

Emperor Vs. Lal Bage

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Court : Chennai

Decided On : Oct-08-1917

Reported in : 47Ind.Cas.666

Judge : Phillips and ;Krishnan, JJ.

Appellant : Emperor

Respondent : Lal Bage

Judgement :

1. The prosecution case is that prosecution 1st witness paid three annas to accused as a mamul.' The demand of the 'mamul' is spoken to not only by prosecution 1st witness but also by prosecution 2nd witness, and the payment of the money was witnessed by prosecution 4th witness, the Circle Inspector. The Sub-Magistrate who tried the case believed these witnesses, and there is certainly no reason, in our opinion, for disbelieving prosecution 1st witness, who made his statement to the Inspector at the earliest opportunity. Accused's story is that he paid three annas to prosecution first witness as earnest money for purchase of a goat, and that prosecution 1st witness returned the money as he withdrew from the bargain. Defence witnesses Nos. 1 to 3 are examined in support of this story, but the prosecution witnesses were not cross-examined as to their presence at the scene of offence and the Sub-Magistrate has given good reasons for rejecting their evidence. On the facts we think the Deputy Magistrate has paid too little regard to the opinion of the Magistrate who heard the evidence, an opinion in

which we entirely agree.

2. As regards the point of law the Deputy Magistrate considers that all the elements necessary to constitute an offence under Section 46 of the Police Act are not established. The mere demand of a 'mamul' or customary payment made in order to obtain the favour of the official demanding it is itself a 'threat' and consequently the obtaining of money by such a demand comes within Section 46 of the Police Act. In this case we have also the evidence of prosecution 1st witness that he paid as the Police were troubling him, and in Exhibit A he says the Police threatened to take him to the Police Station; we, therefore, restore the conviction by the sub-Magistrate under Section 46 of the Police Act and confirm the sentence of imprisonment but reduce the fine to Rs. 15.

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