

CRIMINAL REVISION.

Before Mr. Justice Mackney.

THE KING v. MAUNG KAN TUN.*

1937
Sep. 28.

Public duty—Payment of thathameda-tax—Headman's order on villager to appear before Township Officer—Non-compliance whether an offence—Burma Village Act, ss. 8 (1) (i) 11 (d), 12.

If a person who has not paid his *thathameda*-tax is directed by his headman to appear at a Township office but fails to do so he does not commit any offence punishable under s. 12 of the Village Act. The payment of *thathameda* tax is not a public duty imposed upon a villager by the Act and when he pays his tax he does not assist the headman in collecting *thathameda*-tax in the sense intended in ss. 8 (1) (i) and 11 (d) of the Village Act.

The District Magistrate, Kyaukse, made a reference to the High Court under s. 438 of the Criminal Procedure Code as to the legality of the prosecution of the respondent under s. 12 (iii) of the Burma Village Act in the following terms :

The headman of Pagan Village Tract, Myittha Township, ordered one of his villagers Maung Kan Tun, who avoided payment of *Thathameda* tax for the year 1936-37, to appear before the Township Officer at Myittha on the 25th February 1937. He disobeyed the order and was prosecuted before the Township Magistrate (1), Myittha, under section 12 (iii) of the Burma Village Act. On his appearance before the Township Magistrate on the 27th April 1937, when particulars of the offence were stated to him, he pleaded guilty to the charge and was convicted and sentenced to pay a fine of Rs. 5 or in default to suffer 7 days' rigorous imprisonment in Criminal Summary Trial No. 49 of 1937. The fine was paid at once.

On the 6th May 1937, the District Engineer of the Burma Railways, Mandalay, represented that under Rule 12 (a) of the Upper Burma Land Revenue Regulation, 1889, the accused being a permanent railway cooly, should not have been assessed to *Thathameda* tax nor should he have been fined for non-appearance before the Township Officer, Myittha. The fact that

* Criminal Revision No. 540 B of 1937 from the order of the Township Magistrate of Myittha in Criminal Summary Trial No. 49 of 1937.

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he was a permanent employee of the Railway Administration was known only on receipt of the District Engineer's representation and the *thathameda* tax assessed on him has since been written off as erroneous.

However, no action was taken to quash the conviction and sentence passed upon Maung Kan Tun in view of the admission of his guilt, though the legality of the headman's order to appear before the Township Officer for payment of a tax which was not assessable, and the prosecution under section 12 (iii) of the Burma Village Act for disobedience of that order was doubtful.

The Chief Engineer of Burma Railways again represented the matter to the Commissioner of Mandalay Division with a request that the fine imposed on Maung Kan Tun should also be refunded; and the latter was of opinion that I should state a case to the High Court of Judicature at Rangoon for review of the Criminal proceedings.

Agreeing with the Commissioner I now submit herewith the Proceedings in Criminal Summary Trial No. 49 of 1937 of the Township Magistrate (1), Myittha, for favour of the orders of the Hon'ble Judges as to the legality of the order of the headman of Pakan and his prosecution of Maung Kan Tun under section 12 (iii) of the Burma Village Act. If it is decided that the order of the headman is *ultra vires* the conviction and sentence passed upon Maung Kan Tun may be set aside.

MACKNEY, J.—If a person who has not paid his *thathameda*-tax is directed by his headman to appear at a Township Office but fails to do so he does not commit any offence punishable under section 12 of the Village Act.

Section 12 punishes a person residing in a village tract who refuses or neglects to perform any of the public duties enforced upon him by this Act, or by any rule thereunder. The payment of *thathameda*-tax is not a public duty imposed upon a villager by the Village Act, nor is it any part of his public duties to betake himself to any spot which the headman chooses to order him to visit, nor can it be said that by attending a Township Office he was in any way assisting the

headman in the execution of his public duties under the Village Act. When a villager pays his *thathameda*-tax to his headman he does not assist the headman in collecting *thathameda*-tax in the sense intended in sections 8 (I) (i) and 11 (d) of the Act.

The conviction of Maung Kan Tun in the present case is therefore entirely illegal.

As a matter of fact it now appears that Maung Kan Tun should not have been assessed to *thathameda*-tax at all.

The finding and sentence passed upon him are set aside and the fine paid by him shall be refunded to him.

CRIMINAL REVISION.

Before Mr. Justice Mosely.

MA THAUNG *v.* NANDIYA.*

Revisional powers of High Court—Acquittal by appellate Court—Erroneous view of law—Direction by High Court to rehear appeal—"Trial"—Criminal Procedure Code, s. 423.

Where the appellate Court has misdirected itself on a point of law and so has acquitted a person in a criminal case, the High Court can point out the error and direct the appellate Court to rehear the appeal.

Ma Nyem v. Maung Chit Hpu, I.L.R. 7 Ran. 538 ; *Queen-Empress v. Balwant*, I.L.R. 9 All. 134 ; *Queen-Empress v. Basant Lall*, I.L.R. 27 Cal. 320 ; *Queen-Empress v. Ganesh*, I.L.R. 13 Bom. 506 ; *Government of Bengal v. Gokool Chunder*, 24 C.W.R. Cr. Rul. 41 ; *Rameshwar v. Gobind Prasad*, 23 All. L.J. 433 ; *U Min v. Maung Taik*, I.L.R. 8 Ran. 663, referred to.

The word "trial" as used in the Criminal Procedure Code includes an appeal for the purposes of several sections of the Code.

M.C. Moamdar v. Pundit, I.L.R. 16 Cal. 121 ; *Nistarini Debi v. Ghose*, I.L.R. 23 Cal. 44, referred to.

Leong with him *Chan Tin Aung* for the applicant.

Kyaw Myint for the respondent.

MOSELY, J.—This is an application in revision against an order of acquittal by the Additional Sessions

* Criminal Revision No. 439B of 1937 from the order of the Additional Sessions Judge of Maubin in Criminal Appeal No. 353 of 1937.

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