

Hakim v. Tej Chander Mukerji (1), and re-affirmed by him in *Queen-Empress v. Dhum Singh* (2). And I may add that so far as the quantum of damages claimed is concerned, nothing that I have said in this judgment must be taken to lay down any rule as to assessment. The considerations which regulate the assessment of damages in such cases necessarily rest upon the determination of the facts and circumstances of each case, and I do not think that the case is in its present state ready for any adjudication as to the amount of damages. The question will, however, no doubt be determined by the Court of first instance, to which, by the order of the lower appellate Court, the case has been remanded for re-trial.

I would dismiss this appeal with costs.

Appeal dismissed.

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DAWAN
SINGH
v.
MAHIP SINGH.

REVISIONAL CRIMINAL.

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June 23.

Before Mr. Justice Straight.

QUEEN-EMPRESS v. DURGA.

Act V of 1861, ss. 8, 29—Police Officer—Suspension—Breach of order.

A police constable was suspended and ordered to remain in the lines during suspension. Despite the order he absented himself therefrom without leave. He was convicted under s. 29 of Act V of 1861.

Held, s. 29 of Act V of 1861, contemplates that the person to be charged with an offence under it must have been, at the time of his doing the act in respect of which the charge is preferred, a police constable within the meaning of that Act. When a police officer is suspended, he ceases to be a police officer; the conviction was therefore wrong.

The Queen v. Dinonath Gangooly (3) followed.

The facts of this case are stated in the judgment of the Court.

The *Public Prosecutor* (*Mr. G. E. Ross*), for the Crown.

STRAIGHT, J.—This case has been reported by the learned Judge of Banda for consideration as to whether the conviction of the accused under s. 29 of Act V of 1861, which contains the statute law on the subject, can be sustained. S. 29 of the Act to which I have referred provides:—"Every police officer who shall be guilty of any violation of duty, or wilful breach or neglect of any rule or regulation or lawful

(1) I. L. R. 3 All. 815. (2) I. L. R. 6 All. 220.

(3) S. B. L. R. App. 58.

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order made by competent authority ; or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months ; or who shall engage, without authority, in any employment other than his police duty ; or who shall be guilty of cowardice ; or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both."

In this particular case it appears that the man Durga was a police constable employed in the police force of these Provinces ; that for some misconduct upon his part he had been ordered by his District Superintendent to be suspended and to remain in the lines during such suspension ; that despite the order that he was to remain in the lines, he absented himself therefrom without leave ; and it was in respect of his doing so that he has been charged under s. 29, Act V of 1861, and convicted by the Magistrate. When this reference came before me, I thought the matter of sufficient importance to invite the learned *Public Prosecutor* to be good enough to give me the benefit of his valuable assistance, more particularly as there was to be found in the Bengal Law Reports, Vol. VIII, Appendix, page 58 (*The Queen v. Dinanath Gangooly*), a decision which, if a right decision, governs this case and settles the question as to whether such a conviction as that which had been had against Durga can be sustained. I have heard the learned *Public Prosecutor*, and I have had an opportunity also of carefully considering the terms of the judgment of the two learned Judges of the Calcutta High Court, and I am constrained to come to the conclusion that they were right. The provision contained in s. 29 of Act V of 1861 contemplates that the person to be charged with an offence under that section must have been, at the time of his having done the act in respect of which the charge is preferred, a police constable within the meaning of that statute ; and by s. 8, read in conjunction with the form to be found in the schedule attached to the Act, it is clear, that when once a police officer has been suspended, it is his duty to hand over to his superior officer the certificate under which he is appointed a member of the police

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force ; so that the effect of the statute, as pointed out by the two learned Judges of the Calcutta Court, is that a police officer who has been suspended, from the mere circumstance of that suspension, ceases to be a police officer, because it is ordered by the Act that when he is suspended his certificate, hitherto in operation, shall cease to have effect, and shall be immediately surrendered to his superior officer. I cannot help concurring with that view, though, with the profoundest respect for the framers of the law, the policy or convenience of such a provision seems to me doubtful. Indeed, with reference to what transpired yesterday in the course of the case of *Muhammad Mian Khan* (1), and from what appears in the present case, it is difficult to see how the discipline of the police force can be properly preserved unless the District Superintendents have larger and more clearly defined statutory powers to deal with insubordination. It is no use framing rules and formulating police manuals, if such rules and the directions in such manuals are not authorized by or are in hostility with the statute, and I think the subject is one which may fairly claim attention at the hands of the Local Government, specially just now, when there are so many complaints of the working of the present police system, and a thorough overhauling and re-organization seems desirable.

I quash the conviction and sentence of Durga, because on the terms of the statute it seems to me I have no option, and he will stand acquitted. I direct that a copy of this order be forwarded to the Local Government and to the Inspector-General of Police. Under these circumstances the reference must be accepted, the conviction and sentence being set aside, the accused will stand acquitted.

(1) Unreported.