

APPELLATE CRIMINAL.

Before Lord-Williams and Jack J.J.

ANANTAKUMAR CHAKRABARTI

v.

EMPEROR.*

1935

Feb. 20, 21, 26
Mar. 13.

Evidence—Presumption—Omnia praesumentur rite esse acta—Opinion of Local Government, how to be proved—Bengal Criminal Law Amendment Act (Beng. VI of 1930), s. 6—Indian Evidence Act (I of 1872), s. 114 (a).

By reason of the provisions of section 114, illustration (c) of the Indian Evidence Act and the maxim *Omnia praesumentur rite esse acta*, the court is entitled to presume, upon proof of the notification referred to in section 6 (2) of the Bengal Criminal Law Amendment Act, 1930, duly authenticated within the meaning of section 49 of the Government of India Act and signed by the Additional Secretary to the Government of Bengal, that the Government had formed the opinion requisite under that section. It is not necessary to call any witness to prove this.

Under section 3 (2) of the Bengal Criminal Law Amendment Act, 1930, the Local Government is the sole judge of the due diligence required by the section.

CRIMINAL APPEAL.

The case for the prosecution was that the accused Anantakumar Chakrabarti was the member of a revolutionary party and the Local Government by an order dated the 6th June, 1934, directed that he might be arrested without warrant by any police officer and thereafter committed to custody in the nearest District or Central Jail. Attempt was made to serve the order personally at the places where he ordinarily used to live, but, as the accused was not found at those places, the service was effected by hanging copies of the orders on the doors of the houses. A report was submitted to the Local Government to the effect that, in spite of due diligence, it was not possible to serve the order personally. Thereupon the Local Government issued the following Notification under section

*Criminal Appeal, No. 860 of 1934, against the order of T. N. Gupta, Special Magistrate of Dacca, dated Oct. 1, 1934.

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3 (2) of the Bengal Criminal Law Amendment Act, 1930, which was published in the *Calcutta Gazette* of the 1st August, 1934:—

NOTIFICATION.

No. 28953 X.—24th July, 1934.—Whereas, in the opinion of the Government of Bengal, there are reasonable grounds for believing that Babu Ananta Chakrabarti *alias* Megha, son of Babu Durgamohan Chakrabarti of village Bhawalbaria, police-station Kaliganj, in the district of Dacca and of South Maisandi, police-station Sutrapur, district Dacca, is a person in respect of whom an order may lawfully be made under sub-section (1) of section 2 of the Bengal Criminal Law Amendment Act, 1930, and

Whereas the Governor in Council, in exercise of the powers conferred by the said section 2, was pleased to order on the 6th June, 1934, that the said Babu Ananta Chakrabarti *alias* Megha should be arrested without warrant by any police officer at any place where he might be found and thereafter committed to custody in the nearest District or Central Jail, and

Whereas the said Babu Ananta Chakrabarti *alias* Megha has not been arrested and the said order under section 2 of the said Act has not been served personally on the said person, and whereas due diligence has, in the opinion of the Local Government, been exercised to effect such personal service,

Now, therefore, the Governor in Council in exercise of the powers conferred by sub-section (2) of section 3 of the Bengal Criminal Law Amendment Act, 1930, is pleased to direct the said Babu Ananta Chakrabarti *alias* Megha, son of Babu Durgamohan Chakrabarti, of village Bhawalbaria, police-station Kaliganj, in the district of Dacca, and of South Maisandi, police-station Sutrapur, district Dacca, to appear before the Superintendent of Police, Dacca, within fifteen days of this date for the purpose of receiving the aforesaid order.

S. N. Roy,

Additional Secretary to the Government of Bengal.

Copies of it were published in several newspapers of Calcutta and Dacca on later dates.

The accused was arrested on 9th August, 1934, and put upon his trial under section 6 (3) of the Act. His defence, at the trial, was that he was not aware of the issue of the notification, but he examined no witness in defence. He was tried and convicted by a Special Magistrate appointed under the Bengal Suppression of the Terrorist Outrages Act (Beng. XII of 1932) and sentenced to five years' rigorous imprisonment and a fine of fifty rupees or in default to a further period of three months' rigorous imprisonment. He, thereupon, appealed to the High Court.

Bhupendrachandra Guha for the appellant. The trial has been vitiated, inasmuch as the order of the Local Government has not been properly proved. Under section 60 of the Indian Evidence Act, the opinion of the Local Government can only be proved by calling some member of the Council to show that such an opinion was arrived at. Mere production of the copy of the gazette is not sufficient.

Again, the order has not been violated, because the accused was given 15 days' time to appear before the Superintendent of Police. The accused was a resident of Dacca and he was arrested within 10 days of the publication of the translation of the notification in the local papers. He was given no time to carry out the directions in the order.

The Deputy Legal Remembrancer, Khundkar (with him *Anilchandra Raychaudhuri*) for the Crown. Under section 78 of the Indian Evidence Act, the notification has been proved by the copy of the *Calcutta Gazette*. Then under section 114 (e), the court is entitled to presume that the official acts have been regularly performed. Again, the notification is duly authenticated and, under section 49 of the Government of India Act, no court can call into question any order so authenticated.

LORT-WILLIAMS J. In this case the appellant was convicted by a Special Magistrate exercising powers under section 24 of Bengal Act XII of 1932 of an offence under section 6 (3) of the Bengal Criminal Law Amendment Act of 1930 and sentenced to rigorous imprisonment for 5 years and a fine of Rs. 50 or, in default, to rigorous imprisonment for 3 months more.

The case for the prosecution was that the appellant is a very important member of the revolutionary party and that the Local Government made an order in writing (Exhibit 1), under sub-section (1) of section 2 of the Bengal Criminal Law Amendment Act, 1930, on the 6th June, 1934, directing that he should be arrested without warrant and committed to custody. Attempts

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were made to serve the order personally, but, as the accused could not be found, it was served by affixing it to the door at his last known place of residence and at his father's house, according to the provisions of section 71 of the Code of Criminal Procedure. Of the due diligence required by this section the Local Government is the sole judge under section 3 (2) of the Bengal Criminal Law Amendment Act, 1930.

The Local Government, in exercise of the powers conferred by the last mentioned section, issued a notification (Exhibit 2) on the 24th July, 1934, directing the accused to appear within 15 days for the purpose of receiving the said order. The time allowed expired on the 7th August. On the 9th August, a clerk in the District Intelligence Branch Office, Barisal, discovered the accused at his residence and questioned him. He gave his name as Rabeendra Chakrabarti and his address as Kola in the District of Dacca. As he spoke in a hesitating manner, the clerk's suspicion was aroused and he took the accused to the Inspector of Police, who arrested him as an absconder, and subsequently he was charged, tried and convicted as already stated. He pleaded not guilty and his defence was that he was not aware of the issue of the notification, but he did not tender any evidence.

The learned advocate who appeared for the appellant argued that the prosecution had failed to show that the authorities had complied strictly with the requirements of this special legislation. The only point of substance was that it had not been proved that the Government had formed the opinion recited in the first paragraph of the notification.

In my opinion, it is not necessary to call any witness to prove this. The notification was duly authenticated within the meaning of section 49 of the Government of India Act and signed by the Additional Secretary to the Government of Bengal. The court is entitled to presume that judicial and official acts have been regularly performed, by reason of the provisions

of section 114, illustration (e) of the Evidence Act and the maxim *omnia praesumentur rite esse acta*, and the recital in the notification that such was the opinion of Government comes within the ambit of these provisions.

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The other point argued by the learned advocate was raised under a misapprehension of the terms of the notification. The appellant was directed to appear within 15 days "of this date". That date was the date when the order was made, namely, the 24th July, not the date when it was published in the *Calcutta Gazette*, or in certain newspapers.

For these reasons, this appeal must be dismissed.

JACK J. I agree.

Appeal dismissed.

A. C. R. C.