

Nazamuddin Vs. Queen-empress

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Court : Kolkata

Decided On : Jul-09-1900

Reported in : (1901)ILR28Cal344

Judge : Prinsep and ;Handley, JJ.

Appellant : Nazamuddin

Respondent : Queen-empress

Judgement :

Prinsep, J.

1. The petitioner, who is a peon attached to the Office of the Superintendent of the Salt Department in the district of Muzafferpore has been convicted under Section 161 of the Indian Penal Code.

2. The first question that we have to consider on this rule is whether the petitioner is a public servant within the terms of Section 21 of the Indian Penal Code. It is contended by Mr. Abdur Rahim that he does not fall within the terms of the last portion of Clause 9 of that section, which declares that 'every officer in the service or pay of Government' is a public servant, because he is not an officer. The case of Reg. v. Ramajirav Jivbajirav (1875) 12 Bom. H.C.R. 1. is cited as authority for this. The learned Judges in that case had to consider whether a lessee from Government was on the conditions of his lease a public servant, and, in doing so,

they considered generally the meaning of the term 'officer.' It was there held that an officer means 'some person employed to exercise, to some extent and in certain circumstances, a delegated function of Government. He is either armed with some authority or representative character, or his duties are immediately auxiliary to those of some person who is so armed.' The meaning which we are asked to put on these words seem to us to be too narrow as applied to the present case. The peon who has been convicted as a public servant is in service and pay of the Government, and he is attached to the Office of the Superintendent of the Salt Department. The exact nature of his duties is not stated, because this objection was not taken at the trial, but we must take it that, from the nature of his appointment, it was his duty to carry out the orders of his official superior, who undoubtedly is a public servant, and in that capacity to assist the Superintendent in the performance of the public duties of his office. In that sense he would be an officer of Government, although he might not possibly exercise 'any delegated function of the Government.' Still his duties would be immediately auxiliary to those of the Superintendent who is so armed.' We think that an 'officer in the service or pay of Government' within the terms of Section 21 of the Penal Code is one who is appointed to some office for the performance of some public duty. In this sense the peon would come within Section 21, Clause 9.

3. Our attention has been drawn to *The Queen v. Arayi* (1888) I.L.R. 7 Mad. 17 in which the learned Chief Justice held that a peon of a Manager of an Estate under the Court of Wards is not a public servant. The grounds for that opinion are not stated; and it may be that the learned Chief Justice would have gone so far as to hold that a Manager of an Estate under the Court of Wards is not a public servant. Mr. Abdur Rahim, we may here state, contends that such a Manager is a public servant, and, as authority for that, he relies on the case of *Queen-Empress v. Mathura Prasad* (1898) I.L.R. 21 All. 127 in which it was held by Mr. Justice Aikman that a Manager of an Estate employed under the Court of Wards is a public servant. We find ourselves unable to agree with that case, or to concur with the grounds upon which the learned Judge arrived at that conclusion. With every deference to his opinion we think that the grounds stated are sufficient for the contrary opinion which we hold. The fact that the Legislature has thought proper in Act XVII of 1885 specially to declare that a Manager of an Estate under the Court

of Wards in the Central Provinces is a public servant seems to us to show that it was considered that, as under the existing law such person did not come within that term, it was necessary to provide for this. We may also point to the fact that in all legislation for the management of encumbered estates, a cognate subject, the Legislature has thought proper specially to declare that a Manager is a public servant, and we may add that, under the terms of the definition contained in Section 21 of the Penal Code, the Manager of an Estate under the Court of Wards is not, in our opinion, a public servant. The point, however, is relevant for the purposes of the case before us only in so far as it meets the contention of the learned Counsel, that the case of *The Queen v. Aram* (1883) I.L.R. 7 Mad. 17 is in point, and here we would only repeat that the learned Chief Justice in that case gives no reason for his opinion, and it may be that he would also have held that the Manager was not a public servant.

4. It is next contended by Mr. Abdur Rahim that, on the facts found, no offence has been committed. We are, however, of opinion that the facts found indicate that the object of the illegal gratification was to render a service to the persons paying it, and that therefore an offence under Section 161 has been committed. The rule is, therefore, discharged.