

Before Mr. Justice Kemp and Mr. Justice E. Jackson.

THE QUEEN *v.* DINANATH GANGOOLY (PETITIONER).*

1872
Feb'y. 10.

Police Officer Offence by—Act V of 1861, ss 8. and 29.

ONE Dinanath Gangooly was a head constable in the Bengal Police Force in the District of Howrah. On the 2nd September he was suspended by the District Superintendent of Police, and ordered to remain in the police lines. On the 20th of October 1871, he applied to Mr. Godfrey, Deputy Magistrate, then in charge of the district, to be released from illegal restraint. He was then brought up before Mr. Godfrey, who passed the following order on his petition:—

“ I submit this for final orders of the District Magistrate. There is no one in Court to prevent petitioner's free movement, or to show cause why he should not be free, therefore he may go with his pleader.”

Subsequent to this order he left the police lines. On hearing that a warrant was out for his arrest, he, on the 30th November 1871, voluntarily appeared before the District Magistrate, who ordered him to take his trial under section 29 of Act V of 1861 for having disobeyed his superior officer, the District Superintendent.

On the above state of facts, the Magistrate, on the 4th of December 1871 convicted him under section 29 of Act V of 1861, and sentenced him to pay a fine of 30 rupees, or in default to undergo rigorous imprisonment for 20 days.

Mr. Bonnerjee (with him *Baboo Kamalakunt Sen*) for Dinanath Gangooly, moved the High Court (KEMP and E. JACKSON, JJ.) to call for the records of the trial under section 405 of Act XXV of 1861, and to quash the conviction and sentence passed by the Magistrate for the following reasons:—

1st.—That after suspension the applicant had ceased to be a police officer under section 8 of Act V of 1861, and the act complained of having been committed subsequent to the suspension, the conviction under section 29 of Act V of 1861 was illegal; and

2nd.—That if the applicant were a Police officer after suspension, the conviction was also wrong, because the applicant left the lines in pursuance of an order of a Magistrate having jurisdiction to pass such order.

The Court sent for the papers, at the same time intimating to the Magistrate that he might submit any explanation he liked, or appear to support the conviction.

Baboo Jagadavul Mookerjee, Junior Government Pleader, appeared for the Magistrate to support the conviction. He urged that there were several kinds

* Miscellaneous Criminal Case, No. 3 of 1872.

of suspension, *viz.*, suspension without pay, and suspension on quarter pay, or half pay: see the rules of 17th July 1867. The petitioner was not dismissed from the service. During his suspension he could not act as a police officer; but still, not being dismissed, he was bound to obey the orders of his superior officer.

KEMP, J.—We think that the conviction in this case is illegal. The petitioner has been convicted under section 29 of Act V of 1861 of withdrawing from the duties of his office without permission. The petitioner was a head constable in the police force. Under section 8, Act V of 1861, which is enacted for the regulation of the police, every police officer is to receive on his appointment a certificate in the form annexed to the Act. The form is to this effect:—"A. B. has been appointed a member of the police force, "under Act V of 1851, and is vested with the powers, functions, and privileges of a police officer;" and under section 8, this certificate ceases to have effect whenever the person named in it is suspended, or dismissed, or otherwise removed from employment in the police force, and it must be immediately surrendered to the superior officer of such person, or to some other officer empowered to receive the same. It is admitted that the petitioner was under suspension, and therefore under section 8 aforesaid, the powers, functions, and privileges of a police officer vested in him by the certificate ceased to have effect; he was no longer a police officer, and therefore section 29, Act V of 1861, which applies to police officers guilty of violation of duty, or wilful breach, or neglect of any rule or regulation, or lawful order, &c., does not apply to the petitioner, who was not a police officer within the meaning of the Act. We have already showed the inclination of our minds in our order sending for the record, but at the same time we thought it proper to give the Magistrate an opportunity to appear in this Court, either in person, or by agent, or to submit any explanation which he might deem proper. The Junior Government Pleader has now appeared, and he contends that there are, recognised in the police department, different kinds of suspension, suspension without any pay, suspension on quarter pay, and suspension on half pay, and he referred us to the rules promulgated by Government with reference to the adjustment of the salaries of uncovenanted officers under suspension. These rules dated 17th June 1867, which apply to the whole body of uncovenanted officers, and not to the police force alone, merely provide for the payment of a subsistence allowance to uncovenanted officers under suspension: We think, as already remarked above, that the petitioner, not being a police officer under the meaning of the Act, could not be legally convicted under section 29 of that Act.

We therefore quash the conviction, and direct that the fine be refunded to the petitioner.