

APPELLATE CRIMINAL.

Before Mr. Justice Phillips and Mr. Justice Krishnan.

THE KING-EMPEROR, APPELLANT,

1917
October 8.

v.

LAL BAGE (ACCUSED), RESPONDENT.*

Police Act (XXIV of 1859), sec. 46—'Threat,' meaning of—Demand by a police constable of mamul or customary payment, whether an offence under the section.

A demand by a police constable, of a 'mamul' (customary payment made to obtain his favour), is a 'threat' within section 46 of the Police Act (XXIV of 1859) and obtaining money by such threat is an offence under the section. †

APPEAL under section 417 of the Code of Criminal Procedure (Act V of 1898) against the acquittal of the accused by *Janab Moulvi Muhammad Hubibullah Khan Bahadur*, the Sub-divisional Magistrate of Guntur, in Criminal Appeal No. 20 of 1917, preferred against the conviction and sentence by *R. Kotayya*, the Stationary Sub-Magistrate of Guntur, in Calendar Case No. 51 of 1917.

The accused, a police constable in the town of Guntur, demanded of a shepherd who had as usual brought his goats to Guntur for sale, the payment of his 'mamul' (a customary payment) and threatened to take him to the police station in case of non-compliance. The shepherd accordingly paid three annas to the accused. On these facts deposed to by the shepherd and two others, the Sub-Magistrate convicted the accused of having committed an offence under section 46 of the Police Act (XXIV of 1859) but the conviction was set aside on appeal by the

* Criminal Appeal No. 327 of 1917.

† Section 46 of the Police Act (XXIV of 1859) is as follows:—

"Any police officer who shall, directly or indirectly, extort, exact, seek, or obtain any bribe or unauthorized reward or consideration, by any illegal threat or pretence, or for doing or omitting or delaying to do, any act which it may be his duty to do or to cause to be done, or for withholding or delaying any information which he is bound to afford or to communicate, or who shall attempt to commit any of the offences abovesaid, or shall be guilty of cowardice, shall be liable, upon conviction before a Magistrate, to a fine not exceeding twelve months' pay, or to imprisonment, with or without hard labour, not exceeding twelve months or both."

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First-class Magistrate of Guntur who disbelieved the prosecution evidence. The Public Prosecutor preferred this appeal to the High Court under section 417, Criminal Procedure Code.

E. R. Osborne, the acting Public Prosecutor, for the Crown.

K. P. Padmanabha Pillai for the accused.

The judgment of the Court was delivered by

PHILLIPS, J.

PHILLIPS, J.—The prosecution case is that prosecution first witness paid three annas to accused as ‘mamul.’ The demand of the ‘mamul’ is spoken to not only by prosecution first witness but also by prosecution second witness, and the payment of the money was witnessed by prosecution fourth witness, the Circle Inspector. The Sub-Magistrate who tried the case believed these witnesses, and there is certainly no reason, in our opinion, for disbelieving prosecution first witness, who made his statement to the Inspector at the earliest opportunity. Accused’s story is that he paid three annas to prosecution first witness as earnest money for purchase of a goat, and that prosecution first witness returned the money as he withdrew from the bargain. Defence witnesses Nos. 1 to 3 are examined in support of this story, but the prosecution witnesses were not cross-examined as to their presence at the scene of offence and the Sub-Magistrate has given good reasons for rejecting their evidence. On the facts we think the Deputy Magistrate has paid too little regard to the opinion of the Magistrate who heard the evidence, an opinion in which we entirely agree.

As regards the point of law the Deputy Magistrate considers that all the elements necessary to constitute an offence under section 46 of the Police Act are not established. The mere demand of a ‘mamul’ or customary payment made in order to obtain the favour of the official demanding it is itself a threat and consequently the obtaining of money by such a demand comes within section 46 of the Police Act. In this case we have also the evidence of prosecution first witness that he paid as the police were troubling him and in Exhibit A he says the police threatened to take him to the police station. We therefore restore the conviction by the Sub-Magistrate under section 46 of the Police Act and confirm the sentence of imprisonment, but reduce the fine to Rs. 15.

N.R.