YALLA GANGULU v. MAMIDI DALI.

BODDAM, J.—I agree.

[The case came on for final disposal before Collins, C.J. and Benson, J., who delivered judgment as follows:—]

JUDGMENT.—Under section 413, Criminal Procedure Code, the Sessions Judge was precluded from entertaining the appeal.

We set aside his proceedings.

In exercise of our powers of revision we set aside so much of the Deputy Magistrate's order as awards compensation to the deceased man's widow.

APPELLATE CRIMINAL.

Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

1896. October 16, 29.

QUEEN-EMPRESS,

v.

TIRUCHITTAMBALA PATHAN.*

Penal Code, s. 183—Resistance to the taking of property—Attachment of goods not being property of judgment-debtor.

A decree having been passed against the assets of a deceased debtor, execution was taken out and the officer of Court proceeded to seize certain goods. The accused successfully resisted the seizure asserting that the goods seized were his own. He was thereupon charged with having committed an offence under the Penal Code, section 183, but he was acquitted for want of proof by the prosecution that the goods were assets of the deceased:

Held, that the acquittal was wrong and should be set aside.

APPEAL on behalf of the Crown under Criminal Procedure Code, section 417, against the judgment of M. Agnisami, Second-class Magistrate of Mannargudi, in Calendar Case No. 22 of 1896.

A decree having been passed against the assets of a deceased debtor, execution was taken out, and the Amin of the Court attempted to attach and seize a brass plate in the possession of the accused as forming part of the assets of the deceased. The accused wrested it from the hands of the attaching officer stating that it belonged to him and not to the deceased. He was thereupon charged with the offence of offering resistance to the taking of property by lawful authority under Indian Penal Code, section 183, and was tried by the Second-class Magistrate who acquitted him

---

* Criminal Appeal No. 258 of 1896.

for the reason that it was not shown that the property found part of the assets of the deceased.

The present appeal was filed on behalf of the Crown as above.

Mr. *J. G. Smith* for the Crown.

Sivasami Ayyar for accused.

SHEPHARD, J.—The question is whether a person charged under section 183 of the Indian Penal Code was rightly acquitted, on the ground that the prosecution failed to prove that the goods seized by the Amin and rescued by the accused were, as being part of the assets of the deceased debtor, liable to be taken in execution of the decree against his representatives. The question is whether the seizure of the goods was an act done by the lawful authority of a public servant within the meaning of section 183. It was argued on behalf of the accused that no offence had been committed in resisting the Amin, because he was acting unlawfully in seizing goods, which could not properly be taken in execution. The Amin, being commissioned to take the goods of the deceased debtor, forfeited the protection of the law, when he proceeded to take the goods of the defendant himself, although he might have acted in good faith.

It appears to me that, in construing section 183, the language of section 99, as well as that of other sections concerning resistance to the acts of public servants, must be borne in mind. Section 99 declares that the protection afforded by the Penal Code to public servants acting in good faith under colour of their office is not lost to them, by reason of any mistake on their part in the exercise of their proper functions. A public servant may do an act of a kind which he has no authority to do. In such case, he could not be acting in discharge of his public functions (sections 186–353) and the lawful authority required by section 183 would be clearly wanting. The cases cited in argument afford instances (*Lilla Singh* v. *Queen-Empress*(1), *Queen-Empress* v. *Tulsiram*(2)). Whether or not the public servant in the case supposed could, if charged with any offence, shelter himself under the exceptions enacted in sections 78 and 79 of the Code would depend upon the circumstances.

If, on the other hand, the act of the public servant is an act of the kind which the public servant is authorised to do, it is clear that no miscarriage on his part, due to an honest mistake of fact,

(1) I.L.R., 22 Calc., 286. (2) I.L.R., 13 Bom., 168.

QUEEN-EMPRESS v. TIRUCHITTAMBALA PATHAN.

could render him liable to a prosecution. Section 79 would afford him protection. Further more, resistance to such an act or an assault on the public servant in the course of doing the act is made punishable under section 183 and section 353 of the Code, respectively. We are asked to draw a distinction between sections 183 and 186 and to say that there may be obstruction entailing punishment under the latter section, although the lawful authority which section 186 presupposes is absent. It occurred to me at first that there might be some such distinction intended and that if the act of taking exposed the public servant to a civil action, it could not be said to be an act done by lawful authority. Ministerial officers do not enjoy the full protection which is granted to judicial officers by Act XVIII of 1850. Apart from considerations of civil liability, however, I think the object of the legislature as shown in the Code was to facilitate the transaction of public business by affording protection in two ways to public servants acting in the exercise of their duty. They are protected from criminal proceedings by sections 78 and 79. They are insured against resistance by section 99 and other sections of the Code. The intention was to give protection of this latter kind in all the cases in which, but for the immunity specially provided, the act of the public servant would amount to an offence. The phrase "lawful authority" used in section 183 does not oblige us to hold that the cases in which the person charged may have a civil action against the public officer must be excluded from the operation of the section. In the present case, the Amin had lawful authority to take in execution the goods of the deceased. There was no mistake about his authority, but the mistake was in the mode in which he executed his duty and the section does not require that the execution of the authority, as well as the granting of it, must be strictly lawful. To hold that a judgment-debtor might with impunity resist the seizure of goods found in his house, on the mere plea that they belonged to somebody else, honesty and good faith on the part of the attaching officer being presumed, would reduce section 183 to a dead letter. The decided cases support the view which I have adopted.

The acquittal must be set aside and the case disposed of according to law.

SUBRAMANIA AYYAR, J.—A decree was passed against the sons (minors) of one deceased Saminatha Pathân, son of the accused,

for a debt due by Saminatha. The minors were under the guardianship of the accused. In execution of the above decree, a warrant was issued for the seizure of certain articles of moveable property of the deceased debtor. When, with this warrant, the Amin went to the accused's house, where the articles were stated to be and had a plate seized, the accused, it is alleged, forcibly wrested the plate and threatened to use violence, if the Amin proceeded further with the execution of the warrant.

Now, supposing that the plate did, in fact, belong to the accused himself as urged by him, the question is whether that circumstance alone rendered the seizure by the Amin an act done without "lawful authority," within the meaning of section 183 of the Indian Penal Code, so as to make the alleged resistance on the part of the accused permissible in law.

The argument in favour of the accused was in substance this: an officer in executing a process of law acts lawfully, only so long as he keeps himself strictly within the directions contained in the process under which he acts. Consequently, when the Amin took the plate which, in fact, did not form part of the estate of the debtor, the former was a wrong-doer and resistance to him was not unlawful, even though the Amin was not aware that the property did not belong to the deceased and even though the officer acted *bonâ fide*. This view of considering an act, which is done by a public servant in the course of his duties and which is not in every way perfectly consistent with what he should have done in the particular case, to have been committed without "lawful authority" has clearly not been adopted in the Indian Penal Code, as will be seen from the provisions of section 99, with which section 183 should be read. Taking the two together, the reasonable construction to be put is that, if the officer acted in good faith under colour of his office, the mere circumstance that his "act may not be strictly justifiable by law" cannot affect the lawfulness of his authority. And the chief reasons for this view are that the likelihood of serious injury resulting from such acts (excepting those tending to cause apprehension of death or grievous hurt) of persons clothed with public authority and subject to public responsibility is so small that the parties, whose rights are thus invaded, would be sufficiently protected by their being left to obtain redress solely by appealing to the constituted authorities in due course and that, in such cases, to secure an easy

QUEEN-EMPRESS v. TIRUCHIT-TAMBALA PITHAN.

and peaceful execution of legal processes, it is necessary that recourse to self-help on the part of the persons affected should be disallowed. It may not be out of place to observe that in England also, for like reasons, a similar conclusion was arrived at in *Regina* v. *Allen*(1). Referring to the contention that the illegality of the arrest in question there reduced the offence to manslaughter, Blackburn, J., said:—"It was further manifest that . . . . they "knew well that, if there was any defect in the warrant or illegality "in the custody, that the Courts of law were open to an application "for their release from custody. We think it would be monstrous "to suppose that, under such circumstances, even, if the justice did "make an informal warrant, it could justify the slaughter of an "officer in charge of the prisoners or reduce such slaughter to the "crime of manslaughter. To cast any doubt upon this subject "would, we think, be productive of the most serious mischief by "discouraging the Police in the discharge of their duties and by "encouraging the lawless in a disregard of the authority of the "law." (Mayne's Criminal Law of India at page 426.) Nor is the circumstance that the irregularity of the particular act of the officer is such as to give rise to a cause of action against him material, since the provisions of section 99 already referred to are not limited only to such acts "not strictly justifiable by law" as do not furnish ground for a civil action.

The cases of *Queen-Empress* v. *Ramayya*(2) and *Bhawoo Jivaji* v. *Mulji Dayal*(3) fully support our conclusion. *Regina* v. *Gazi Kom Aba Dore*(4) relied upon by the Second-class Magistrate is distinguishable from the present case. There the officer altogether transgressed his powers in breaking open the outer door, which he was not entitled to do, except on conditions that were not shown to have existed. Here, however, the Amin did not transgress any established rule of law as to the limit of his powers, but acted erroneously with reference to a matter, which no doubt rendered the particular act invalid, but did not affect the nature of his authority.

I agree, therefore, that the acquittal of the accused should be set aside. The case must be restored to the file and disposed of according to law.

---

(1) Stephen's Digest of the Criminal Law, 4th Ed., p. 390.

(2) I.L.R., 13 Mad., 148. (3) I.L.R., 12 Bom., 377.

(4) 7 Bom. H.C. Rep., Cr., 83.