

Emperor Vs. Haridas Ukil

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Court : Kolkata

Decided On : Jun-11-1941

Reported in : AIR1941Cal715

Appellant : Emperor

Respondent : Haridas Ukil

Judgement :

Bartley, J.

1. This is a reference under Section 438, Criminal P.C., made by the learned Sessions Judge of Jessore. The facts are that a Census Enumerator appointed under the provisions of the Census Act reported that Haridas Ukil a resident of Bongaon, gave false information to him regarding the number of people actually resident in a particular house. The Sub-Divisional Officer of Bongaon took cognizance on this report, examined the Enumerator and issued process under Sections 193 and 417, Penal Code, against Haridas Ukil, the original informant. The learned Judge has referred the matter to this Court recommending that the said order under which Haridas Ukil has been directed to be brought up for trial should be set aside on the ground that no such proceedings can be taken without the previous sanction of the Provincial Government. I am of opinion that the contention of the learned Judge is correct and that the present reference must be accepted. Section 10, Census Act, lays down:

No prosecution under this Act shall be instituted except with the previous sanction of the Provincial Government or of an authority authorized in this behalf by the Provincial Government.

2. Section 11 provides:

Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Act: Provided that no such prosecution shall be instituted except with the previous sanction referred to in section 10.

3. The complaint in the present case upon which process was issued was that the accused person intentionally gave a false answer to a question asked him by a Census Officer and thereby committed an offence under Section 9 (c), Census Act. Had proceedings been taken under that Act, the previous sanction of the Provincial Government or of an authority authorized by them would have been necessary under Section 10. In the present case, however, proceedings were actually taken under the Penal Code. But even in this case under the proviso to Section 11, Census Act, no such prosecution can be instituted except with the previous sanction referred to in Section 10. It is not contended that any previous sanction was obtained in the present case and the proceedings of the learned Magistrate were, therefore, without jurisdiction. I accordingly hold that the present reference must be accepted and the proceedings under Sections 417 and 193, Penal Code must be quashed.

Derbyshire, C.J.

4. I agree with the order that has just been made. It seems to me, however, that these cumbersome proceedings whereby the matter was brought before the Sessions Judge and then before this Court might have been avoided. It is clear that under Sections 10 and 11, Census Act, no prosecution either under the Census Act or under the Penal Code could be instituted in this matter except with the previous sanction of the Provincial Government or of an authority authorized in this behalf by the Provincial Government. It seems to me that it was open to the person who was prosecuted in this case to draw the attention of the Magistrate to

Sections 10 and 11, Census Act, and then when the Magistrate had satisfied himself that this prosecution did arise out of the provisions of the Census Act referred to in Sections 10 and 11 thereof, it was his duty to proceed no further in the matter. That could, in my opinion, have been done in this case and this procedure which is both expensive and cumbersome could have been avoided.

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