

In Re: Bob Dore

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Court : Chennai

Decided On : Apr-05-1916

Reported in : 35Ind.Cas.165

Judge : William Ayling and ;Napier, JJ.

Appellant : In Re: Bob Dore

Judgement :

ORDER

1. The question referred to us by > the District Magistrate of Bangalore is whether he has exceeded his powers in awarding a sentence of six months' rigorous imprisonment to a European British subject in Criminal Case No. 7 of 1915, his view being that as a Justice of the Peace, he can only pass a sentence of imprisonment for three months, in which case the sentence passed by him for six months would be illegal. This view is evidently founded on the language of Section 446 of the Criminal Procedure Code, which limits the powers of a Justice of the Peace to passing a sentence on a European British subject to a term of three months. We have had considerable difficulty in ascertaining the powers of the District Magistrate of Bangalore in respect of a European British subject. The Public Prosecutor has invited our attention to the history of the various Notifications and we are satisfied that there are only two Notifications at present in force, namely Notification No. 680 I-B of the 19th March 1912 and Notification No. 732 D of March 1913. Notification No. 680 directs 'that any Justice of the Peace in or for any country or place beyond the limits of British India shall have, in regard to

a European British subject, all the ordinary powers which may be conferred on a Magistrate of the first class under the Code of Criminal Procedure, and, in Addition, all the powers which may be conferred on a Magistrate under Sections 186 and 190 of the said Code'. The term ordinary powers which may be conferred has reference to Section 36 of the Code vide *Loghan v. Romer* 12 Ind. Cas. 303 : 34 M. 343 : (1911) 2 M.W.N. 196 : 12 Cri. L.J. 535 and does not mean the general powers of a Magistrate under the Code. The 'ordinary powers' are specified in the Third Schedule and are to be found in Clauses I, II and III of that Schedule. They do not include powers to try European British subjects, that power being reserved under Clause V, Sub-clause 15, to the District Magistrates. It is true that Mr. Cox is a District Magistrate but these ordinary powers conferred by the Notification are only incorporated by reference from the Code and it is not Open to us to look at any part of the Schedule other than that containing the ordinary powers specially made applicable. The powers which may be conferred on a Magistrate under Section 186 are powers with reference to offences committed outside the local limits of his jurisdiction and those under Section 150 are powers to take cognizance of offences for which he may try or commit for trial. But these powers do not enable him to try or commit for trial any European British subject, such power being given by Sections 443 and 446 which are not included in the Notification. The other Notification No. 732 is a quasi-statutory Notification in exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1602, applying a large body of enactments in force in British India to the Civil and Military Station of Bangalore, over which, although outside the limits of British India, the British Government has, by treaty, jurisdiction exclusive of that of the Government of Mysore. No Indian statute applies to the Civil and Military Station, the legislative power being exercised under the Indian (Foreign Jurisdiction) Order in Council above referred to. This Notification applies the Code of Criminal Procedure of 1898 to the Station subject to four exceptions, the fourth being 'nothing in this Code as applied shall be deemed to apply to proceedings against European British subjects,' etc. If this matter were *res integra*, we should be unable to find any power to apply the Code or any portion of it to a European British subject, for that seems to us to be the plain meaning of the words; and that being so, there would be, in the District Magistrate, no power to try a European

British subject at all, the earlier Notification quoted having, as already pointed out, not given the power. We are, however, relieved from the necessity of holding this, as the matter has been considered by a Full Bench of this Court which has arrived at a conclusion which we think binds us, although on a different Notification. The decision is *In re W.B. Lawrance* 9 Ind. Cas. 255 : 9 M.L.T. 322 : (1911) 2 M.W.N. 199 : 12 Cri. L.J. 42 : 34 M. 346 The District Magistrate of Bangalore had refused to take cognizance of an offence against a European British subject on the ground that Notification No. 2668, which applied the Criminal Procedure Code to the station, exempted European British subjects from its operation and the Full Bench had to consider the proviso, which is in exactly the same terms as that in the present Notification No. 732 D. They held that although in terms it did not apply the Code, still it must be read as reproducing the effect of an earlier Notification of the 1st March 1883, which applied the whole Code with the exception of so much of the Code as applies to European British subjects. It is obvious from the language used by the Full Bench that they thought the difference in language of the later Notification was due to inadvertence. The earlier Notification made a European British subject subject to the general powers of the District Magistrate over all British subjects and the Full Bench decided to read the latter Notification as having the same effect. The Notification we have now to construe is in the same terms and we are bound to apply the same reasoning. We, therefore, hold that the District Magistrate has with reference to European British subjects all the powers under the Code of a District Magistrate not limited by the special provisions applicable to European British subjects. He, therefore, has power to try a European British subject and sentence him to a term not exceeding two years. We think it right to express our surprise that after the decision of this Court in January 1911 pointing out the difficulty created by the language used in Notification No. 2668 a fresh Notification should have been issued in exactly the same terms. The papers will be returned to the District Magistrate.