

*Before Sir Barnes Peacock, Kt., Chief Justice, Mr. Justice Bayley, Mr. Justice L. S. Jackson, Mr. Justice Macpherson, and Mr. Justice Glover.*

THE QUEEN v. BHAGAI DAFADAR.\*

1863  
Sept. 2.

*Resistance of Civil Process—Penal Code (Act XLV. of 1860) s. 186—Jurisdiction of Criminal Courts—Criminal Procedure Code (Act XXV. of 1861.)*

The resistance of process of a Civil Court is punishable, under the Code of Criminal Procedure, by a Court of Criminal Jurisdiction.

BHAGAI DAFADAR and Fatik Gazi were sent for trial to the Officiating Joint Magistrate of Jessore, by the Judge of Small Cause Court of that district, on a charge of having resisted the process of his Court. The Joint Magistrate declined to try the case, being of opinion, on the authority of *Chandra Kant Chuckerbutty* (1), that the Small Cause Court alone had power to deal with it. The Judge of that Court, therefore, asked the opinion of the High Court on the question whether a Small Cause Court is empowered to punish resistance of its process without reference to the Magistrate. He said: In the case of *Chandra Kant Chuckerbutty* (1), it was held by Loch and Glover, JJ., that a Civil Court cannot make over a case of simple resistance of its process to a Magistrate for trial, section 25 of Regulation IV. of 1793 being still in force; but this decision is, I find, opposed to Circular Order No. 121, dated the 13th January 1863, which says that any offence that may be construed to be an offence provided for by the Penal Code, must, under section 2 of that Code, be punishable under its provision. Assuming that the decision in question will apply, a further question arises, whether the provisions of the Regulation referred to in that decision have been made applicable to Small Cause Courts in the Mofussil or not? They certainly have not been made applicable by Act XI. of 1865 or any other Act; and

\* Reference by the Judge of the Small Cause Court of Jessore.

(1) 9 W. R. Cr., 63.

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it, therefore, appears to me that I have no power to punish resistance of a process of my Court without reference to the Magistrate."

The case was submitted for the opinion of a Full Bench, under the following order by PEACOCK, C. J., and BAYLEY, J.: "The decision of the Officiating Joint Magistrate may be referred to a Full Bench."

The opinion of the Full Bench was as follows :

PEACOCK, C. J.—The question is, whether the resistance of process of a Civil Court is punishable under the Code of Criminal Procedure by the Courts of Criminal Jurisdiction. It is unnecessary to determine whether the offence is punishable by a Civil Court, if it chose to take cognizance of it.

By section 186 of the Penal Code, it is an offence to obstruct any public servant in the discharge of his public functions, and by section 21, every officer of a Court of Justice whose duty is to execute any judicial process, is a public officer. The offence, therefore, is punishable under the Penal Code. Offences punishable under section 186 of the Penal Code are by the Code of Criminal Procedure made punishable by the Courts mentioned in column 7 of the Schedule to that Act.

BAYLEY, MACPHERSON, and GLOVER, JJ., concurred.

JACKSON, J.—I only wish to add, that it appears to me that there has been a misapprehension in regard to the applicability of the provisions of section 22 to 25 of Regulation IV. of 1793 to the subordinate Civil Courts. These provisions, as originally enacted, applied only to the Courts of the Zilla Judges. It was held in *Illah Buksh Chowdry*, petitioner (1), that by the provisions of Act VI. of 1843, the power of punishing resistance of process, being part of, as being included among the rules for, the trial and decision of all original suits, had been extended to the Courts of the Principal Sudder Ameen; and the Sudder Court would, doubtless, have held that, by the parity of reasoning, the power had been subsequently conferred by Act XXVI. of 1852 on the

(1) S. D. R. (1852), 71.

Sudder Ameen and Moonsiffs. Whether that view was correct or no, those Acts have been since wholly repealed by Act X. of 1861; consequently, the provisions of section 24, Regulation IV. of 1793, if they are still in force, now stand as they originally did, applicable only to the Courts of the Zilla Judges. It, therefore, seems to me that there is no ground for holding that resistance of process of the subordinate Civil Courts can be dealt with by those Courts under the Regulation of 1793. It also appears to me more than doubtful, whether the provisions of the section are not superseded by section 2 of the Indian Penal Code, in so far as any case of resistance of process falls within the provisions of the Code.

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THE QUEEN v. SRIKANT CHARAL.\*

*Criminal Procedure Code (Act XXV. of 1861), ss. 362 and 363—Pleading Guilty—Assessors.*

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A conviction of a prisoner on a plea of guilty before a Court of Session is valid, although there were no Assessors.

See also  
Ind. L. R.  
3 Calc. 756.

ONE Srikant Charal pleaded guilty to the charge of voluntarily giving false evidence in a stage of judicial proceeding. He was sentenced by the Sessions Judge of Dinagepore, who did not employ any Assessors for the trial of the case.

The case came up before L. S. JACKSON, J., on review of Jail Delivery Statement; and he referred it to a Full Bench with the following remarks:

“A letter (1) of the Registrar of this Court, dated 28th February 1866, para. 2, states that where the prisoner pleads guilty, the opinion of the Assessors is unnecessary. This letter, or the extract containing this opinion, having been printed in the Weekly Reporter, is doubtless accepted as authority, and the Judge in this case improves upon the ruling by not employing Assessors at all. I think the opinion expressed in the letter is incorrect, and the course taken by the Judge in this case unwarranted by law. It appears to me that, by

\* Referred on review of Jail Delivery Statement by the Judge of Dinagepore.

(1) No. 157, to the Officiating Sessions Judge of Cuttack.