

**In Re: Bhola Nath Das**

**In Re: Bhola Nath Das**

**SooperKanoon Citation :** [sooperkanoon.com/862763](http://sooperkanoon.com/862763)

**Court :** Kolkata

**Decided On :** Dec-04-1885

**Reported in :** (1885)ILR12Cal427

**Judge :** Mitter and; Agnew, JJ.

**Appellant :** In Re: Bhola Nath Das

**Judgement :**

**Mitter and Agnew, JJ.**

1. The petitioner in this case has been convicted by the Deputy Commissioner of Goalpara in a summary trial of the offence of neglect of duty under Section 29 of Act V of 1861, under the following circumstances:

The petitioner, who is a constable in the Goalpara Police Force, was ordered by the District Superintendent of Police to cut down the jungle in the vicinity of the lines occupied by the said Police Force. On his refusal to obey this order, the District Superintendent ordered extra drill every day for the petitioner and other similar delinquents. The petitioner not having attended the extra drill thus ordered has been convicted as aforesaid and sentenced to three months' rigorous imprisonment.

2. The offence of which the petitioner has been found guilty is that of neglect of duty under Section 29 of Act V of 1861. 'The section in question does not provide

for any such offence. It deals with offences constituted either by any violation of duty or wilful breach, or neglect of any rule or regulation, or lawful order, made by competent authority' on the part of a police officer. Any neglect of duty short of a violation of duty does not amount to an offence under Section 29 of Act V of 1861. But apart from this error it seems to us that, under the circumstances of this case, the omission on the part of the petitioner to attend the extra drill ordered by the District Superintendent of Police did not amount to an offence under this section. The words 'lawful order' used in the section mean an order which the 'authority' mentioned therein is competent to make. It has not been shown to us that the District Superintendent of Police in this case was competent to order his constables to cut down the jungle in the vicinity of their lines, and that on their refusal to do so, to order extra drill in respect of them. That being so, the prosecution in this case, in our opinion, failed to establish that there was any violation of duty or wilful breach, or neglect of any lawful order, made by competent authority on the part of the petitioner. We, therefore, set aside his conviction and the sentence passed upon him upon that conviction.