

ALLAHABAD HIGH COURT

Bhagwan Din

Vs

Emperor

(Sen, J.)

14.08.1929

JUDGMENT

Sen, J.

1. This is an application for revision of an order of Pandit Rup Kishan Aga, Additional Sessions Judge of Allahabad, upholding the conviction and sentence of Bhagwan Din, applicant, under Sections 221 and 384, I.P.C. The applicant was sentenced to one year's rigorous imprisonment under Section 221, and to six months' rigorous imprisonment under Section 384, I.P.C.

2. On 7th February 1929, one Ramana Pasi was caught flagrante in delicto while stealing sarson from the field of one Pancham in Khuda Buksh ka purwa. He was apprehended by Mangal Das and Bhagwan Din, Bhagwan Din is chowkidar of Singraur and Khuda Buksh ka purwa is outside his circle.

3. Beni Madho Bhat is chowkidar of Khuda Buksh ka purwa and figures as complainant in this case.

4. Only a few handfuls of sarson appear to have been stolen and Ramana, when caught, was found in possession of a few wisps of sarson stalks. Bhagwan Din chowkidar detained Ramana Pasi for the whole night after his arrest at the house of one Nanku. In the morning, he released Ramana upon payment of rupees ten as consideration for his release and for forbearing to report him to the police. Bhagwan Din chowkidar had taken away from Ramana the few handfuls of sarson.

5. The trying Magistrate had convicted Bhagwan Din under Section 201, I.P.C. for having intentionally caused the disappearance of evidence against Ramana with a view to screen him. The learned Sessions Judge very properly held that no offence under Section 201, I.P.C. was brought to the door of Bhagwan Din and it could never be seriously contended that the non-production of a few dry stalks of sarson amounted to a suppression of material evidence.

6. The conviction of the applicant under Section 221, I.P.C. cannot be maintained. A Village Chowkidar has not been referred to in terms in any one of the categories under Section 21, I.P.C. But it may be hypercritical to deny that he is a public servant. He is referred in Section 45, Criminal P.C. as a village watchman. A village chowkidar is not a "police officer" within the meaning of Section 54, Criminal P.C. The whole tenor of the Code shows that 'chowkidars' who have been given a distinctive name were not intended to be included under the term police officer. Where a non-bailable and cognizable offence has been committed within the view of a private person or where there is a proclaimed offender, a private person may under Section 59, Criminal P. C' arrest such person. Under Section 221, I.P.C. where a person, being a public servant and legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence intentionally omits to apprehend such person or intentionally suffers such person to escape, he places himself within the grip of law and is liable to punishment. Assuming that Bhagwan Din was a public servant, was he legally bound as such public servant to apprehend or Keep in confinement Ramana Pasi, where a non-bailable offence had been committed under his very eyes? It is to be remembered that Bhagwan Din was not the chowkidar of Khuda Buksh ka purwa which was outside his circle. Under Section 43, I.P.C., a person is said to be "legally bound to do" whatever it is illegal in him to omit. The word "illegal" has an extensive meaning, including anything and everything which is prohibited by law which constitutes an offence and which furnishes the basis for a civil suit, ending in damages. The Courts below do not appear to have applied themselves to the determination of the question, whether Bhagwan Din in his capacity of being a public servant was bound to apprehend or keep in confinement Ramana Pasi. The learned Assistant Government Advocate has failed to make out that it was within the statutory duty of Bhagwan Din to apprehend Ramana or to keep him in confinement. The duties of Bhagwan Din as a private citizen ought not to be confounded with his duties as a public servant. Where the legal obligation of the chowkidar to arrest or detain has not been established there is no dereliction from his statutory duty within the purview of Section 221,1. P.C. and Bhagwan Din cannot be penalized for intentionally suffering Ramana to escape from his detention. The conviction of the applicant under Section 221 cannot be sustained and must be set aside.

8. All the ingredients of the offence of extortion as defined in. Section 383 are present in this case. No offer of a bribe emanated from Ramana. Bhagwan Din put Ramana in fear of being continued in custody of being reported against and delivered to the police and thereby dishonestly induced Ramana to pay him ten rupees as the condition for his release. He has been rightly convicted under Section 384, I.P.C. The sentence passed on him does not err on the side of severity.

9. The result is that this application succeeds in part. The conviction and sentence of the applicant under Section 221, I P.C. are hereby overset and the conviction and sentence under Section 384, I.P.C. are maintained.

