

1927

BUDHA MAL

v.

RALLIA RAM.

AGHA HAIDAR J.

BROADWAY J.

I accordingly overrule the plea of jurisdiction raised by the appellant.

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(His Lordship then proceeded to deal with other matters not required for the purposes of this report ; and the Bench concurred in dismissing the appeal as regards the plea of jurisdiction.)

BROADWAY J.—I agree in the order proposed.

*N. F. E.*

*Appeal dismissed,  
except in part.*

### REVISIONAL CRIMINAL.

*Before Mr. Justice Tek Chand.*

DASONDHI AND OTHERS, PETITIONERS

*versus*

THE CROWN, RESPONDENT.

1927

Nov. 16.

**Criminal Revision No. 1454 of 1927.**

*Indian Penal Code, 1860, section 225-B—Resistance to apprehension—under unsealed warrants for non-payment of illegal tax—Tax on incomes of trades and professions made without sanction of Governor-General—District Boards Act, XX of 1883, section 30.*

The District Board, Jullundur, with the permission of the Local Government imposed a *haisiyat* tax on the total income derived by all persons carrying on any trade or following any profession or calling within the district. The accused, goldsmiths, refused to pay the tax and warrants were issued, under section 69, Punjab Land Revenue Act, for their arrest. The execution of the warrants was resisted by them and their friends, and they were convicted under section 225B of the Penal Code.

*Held* (following *District Board, Sialkot v. Sultan Muhammad Khan* (1)) that the *haisiyat* tax being in the nature of a tax on incomes could, under section 30 of the District Boards Act, be imposed with the previous sanction of the

Governor-General in Council ; and that the assessment was therefore illegal and *ultra vires* ; and the assesseees were not liable to pay it.

*Held also*, that under section 225B of the Penal Code resistance or obstruction is made punishable only if the apprehension was lawful ; and where (as here) the imposition of the tax for the non-payment of which warrants were issued was itself illegal, the resistance to their execution was not punishable under the section.

*Application for revision of the order of Chaudhri Ghulam Mustfa, Magistrate, 1st class, Jullundur, dated the 30th August 1927, affirming that of Khan Sahib Khan Shah Zaman Khan, Honorary Magistrate, 2nd class, Jullundur, dated the 25th July, 1927, convicting the petitioners.*

FAKIR CHAND, for Petitioners.

MULK RAJ, for GOVERNMENT ADVOCATE, for Respondent.

#### JUDGMENT.

TEK CHAND J.—The petitioners have been convicted under section 225B of the Indian Penal Code for having offered illegal obstruction to their apprehension by certain *tahsil* peons in execution of warrants issued for their arrest and have been sentenced each to undergo rigorous imprisonment for two weeks and pay a fine of Rs. 50

The facts found by the lower Courts are as follows:—In May, 1924, the District Board, Jullundur, with the permission of the Local Government, imposed a *haisiyat* tax on the total annual income derived by all persons carrying on any trade or following any profession or calling within that district. Notification No. 30162 was issued on the 30th of April 1924, and will be found printed at pages 280 and 281 of part I—A of the *Punjab Government Gazette* published on the 2nd of May, 1924. The assessment

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was not fixed at a flat rate for a particular profession, calling or trade but was to vary according to the income of each individual assessee. Three of these assessees Dasondhi, Dheru and Basanta, goldsmiths of *Mauza Uchcha*, refused to pay the tax on demand and under section 70 of the District Boards Act steps were taken to recover it as if it were arrears of land revenue. Accordingly, on the 14th of August, 1926, the Tahsildar, Jullundur, issued warrants under section 69 of the Punjab Land Revenue Act for the arrest of the defaulters. Five *tahsil* peons accompanied by a number of *zaildars* and *sufedposhes* went to the village to effect the arrest. The execution of the warrants was, however, obstructed by the persons named in the warrants and their friends and relations all of whom offered resistance to the peons, with the result that the persons apprehended escaped. Accordingly they and their companions, who had rescued them were prosecuted under section 225B of the Indian Penal Code and convicted and sentenced as described above. Their appeal having been dismissed they have come upon revision to this Court.

The first point urged on their behalf is that *haisiyat* tax, for the non-payment of which warrants for the arrest of the assessees had been issued, had been illegally imposed by the District Board, Jullundur. It was argued that the tax was in substance a tax on incomes and as such it could not, under section 30 of the District Boards Act, be imposed by a local body without the previous sanction of the Governor-General in Council, which had not been obtained in this case. It is conceded for the Crown that the District Board had imposed the tax with the sanction of the Local Government only. There is, therefore, no doubt that the tax imposed under the notification

aforesaid was *ultra vires*. This question has been recently considered by a Division Bench of this Court (Addison and Coldstream JJ.) in *District Board, Sialkot v. Sultan Muhammad Khan* (1) where the legality of a similar tax imposed by the District Board, Sialkot, was involved. The learned Judges in an exhaustive judgment held that the *haisiyat* tax imposed in Sialkot district under a notification, the terms of which are identical with those of the notification now before me, was in the nature of a tax on incomes and could only be imposed with the previous sanction of the Governor-General in Council and as this had not been done, the assesseses were not legally liable to pay it. Following that authority, I hold that the action of the District Board, Jullundur, in assessing *haisiyat* tax on Dasondhi, Dheru and Basanta, petitioners, was illegal and *ultra vires* and they were not legally liable to pay it. It follows, therefore, that the warrants under which it was sought to apprehend these petitioners had not been legally issued and the act of the petitioners in offering resistance to the execution of such warrants did not constitute an offence under section 225B. Under that section resistance or obstruction to the apprehension of a person is made punishable only if the apprehension was "lawful"; but where (as here) the imposition of the tax for the non-payment of which warrants were issued was itself illegal and *ultra vires*, the resistance to their execution cannot be punishable.

\* \* \* \* \*

Accordingly I accept the petition for revision, set aside the conviction and direct that the petitioners be acquitted. The fine, if paid, will be refunded.

*Revision accepted.*

N. F. E.