a public servant acting in good faith under the colour of his office but that section has been held by this Court to throw light on and govern the interpretations of the expressions 'lawful authority' and 'discharge of public function' found in sections 183 and 186 of the Indian Penal Code and I think it is too late to raise the question whether it is strictly logical to interpret sections 183 and 186 in the light of Section 99 Clause 2.

14. As regards 'good faith' we held in a case decided very recently that if the public servant did not exercise due care and caution in arriving at his opinion that he had authority to do the obstructed act, he cannot be said to be acting in good faith.

15. Even if the surveyor in this case had no authority to go upon the Palur estate lands to measure them and to fix demarcation stones upon them, if he in good faith believed that he had such authority or that the lands were really in Biridi Estate, the obstruction to him would fall under Section 186. Though there is no express decision as regards the words 'authority of a public servant' used in Section 434 of the Indian Penal Code, I think the same considerations would apply to an offence under that section as to an offence under sections 183 and 186.

16. The question whether there was any act of obstruction on the part of the accused or some of them to the measurement by the surveyor has also been not

considered by the Deputy Magistrate. Mr. Prakasam for the accused argued that the evidence was not sufficient to prove more than a verbal remonstrance or representation to the surveyor but this is a question of fact which should be decided by the appellate Magistrate on the evidence. The order of acquittal by the Deputy Magistrate is therefore set aside. The District Magistrate himself or any First Class Magistrate (other than Mr. Umamakeswara Row) to whom he might transfer the appeals for disposal shall hear the appeals Nos. 136 to 143 of 1915 on the file of the Deputy Magistrate of Chatrapur afresh in the light of the above remarks and dispose of them according to law.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**