

## APPELLATE CRIMINAL—FULL BENCH.

*Before Sir Arnold White, Chief Justice, Mr. Justice Subrahmaniam Ayyar and Mr. Justice Davies.*

IN THE MATTER OF RAMAYA NAIKA (ACCUSED),  
PETITIONER.\*

1903.  
February 6.

*Penal Code—Act XLV of 1860, s. 187—Rendering assistance to a public servant—Refusal to sign search list by person who attended search under Abkari law—Liability—Criminal Procedure Code—Act V of 1898, s. 103 (1)—Party called upon to attend and witness a search.*

A person was called upon by an Abkari Inspector to attend a search held under section 103 of the Code of Criminal Procedure, and did so. He, however, refused to sign the search list when it was prepared. On a charge being preferred against him under section 187 of the Indian Penal Code of intentionally omitting to assist a public servant in the execution of his duty:

*Held*, that the accused was not guilty of an offence under section 187. Assuming that a person called upon to attend and witness a search, under section 103 of the Code of Criminal Procedure, is under a legal obligation to attend the search and sign the search list, the "assistance" which a person is bound, by the earlier part of section 187 of the Penal Code, to render is *ejusdem generis* with the various forms of assistance referred to in the latter part of the section. It must have some direct personal relation to the execution of the duty by the public officer. The signing of the search list required by section 103, is an independent duty which is imposed on the witness, whereas the word, "assistance," as used in the section, implies that the party who assists is doing something which, in ordinary circumstances, the party assisted could do for himself.

QUESTION referred to a Full Bench. Accused was charged before the Second-class Magistrate of Kasaragod taluk with having wilfully neglected to aid a public servant, under section 187 of the Indian Penal Code. The complaint was lodged by the Sub-Inspector of Abkari and Customs, under the orders of his Inspector. Complainant stated that on 18th March 1902 he had visited a certain house with the object of searching it for contraband liquor under the Abkari Act. He called upon the accused and others, as respectable inhabitants of the locality, to accompany

\* Criminal Revision Case No. 524 of 1902, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of V. Ramachandra Rau, General Duty Deputy Magistrate of South Canara, in Criminal Appeal No. 78 of 1902, presented against the conviction and sentence of C. Narayanan, Stationary Second-class Magistrate of Kasaragod, in Criminal Case No. 298 of 1902.

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him and witness the search. The accused attended with reluctance and was present during the search, but, as the complainant alleged wilfully neglected and refused to attest the search list, though his attention was drawn to section 187 of the Indian Penal Code, and he was warned that he was bound to comply with the complainant's request. It was stated by the prosecution that the reason which the accused gave for his refusal was that if he attested the search list he would have to attend at the enquiry and at Courts, which would put him to expense. The Magistrate held that this was not a lawful excuse, and that the conduct of the accused was an intentional omission to render or furnish assistance within the meaning of section 187, and inflicted a fine of Rs. 50 with one week's simple imprisonment on default. An appeal to the Deputy Magistrate was dismissed.

The accused preferred this criminal revision petition.

*K. N. Ayya* for petitioner.

The Public Prosecutor in support of the conviction.

The case came, in the first instance, before Subrahmaniam Ayyar and Davies, JJ., who made the following

ORDER OF REFERENCE TO A FULL BENCH.—The accused, on requisition, attended a search held under section 103 of the Code of Criminal Procedure, and witnessed the search, but refused to sign the search list when it was duly prepared. The refusal was intentional. The question is whether the accused was guilty of an offence under section 187 of the Indian Penal Code. Having regard to the importance of the question, we refer it for the decision of a Full Bench.

The case came on for hearing in due course before the Full Bench constituted as above, when the Court expressed the following

OPINION.—For the purposes of the question referred we assume that a party called upon to attend and witness a search under section 103 (1) of the Code of Criminal Procedure is under a legal obligation to attend the search and sign the search list.

Section 187 of the Indian Penal Code provides, first, in general terms, for the punishment when a person being bound by law to render assistance to a public servant in the execution of his public duty intentionally omits to assist; secondly, it provides for the punishment when the assistance is demanded for certain specified

purposes. We think the "assistance" referred to in the former part of the section is *ejusdem generis* with the various forms of assistance specified in the latter half. The "assistance" must have some direct personal relation to the execution of the duty by the public officer. The signing of the search list required by section 103 is an independent duty imposed on the witness. The word "assistance" as used in the section implies that the party who assists is doing something which, in ordinary circumstances, the party assisted could do for himself.

Our answer to the question referred is, that on the facts stated, the accused was not guilty of an offence under section 187 of the Indian Penal Code.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Subrahmaniam Ayyar and Mr. Justice  
Bhushyam Ayyangar.*

VEMURI SESHANNA AND ANOTHER, ACCUSED IN CRIMINAL CASE  
No. 180 OF 1902.\*

1902.  
January 16.

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*Criminal Procedure Code—Act V of 1898, s. 423 (b)—Conviction of two accused and order against both accused to pay Court and process fees in equal shares—Acquittal of one accused on appeal—Order by Appellate Court for entire Court and process fees—Legality—"Enhancement of sentence."*

A Magistrate convicted two accused, and, in addition to the sentences which he passed on them, ordered them to pay the Court and process fees in equal shares. The Appellate Court acquitted one of the accused and ordered the other accused (whose conviction was affirmed) to pay the whole amount of the Court and process fees :

*Held*, that the order of the Appellate Court was legal under section 423 (a) of the Criminal Procedure Code and did not amount to an enhancement of sentence within the meaning of section 423 (b). Fees ordered to be paid under section 31 (iv) of the Court Fees Act are recoverable as if they were fines imposed by the Court, but they are not part of the fine imposed as a punishment for the offence.

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\* Case referred for the orders of the High Court, under section 438 of the Code of Criminal Procedure, by R. Morris, District Magistrate of Kistna, in his letter, dated 29th November 1902, Revision Case No. 1329 of 1902 (Criminal Revision Case No. 567 of 1902).