

Raman Singh and ors. Vs. Queen-empress

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Court : Kolkata

Decided On : Jul-06-1900

Reported in : (1901)ILR28Cal411

Judge : Prinsep and ;Handley, JJ.

Appellant : Raman Singh and ors.

Respondent : Queen-empress

Judgement :

1. These are two rules relating to the same trial and it will be more convenient that they should be disposed of simultaneously.
2. It appears that, in consequence of some combination amongst about 30 villages in the District of Patna to resist all measures for the prevention or suppression of the plague and an apprehension that a riot was likely to take place, the District Magistrate appointed a considerable number of the principal inhabitants of the villages to serve as special constables. To carry out this order, Mr. Baker, Inspector of Police, accompanied by the Sub-Inspector and two constables, went to the village of the petitioners for the purpose of informing the 3 petitioners, Nawranghi, Sewbaran and Gangabissen Singh, that they had been appointed special constables under Section 17 of the Police Act of 1861. On arriving at this village, the Police Officers found a large number of people assembled. Mr. Baker, the Inspector of Police, gave notice that Nawranghi, Sewbaran and Gangabissen

had been appointed special constables. Two of these men were known to the Sub-Inspector, and it is said that they were pointed out to the Inspector, but there is reason to believe that the Inspector did not understand this. It is in evidence that Nawranghi, when asked his name, gave a false name. Mr. Baker then announced that these men were to go with him to the police station at Bakhtearpore, which they refused to do. On this, he ordered a police constable to arrest Nawranghi and, on making the arrest, Nawranghi shook himself free and the villagers, who were assembled and amongst whom were the other petitioners before us, tumultuously threatened and used criminal force to the Police Officers, so as to cause them to leave the place. For these acts the petitioners have all been convicted under Section 353, read with Section 149 of the Indian Penal Code, that is, of being members of an unlawful assembly in prosecution of the common object of which some member assaulted, or used criminal force to a Police Officer, a public servant, in execution of his duty as such public servant, with intent to prevent or deter such person from discharging his duty as a public servant. Nawranghi, Sewbaran and Gangabissen have also been convicted under Section 19 of the Police Act of 1861 in that, being appointed special police officers, they, without sufficient excuse, refused to serve as such or to obey the lawful order of the Inspector. The petitioners have all been sentenced to 6 months' rigorous imprisonment for the first offence and the three petitioners just named have also been sentenced to a fine under the Police Act.

3. Now there can be no doubt that Mr. Baker, Inspector of Police, had no authority to arrest Nawranghi Singh, and therefore, as the police when obstructed were not acting in lawful discharge of their duty, the petitioners can, none of them, be properly convicted of an offence under Section 353 of the Indian Penal Code. The refusal of Nawranghi to accompany the Police Inspector to Bakhtearpore was not an offence, for which the arrest could have been made. Nor do we think that any refusal of Nawranghi, Sewbaran and Gangabissen to accompany the Police Inspector to Bakhtearpore constituted an offence under Section 19 of the Police Act, for which they could be punished. It appears that the order was intended not for any purpose of police duty, but simply that they might obtain the authority of their appointment and the necessary arms. It seems to us that to require any one, who has been appointed a special constable, to leave his own occupation and to

proceed to some distance for such a purpose is not a reasonable order, or one which can be properly called an order connected with the purposes of his duty. Nor do we regard the conduct of these men as a refusal to serve. We think rather that it was simply a refusal to go to Bakhtearpore, and that there was an opposition to the arrest of Nawranghi, in consequence of such refusal. Under such circumstances we think that the conviction and sentence under Section 19 of the Police Act is bad. It is accordingly set aside.

4. It remains, however, to consider the other part of the case against the petitioners. By reason of the terms of their conviction, we understand that they are all found to have been members of an unlawful assembly, by which the riot was committed. The question then arises, whether the facts found constitute the offence of rioting. Mr. Leith, who appears against the Rule, has brought to our notice the case of *Queen-Empress v. Dalip* (1896) I.L.R. 18 All. 246 and we think that the facts of that case are, in nearly every respect, similar to those of the present case and we concur generally with the rule laid down in that case. Mr. Abdur Rahim who appears on the other side cites as authority to the contrary the cases of *Chunder Coomar Sen v. Queen-Empress* (1899) 3 C.W.N. 605 and *Mangobind Muchi v. Empress* (1899) 3 C.W.N. 627. The last case clearly has no application. In reference to the case of *Chiinder Coomar Sen*, we would observe that it was there held, as in the case in the Allahabad Court, that the accused could not be properly convicted under Section 353, when the resistance was to the action of an officer of the Civil Court, who was not acting under any legal authority. One of the accused in that case was, however, convicted of rioting, but his acquittal was on other grounds. The question was not considered in that case, whether any of these persons could properly be convicted of any other offence. That case is, therefore, not opposed to the case in the Allahabad Court.

5. On the facts found, therefore, we are of opinion that the petitioners should all be convicted of rioting under Section 147 of the Indian Penal Code. Their common object was to commit an offence, that offence being to assault or use criminal force to the Police Officers, and there was no real justification for such proceeding. It was a very dangerous assembly consisting of a very large number of persons, whose object, as was shown by their acts, was clearly to resist any action

whatsoever on the part of the police, and it was entirely owing to the forbearance of the police and their withdrawal, that no serious consequences took place.

6. We think, however, that the sentences of six months' rigorous imprisonment passed are too severe, having regard to the cause of the commission of this offence. Although the accused were, in our opinion, not justified in what they did, we also think that the action of the police was injudicious and without legal authority, and that there was some provocation for the resistance to the arrest of Nawranghi Singh. Under such circumstances, we think that the sentence should be reduced to a sentence of rigorous imprisonment for two months in respect of each of the petitioners. The fines, if paid by Nawranghi Lall, Sewbaran and Gungabissen, must be refunded.

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