

1932.

CHHATER-

BIJAI

SINGH

v.

DAMODAR

DAS.

COURTNEY

TERRELL,

C. J.

without costs. Appeal no. 81 of 1931 was not pressed and we are not in a position to say anything as to its merits.

KHAJA MOHAMAD NOOR, J.—I agree.

Appeal no. 81 dismissed.

Appeal no. 85 allowed.

APPELLATE CRIMINAL.

Before Courtney Terrell, C.J.

November,
8, 1932.

(On difference of opinion between Scroope and Agarwala, JJ.)

KING-EMPEROR

v.

RAM CHANDRA SAHU.*

Penal Code, 1860 (Act XLV of 1860), section 21, clauses (4) and (9)—“apprentice” peon serving process without remuneration, whether is a “public servant”—clause (9)—unpaid peon authorized by Munsif to serve process, whether is “specially authorized” within the meaning of clause (4).

Section 21 of the Penal Code, 1860, provides:—

“The words ‘public servant’ denote a person falling under any of the description hereinafter following, namely.....”

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court; and every person specially authorized by a Court of Justice to perform any of such duties.....

Ninth...... and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty.....”

Held, per Courtney Terrell, C.J. and Agarwala, J. (Scroope, J. dissentiente)—(i) When a person who has no

* Government Appeal no. 4 of 1932, from a judgment of Mr. S. N. Patnaik, Sub-Deuty Magistrate, 2nd Class, Bargarh, dated the 23rd of April, 1932.

general power to execute a judicial process is authorized by a court to execute such a process, he is "specially authorized" within the meaning of section 21(4).

(ii) where a person is enrolled as a candidate or apprentice peon getting no pay or remuneration by fees or commission for the performance of any public duty, but accepts the duties and responsibilities of executing a warrant entrusted to him and the court recognises him as filling the position of a process-server, he falls within the description of "public servant" as defined in the ninth clause of section 21.

Queen-Empress v. Parmeshar Dat(1) and *Queen v. Ramkristo Doss*(2), followed.

Per SCROOPE, J.—(i) The mere fact that the Munsif himself has made over a process to an "apprentice" peon for service, does not bring that peon within the words "specially authorized by a Court of Justice" of the fourth clause of section 21. That expression has reference to an ad hoc appointment, as for example, that of a commissioner in a civil case who receives a writ of commission from the Civil Court and thereby becomes a public servant for the purpose of the particular duty assigned to him;

(ii) a "candidate" or "apprentice" peon who serves processes without any remuneration whatsoever is not a "public servant" within the meaning of the ninth clause of section 21, as he cannot be called "an officer in the service of Government".

The facts of the case are set out in the following judgment of Agarwala, J.

AGARWALA, J.—The question for decision in this appeal is, whether the complainant Pankdhar Meher was, on the 25th of February, 1932, a "public servant" within the meaning of section 21 of the Indian Penal Code. The complainant had for some time been enrolled as a candidate peon in accordance with rule 30 of the High Court General Rules and Circular Orders. He gets no pay or remuneration, but by being on the list of candidate peons he has the chance of being appointed as a civil court process server when a vacancy occurs. The facts out of which this appeal has arisen were these. The complainant was entrusted with the service of a warrant of attachment of moveable properties which had been issued in execution of a decree by the Munsif of Bargarh. On the 25th of February he went to the house

(1) (1886) I. L. R. 8 All. 201.

(2) (1871) 16 W. R. 27 (Cr.).

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of the judgment-debtor for the purpose of executing the warrant and attached some of his moveable property. Ram Chandra, the son of the judgment-debtor then assaulted him and took away the property. Ram Chandra was put on his trial on charges of theft, of resisting the taking of property by the lawful authority of a public servant and of assaulting a public servant. The Deputy Magistrate who tried the case came to the conclusion that the complainant was not a public servant. In these circumstances he held that it was useless to enter into a discussion of the merits of the case and he acquitted the accused. The Government have appealed under section 417 of the Code of Criminal Procedure, and the question for decision now is, whether the complainant was a public servant at the time he was resisted and assaulted.

The material portions of section 21 of the Indian Penal Code are the fourth and ninth clauses. The material words of the fourth clause are as follows :

"Every officer of a Court of Justice.....and every person specially authorized by a Court of Justice to perform any of "

the duties of an officer of a Court of Justice. This clause clearly distinguishes between a person who is an " officer of a Court of Justice ", and a person who is not such an officer; the latter is not a " public servant " within the meaning of the section unless he is " specially authorized " by a Court of Justice to perform the duties of an officer of a Court of Justice. Now, in this case the Munsif of Bargarh deposed that owing to dissatisfaction among the peons of the civil courts of Bargarh with the distribution of processes by the nazir he himself distributes the processes and that he gave the warrant of attachment in this case to the complainant for execution. It is contended by the learned Government Advocate that this amounts to special authorization within the meaning of section 21, clause 4 of the Code. I have no doubt that the complainant in this case was authorized by the Munsif to execute the warrant and to my mind the only question that arises is whether he was " specially " authorized; and it seems to me that when a person who has no general power to execute a judicial process is authorized by a court to execute such a process, he is " specially authorized " within the meaning of the section.

It has also been argued by the learned Government Advocate that the complainant is a public servant within the meaning of the ninth clause of the section. Under this clause

"every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty "

is a public servant. It is argued that although the complainant is not in the pay of Government and is not remunerated by fees or commission for the performance of any public duty, he is nevertheless in the service of Government; and reliance was placed on the decision of Straight, J., in *Queen Empress v. Parmeshar Dat*(1) where his Lordship said: " I am of opinion that any person, whether receiving pay or not, who chooses to take upon himself duties and responsibilities belonging to the position of a public servant, and performs those duties,

(1) (1886) I. L. R. 8 All. 201.

and accepts those responsibilities, and is recognized as filling the position of a public servant, must be regarded as one". It is true that that was a case in which the person alleged to be a public servant was interested in denying that he was such public servant, but I respectfully agree with the test suggested by Straight, J. In this case, as has been already observed, the complainant was enrolled as a candidate or apprentice peon; he accepted the duties and responsibilities of executing the warrant entrusted to him; the Munsif recognized him as filling the position of a process-server; and I am, therefore, of opinion that he was a person who fell within the description of 'public servant' as defined in the ninth clause of section 21. The case is not dissimilar from that of *The Queen v. Ramkristo Doss*(1). There a supernumerary collectorate peon, whose sole remuneration was the amount received as fees on such occasions as he was entrusted with the service of processes, was deputed, on the 21st of June, 1871, to keep order in the Special Sub-Registrar's office, for which duty he was to get no remuneration at all. It was held by Ainslie and Paul, JJ. that the peon was a public servant while keeping order in the Special Sub-Registrar's office.

I would, therefore, set aside the acquittal and send the case back to the learned Magistrate to be tried according to law.

SCROOPE, J.—The additional evidence ordered by a Bench of this Court has now been taken and it transpires that the peon got no remuneration at all for serving this process and this peculiar system which seems to prevail in Sambalpur alone of all the civil courts in the province according to which "candidate" or "apprentice" peons serve processes without any remuneration whatsoever has led to the difficulty in this case, the Sub-Deputy Magistrate of Bargarh having held that such a peon is not a public servant and I am not prepared to say that he is wrong. There is authority in support of either view. The learned Magistrate has relied on *Mahendra Prosad v. Emperor*(2) and in support of the appeal *Queen-Empress v. Parmeshar Dat*(3) and *Queen v. Ramkristo Doss*(1) have been cited. The learned Government Advocate has sought to bring this kind of peon under the words "specially authorized by a Court of Justice" because the Munsif himself made over the processes to the peon; but it was not because he was an unpaid peon that the Munsif did this. It appears that the Munsif distributes the processes amongst the peons in Bargarh as there had been some dissatisfaction amongst the peons when the Nazir distributes; and in my opinion, the mere fact of distribution by the Munsif does not amount to "specially authorized" within the meaning of the fourth clause of section 21 of the Indian Penal Code. The expression, in my opinion, has reference to an ad hoc appointment, say, that of a commissioner in a civil case who receives a writ of commission from the civil court and thereby becomes a public servant for the purpose of the particular duty assigned to him. Nor do I consider that the complainant is a public servant within the meaning of the ninth clause as he cannot be called "an officer in the service of

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(1) (1871) 16 W. R. 27 (Cr.).

(2) (1910) 9 Ind. Cas. 698.

(3) (1886) I. L. R. 8 All. 201.

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Government". The High Court Rules do not, as I read them, contemplate a peon serving processes without remuneration of any kind: obviously no proper system of process serving could, as it simply means that this irregular forces of peons is to gain its remuneration from the litigant public. I would, therefore, hold that the so called peon in this case was not a public servant and was not acting in that capacity and I would dismiss the appeal.

ORDER.

SCROOPE, J.

SCROOPE AND AGARWALA, JJ.—As we have disagreed in this case let the appeal be placed before the Hon'ble the Chief Justice for necessary orders.

On this reference

Sir Sultan Ahmed, Government Advocate, for the appellants.

H. Singh, for the respondents.

COURTNEY TERRELL, C.J.—I need only say that I entirely agree with the judgment of Mr. Justice Agarwala and have nothing to add to it.

Appeal allowed.

Case remanded.

**REFERENCE UNDER THE COURT-FEES ACT,
1870.**

1932.

November,
18.

Before James, J.

DHANUKDHARI PRASAD PANDEY

v.

RAMADHIKARI MISSIR.*

Court-fees Act, 1870 (Act VII of 1870), section 11 and Schedule I, Article 1—final decree determining amount of mesne profits, appeal from—ad valorem court-fee payable on amount of decree—liability of defendants joint—value of appeal, what should be—ad valorem court-fee paid on the appeal from preliminary decree, whether allowance should be made for—Taxing Judge, whether can make reference to Division Bench.

* Reference under section 5 of the Court-fees Act.