

APPELLATE CRIMINAL.

Before Dawson Miller, C. J. and Ross, J.

GOVERNMENT ADVOCATE, BIHAR AND ORISSA

v.

GANGA PRASAD.*

1922.

March, 9.

Penal Code 1860 (Act XLV of 1860), sections 21 and 186—Public servant—Municipal Tax Collector—Distress warrant, service of—Bengal Municipal Act, 1884 (Ben. Act III of 1884), section 356 and Schedule IV—Date of return, whether must be shewn on warrant—Code of Criminal Procedure, 1898 (Act IV of 1898), section 195—complaint by public servant, whether sanction is necessary.

A person employed by a Municipality as a tax collector is a public servant within the meaning of section 21 of the Penal Code.

Where *T* was recorded as the owner of a house within the Patna Municipality but the house was in fact in the occupation of his brother *G*, and it was shewn that although the Municipal taxes were always levied on *T* they were collected from *G*, *held*, that service of a distress warrant on *G* was a proper service although the warrant was made out against *T*.

It is not necessary that a distress warrant issued in the form prescribed in Schedule I to the Bengal Municipal Act, 1884, should mention a date for the return of the warrant.

Sanction under section 195 of the Code of Criminal Procedure, 1898, is not necessary when the complainant is himself the public officer in question.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

Sultan Ahmed (Government Advocate), for the Crown.

Siveshwar Dayal, for the accused.

DAWSON MILLER, C. J.—This is an appeal from an acquittal by an Honorary Magistrate of the second

* Government Appeal No. 2 of 1922, from an order of Syed Abdul Aas, Honorary Magistrate of Patna, dated the 18th November, 1921.

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class of the Sadikpur Bench in Patna on the 25th October last year. The complainant is a Tax Collector employed by the Municipality of Patna. The accused is in occupation of a house within that Municipality. The name of the accused is Ganga Prasad but the house is entered in the name of his brother Tulsi Lal who appears to be the actual owner of the house. Ganga Prasad, however, is in occupation and the taxes although levied on Tulsi Lal have hitherto been collected from Ganga Prasad. The offences with which the accused is charged are offences under sections 504 and 186 of the Indian Penal Code. Section 504 refers to intentionally insulting or giving provocation to a person intending or knowing it to be likely that such provocation will cause a breach of the peace or some other offence. Section 186 refers to voluntarily obstructing a public servant in the discharge of his public functions. It appears that on the 14th July last the complainant proceeded to the house in question with a distress warrant in order to attach the property in the house by reason of a default in payment of the taxes due. The tax due was a small sum of Rs. 1-14-0 or thereabouts. A demand notice had previously been served: no payment had been made and consequently something more than a month later the distress warrant having issued was given to the complainant who is the Tax-Collector employed by the Municipality in order to serve it. What happened has been described by the complainant himself and by four or five other witnesses. He went to the house occupied by Ganga Prasad and when Ganga Prasad appeared he presented the warrant with the result that he was called filthy and abusive names and Ganga Prasad apparently got angry and went for a stick which he brought out and he chased the complainant away threatening and abusing him. I ought perhaps to add before this assault took place the complainant upon being refused the amount of the tax had ordered his peon to attach two of the chairs in the house and it was upon the peon's attempting to do so that the accused was guilty of the offences charged.

against him. The evidence given by the complainant is supported in its main incidents by Gopi, the peon and by one Chhetto, a toddy seller, by Ganga, a telegraph peon and by Lalloo Ram, a Collectorate peon and by Luchmi Prasad, a waterworks tax collector in Bankipore also employed by the Municipality. There can be no doubt, if the evidence of these witnesses is relied upon, that the accused not only threatened the complainant and chased him with a stick but also used extremely abusive and insulting language to him such as was certainly very likely, unless the complainant shewed great restraint, to result in a breach of the peace.

In answer to these charges there is not a scrap of evidence given on behalf of the defence. The learned Honorary Magistrate before whom the case came dismissed it upon three grounds. He said that as the distress warrant was addressed to Tulsi Lal in whose name the house stood in the Municipal Register and as it was served merely at his house or upon the accused Ganga Prasad there was therefore no proper service of notice. He was clearly wrong in this because under the Bengal Municipal Act, 1884, section 356 provides that every notice, summons, or other demand under this Act may be served personally on or presented to the person to whom the same is addressed or may be left at his usual place of abode with some adult male member or servant of his family. Now what was done in this case was that it was left at Tulsi Lal's house and was presented to an adult male member of his family, *viz.*, his brother. There can be no doubt therefore in my mind as to the regular service of the notice.

The second point upon which the learned Honorary Magistrate dismissed the case was that the distress warrant was illegal inasmuch as there was no date of return mentioned in the said warrant. We are not informed under what law the learned Honorary Magistrate considered that it was necessary to have any date mentioned for the return of the warrant. It was

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issued in the proper form provided in Schedule IV of the Bengal Municipal Act and that form does not require that any date should be put in the warrant for return and this is hardly surprising when one considers that the warrant is merely an order directed to the Tax Collector or whoever may be the proper person to serve it directing him that if the tax cannot be recovered he should attach the property belonging to the defaulter. Thereupon armed with that warrant the Tax Collector proceeds to the house and endeavours to carry out the duty enjoined upon him.

The next ground upon which the learned Honorary Magistrate thought that the case should be dismissed was that the complainant was not a public servant. The complainant is undoubtedly a person employed by the Municipality for the purpose of collecting taxes and has been so employed for some time. Under section 21 of the Indian Penal Code it is distinctly provided in the 10th clause that the words "Public Servant" shall apply to every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district. It seems quite clear that the learned Honorary Magistrate did not have his attention properly drawn to the law upon this subject. Another matter which he considered was fatal to the present prosecution was that no sanction had been properly accorded for the prosecution in this case under section 195 of the Criminal Procedure Code. Again the learned Honorary Magistrate's law is at fault. Had he taken the trouble to consider the matter in the least and read the section in question it would have been at once manifest to him that sanction was not necessary in a case where the complainant was himself the public officer in question.

Therefore in so far as the learned Magistrate has acquitted the accused upon these grounds of law his judgment cannot possibly stand. The learned

Honorary Magistrate did not in his judgment find that the facts upon which the charge is based had not been proved although he said there were certain discrepancies in the evidence and therefore we are unable to say whether if he had not misdirected himself as to the law he would have convicted the accused of the offences charged. In appeal before us today the law laid down by the learned Honorary Magistrate has not been supported but it has been contended that upon the evidence given we ought to come to the conclusion that nothing of the sort occurred as is alleged by the witnesses. The account given is, as I said at the beginning, an account which shews not only an attack and threats but also very abusive language used against a public officer in the attempted discharge of his duties. But it is said that there are certain discrepancies in the evidence given by these witnesses which ought to lead us to the conclusion that none of the evidence can be accepted. I am entirely unable to come to that conclusion. It is quite true in a case of this sort as so frequently happens where you get accounts given by different witnesses there are some discrepancies. The main discrepancy which has been relied upon is that Tabarak Hosain, the complainant, stated in his cross examination in one place that on the day of the occurrence he went to the accused only with a warrant peon. It appears from his evidence however a little later on, also in cross-examination, that when the incidents which are complained of took place Luchmi Prasad and several others were present at or very near the house when the accused threatened to beat him. The evidence given by Luchmi it is said is in conflict with this. What Luchmi said was that he had gone, the same morning, to the same house to try and collect the water tax but had been unsuccessful; but later in the day he met Tabarak Hosain also on his way to the house of the accused and he went back with him thinking perhaps he might have better luck that time. He was outside the house at the time when the occurrence took place and he corroborates the other witnesses as to the

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assault and the bad language used. The only discrepancy, if it be a discrepancy at all, is that whereas Tabarak Hosain said he went to the accused only with a warrant peon the other witness Luchmi says he met him before he got there. Now the complainant certainly does in his evidence also say that Luchmi and other men, some of whom have given evidence, were present when the occurrence took place. I do not think myself that there is any real discrepancy in the evidence. It may well be that when he gave the first part of his evidence he was referring to the time when he actually began to proceed to the house to collect the debt.

Another matter which has been drawn to our attention is that Gopi, the warrant peon, who accompanied the complainant says that when they went to the house there were two boys reading in the *dalan* and he asked them to call Tulsi Lal which they did, and accused then came out, whilst Tabarak, the complainant, does not in fact refer to these boys being there at all. He certainly does not contradict the evidence but he has omitted the incident altogether. What he says is,

"I went to the house of the accused at 10 a.m. and demanded taxes which he refused to pay. I informed and showed him the warrant,"

and so on. There is no real discrepancy there. It merely means this, that whereas Gopi had gone into evidence which was really not material, leading up to the actual assault, the complainant had not considered it necessary to give all these details but has gone straight to the material points. I can find no discrepancies in the evidence such as would lead us to reject the whole of it and consider that the whole case was got up for some ulterior purpose.

A suggestion has been made in the written statement that there was enmity between the complainant and the accused because the accused had threatened to charge him with committing a nuisance by going to the house of a prostitute at night somewhere in the neighbourhood of the accused's own house but there is not a word of evidence in support of this charge and

I think it may at once be dismissed as altogether unfounded.

The result is that we have come to the conclusion that the charge in this case has been made out. It is essential that people in the position of Tax Collectors, who are always very unpopular, should not be subjected to insults and annoyance by those who are by law bound to pay their taxes and we think therefore that some punishment should be inflicted upon the accused. Fortunately no damage was done and although the complainant was threatened he was not in fact beaten. We think in the circumstances of the case the accused should be fined a sum of Rs. 50 or in default one month's simple imprisonment for the offence under section 504. We also consider him guilty under the other section but we do not pass any separate sentence under that section.

Ross, J.—I agree.

Order reversed.

APPELLATE CIVIL.

Before Dawson Miller, C. J., and Ross, J.

MAHABIR PRASAD TEWARI.

v.

JAMUNA SINGH.*

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Limitation Act (IX of 1908), Schedule 1, Article 179—Appeal to His Majesty in Council—exclusion of time spent in obtaining copy of judgment.

In computing the period of limitation prescribed by Article 179 of the Limitation Act, 1908, for an application for leave to appeal to His Majesty in Council, the time spent in obtaining a copy of the judgment sought to be appealed from should be excluded under section 12(3).

Ram Sarup v. Jaswant Rai (1), approved.

* Privy Council Appeal No. 54 of 1921.

(1) (1915) 31 Ind. Cas. 906.

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