

**Muga Khan Vs. Emperor**

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**Court :** Kolkata

**Decided On :** Aug-30-1917

**Reported in :** 43Ind.Cas.251

**Judge :** Chitty and ;Richardson, JJ.

**Appellant :** Muga Khan

**Respondent :** Emperor

**Judgement :**

1. This is a Rule issued at the instance of Muga Khan calling on the District Magistrate to show cause why the conviction and. sentence passed on the petitioner under Section 19 of the Indian Police Act (V of 1861) should not be set aside, on the ground that the mere failure to attend the police station to receive his belt and take charge of his appointment as a special constable did not amount to a refusal to serve within the meaning of that section. Other grounds were put forward by the petitioner before us but the Rule was confined to the ground above stated.

2. It appeals that on 17th April 1917 a notice was issued to the petitioner reciting the necessity for the appointment of special constables and informing him that he was appointed a special constable for three months under Section 17 of Act V of 1861. The notice concluded as follows: 'Be it stated that you should appear in police station Barguna within three days of the receipt of this notice and take belt

and orders of your duties; otherwise the law will be enforced'. The petitioner deliberately refrained from attending at the police station; and as appears from the judgment of the Magistrate, his mukhtear frankly stated that he did so in order to raise the legality of the order under Section 17 of the Indian Police Act. That matter was gone into before us and there can now be no question as to the legality of that order. We have, therefore, to determine whether the refusal or neglect of the petitioner to attend at the office in pursuance of this notice brought him within the purview of Section 19.

3. It is argued that a mere refusal to go to receive orders could not be a refusal to serve. But the section says: 'If any person, being appointed a special Police Officer as aforesaid shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable to fine.' In this case it would appear that the notice quoted being a proper notice and the order on the petitioner requiring him to appear at the police station being a lawful order, it was disobedience of that order for the petitioner to remain at his house and decline to go to the police station. We are also of opinion that it would be a neglect if not a definite refusal to serve as a special constable, because undoubtedly his service in that capacity was to commence by his attend-ance at the police station in order that he might be properly instructed in his duties and receive the necessary orders for their performance. The case of *Ramin Singh v. Queen-Empress* 28 C. 411 : 5 C.W.N. 134 was relief upon by the learned Pleader for the petitioner. That case is distinguishable in its facts from the present and the remarks of the Court given at page 414 must be read with reference to the particular facts of that case. There the Court considered that the conduct of the accused in that case in declining to accompany the Police Inspector to Bakhtiarpore did not amount to a refusal to serve. The learned Judges thought that it was simply a refusal to go to Bakhtiarpore and that that would not fall within Section 19 of the Act. That case, whether rightly or wrongly decided, is distinguishable from the present.

4. We think that in this case there has been an offence committed within the purview of Section 19 of the Indian Police Act and we accordingly discharge the Rule.

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