

**Basanta Kumar Gon Vs. the State**

**Basanta Kumar Gon Vs. the State**

**SooperKanoon Citation :** [sooperkanoon.com/855711](http://sooperkanoon.com/855711)

**Court :** Kolkata

**Decided On :** Dec-05-1955

**Reported in :** AIR1956Cal118,1956CriLJ524

**Judge :** Debabrata Mookerjee, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 195(1); ;[Indian Penal Code \(IPC\), 1860](#) - Sections 186, 441 and 448

**Appeal No. :** Criminal Revn. No. 787 of 1955

**Appellant :** Basanta Kumar Gon

**Respondent :** The State

**Advocate for Def. :** Soudhendra Kumar Basu, Adv.

**Advocate for Pet/Ap. :** Sambhu Nath Banerjee and ;Ganga Narayan Chandra, Adv.

**Judgement :**

ORDER

**Debabrata Mookerjee, J.**

1. The petitioner was convicted under Section 448, Penal Code, and sentenced to pay a fine of Rs. 100/- in default to suffer rigorous imprisonment for four months.

The trial was held by a Magistrate of Kalna upon two charges under Sections 186 and 448, Penal Code.

The charge of offence relating to obstruction to a public servant under Section 186 I. P. C. was found unsustainable by the learned trying Magistrate on the ground that a proper complaint had not been made in accordance with the provisions of Section 195, Criminal P. C.

The result was that the learned Magistrate acquitted the petitioner of the charge of offering obstruction to the public servant concerned in the discharge of public functions and the petitioner was convicted of the other charge under Section 448, I. P. C., and sentenced to pay a fine of Rs. 100/-, in default to suffer rigorous imprisonment for four months.

2. The case for the prosecution briefly stated was that at an Attestation Camp proceedings were going on on 4-8-1954. The Attestation Officer was according interests in Mouja Purba Khanpur in which the Gon Babus of Putsuri were interested as Darpatnidars. An agent of the Gon Babus was representing them and certain collection papers were placed for consideration of the Attestation Officer.

The Officer however was not satisfied with the manner in which information asked for was being supplied and he asked the agent of the Gon Babus to go back to the kutchery and send somebody who was really in a position to assist him. At about 11-30 A. M. the petitioner, who was one of the proprietors of this estate, entered the attestation camp and appeared to be an temper. He remonstrated with the attestation officer that the documents were there to which reference could be made for the purpose of completing his records and that there was no occasion whatever for the attestation officer to send for him.

At this the attestation officer became very much annoyed and told the petitioner to clear out. The petitioner then flew into rage and uttered objectionable words to the effect that he would teach him a lesson and so on. This evidently caused some disturbance in the office and then a report was made as a result of which the petitioner came to be tried upon charges under Sections 186 and 448, I. P. C.

3. The petitioner denied the charges that had been framed against him and his case seems to be that the prosecution evidence is a gross exaggeration of what exactly happened at the Camp. It is further the case for the defence that the petitioner did not come to the place on his own but that he had been sent for and he came on invitation from the attestation officer.

4. The learned Magistrate acquitted, as I have said above, the petitioner on the ground that there was no valid complaint against him for the alleged offence of offering obstruction to a public servant but convicted and sentenced him of criminal trespass under Section 448, I. P. C.

5. On behalf of the petitioner Mr. Banerjee has argued that the substance of the case against the petitioner is that he had offered obstruction to the public servant concerned in the discharge of his duty. That allegation relating as it does to a charge under Section 186, I. P. C., required a complaint in accordance with the procedure laid down in Section 195 (1), Criminal P. C.

There having been no such complaint the learned Magistrate had no alternative but to acquit the accused of the charge under that section. As regards the remaining charge under Section 448 Mr. Banerjee has contended that this is nothing but the offence of offering obstruction to a public servant in a different garb which could not be tried without a proper and valid complaint.

6. It appears to me that there is substance in Mr. Banerjee's contention. The real complaint in this case is that there was obstruction to a public servant in the discharge of public functions. Now it is an offence which is covered by Section 186, I.P.C. That section requires that before a prosecution for such obstruction can be launched there must be a previous complaint made either by the public servant concerned or by some officer to whom the public servant is subordinate.

Section 195 (1) (a) lays down that before cognizance can be taken of an offence under Section 186 and other cognate sections of the Indian Penal Code, there must be a complaint by the public servant concerned or by some public servant to which the public servant is subordinate. As a matter of fact, in the present case, there has been no such complaint and in that view the Magistrate felt compelled to

acquit the accused petitioner.

I think it cannot be said that since the petitioner appeared before an attestation officer although on invitation and behaved in a manner which did not rebound to his credit, he should be held guilty under Section 448, I. P. C. Under the latter charge there must be an un-lawful entry and there must be proof of one or other of the intentions mentioned in Section 441 of the Code.

It has to be found upon evidence that the person concerned entered a place which was in the possession of another and that the entry was made with a view to causing insult, annoyance or injury to the person concerned. I do not think it possible to say on the evidence in the case that there was such intention present on the part of the petitioner.

7. On behalf of the State it was strenuously contended that even after the petitioner had been asked to remove himself from the place he continued to stay on; that would, it is argued, amount to criminal trespass within the meaning of the section provided the requisite intention is also established by the evidence on the record.

I am not unmindful of the circumstance upon which reliance has been placed by the State for the purpose of supporting the conviction under Section 448; but I have grave doubts whether it can reasonably be said that the place where a public officer discharges public functions can be said to be in exclusive possession of the place where he discharges those functions.

I doubt whether the attestation officer can be said to be in such possession as is contemplated in Section 441 in order that the act of the petitioner might be said to come within the mischief of criminal trespass as defined and understood in the Penal Code. To my mind Section 441 clearly means and implies that a person has to be in possession of a place in the sense that he is entitled to exclude another if that Other person enters the place.

The attestation officer carrying on his duties in what is described as a camp cannot conceivably be held to be in possession of it in the sense the word possession is

understood in Section 441, I. P. C. I understand possession mentioned in Section 441, as meaning actual, physical possession which includes the right to eject or exclude another person.

To all intents and purposes the assistant settlement officer was functioning as public officer at the place and all members of the public who had business had a right of access and nobody could possibly be ejected except perhaps on special ground. The special ground here put forward is that the petitioner made himself nearly a nuisance by saying things or uttering words which he should never have said or uttered.

That really clinches the matter, makes the position clear and establishes the fact that the real offence, if any, that was committed was that of causing obstruction to a public functionary while discharging his public duties.

Unfortunately for the prosecution that charge could not be held proved as it was found that the requisite complaint had not been made by the public servant concerned. It may be unfortunate in the extreme that a contumacious person who did not behave properly before an officer goes unpunished; but then the law has got to be administered by this Court as it finds it and no evasion can be permitted or circumvention of statutory procedure encouraged.

8. The result therefore is that although the act or the conduct of the petitioner might have deserved condemnation, nevertheless he cannot possibly be convicted of an offence under Section 448, Penal Code. The only charge of offence that was possible in a case of this kind was a charge under Section 186 of offering obstruction to a public servant when discharging his public functions. That charge failed but that will not entitle me to hold that the evidence in the case established the remaining charge under Section 448, I. P. C.

The officer concerned might have good-reason to feel insulted or annoyed at the conduct of the petitioner but that does not mean that the petitioner committed criminal trespass by entering the place in possession of the Officer with one or other of the several intentions mentioned in Section 441 of the Code.

9. The result, therefore, is that this Rule is made absolute. The conviction and sentence under Section 448, Penal Code, are set aside. The fine, if paid, will be refunded.

Conviction and sentence set aside.

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