

MUTHIAH
CHETTI
v.
EMPEROR.

Emperor (1)]. As in this case there was no finding that a breach of the peace had been committed, and the offence for which the accused were convicted did not necessarily involve a breach of the peace and no breach of the peace was in fact committed, we set aside the order requiring the accused to give security for keeping the peace, and the bonds if already executed will be cancelled.

Except as above, we affirm the convictions and sentences.

APPELLATE CRIMINAL.

Before Mr Justice Boddam and Mr Justice Moore.

1905
December 11.

EMPEROR

v.

RAMASAWMY RAJU.*

Madras District Police Act XXIV of 1859, s. 44—Police constable not returning to duty after expiry of leave guilty of offence under.

A police constable, who, having obtained casual leave, does not return to duty on the expiry of such leave and stays away without obtaining fresh leave, is guilty under section 44 of Act XXIV of 1859 of the offence of 'ceasing to perform the duties of his office without leave.'

THE facts necessary for this report are set out in the judgment.

The Public Prosecutor (*Mr. Powell*) for appellant.

JUDGMENT.—We think the order of acquittal in this case must be set aside.

The accused, a police constable, was charged under section 44 of Act XXIV of 1859 with "ceasing to perform the duties of his office without leave." It appears that he applied for leave which was refused. He then obtained three days' casual leave, and whilst on such leave again applied for long leave which was again refused. He did not however return to duty at the expiry of his casual leave but stayed away without leave. Having stayed away from duty for over one month sanction was granted for his

(1) I.L.R., 26 Mad., 469.

* Criminal Appeal No. 298 of 1905, presented under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed on the accused in Criminal Appeal No. 101 of 1904 by M. R. Ey. C. S. Anantarama Ayyar, Sub-Divisional Magistrate of Malur Division (Calendar Case No. 993 of 1904 on the file of the Stationary Third-class Sub-Magistrate, Madura Town).

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prosecution under the above section, and the Stationary Sub-Magistrate of Madura Town tried, convicted, and sentenced him to a fine of Rs. 12 or in default one week's simple imprisonment. On appeal the Sub-Divisional First-class Magistrate set aside the conviction and acquitted him, holding that the facts proved did not constitute the offence of "ceasing to perform the duties of his office without leave" inasmuch as he was on casual leave and merely overstayed his leave.

We think that is wrong. We are of opinion that, if a police constable is granted casual leave for a limited period and does not at the end of that period resume his duties as a police constable, he withdraws himself from his duties and "ceases to perform the duties of his office without leave" within the meaning of the section.

The intention of the section is to render police constables liable to punishment for such neglect or breaches of duty as are not punishable under section 10 of the Act, such as desertion: *Prima facie*, a constable absent without leave is guilty of "ceasing to perform his duty." The fact that he has been permitted to be absent on casual leave for a time immediately anterior to his absenting himself from duty can make no difference in his offence. At the expiry of his casual leave he should, presumably, be on duty, and his own omission to return to duty cannot make his conduct less an offence than if he had returned to duty and then ceased to perform his duty.

We therefore set aside the acquittal of the First-class Sub-Divisional Magistrate, and restore and confirm the conviction and sentence of the Stationary Subordinate Magistrate.