

Ramdihal Vs Empress

Court: Calcutta High Court

Date of Decision: Nov. 2, 1898

Judgement

1. The Petitioners before us have been convicted of rioting, the common objects being to overawe the head constable of police in the lawful

exercise of his lawful duties, and to use criminal force to that head constable and to certain other public servants, viz., constables and ehawkidars,

in the execution of their duty as such. Each of the Petitioners has been convicted separately,--first, under sec. 147; secondly, under sec. 353; and

thirdly, under sec. 853 read with sec. 149, Indian Penal Code. The Petitioner, Ramdihal, has been sentenced to two years" rigorous imprisonment

under sec. 147, and to a further term of one year"s rigorous imprisonment under sec. 353, and under the latter section read with sec. 149. The

Petitioner, Supha Ahir, has been sentenced to a year"s rigorous imprisonment under sec. 147, to six months" rigorous imprisonment under sec.

353, and a further six months" rigorous imprisonment under sec. 353 read with sec. 149. We think that these cumulative sentences are illegal. The

force which was used and formed one of the component elements of the offence of rioting was the criminal force used to the public servants in the

execution of their duty, and to sentence the Petitioners separately under sec. 147, and under sec. 353 is in fact to punish them twice for the same

offence. The further sentencing of the Petitioner, Supha Ahir, under sec. 353 read with sec. 149 was obviously altogether illegal, for he was

punished, first, for actually committing an offence under sec. 353, and again for committing the same offence constructively. We set aside the

sentences passed on each of the Petitioners under sec. 353, and under sec. 353 read with sec. 149, Indian Penal Code, and affirm the sentences

passed upon them respectively under sec. 147 of the Code. E. H. M.