

Their Lordships will therefore humbly advise His Majesty that the appeal should be allowed as respects respondents Nos. 3, 6, 7 and 8, and the judgments and orders of the courts below should be set aside, and that it should be declared that the order of detention under r. 26 of the Defence of India Rules in each of these cases was a valid and proper order; that in the case of respondents Nos. 1 and 5 the appeal should be dismissed and the judgments and orders of the courts below should be affirmed. There will be no order as to costs.

J. C.
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Sibnath
Banerjee.

Solicitor for appellant: *Solicitor, India Office.*

Solicitor for respondents: *Stanley Johnson & Allen.*

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SARJOO PRASAD v. THE KING EMPEROR.

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[SIR PATRICK SPENS C.J., SIR SRINIVASA VARADACHARIAR
and SIR MUHAMMAD ZAFRULLA KHAN J.J.]

Nov

Government of India Act, 1935, s. 270(1)—Prosecution of Civil Servant—Act “done or purporting to be done in execution of duty”—Necessity of consent of Governor-General—Applicability of section to be decided at the earliest stage and on the basis of prosecution case.

As the prohibition contained in s. 270(1) of the Constitution Act is against the institution of the proceedings itself, the applicability of the section must be judged at the earliest stage of institution and if the prosecution case as disclosed by the complaint or police report, as the case may be, shows that the act “purported to be done” in execution of duty the proceedings must be dropped. But if the prosecution case does not involve this the case cannot be thrown out on the preliminary ground of want of consent.

A complaint was filed against the appellant who was a station master at a steamer station on the following allegations. The complainant and his wife and certain others proceeded to the station a short time before the steamer was due to leave. The booking clerk refused to issue tickets on the ground that the steamer was about to leave. The complainant appealed to the station master to arrange for the issue of tickets, as his wife and her companions had boarded the steamer with the luggage. The station master also refused. The

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complainant thereupon wanted to go to the steamer to bring back the ladies and the luggage. The station master resisted and abused the complainant. When the complainant protested against this uncivil behaviour, the station master called some coolies and the station master and the coolies "assaulted the complainant with slaps and gave fists and blows on the body of the complainant and his brother."

Held, that the act complained of could not be regarded even as an act "purporting to be done" by the appellant in the execution of his duty and the complaint was not liable to be thrown out for want of consent under s. 270(1) of the Constitution Act.

Hori Ram Singh v. The Crown⁽¹⁾ applied.

APPEAL from a judgment of the High Court of Judicature at Patna. Criminal Appeal No. III of 1945.

The facts of the case are set out in the judgment.

1945. Nov. 5. *Nageswar Prasad (Tarakeshore Prasad with him)* for the appellant. The High Court is obviously wrong in the interpretation of the expression "relevant date." The main question is whether the case falls within s. 270 (1) of the Constitution Act and consent of the Governor-General is necessary. The accused is a servant of the Crown and the complaint is in respect of "an act done or purporting to be done in the execution of duty." Whether the act was one done or purporting to be done in the execution of duty must be decided not only on the allegations in the complaint. The attendant circumstances also must be looked into. Even acts in excess of powers are protected under s. 270(1): *Hori Ram Singh v. The Crown*⁽¹⁾. A public servant is entitled even to use criminal force in execution of his duty. It was the appellant's duty to prevent a passenger from boarding the steamer when it was about to depart. Railways Act, s. 68, permits use of force. [Sections 113A and 10 of the Railways Act and chap. IV, r. 2, of the Bengal and North Western Railway Traffic Manual were also referred to.] The appellant bona fide believed that he was entitled to use force. Even if the accused's belief was erroneous in law he would be entitled to the protection.

Mahabir Prasad, Advocate-General of Bihar (Tarakeswar Nath with him) for the respondent. The nature of the act complained of must be decided on the allegations

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contained in the complaint, that is, the prosecution case. The true test is laid down by Sulaiman J., in *Hori Ram Singh v. The Crown* ⁽¹⁾. The fact that the accused proposes to raise a defence that the act was done, or purported to be done in execution of duty is not a matter to be considered at this stage. Beating of the complainant and ordering others to beat him cannot be an act done in the execution of duty or even an act purported to be done in execution of duty.

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Nageshwar Prasad replied.

Cur. adv. vult.

Nov. 9. The judgment of the Court was delivered by SPENS C.J. The only question which it is necessary to decide in this appeal is whether the proceedings out of which the appeal arises are "in respect of any act done or purporting to be done in the execution of his duty" by the appellant as a servant of the Crown (s. 270 (1) of the Constitution Act).

The appellant was a station master at a steamer station on the O. T. Railway. The complaint alleges that on 25th July 1944, the complainant with his wife and certain others proceeded to the station a short time before the steamer was due to leave, that he went to the booking office to purchase tickets, asking his wife and the rest of the party to wait at the jetty along with the luggage, that the booking clerk declined to issue tickets alleging that it was very near the time fixed for the steamer's departure and that when he went to the jetty he found that his wife and the other people had already boarded the steamer with the luggage and accordingly he asked the station master to arrange for the issue of the tickets required. It will be convenient, in view of the arguments urged before us, to set out the rest of the complaint in full: "He (the station master) gave a flat refusal and said that he could not do anything in the matter and when your petitioner repeated his request, he got annoyed and asked your petitioner to get out and then your petitioner wanted to go on the steamer to bring back the ladies and the luggage but the accused No. 1 (station master) resisted your petitioner's going on the steamer and showed unsym-

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pathetic attitude and furious temper and went to the length of abusing your petitioner calling bad names such as "*Badmash*", "*Tum kahan jata hai*," "*Steamer per jaoge tab mar khaoge*." (6) That your petitioner resented this and protested against the uncivil behaviour whereupon accused No. 1 called out a man Khalifa by name and other coolies and ordered them to beat your petitioner and on the order being issued accused No. 2 Khalifa and some coolies began to assault your petitioner and his companions. The accused No. 1 also assaulted your petitioner with slaps and gave fists and blows on the body of your petitioner and your petitioner's brother." After the appellant had been summoned the Magistrate expressed the view that sanction under s. 270 (1) of the Constitution Act was necessary for the institution of these proceedings. The complainant applied to the Government of Bihar for sanction; he was informed in reply "that he should seek his remedy in the superior Courts if his complaint is dismissed." On production of this order, the Magistrate discharged the accused, though it is not on record how exactly he interpreted this order.

On application to the Sessions Judge for further enquiry, he was of the opinion that no sanction was necessary in the case and he accordingly ordered a further enquiry. The station master carried the matter on revision before the High Court at Patna. The learned Judge of the High Court (Agarwala J.) dismissed the petition, holding that s. 270 (1) could not be invoked in respect of an offence committed in 1944 because the "relevant date" referred to in that clause must be taken to be the date of Part III of the Act coming into force, viz., 1st April, 1937. This appeal has been filed against this order of the learned Judge and the correctness of his interpretation of the expression "relevant date" in its application to a railway servant has been questioned.

It has been contended that a railway servant is not a person "employed about the affairs of a Province" but one "employed about the affairs of the Federation" that according to clause (3) of s. 270, "the relevant date" in the applicant's case must be held to be the

date of the establishment of the Federation and that therefore the act complained of is one done before the "relevant date." By way of answer to this contention, it has been suggested that on a proper reading of clause (1) of s. 270 the benefit of that section can be invoked by servants of the Central Government only when proceedings are instituted *after* the establishment of the Federation in respect of acts done before the date of the establishment of the Federation. It is unnecessary for the purposes of this case to decide this question, because we are of the opinion that the act complained of in this case cannot be held to be one "done or purporting to be done" in the execution of the appellant's duty as a servant of the Crown.

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The materials with reference to which the applicability of s. 270 (1) must be considered were indicated in the judgment of this Court in *Hori Ram Singh v. The Crown*⁽¹⁾. It was pointed out by Sulaiman J. that as the prohibition was against the institution itself, the applicability of the section must be judged at the earliest stage of institution. The learned Judge then proceeded to say "If the prosecution case as disclosed by the complaint or Police report, as the case may be, shows that the act purported to be done in execution of duty, the proceedings must be dropped. But if the prosecution case does not involve this, the case cannot be thrown out on the preliminary ground of want of consent" (Page 179 : *see also* pp. 184 and 185). Applying this test, we are unable to hold that on the allegations in the complaint, which we have above set out, the act complained of can be regarded even as one "purporting to be done" by the appellant in execution of his duty.

Counsel for the appellant drew our attention to ss. 68 and 113-A of the Indian Railways Act and to chapter IV, rule 2, of the Bengal and North Western Railway Traffic Manual and contended that the station master believed that he was exercising the powers and duties imposed upon him by these provisions and that he was entitled to the protection afforded by s. 270(1) even if he erroneously thought that these provisions justified

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his conduct. We do not propose to discuss the bearing of these provisions on the case. As observed by Sulaiman J., in the judgment already referred to, "The mere fact that the accused proposes to raise a defence of the act having purported to be done in execution of duty would not in itself be sufficient," to justify the case being thrown out for want of sanction under s. 270 (1). Counsel for the appellant further contended that reading the complaint in the light of the statement made by the complainant before the Magistrate we must hold that the complaint itself discloses that the act purported to be done in execution of duty. We are not satisfied that this is so. On the language of paragraph (6) of the complaint set out *supra* there is no room for any suggestion of ambiguity as to the case alleged against the appellant.

The appeal fails and is dismissed.

Appeal dismissed.

Agent for the appellant : *Tarachand Brijmohanlal*

Agent for the respondent : *S. P. Verma.*
