

impossible to hold, having regard to the customs amongst Hindus, that on the facts found by the lower Appellate Court, plaintiff has not suffered seriously from the slander of the defendant inasmuch as his social position has been materially affected by the suspicion cast upon him, and his priest has refused to perform the usual rites and ceremonies for him.

The damages awarded are moderate. The appeal is, therefore, dismissed with costs.

J. V. W.

*Appeal dismissed.*

### CRIMINAL REVISION.

*Before Mr. Justice Mitter and Mr. Justice Agnew.*

IN THE MATTER OF THE PETITION OF BHOLA NATH DAS.\*

*Police Act (V of 1861), s. 29—Police constable—"Neglect of duty"—"Lawful order"—Extra drill.*

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A District Superintendent of Police directed his constables to cut down the jungle in the vicinity of their lines, and on their refusal to comply ordered them extra drill every day. One of such constables not turning out to such extra drill was thereupon prosecuted and convicted of neglect of duty under s. 29, Act V of 1861.

*Held*, that s. 29 provided for no such offence, and that any neglect of duty short of a violation of duty does not amount to an offence under that section.

*Held*, further, that the omission to attend such extra drill did not amount to an offence under that section, as the words "lawful order" used in the section mean an order which the authority mentioned therein is competent to make, and it did not appear that a District Superintendent of Police was competent to order his constables to cut down the jungle in the vicinity of their lines and, on their refusal to do so, to order them extra drill.\*

IN this case the accused, who was a constable in the Goalpara Police Force, was charged with neglect of duty under s. 29, Act V of 1861.

It appeared from the statement of the complainant, who was an inspector, that the District Superintendent of Police had recently ordered his men to cut down the jungle in the vicinity

\* Criminal Revision No. 302 of 1885, against the order of Lieutenant-Colonel T. B. Michell, Deputy Commissioner of Goalpara, dated the 6th of July 1885.

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of their lines. Some of the men, and amongst them the accused, considered this work derogatory and refused to obey the order. The District Superintendent thereupon as a punishment ordered these men extra drill every day. On the 3rd July, the first day on which such extra drill was ordered, the accused absented himself. The present charge was, therefore, brought against him, and he was convicted of an offence under the above mentioned section, the Deputy Commissioner being of opinion that the District Superintendent was perfectly right in ordering the men to clear the jungle and in punishing them for their disobedience. The Deputy Commissioner being of opinion that the accused was one of the ring-leaders, sentenced him to three months' rigorous imprisonment. The accused then sent an application for revision to the High Court, and upon the papers being laid before Prinsep and Grant, JJ., a rule was issued against the Deputy Commissioner to show cause why his order should not be set aside, and pending the hearing of the rule the accused was directed to be released on bail.

The rule came on to be heard in the vacation on September 18th, before a Bench consisting of Pigot and O'Kinealy, JJ., who considered that the question of whether the District Superintendent of Police had power to order extra drill as a punishment was of some difficulty and of importance to the police authorities, and that they should have an opportunity of being heard. The case was, therefore, adjourned till after the vacation, and accordingly now came on for hearing before a Bench consisting of Mitter and Agnew, JJ.

*Baboo Dwarka Nath Chakrabati*, for the petitioner.

The *Deputy Legal Remembrancer* (Mr. Kilby) for the Crown.

*Baboo Dwarkanath Chakrabati*, for the petitioner, contended that failure to appear to undergo punishment is not a neglect of duty, as liability to undergo punishment is hardly a duty. Assuming it to be so, there is no finding by the Court below that the failure to appear was "wilful" as contemplated by s. 29, Act V of 1861; the District Superintendent of Police had no authority to order extra drill, which is a

corporal punishment, therefore failure to obey that order is not a breach or violation of duty under s. 29, Act V of 1861. Section 7 authorises the District Superintendent of Police to punish his subordinates, but it does not authorise him to inflict corporal punishment. The order to cut jungle was illegal, it not being the duty of a constable to cut jungle, therefore the punishment awarded for failing to do what was unlawful is illegal, and therefore omission to comply with the order would not be an offence under s. 29.

The *Deputy Legal Remembrancer*.—The order to cut jungle is legal, because the Police Manual provides that the constables are to keep their lines clean. The power to order extra drill, although not expressly provided, has been recommended in the Police Manual in the case of officers receiving very small pay.

Baboo *Dwarkanath Chakrabati* in reply.

The judgment of the High Court (MITTER and AGNEW, JJ.) was as follows:—

The petitioner in this case has been convicted by the Deputy Commissioner of Goalpara in a summary trial of the offence of neglect of duty under s. 29 of Act V of 1861, under the following circumstances:—

The petitioner, who is a constable in the Goalpara Police Force, was ordered by the District Superintendent of Police to cut down the jungle in the vicinity of the lines occupied by the said Police Force. On his refusal to obey this order, the District Superintendent ordered extra drill every day for the petitioner and other similar delinquents. The petitioner not having attended the extra drill thus ordered has been convicted as aforesaid and sentenced to three months' rigorous imprisonment.

The offence of which the petitioner has been found guilty is that "of neglect of duty under s. 29 of Act V of 1861." The section in question does not provide for any such offence. It deals with offences constituted either by any violation of duty or wilful breach, or neglect of any rule or regulation, or lawful order, made by competent authority on the part of a police-officer. Any neglect of duty short of a violation of duty does not amount to an offence under s. 29 of Act V of 1861. But apart from this error it seems to us that,

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under the circumstances of this case, the omission on the part of the petitioner to attend the extra drill ordered by the District Superintendent of Police did not amount to an offence under this section. The words "lawful order" used in the section mean an order which the "authority" mentioned therein is competent to make. It has not been shown to us that the District Superintendent of Police in this case was competent to order his constables to cut down the jungle in the vicinity of their lines, and that on their refusal to do so, to order extra drill in respect of them. That being so, the prosecution in this case, in our opinion, failed to establish that there was any violation of duty or wilful breach, or neglect of any lawful order, made by competent authority on the part of the petitioner. We, therefore, set aside his conviction and the sentence passed upon him upon that conviction.

H. T. H.

*Conviction quashed.*

## APPELLATE CIVIL.

*Before Mr. Justice Wilson and Mr. Justice Field.*

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 December 4.

UMACHURN BAG AND ANOTHER (PLAINTIFFS) v. AJADANNISSA BIBEE AND OTHERS (DEFENDANTS).\*

*Road Cess Act (Bengal Act X of 1871), ss. 3, 9, 10, 23, 25 and 26—Sale for arrears of Road Cess, Effect of—Right of purchaser.*

In a suit on a bond by which certain land, admittedly lakheraj, was mortgaged, the purchaser of a portion of the mortgaged property at an auction sale for arrears of road cess due under Bengal Act X of 1871, was added as a defendant, and the lower Courts holding that the effect of such a sale was to pass the property to the defendants free of encumbrances, made a decree excluding that portion from liability in respect of the mortgage bond.

*Held*, on the construction of Bengal Act X of 1871, that the sale had no such effect, and that the whole of the property was liable to be sold in satisfaction of the plaintiffs' claim.

Although the effect of an interpretation clause is to give the meaning assigned by it to the word interpreted in all places in the Act in which that

\* Appeal from Appellate Decree No. 1457 of 1885, against the decree of Baboo Brojendra Coomar Seal, Judge of Bancoorah, dated the 15th of April 1885, affirming the decree of Baboo Nil Madhub Mookerjee, Rai Bahadur, Munsiff of that District, dated the 2nd of December 1884.