

CRIMINAL REFERENCE.

1892
August 25.

Before Mr. Justice Pigot and Mr. Justice Rampini.

THE QUEEN-EMPRESS *v.* KRISHNA GOBINDA DAS AND OTHERS.*

Refusal to sign a receipt for summons—Criminal Procedure Code (Act X of 1882), ss. 69, 71—Criminal Procedure Code (Act X of 1872), s. 154—Penal Code (Act XIV of 1860), ss. 173, 180.

A mere refusal to sign a receipt for a summons is not an offence under section 173 or section 180 of the Penal Code.

THIS was a reference from the Sessions Judge of Mymensingh, the facts of which were as follows:—

At the instance of one Chandra Kanta Chakrabatti, a summons was issued to Krishna Gobinda Das, calling upon him to show cause why he should not be required to furnish security for keeping the peace. The summons was made over for service to a constable. That officer reported that he delivered a duplicate of the summons to Krishna Gobinda Das, who refused to sign a receipt therefor on the back of the other duplicate. On this report the Magistrate of the district, Mr. Phillips, directed the prosecution of Krishna Gobinda Das under section 180, Penal Code. Subsequently, however, the Magistrate directed that the prosecution should be under section 173 of the Penal Code, read with section 69 of the Criminal Procedure Code. The Deputy Magistrate of Netrokona, who tried the case, finding that the accused, who had received a copy of the summons, had refused to sign a receipt for the same, and being of opinion that sections 173 and 180, Penal Code, were applicable to the case, on the 16th May 1892 convicted the accused under those sections, and sentenced him to pay a fine of Rs. 25, and in default to suffer two weeks' simple imprisonment.

On the case being taken before the Sessions Judge, he referred the matter to the High Court under the provisions of section 438

* Criminal Reference No. 220 of 1892, made by F. H. Harding, Esq., Sessions Judge of Mymensingh, dated the 3rd August 1892, against the order passed by J. N. Bose, Esq., Deputy Magistrate of Netrokona, dated the 6th May 1892.

of the Criminal Procedure Code, being of opinion that the order of the 16th May was illegal. The Sessions Judge in referring the case pointed out that under the old law as contained in section 154 of Act X of 1872, which made no provision for substituted service in case of refusal to sign a receipt for a summons, it had been held in *In the matter of Bhoobuneshwar Dutt* (1), and *Reg. v. Kalyá bin Fakir* (2) that the refusal to sign a receipt for a summons was not an offence under section 173 of the Penal Code; that the present law, sections 69 and 71 of Act X of 1882, allowed the serving officer, where there was a refusal to sign the receipt, to affix a duplicate of the summons to some conspicuous part of the residence of the person it was desired to serve; and he expressed his opinion that this additional provision in the new law made it still more clear that the refusal to sign the receipt was not intended to amount to preventing service of the summons, under section 173 of the Penal Code. As to section 180 he held it was clearly inapplicable, as no statement had been made by the accused. The Judge was therefore of opinion that no offence had been committed under either of those sections of the Penal Code, and that the order of conviction should be set aside.

No one appeared on the reference.

The order of the Court (PIGOT and RAMPINI, JJ.) was as follows:—

For the reasons given by the Sessions Judge, and having regard to the authorities cited by him, in his letter, we set aside the conviction and sentence pronounced by the Deputy Magistrate of Netrokona on the 16th of May 1892, and we direct that the fine, if paid, or any portion thereof which may have been paid, be refunded.

Conviction set aside.

A. F. M. A. R.

(1) I. L. R., 3 Calc., 621.

(2) 5 Bom., H. C., 34.

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