REVISIONAL CRIMINAL.

1919
July, 3.

Before Mr. Justice Ryves

EMPEROR *v.* NUR-UL-HASAN.*

Act No. V of 1861 *(Police Act), section* 29—*Police constable—Failure to return to duty followed by suspension and punishment—Second failure to obey orders after re-instatement—Separate offences.*

A police constable, having failed to return to duty at the expiry of casual leave, was convicted and fined under section 29 of the Indian Police Act. During his trial he was under suspension. Subsequently he was re-instated and ordered to return to duty. He failed to do so.

Held that this second disobedience of orders was a separate offence entirely from that in respect of which he had been tried and convicted and that his conviction and sentence in respect thereof were legal.

ONE Nur-ul-Hasan, a police constable, having taken casual leave, failed on the expiration of his leave to return to duty. For this he was prosecuted under section 29 of the Indian Police Act, 1861, and fined Rs. 30. Pending his trial he was suspended, but on the 1st of February, 1919, he was re-instated and ordered to return to duty. Finally an order was sent to him, dated the 10th of March, 1919, as he had meanwhile sent in an application for leave to resign, directing him to appear in the police lines and there give the two months' notice required by the Act. This order also he failed to obey, and he was consequently tried again as in respect of a fresh offence and was sentenced to two months' rigorous imprisonment. The Sessions Judge of Saharanpur referred the case to the High Court, being of opinion that the offence of which Nur-ul-Hasan was guilty was really only one, and that he could not legally be tried and convicted for the second time.

In the High Court neither the accused nor the Crown was represented.

RYVES, J:—Nur-ul-Hasan, police constable, failed to return to duty on the expiry of "casual leave" and was in consequence prosecuted under section 29 of the Police Act and, on conviction, was fined Rs. 30. This was on the 17th of January, 1919. Pending that trial he had been suspended, but on the 1st of February, 1919, the Superintendent of Police passed an order re-instating him and called upon him to return to duty. Orders were repeatedly sent

* Criminal Reference No. 375 of 1919.

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to him to this effect, and it is admitted that in spite of these orders he failed to return to duty. In consequence he was prosecuted under section 29 of the Police Act, for his failure to comply with the order of the Superintendent of Police, dated the 10th of March, 1919, directing him to appear in the police lines and there give a two months' notice as required under the section of the Act. This order was so worded, because Nur-ul-Hasan had in the meantime sent in an application for leave to resign. This order was received by Nur-ul-Hasan on the 13th of March, 1919. He failed to comply with it and in consequence he was prosecuted under section 29 of the Act. The accused admitted the facts, but pleaded that as he had already been fined Rs. 30, for failure to return to duty, he was justified in disobeying subsequent orders calling him back to duty. The learned Magistrate convicted him and sentenced him to rigorous imprisonment for two months. The learned Sessions Judge of Saharanpur has referred the case to this Court with a recommendation that the conviction and sentence be set aside on the ground that his failure to return to duty was one single offence. The Judge says:—"He withdrew from his duties without giving two months' notice, and he has been punished," and suggests that therefore he could not legally be again convicted, merely because he still failed to return to duty. It seems to me that the accused has not been punished again for the same offence but for another similar offence. Section 9 of the Act provides that no police officer shall be at liberty to withdraw himself from the duties of his office except as provided in that section. At the first trial Nur-ul-Hasan was punished for failure to return to duty after casual leave. On the second occasion he was prosecuted for failure to return to duty after he had been re-instated. These were two distinct and separate offences, though similar in character. It seems to me, therefore, that legally the conviction is right. At tht same time, I think under the circumstances of the case, a sentence of rigorous imprisonment for two months is perhaps unnecessarily severe. I reduce the sentence to one of one month's rigorous imprisonment from the date of his original sentence.

Sentence reduced.