

APPELLATE CRIMINAL.

Before Mr. Justice Kernan and Mr. Justice Brandt.

QUEEN-EMPRESS

against

NARAYANASÁMI.*

1886.
Sept. 2, 18.

Army Act, 1881 (44 & 45 Vict., c. 58), s. 156.

Under the Army Act, 1881 (44 & 45 Vict., c. 58), s. 156, any person who takes in pawn a military decoration from a soldier is liable to punishment :

Held that this section of the Army Act, 1881, is applicable to a person who takes a medal in pawn from a sepoy in India.

THIS was an application under s. 439 of the Code of Criminal Procedure against an order passed by H. R. Farmer, Acting District Magistrate of Trichinopoly, dismissing a complaint against one Náráyanasámi Pillai, under s. 203 of the Code of Criminal Procedure.

The facts necessary for the purpose of this report are set out in the judgment of Brandt, J.

The Acting Government Pleader (Mr. *Powell*) for the Crown.

The accused was not represented.

The Court (Kernan and Brandt, JJ.) delivered the following judgments

KERNAN, J.—The Indian Articles of War relative to the Native Army are in Act V of 1869, which does not contain a clause prohibiting, in terms, a person not subject to the Articles of War from taking in pledge, &c., any regimental equipments, medals, &c., of a native soldier.

Section 47 prohibited the pledge, &c., by the soldier and made the act punishable.

That Act related to the Native Indian Forces alone.

The Army Act, 1881 (44 & 45 Vict., c. 58), is an Imperial Act, and, except when specially excepted, applies to the regular forces, which expression by s. 190, sub-section (8), includes Her Majesty's Indian forces. Sub-section 2 (h) of s. 180 provides that Part Two of the Act shall not apply to Her Majesty's Indian forces. Therefore all the Act, except when excepted, does apply to the Indian forces.

The Act of 1881 in sub-section (6) of s. 190 provides that the expression "soldier" applies to any person subject to the Articles of War, and therefore to the native soldier. There is nothing in s. 156 inconsistent with the context of s. 190: therefore the term "soldier" in both sections applies to all soldiers within s. 190. The Acts of 1879 and 1881 are *in pari materia* and to be construed together. The subsequent Act enacts a new provision, s. 190, which is in no wise contrary to, or inconsistent with, the prior Act, nor does it, within s. 180 of the Act of 1881, sub-section (2) (a), prejudice or affect the India military law respecting officers or soldiers or followers in Her Majesty's Indian forces, though s. 156 no doubt affects persons *not* officers, soldiers or followers.

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The order of dismissal by the District Magistrate must be set aside, and the case retried.

BRANDT, J.—The District Magistrate of Trichinopoly on the 24th November 1885 dismissed, under s. 203, Criminal Procedure Code, a complaint against a civilian shopkeeper charged with having received in pledge a medal from a sepoy, an offence, as the case for the prosecution was, under the Army Act, 1881, and under Act VII of 1867.

It appears that in a precisely similar case tried by the predecessor in office of the District Magistrate, the accused was convicted.

The District Magistrate states that, for reasons given, he is, in his opinion, more likely to be wrong than right in the decision finally come to by him.

The reasons given for his conclusion are that it does not clearly appear that the Legislature intended to make the act an offence, and that the word "soldier" when used in s. 156 of the Army Act, 1881, does not include a native soldier, *i.e.*, a sepoy of Her Majesty's Indian troops; the reasons given for arriving at the latter conclusion are that it is provided in s. 180 of that Act that "nothing in that Act shall prejudice or affect the Indian military law respecting soldiers * * * in Her Majesty's Indian forces being natives of India?" that the Indian Articles of War provide expressly for the punishment by a Court Martial of a sepoy, and of any other person subject to those Articles who pawns any medal, granted for service in the field or for general good conduct, while, unlike the Army Act, 1881, they contain no provision for the punishment of any person, not being an officer, soldier, or

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follower, who knowingly receives a sepoy's medal in pawn; and the question therefore arises whether if a man is punished under the Army Act, 1881, for receiving in pawn a medal from a sepoy, such act, not being punishable under the Indian Articles of War, does not affect the Indian military law respecting soldiers in Her Majesty's Indian forces, being natives of India, in which case the punishment would, with reference to clauses (a) and (b), sub-section (2), s. 180 of the Army Act, be illegal.

It was decided in *Nathud Bi v. Jafar Hussain*(1) that there is nothing in the provisions of clause 1 of s. 145 of the Army Act, 1881, which prohibits the application of that section to soldiers of Her Majesty's Indian forces; and that clause 2 also applies. The decision turned on the interpretation to be placed on the third clause with which we are not here concerned; and agreeing with the learned Judges who decided that case as to the effect of s. 190, the only question we have to determine is whether, as the District Magistrate holds, the effect of clauses (a) and (b), sub-section (2), s. 180, is to protect any person taking in pawn any military decoration of a sepoy from the penalties provided in that section.

The proviso in s. 180 on which the District Magistrate bases his decision makes an exception in the case of officers, soldiers and followers in Her Majesty's Indian forces being natives of India: it does not make any exception in the case of persons other than the above; and the object of it clearly is to secure to such officers, and others being natives of India, in trials by Court Martial convened in pursuance of the Act, reference to the Indian military law and to the established usages of the service: no special provision is made in the case of persons other than such officers, soldiers and followers being natives of India in respect of such law or usages.

This appears to be sufficient for the disposal of the question before us; but we may refer to the concluding sub-section in s. 156 as additional, if not conclusive proof that that section applies to the case of any person taking in pawn a military decoration from a sepoy.

I would accordingly set aside the District Magistrate's order and direct him to restore the complaint to his file and to dispose of it in due course.

(1) I.L.R., 8 Mad., 365.