

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice N. J. Wadia.

SAKHARAM RAOJI PAWAR (ORIGINAL ACCUSED), PETITIONER v. EMPEROR.*

1935
February 1:

Indian Penal Code (Act XLV of 1860), sections 183 and 99—Public officer—Public officer acting bona fide though in excess of authority—Resistance offered by the accused, whether justifiable—Irrigation dues in arrear—Attachment of goods by Mamlatdar's order—Delegation of authority by Collector to Mamlatdar must be proved—Land Revenue Code (Bom. Act V of 1879), section 154.

The language of section 183 of the Indian Penal Code, 1860, is not controlled by section 99 of the Code. That section is designed to protect a public servant and to limit the amount of resistance which may be offered to him. Section 183 on the other hand is not a section for the protection of the public servant but enables him to take the offensive and prosecute anybody who resists the taking of property by lawful authority. The resistance to the act of a public officer acting *bona fide*, though in excess of his authority, may well give rise to some charge in the nature of assault but it cannot afford any foundation for a prosecution under section 183 of the Indian Penal Code, 1860.

B owned certain lands in respect of which he was in arrear with irrigation dues. He sold the sugar cane grown in the lands to one R, who employed the accused to crush the sugar cane into jaggery. The jaggery was being removed in two carts when it was attached by the Talathi in respect of the irrigation dues in arrear from B. The accused removed the carts from the custody of the Talathi and took them away without doing any act of violence. He was charged under section 183 of the Indian Penal Code. The First Class Magistrate convicted him. The conviction was upheld by the Sessions Judge. The accused having preferred a revisional application to the High Court, two points were urged, first, that there was no evidence on the record to show that the Collector had delegated to the Mamlatdar his authority to act under section 154 of the Land Revenue Code, under which the moveable property of the defaulter could be distrained; secondly, that the jaggery could not be seized under section 154 as the defaulter B had sold the sugar cane to R and therefore no prosecution could lie under section 183 of the Indian Penal Code.

Held, setting aside the conviction, (1) that under the Land Revenue Code, section 154, it was the Collector who had the power to enforce payment of land revenue in arrear and the Mamlatdar could only act by showing that the Collector had delegated to him the particular power in question and there being an omission to prove the delegation of authority the conviction was illegal:

Gangaram Hatiram v. Dinkar Ganesh,⁽¹⁾ followed;

(2) that the accused was entitled to resist peaceably the wrongful act of the Talathi in seizing the jaggery which did not in fact belong to the defaulter B, and

*Criminal Revision Application No. 505 of 1934.

⁽¹⁾ (1913) 37 Bom. 542.

1935
 SAKHARAM
 RAOJI
 v.
 EMPEROR

therefore he could not be convicted under section 183 of the Indian Penal Code, 1860 :

Queen-Empress v. Tiruchittambala Pathan,⁽¹⁾ disapproved.

CRIMINAL REVISION APPLICATION against the order passed by K. K. Kumthekar, Sessions Judge, Ahmednagar, confirming the conviction and sentence passed by V. G. Gupte, First Class Magistrate, Rahuri.

Offence under section 183 of the Indian Penal Code.

One Baban Mohomed owed an amount of Rs. 250-8-0 as irrigation dues to Government, for water taken by him, to maintain the sugar cane crop in survey number 25 in the year 1932-33. On April 16, 1933, the jaggery was being carried to Kopargaon in two bullock carts. On the way it was attached by the Talathi who directed that the carts be taken to Mamlatdar's office at Kopargaon. It was alleged by the prosecution that the accused stopped the carts and forcibly took them to a Marwadi's shop notwithstanding the intimation that the jaggery was attached by the Mamlatdar. The accused was, therefore, charged under section 183 of the Indian Penal Code.

The accused denied having committed the offence and pleaded that the sugar cane for 1932 was sold by Baban's brother to one Raichand by a deed dated September 19, 1932; that Raichand had given the crop to the accused for crushing it into jaggery and that he was carrying the jaggery to Raichand's shop.

The trying Magistrate held that exhibit 1C was the general order of the Mamlatdar to make recoveries for irrigation dues, stating the name of Baban, among other defaulters, as the debtor for the amount of Rs. 250-8-0; that the accused offered resistance to the taking of jaggery by the Talathi whom he knew to be a public servant acting under lawful authority. The Magistrate therefore convicted the accused of the offence under section 183 of the Indian Penal

⁽¹⁾ (1896) 21 Mad. 78.

Code and sentenced him to two months' simple imprisonment and a fine of Rs. 50.

On appeal the Sessions Judge confirmed the conviction and sentence observing as follows :—

“ Assuming, however, for the sake of argument that the jaggery was attached by the Talathi on the understanding that it belonged to Baban and was from Baban's cane and assuming for the sake of argument that it did not really belong to Baban, still also the Talathi was doing his duty lawfully, and still the accused's obstruction or resistance would make him liable under section 183 of the Indian Penal Code (*vide* I.L.R. XXI Madras, page 78). The present case is much stronger than the Madras case.”

The accused applied in revision to the High Court.

C. H. Carden Noad, with *J. G. Rele*, for the applicant (accused).

B. G. Rao, Assistant Government Pleader, for the Crown.

BEAUMONT C. J. In this case the accused applies in revision against his conviction by the First Class Magistrate of Rahuri under section 183 of the Indian Penal Code, the conviction having been upheld by the Sessions Judge of Ahmednagar. Section 183 provides that whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished as therein provided. So that, in order to bring the section into operation, there must be resistance to the taking of property by the lawful authority of a public servant. The facts are that a man named Baban owned certain land in respect of which he was in arrear with his irrigation dues. He had sold the sugar-cane grown in that land to a man named Raichand, who had employed the accused to crush the sugar, and the jaggery was being removed in two carts, when it was attached by the Talati in respect of the irrigation dues in arrear. The accused subsequently removed the carts from the custody of the Talati, and took them

1935

SAKHARAM
RAOJI
P.
EMPEROR

1935

SAKHARAM
RAOJI
v.
EMPEROR*Beaman v. U. J.*

away, but no act of violence is alleged. Under section 57 of the Bombay Irrigation Act, 1879 (Bom. VII of 1879), it is provided that any instalment of irrigation dues not paid on the due date shall be recoverable according to the law and under the rules for the time being in force for the recovery of arrears of land revenue. The section of the Land Revenue Code under which the seizure of these carts is sought to be justified is section 154, which provides that the Collector may cause the defaulter's moveable property to be distrained and sold.

Two objections are taken to the conviction, one technical, and one on the merits. The technical objection is that it is not proved that the Talati was a public servant. The Talati put in an authority from the Mamlatdar authorising him to seize the crops of Baban, that authority being Ex. 10. But it was not proved that the Mamlatdar had power to give that authority to the Talati. Under the Bombay Land Revenue Code it is the Collector who has the power to enforce payment of land revenue in arrears, and the Mamlatdar can only act by showing that the Collector has delegated to him the particular power in question. That was laid down by this Court in *Gangaram Hatiram v. Dinkar Ganesh*.⁽¹⁾ In this case there is no evidence on the record to show that the Collector had delegated his authority to act under section 154 to the Mamlatdar. The Assistant Government Pleader says that this point was not taken in the lower Court, and ought not to be taken now, but it is plainly open in revision for an accused person to say that on the face of the record the prosecution has not proved its case. It is not for the defence to point out to the prosecution any missing link in the chain of proof. The

⁽¹⁾ (1913) 37 Bom. 542.

omission to prove the authority of the Mamlatdar is, in my opinion, fatal to the conviction.

The other point taken is this, that under section 154 what can be distrained and sold is the moveable property of the defaulter. The defaulter was Baban, and on the facts proved the jaggery in these carts was no longer the moveable property of Baban. It had been sold to somebody else, and that being so, it could not be seized under section 154. The learned Sessions Judge held that even if that was so, inasmuch as the Talati was acting *bona fide*, though in excess of his authority, the prosecution would lie under section 183, and he relied on a decision of the Madras High Court, *Queen-Empress v. Tiruchittambala Pathan*.⁽¹⁾ In that case property had been seized in execution by the officer of the Court, and it was held that the officer of the Court was acting *bona fide*, but in fact had seized the property of the wrong person. Nevertheless the Court was of opinion that the accused could be properly convicted under section 183 for resisting the execution. That case has stood for a good many years, and seems to have found its way into the text-books. But we have been referred to no authority in this Court in which it has been recognized, and I am clearly of opinion that the decision was wrong. The Court held that the language of section 183 of the Indian Penal Code was controlled by the language of section 99. Now section 99 provides that there is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law. That section, therefore, is designed to protect a public servant, and to

1935

SAKHARAM
RAOJI
v.
EMPEROR

Beaumont C. J.

⁽¹⁾ (1896) 21 Mad. 78.

1935

SAKRARAM
RAOJI
v.
EMPEROR

Beaumont C. J.

limit the amount of resistance which may be offered to him. Section 183, on the other hand, is not a section for the protection of the public servant, but enables him to take the offensive and prosecute any body who resists the taking of property by lawful authority. It is one thing to provide that a public servant who is acting *bona fide* in the exercise of his office, though in excess of his authority in fact, is to be protected from acts of violence. It is quite another thing to say that such a public servant, being in fact in the wrong, may prosecute anybody for resisting peaceably his wrongful act. Resistance to the act of a public officer acting *bona fide* though in excess of his authority may well give rise to some charge in the nature of assault, but it cannot, in my opinion, afford any foundation for a prosecution under section 183. The language of section 183 is perfectly plain. It applies to resistance to the taking of property by lawful authority of a public servant, and there are no words in that section, as there are in section 99, extending the operation of the section to acts which are not strictly justifiable by law. In my opinion, therefore, we ought not to follow the case of *Queen-Empress v. Tiruchittambala Pathan*,⁽¹⁾ and we are bound to hold that in this case there being no allegation of violence on the part of the accused, the accused was entitled to resist peaceably the wrongful act of the Talati in seizing the jaggery which did not in fact belong to the defaulter.

The application must be allowed, and the conviction and sentence set aside. The fine, if paid, will be refunded, and the bail bonds cancelled.

N. J. WADIA J. I agree.

Rule made absolute.

Conviction and sentence set aside.

J. G. R.

⁽¹⁾ (1896) 21 Mad. 78.