

REVISIONAL CRIMINAL.

Before Mr. Justice LeRossignol.

SHAHDAD KHAN, Petitioner

versus

THE CROWN, Respondent.

Criminal Revision No. 913 of 1925.

Indian Penal Code, 1860, Section 189—Threat to bring a complaint against a public servant—Whether an injury within the meaning of the section.

A Police constable stopped a motor-car travelling at night without lights on the Murree Road. During an altercation which took place between the driver and the constable the petitioner came up and told the driver to bring a complaint against the constable, in which he himself would be pleased to give evidence on behalf of the driver. The petitioner was convicted under section 189 of the Penal Code.

Held, that "injury" in section 189 implies an illegal harm and the mere threat to bring a *legal* complaint either before a Court or before the constable's superior was no "injury" within the meaning of the section and the petitioner was therefore entitled to an acquittal.

Application for revision of the order of G. C. Hilton, Esquire, Sessions Judge, Rawalpindi, dated the 9th May 1925, modifying that of E. J. Stephens, Esquire, Magistrate, 1st class, Rawalpindi, dated the 27th April 1925, convicting the petitioner.

AZIZ AHMAD, for Petitioner.

R. C. SONI, for Government Advocate, for Respondent.

JUDGMENT.

LEROSSIGNOL J.—The petitioner in this case has been convicted under section 189, Indian Penal Code, and sentenced to pay a fine of Rs. 30 on the following facts as found by the learned Sessions Judge.

On the evening of the 28th August, 1924, constable Nadir Khan stopped a motor-car without lights on the Murree Road and asked the driver for his name and number. The driver refused this information at first and during the altercation the petitioner came up and told the driver to bring a complaint against the constable in which he himself would be pleased to give evidence on behalf of the driver. The learned Sessions Judge's finding on the facts is justified by the evidence and in all probability represents what really did occur, and the question for decision is whether on these facts the petitioner was guilty of an offence under section 189, Indian Penal Code, which runs as follows:—

“Whoever holds out any threat of injury to any public servant for the purpose of inducing that public servant to forbear to do any act connected with the exercise of the public functions of such public servant, shall be punished, etc., etc.”

Now it appears that the constable was detaining the car because he wished the driver to proceed to the *thana* and sign an undertaking to appear before a Magistrate. There had no doubt been some altercation between the policeman and the driver of the car and the action of the policeman appears to have been justified by section 57, Criminal Procedure Code, and there can be no doubt that the remark of the petitioner was made with the intention of inducing the constable to forbear from further detention of the car and its occupants. Injury, however, implies an illegal harm and unless the threat was to bring a false complaint—the word used was complaint or petition—I am unable to hold that

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the mere threat to bring a legal complaint either before a Court or before the constable's superiors was an injury. Police constables in the execution of their duty must be protected but when a member of the public considers that he is being harshly treated or that a constable is exceeding the powers given to him by law, it would be absurd to hold that a protest or oral threat to report the matter either to the Courts or to the constable's superior officers amounts to an illegal harm. If the constable is acting within his powers, the complaint can do him no harm; if he is acting beyond his powers, he has no cause for complaint and the public has every right to protest.

For the foregoing reasons I accept the petition, acquit the petitioner and direct that the fine, if already paid, shall be refunded.

C. H. O.

Revision accepted.
