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In Re: A.S. Socha Gowder

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Court : Chennai

Decided On : Oct-14-1954

Reported in : 1956CriLJ754

Judge : Somasundaram, J.

Appellant : In Re: A.S. Socha Gowder

Judgement :
ORDER

Somasundaram, J.

1. The petitioner in this case has been convicted for an offence under Section 175, I.P.C. and sentenced to a fine of Rs. 100 by the first court, which was reduced to Rs. 25 by the appellate court. The petitioner was acting as karnam of certain villages during the absence on leave of another karnam. The Collector appointed P. W. 3 as the karnam of those villages to whom the accused has to surrender all his records.

The order appointing P-.W. 3 was communicated to the petitioner and in spite of P. W. 3 asking for the records, the accused failed to hand over the records to P. W. 3.

On 9-11-1953 the Tahsildar personally directed the accused to hand over charge to P. W. 3. Even, then the accused did not do so. On 12-11-1953. the Tahsildar

went to the village of the accused. He was found absent.

The collector then issued an order to the police to take necessary action against the accused. Then, on 24-11-1953 the accused voluntarily handed over charge to the revenue inspector. Thereafter, the Collector ordered prosecution of the accused for having failed to hand over the records to P. W, 3 in pursuance of the order of the Tahsildar which was given to the accused orally.

2. The ground urged is that the petitioner is not legally bound to produce or deliver the records within the meaning of that expression 'legally bound to do' in Section 43, I.P.C. Section 43 defines what is meant by 'illegal'. It says

The word 'illegal' is applicable to everything which is an offence 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.

3. The learned Counsel for the petitioner relies on - 'Queen Empress v. Appayya' 14 Mad 484 (A), in support of his proposition that the petitioner is not legally bound to hand over records to-the newly appointed karnam. There, a Deputy Tahsildar who submitted false return to his superior officer and made a false statement in a revenue enquiry before the Principal Assistant Collector was convicted for an offence under Section 177, I.P.C. Section 177 being where a person is legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows to be false.

It was conceded in that case by the Government Pleader who appeared for the State that his refusal to furnish the true information would not be a ground for a civil action. It was then held that in the absence of any other provision, he cannot be said to be legally bound to do. But the facts of the present case are different. When a karnam is in possession of Government records he has 'ex necessitae' to hand over the records to another karnam who is duly appointed by the Collector,

His default to hand over the records will certainly give rise to cause of action against him and the Collector is entitled to file a suit for the recovery of the account books and all the records from the karnam. Here, undoubtedly a civil action will lie

against the petitioner for his refusal to hand over the records. His action would certainly fall within the definition of 'legally bound to do' under Section 43, I.P.C. If he is legally bound to do an act and if he fails to do so, then Section 175, t. P.C. will apply.

4. The conviction is therefore correct and the sentence of fine of Rs. 25 in the circumstances of the case cannot be said to be excessive. The petition is, therefore, dismissed.

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