

Biswanath Mukherjee Vs. the State

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Court : Kolkata

Decided On : Dec-05-1966

Reported in : AIR1967Cal602,1967CriLJ1626

Judge : R.N. Dutt and ;A.K. Das, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Section 170

Appeal No. : Criminal Revn. No. 1077 of 1963

Appellant : Biswanath Mukherjee

Respondent : The State

Advocate for Def. : Dilip Kumar Dutt, Adv.

Advocate for Pet/Ap. : Nalin Chandra Banerjee and ;Samir Kumar Mukherjee, Adv.

Judgement :

Das, J.

1. This revisional application is directed against the petitioner's conviction under Section 170 of the Indian Penal Code.
2. The prosecution case is that the petitioner went on board the Japanese vessel S. S. Ganges Maru and represented himself as a Customs Officer and wanted

presents from the Purser and the Master of the vessel. He received a ball-pointed pencil from the Purser and a packet of handkerchiefs from the Master. At this time, P. W. 1 Mr. Gomes, a Preventive Officer of the Customs went on board the vessel in course of his official duty and found the petitioner sitting with the Master and two others. On enquiry about his identity, it was pointed out that the petitioner represented himself as a Customs Officer. His identity was challenged and finally he was held and handed over to the police. Charge sheet was submitted and the learned Presidency Magistrate charged him under Section 419 Indian Penal Code for cheating in respect of the ball-pointed pencil and one packet containing handkerchiefs. He was further charged under Section 170 Indian Penal Code for pretending to be a Customs Officer, that is, a public servant, which he was not and for having acted in such an assumed character and colour of office by receiving these presents. The learned Presidency Magistrate found him not guilty in respect of the offence under Section 419 Indian Penal Code and acquitted him. He however found on the evidence that the petitioner pretended to hold the office of the Customs Officer of the Calcutta Port knowing that he did not hold such office and that in such assumed character he extracted presentation of the packet of handkerchiefs from the Master of the ship under colour of such office.

3. Mr. Nalin C. Banerjee, learned Advocate for the petitioner has not so much disputed the facts alleged. His principal argument is that even assuming all the facts to be true, no offence under Section 170 of the Indian Penal Code was committed inasmuch as nothing was done 'under colour of such office'. Mr. Banerjee argued that the act done or attempted to be done must be associated with the office assumed and unless the prosecution succeeded in proving that the act done, or attempted to be done had some relation to the office he pretended to hold, mere assumption or pretention to be a Customs Officer will not be sufficient in the eye of law for a conviction under Section 170 of the Indian Penal Code. Mr. Banerjee further elaborated his argument by saying that acceptance of presents is no part of the duty of a Customs Officer and at such even conceding that the petitioner pretended to be a Customs Officer which he was not and received presents from the Master of the ship, his act cannot be said to be in relation to the office of a Customs Officer and he cannot be charged with offence under Section 170 Indian Penal Code.

Section 170 Indian Penal Code reads as follows :

Whoever pretends to hold particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine or with both.

The prosecution, therefore, is to prove the following points, (1) that the accused falsely pretended to be or personated to be a public servant, (2) that he did so knowingly, and (3) that when assuming such character he did or attempted to do something under colour of such office. Mr. Banerjee has not disputed the learned Magistrate's finding that the petitioner falsely pretended to be a Customs Officer which he was not and that he did so knowingly. His argument however turns on the Interpretation of the second clause, namely, 'in such assumed character does any act under colour of such office' The clause 'under colour of such office' apparently means making use of such office and an act done or attempted to be done 'under colour' must be an act having some relation to the office which the accused pretends to hold. There is no doubt that reception of presents has no relation to the office of the Customs Officer in the Port of Calcutta and to that extent the offence charged can hardly be said to have been made by the petitioner by making use of his pretended office. It is important to note here that the relevant portion of the section not only speaks of 'in such assumed character' but further adds that 'the act done or attempted to be done must be under colour of such office'. Mere assumption of the office would not be sufficient but the act done or attempted to be done must be under colour of such office. The learned Magistrate dismissed the argument by saying that 'it is well settled that it is not necessary that the act done or attempted to be done should be such an act as might legally be done by the public servant so personated'. He has not referred to any authority on the point but Mr. Banerjee has placed before us several decisions of the different High Courts. In the case reported in (1907) 5 Cri LJ 211 (Bom.) *Emperor v. Umakant Balvant* a Division Bench of the Bombay High Court held that the phrase 'an act under colour of such office' points to acts which could not have been done without assuming official authority or responsibility. In the case reported in

Sukhdeo Pathak v. Emperor, AIR 1918 Pat 653 it was held that 'mere assumption of false character without any attempt to do an official act is not sufficient to bring the offender within the meaning of Section 170' The learned Judges held that there is overwhelming authority for the proposition that the act done must be one which assumes an official authority The same view was reiterated later on in the decision reported in Lakshmi-narayan Tripathy v. Emperor. AIR 1943 Pat 378 where Chatterji, J., held that the act done 'under colour' of an office is an act having some relation to the office which the accused pretends to hold.

There is however, a contrary decision to the Allahabad High Court reported in Emperor v. Aziz-Ud.Din, (1905) ILR 27 All 294 where Justice Banerji sitting singly held that to constitute an offence provided for by Section 170 of the Indian Penal Code it is not necessary that the act done or attempted to be done should be such an act as might legally be done by the public servant personated. The accused in this reported case came by train without a ticket and was arrested when he was demanding one anna worth of fruit from the fruit-seller for one pice on the representation that he was a head-constable which in fact he was not. The learned Judge held that the accused assumed a character which he had not and attempted to do an act under colour of such office. It was further pointed out that it was not necessary for the application of the section that the act done under colour of office should be a legal act on the part of the accused. In his view, if the accused pretended to be a police officer and as such police officer tried to extort money or things from the fruit-seller, offence under Section 170 was committed. This view, If accepted, would virtually make the clause 'under colour of such office' redundant but the section not only Provides that the act shall be done in such assumed character but also under colour of such office.

4. The demand or receipt of presents cannot be said to be under colour of office, as the act has no relation to the duties of the Customs Officer and the ingredients for an offence under Section 170 Indian Penal Code are not therefore satisfied. We are therefore of the view that the prosecution failed to prove that the act was done under colour of the pretended office and no offence under Section 170 Indian Penal Code was therefore committed.

5. The Rule is therefore made absolute and the conviction of petitioner under Section 170 Indian Penal Code and the sentence passed thereunder is set aside and he is acquitted. The petitioner is discharged from his bail bond.

R.N. Dutt, J.

6. I agree.

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