

costs are not fully recovered from the Trust Funds. I regret I can find no precedent enabling me to give him priority as to his costs. The only order under the circumstances, I can make, is that the costs of all parties appearing before me be paid out of the Trust property—those of the Advocate-General being taxed between attorney and client. Costs to be taxed as if this Originating Summons had been a long cause.

I cannot conclude this judgment without expressing my sense of obligation to the members of the legal profession engaged in this case, most especially to Mr. Bahadurji, for the very valuable assistance they have rendered to the Court throughout the case.

Attorneys for the plaintiff:—*Messrs. Wadia, Gandhi & Co.*

Attorneys for defendant No. 1:—*Messrs. Pestonji, Rustim & Kola.*

Attorney for defendants Nos. 10 and 11:—*Mr. P. S. Ballivala.*

Attorneys for defendant No. 12:—*Messrs. Jehangir, Gulabbhai and Billimoria.*

B. N. L.

Note:—Italicised words or sentences, occurring in quotations from treatises or documents and embodied in this judgment, indicate that Mr. Justice Davar desired to emphasise those particular words or sentences and do not indicate that they were so italicised in the originals from which the quotations are taken.—*ERROR.*

CRIMINAL REVISION.

Before Chief Justice Scott and Mr. Justice Heaton.

EMPEROR v. BABULAL KANAIYALAL.*

Penal Code (Act XLV of 1860), secs. 21, 186—Public Servant—Obstruction to a public servant—Clerk in the cess-collection department of a District Municipality—Bombay District Municipal Act (Bombay Act III of 1901).

A clerk in the cess-collection department of a District Municipality constituted under the Bombay District Municipal Act (Bombay Act III of

* Criminal Application for Revision No. 86 of 1908.

1907.

JAMSHEDJI
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CHAND
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SOONABAI.

1908.

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BABULAL.

1901), is a public servant within the meaning of section 21, clause 10 of the Indian Penal Code (Act XLV of 1860); and any obstruction offered to him in execution of his duties is an offence punishable under section 186 of the Code.

This was an application for revision under section 435 of the Criminal Procedure Code (Act V of 1898) against the conviction and sentence recorded by the Honorary First Class Magistrate of Ahmedabad.

The complainant was a clerk in the cess-collection department of the Ahmedabad City Municipality.

The Municipality served a bill for privy tax (Rs. 2-1-0) upon the accused, in respect of his house. The amount not having been paid, a notice of demand was served upon the accused. The Municipality subsequently obtained a warrant of attachment, which they attempted to serve through their clerk, the complainant. When the complainant went to the accused's house to execute this warrant he was obstructed by the accused, who was thereupon tried for and convicted of an offence punishable under section 186 of the Indian Penal Code (Act XLV of 1860). The accused was sentenced to pay a fine of Rs. 25.

The accused applied to the High Court.

L. A. Shah, for the accused :—

The complainant is not a public servant within the meaning of section 21 of the Indian Penal Code. The act of the accused therefore does not amount to an offence under section 186 of the Code.

There was in the old Municipal Act (Bombay Act II of 1884, section 46) a provision making all Municipal servants public servants within the meaning of section 21 of the Indian Penal Code. The present Municipal Act (Bombay Act III of 1901, section 45) however makes only particular servants public servants for certain limited purposes.

The case of *Reg v. Nantamram Uttamram* ⁽¹⁾, which is against my contention, was decided under the old Municipal Act of 1859, where there was no provision corresponding to section 45 of the

(1) (1869) 6 Bom. H. C. R. Cr. Ca. 64.

present District Municipal Act. Referred to *Emperor v. Gulab* ⁽¹⁾ and *Emperor v. Ezekiel* ⁽²⁾.

M. N. Mehta, for the complainant, was not called upon.

SCOTT, C. J.:—The accused and his wife were living together in a house in Ahmedabad and were liable for Rs. 2-1-0, in respect of privy tax for the house they were living in under section 82 of Act III of 1901. A bill for the sum claimed for the tax was presented to the accused although the bill itself was made out in the name of his wife. The bill not having been paid notice of demand in the statutory form prescribed in Schedule B was served upon the accused and on his failure to pay a warrant was served upon him by the complainant Lakshmi-shankar Maganlal who was a clerk in the cess-collection department of the Ahmedabad Municipality. When the warrant of attachment was taken to the accused for execution according to law the accused obstructed the complainant in the execution of the warrant. For this he has been charged under section 186 of the Indian Penal Code and there is no doubt that he is guilty if the complainant was a public servant executing his duty within the meaning of that section of the Indian Penal Code.

Public servants are defined by the Penal Code, section 21: clause (10) of that section includes in the term "public servant" every officer whose duty it is as such officer to receive any property for the secular purpose of any taluka or district.

We are of opinion that the complainant being clerk in the cess-collection department of the Municipality falls within the words of clause (10), which we have read, and we are supported in that conclusion by the judgment of this Court delivered in the case of *Reg v. Nantamram Utamram* ⁽³⁾.

We, therefore, think that the conviction was right and we dismiss the application.

R. R.

(1) (1904) 1 All. L. J. 125.

(2) (1904) 6 Bom. L. R. 54.

(3) (1869) 6 Bom. H. C. R. Cr. C. 64.