

ALLAHABAD HIGH COURT

Kishori Lal

Vs

Emperor

(Author, J. Mukerji, C.J.)

29.08.1924

JUDGMENT

Mukerji, J.

1. The original charge under which the applicants were tried was one under Section 53 of the Indian Penal Code. The applicants were convicted of that offence and were sentenced each to rigorous imprisonment for 9 months; and were besides ordered to pay a fine. There was an appeal to the learned Sessions Judge and he disbelieved that any offence had been committed such as is defined in Section 353. But he held that there was an obstruction in the discharge of the duty of the Kanungo within the meaning of Section 186 of the Indian Penal Code and he convicted the applicants of an offence under Section 186 and reduced the sentence of imprisonment for two weeks. In this Court it has been contended that there was really no case under Section 186 of the Indian Penal Code and the appellants were entitled to an acquittal.

2. The facts of the case, as found by the learned Sessions Judge, were these : The Kanungo, Amiruddin, went to a village of which the applicant, Kishori Lal, was the newly-appointed patwari. He took out the patwari for parchal. After that he sent for him to check his books. The Kanungo suggested that he should have his customary present, locally known as "fasilana", of the sum of Rs. 14. The patwari said that he was too young to know of these things and he had better consult his father who was a retired patwari; the father, namely, the applicant Munshi Lal came and did not agree to the payment of the sum demanded. There was thereupon an exchange of hot words and ultimately Kishori Lal went away with his books.

3. Now the question is whether on this finding a case under Section 186 has been made out.

4. I am clearly of opinion that Section 186 was never enacted to meet a case like this, The most that can be said is that the patwari was grossly insubordinate. But it was not a case of voluntarily causing obstruction to any public servant in the discharge of his public functions. Supposing that no bribe had been demanded by the Kanungo, all that happened was that the patwari refused to

help the Kanungo in going through or checking the books kept by him. The learned Judge clearly finds that the provocation for hot words came from the Kanungo. Even if there was no provocation from the Kanungo, the refusal of the patwari to allow the Kanungo to go through his books and to check them was only an act of insubordination and was not a criminal act.

5. I allow the application, set aside the conviction of the applicants and the sentence. They are on bail and they need, not surrender.

