

CRIMINAL REVISION.

Before Mr. Justice Banerjee and Mr. Justice Sale.

1894
October 17.

LILLA SINGH AND ANOTHER (PETITIONERS) v. QUEEN-EMPRESS
(OPPOSITE PARTY.)^{*}

Estates Partition Act, 1876 (Bengal Act VIII of 1876), sections 112 and 116
—*Penal Code, section 186—Obstructing Public Servant in discharge of his*
public functions—Amin, Power of to measure lands in Butwara proceedings
—*Public functions.*

The public functions contemplated by section 186 of the Penal Code mean legal or legitimately authorised public functions, and were not intended to cover any act that a public functionary might choose to take upon himself to perform.

A *butwara* Amin, in proceeding to measure certain lands in the course of proceedings connected with the partition of an estate under Bengal Act VIII of 1876, was obstructed by certain persons who claimed the lands and objected to their being measured. The lands were stated in the report of the Amin to be the common land of estate No. 546, and of certain other estates. The persons who obstructed him were not co-sharers in that estate, and contended that the land, sought to be measured, had been divided amongst the *maliks* of the different estates, and different portions of it had been held separately by them. The persons so obstructing the Amin were charged with an offence under section 186 of the Penal Code, the Deputy Collector in charge of the *butwara* proceedings being of opinion that section 112 of the Act applied, and that the Amin was entitled to measure the land. The accused were convicted.

Held, that section 112 is limited to cases where the community of interest in the land in dispute between the proprietors of the estate under partition as a body and the proprietors of other estates is admitted. When this is not admitted the provisions of section 116 apply.

Held further, that, as there was no evidence to show that such community of interest was admitted, the accused were entitled to the benefit of the doubt, and to have the case treated as one under section 116, and that as the procedure laid down in that section had not been followed, the Amin had no power to measure the lands, and could not be said to be a public servant acting in discharge of his public functions, and that the conviction must consequently be set aside.

^{*} Criminal Motion No. 533 of 1894, against the order passed by C. J. O'Donnell, Esq., District Magistrate of Patna, dated the 27th of July 1894, affirming the order of Mendin Augior, Esq., Sub-Deputy Magistrate of Patna, dated the 10th of July 1894.

THIS was a rule to show cause why an order passed by the Sub-Deputy Magistrate of Patna, and affirmed by the District Magistrate, convicting the petitioners of an offence under section 186 of the Penal Code, should not be set aside.

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The petitioners were residents in a village in *thana* Bask and were entitled to, and in possession of, certain lands in *mouza* Sikanderpur in the district of Patna. They were charged with having obstructed, in measuring certain lands, a *butwara* Amin, who had been deputed by the Deputy Collector to make a survey of certain lands in *mouza* Kajwar in connection with certain proceedings pending before him for partition of an estate under the provisions of the Estates Partition Act, 1876 (Bengal Act VIII of 1876).

The case for the petitioners was that the Amin having been deputed to measure lands in Kajwar was proceeding to measure the lands in Sikanderpur, which adjoined Kajwar, when they objected. The Amin was apparently acting at the instance of one Munshi Khan, who pointed the lands out to him, alleging them to be portion of Kajwar. No violence appeared to have been used, though the prosecution alleged that the petitioners had threatened to throw away the Amin's chain should he persist in measuring the lands, and that a crowd then assembled armed with *lathis*. The Amin appeared to have then left, and proceedings were subsequently commenced against the petitioners for obstructing the Amin, sanction having been given by the District Magistrate.

There was no doubt that a dispute did in fact take place. The Sub-Deputy Magistrate convicted the petitioners and sentenced them to pay a fine of Rs. 50, or in default to suffer two weeks' rigorous imprisonment.

The conviction was upheld, on appeal, by the District Magistrate. The petitioners then applied to the High Court, and a rule was issued which now came on for hearing.

Mr. *M. Ghose* and Babu *Dasarath Sanyal* for the petitioners.

No one appeared to show cause.

It was urged in support of the rule that the Amin had no authority to measure the lands which he sought to survey, and

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could not therefore be said to be a public servant acting in discharge of his public functions, and that consequently no offence under section 186 had been committed.

The judgment of the High Court (BANERJEE and SARKAR, JJ.) was as follows :—

The question raised in this case is whether the conviction of the petitioners under section 186 of the Indian Penal Code is legal. They have been convicted under that section for obstructing a *butwara* Amin who proceeded to measure some lands in the course of partition of an estate under Bengal Act VIII of 1876. That the Amin was technically obstructed is not denied; that is to say, it is not denied that the Amin was told that he should not measure the lands he wanted to measure; but the accused deny having done anything more than that; nor does the Deputy Magistrate find that the obstruction was of any aggravated kind. The question, therefore, is reduced to this, namely, whether the accused, by preventing the Amin from measuring the lands in question, voluntarily obstructed a public servant in the discharge of his public functions within the meaning of section 186 of the Penal Code. Now, the petitioners are not co-sharers in the estate under partition, which is estate No. 546 on the rent-roll of the Patna Collectorate. The land which the Amin wanted to measure, and was prevented from measuring, is stated by the Amin in his report submitted to the Deputy Collector to be the common land of estate No. 546 and of certain other estates; and the Amin, in the report just referred to, stated that the accused objected to his measuring the land on the ground that it had been divided amongst the *maliks* of the different estates, and different portions of it had been held separately by them. Upon this report of the Amin, the Deputy Collector in charge of the *butwara* proceedings thought that the case came under section 112 of the Partition Act (Bengal Act VIII of 1876), which enacts: "Whenever any lands are held in common between the proprietors of two or more estates, one of which is under partition in accordance with the provisions of this Act, the Deputy Collector shall first allot to the estate under partition a portion of such common lands of which the assets are in proportion to the interest which the proprietors of such estate hold in the said common lands; and

all the provisions of this Act in respect of the allotment between the shareholders in one estate, of lands which are held jointly by such shareholders, shall, as far as possible, apply to the allotment of the proportionate share of such common lands to the estate under partition ; and in respect of the service of notices, hearing of objections, and all other procedure in view to such allotment, the proprietors of the estate under partition, and the proprietors of all other estates who have an interest in the said common lands, shall be deemed to be joint proprietors of a parent estate, consisting only of the lands so held in common." If, therefore, the case came under section 112, it would, as it seems to us, follow that the Amin would have authority to measure the lands in question in the same way as he had authority to measure the lands of the estate under partition which was held by the co-sharers in that estate exclusively. But in addition to the provisions contained in section 112, there are certain other provisions relating to the subject of the measurement of lands not held exclusively by the co-sharers of the estate under partition, or lands as to the title to and possession of which there is dispute or doubt. These provisions are to be found in section 116 of the Act, which provides that "if a dispute or doubt shall be found to exist as to whether any lands form part of the parent estate, the Deputy Collector shall enquire into the fact of possession, and shall report his conclusions with the reason thereof to the Collector, whereupon," the section goes on to provide : "The Collector may (whether the possession of disputed lands is with the proprietors of the parent estate or otherwise) order that the partition be struck off the file," or hold a preliminary enquiry, and issue further directions depending upon the result of such enquiry. A comparison of these two sections of the Partition Act goes to show that section 112 is limited to those cases where the community of interest in the land in dispute between the proprietors of the estate under partition as a body and the proprietors of other estates is admitted. In the present case it is not at all clear that such community of interest is admitted, and the evidence for the prosecution leaves it in doubt, to say the least, whether the case comes under section 112 or section 116. If it comes under section 116, the measurement Amin, without a special order from the Collector, made after the preliminary

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enquiry referred to in that section, could have no lawful authority to measure the lands in dispute ; and if the case therefore came under section 116 of the Partition Act, the petitioners could not be held to be guilty of the offence of obstructing a public servant in discharge of his public functions within the meaning of section 186 of the Indian Penal Code. As the evidence for the prosecution leaves the matter in doubt, the accused are clearly entitled to the benefit of that doubt.

A question might be raised as to whether, though not strictly authorized by law to measure the lands in dispute, still the *butwara* Amin, when he proceeded to measure the lands in the course of the *butwara* proceedings, was not acting in the discharge of his public functions. In one sense, no doubt, his proceeding to measure the lands could only have been in the course of his duty as a *butwara* Amin. He could have no private interest in the matter. But we are of opinion that the question must be answered in the negative. The public functions contemplated by section 186 must mean legal or legitimately authorised public functions. They could not have been intended to cover any act that a public functionary might choose to take upon himself to perform ; and, if that is so, and, as we have said above, if the case comes under section 116, it would not be within the legitimate functions of the Amin to proceed to measure the lands without express authority from the Collector. This view is, we think, fully supported by the cases of *Reg. v. Bhagtidas Bhagvandas* (1) ; and *Queen-Empress v. Tulsiram* (2). The result then is that this rule must be made absolute, and the convictions and sentences set aside, and the fines, if realized, refunded.

H. T. H.

Conviction quashed.

(1) 5 Bom. H. C., Cr. 51.

(2) I. L. R., 13 Bom., 168.