

Chandi Pershad Vs. Evans

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Court : Kolkata

Decided On : Aug-13-1894

Reported in : (1895)ILR22Cal123

Judge : W. Comer Petheram, Knight, C.J. and ;Beverley, J.

Appellant : Chandi Pershad

Respondent : Evans

Judgement :

W. Comer Petheram, Knight, C.J. and Beverley, J.

1. On the 7th of April 1894, the Chairman of the Monghyr Municipality forwarded to the Magistrate of the District a report by Mr. Evans, a Municipal Commissioner, complaining of the conduct of Chandi Pershad, with a request that he might be prosecuted, if in the opinion of the Magistrate any criminal offence had been committed by him. On the 12th the Magistrate made this order: 'The applicability of Section 228, Penal Code, is doubtful. But an offence appears to have been committed under Section 448, Penal Code. I direct prosecution under that section. To the Joint-Magistrate.' The trial was commenced on the 28th, before Mr. Jarbo, a Deputy Magistrate. On that day Mr. Evans himself was examined as complainant, and as for the purpose of what we have to say we accept his statement as absolutely accurate, and as his case cannot, of course, be put higher than he puts it himself, we think it best that he should tell his own story, which is as

follows:

On the 6th April, I think it was, I and Mr. Thomas and a Native gentleman, whose name has slipped my memory, were sitting as a Revision Committee of the Municipal Board hearing, and deciding petitions. This was in a room adjoining the public office room. The present accused, Babu Chandi Pershad, came into the room uncalled. No one was allowed into the room unless sent for. I had warned this man on the very first day of our sitting. I believe it was the 18th March, Dr. Vaughan being present. Chandi had entered this room of ours and interrupted us. He did so ostensibly to present a petition of revision of assessment. We told him then that having reconsidered the matter we had passed orders upholding the assessment, and we would not alter thorn. He refused to go and we had to turn him out. Ever since then he has been coming worrying us to reconsider our order and prevented our work going on. On the 6th April he entered our room. He walked round to where the petitions were being sorted on the floor and began pulling them about. As Chairman of the Committee, I ordered him to leave the room. He took no notice of my order and then Mr. Thomas spoke to him. He took no notice of that order either, and I rose and had to turn him out. He then said: 'Yihan hooch insaf nahin hai, sub be-insaf.' I went back to my chair and resumed work. In the course of ten minutes there was a hubbub in the east verandah.] went out and saw the present accused gesticulating to the crowd and stating that no justice could be obtained. This was in the verandah, and I told him to leave it. He Said he had a right to stay there. I called for a constable 'then every one left. I called for a constable as accused's manner was insulting to us and exciting to the crowd and I feared a breach of the peace.

2. Some witnesses were examined on the same day, and a charge was framed, after which the trial was adjourned to the 4th of May for the accused to summon his witnesses. On that day two witnesses were examined for the defence, and the Deputy Magistrate gave his judgment, by which he convicted the accused of an offence under Section 448, and sentenced him to pay a fine of Rs. 200, or in default to 14 days' rigorous imprisonment. This judgment was afterwards upheld by the Sessions Judge on appeal, and this rule was obtained from a Division Bench of this Court on the 17th of July to revise the whole proceeding.

3. In answer to the rule the District Magistrate, Mr. Phillips, has written a letter to the Registrar of this Court which, as we understand it to be his wish that his arguments should be made public, we have had copied here. It is as follows:

Sir, In reply to letter No. 2141, dated 19th July 1894, I have the honour to forward the record of the case called for, and to show cause as follows: 'A letter from the Deputy Magistrate, Mr, Jarbo, is herewith submitted.

' Grounds : I. Even if it be admitted for the sake of argument that the first and original entry of the petitioner was not with intent to intimidate, insult or annoy, it is clear that, after he had been ordered to leave, he remained with one of such intents. The petitioner's conduct appears to have been outrageous and most insulting to the Municipal Commissioners sitting, Mr. Thomas and the Rev. Mr. Evans. He interrupted and obstructed their work, and as Municipal Commissioners are public servants, the petitioner might have been convicted under Section 186, Penal Code, also.

' II-VII. All these grounds have been dealt with by the Deputy Magistrate and the Sessions Judge on appeal. If this petitioner had behaved decently, quietly, and with ordinary respect, probably nothing would have happened. I know of no absolute right to enter a Municipal Office. Accounts are open to the inspection of any tax-payer on a day or days to be fixed in each month (Section 711, Bengal Act III, 1884). The budget is open to inspection for fourteen days at all reasonable times (section 78). Then by Section 117, the Commissioners declare at what hours of each day the office shall be open for the receipt of money and the transaction of business. The petitioner, as a matter of fact, did not want to see accounts or to pay in money. The Revision Committee were sitting as a Court in a room, which is set apart for their so sitting. Till quite recently it was used as the Court of the Bench of Honorary Magistrates. I was of opinion that probably Section 2282, Penal Code, did not apply, as the Commissioners were not a Court. If they were not a Court, then the provisions in the Procedure Code as to open Courts would not be applicable, and even supposing they were applicable, that would not prevent the Commissioners from making due arrangements for the proper transaction of the business before them. They were absolutely within their rights in directing that only

those who were called should come in. The room is a small one and not spacious like a Court. The petitioner begs the issue when he speaks of his right to enter for a lawful purpose. As regards the fine, I have ascertained from the Income Tax Office, that the petitioner pays an income tax of Rs. 143-3-8. He is reputed to be a wealthy man.-I have the honour to be, &c;, (Sd.) H.A.D. Phillips, Magistrate.

4. The broad question we have to consider is whether, upon the facts as stated, the offence of house-trespass, as defined in Section 442, Penal Code, has been committed by Chandi Pershad against Mr. Evans. We say against Mr. Evans, because the offence, if any was committed, was not one for which the Commissioners could prosecute and could throw the expenses on the rates under Section 352 of the Municipal Act, but was an offence against the complainant, Mr. Evans alone, which he could himself compound for any satisfaction, pecuniary or otherwise, made to himself, under Section 345 of the Procedure Code. Whether the charge is made under Section 4413 or Section 442, the prosecution must prove that the property trespassed upon was at the time in the possession of a complainant who could compound the offence under Section 345 of the Code, and as this is the case, we think the charge must fail, even if there were no other reason, on the ground that the complainant's own statement, so far from showing that the room was in his possession, shows that it was not, but that he was merely sitting in it with other persons at the invitation and with the consent of the person, whoever he may be, as to which we know nothing, who is in possession of the room in the well understood sense that he is the person to whom the right to immediate possession belongs. But even if it were shown that the room was in the possession of Mr. Evans at the time, or that it was a building used as a human dwelling, a place for worship, or a place for the custody of property, still it would be necessary, under either section, for the prosecution to prove that the accused trespassed in it, with intent to commit an offence, or to intimidate, insult, or annoy some person who was in possession of the room, and upon Mr. Evans' own statement, it is, we think, apparent that the accused did not enter the room, or remain in it, for any or either of such purposes, but his only object in going and remaining there was to endeavour to induce Mr. Evans and his colleagues to reconsider their decision.

5. The appellant's grievance was that his appeal against the assessment had been disposed of in his absence, and as we observe from the judgment that there are sometimes as many as 600 petitions to hear in a day, it may be possible that some of them may not be as fully heard as the appellants would wish. Moreover, the verbal insult which the Magistrate finds constituted a part of the offence was, on the evidence, uttered after the petitioner had left the room, and was addressed to the crowd outside.

6. We are perfectly well aware that it is extremely annoying to be compelled, or even persistently entreated, to reconsider a matter which has been already disposed of, to the best of the ability of the person who has disposed of it, but we must say that this is the first time we ever heard it suggested, that it is a crime or an insult to present a petition of review, even if it is pressed in such a way as to worry and distress the person to whom it is presented, and if the useless consideration of it prevents him from attending to his other business.

7. We are of opinion that the rule must be made absolute. The conviction will be set aside and the fine, if paid, must be refunded.

1 Account books to be kept open and quarterly statement published.

[Section 71: The account books of the municipality shall be open to the inspection of any tax-payer at the office of the commissioners on a day or days to be fixed in each month.

An account showing the receipts and expenditure during the quarter, arranged under the proper heads and duly balanced, shall be prepared immediately after the close of each quarter, and shall, with the account books, be open to the inspection of any tax-payer.

A similar account shall be prepared for each year as soon as possible after its close, and shall be open to inspection as aforesaid.]

2 Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

[Section 228: Whoever intentionally offers any insult or causes any interruption to any public servant while such public servant is sitting in any stage of a judicial proceeding, shall be punished with 'simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

3 Criminal trespass.

[Section 441: Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult, or annoy any person in possession of such property; or having lawfully entered into or upon such property, unlawfully remains there with intent there by to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit criminal trespass.]

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