
(1878) 02 CAL CK 0009

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

Amiruddeen

RESPONDENT

Date of Decision: Feb. 12, 1878

Acts Referred:

- Penal Code, 1860 (IPC) - Section 217

Hon'ble Judges: L.S. Jackson, J; Cunningham, J

Bench: Division Bench

Judgement

L.S. Jackson, J.

It has been pressed upon us in this appeal that the prisoner has not been duly convicted u/s 217 of the Indian Penal Code, because there was not before the Court upon the present trial any evidence to show that in point of fact an offence had been committed, still less that such offence had been committed by the person in respect of whom the wrongful act of the Police Officer, the prisoner, had been done. What appears is, that a person named Adhari Dhopa was charged before the Court of Session, and was tried and acquitted, of an offence, the offence charged being the cutting off somebody's ear; and it appears that the particular act which the prisoner in this case had committed, and which amounted to knowingly disobeying a certain direction of the law as to his conduct as a public servant, had a tendency to save a person, namely, the person charged, as first stated, from legal punishment. It appears to me quite sufficient, for the purpose of a conviction u/s 217 that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant, and that he should have done this with the intention of saving a person from legal punishment, and that it is not further necessary to show that in point of fact the person so intended to be saved had committed an offence or was justly liable to legal punishment. It appears to me certain that a public servant charged under that section is equally liable to be punished, although the intention which he had of saving any person from legal

punishment was founded upon a mistaken belief as to that person's liability to punishment. We have been pressed with a case in which I myself gave judgment--the case of Queen v. Joynarain Patro 20 W.R. Cr. Rul. 66. It is not necessary for us at present to consider whether that judgment was right, because the section on which that case turned was wholly different from the section now under consideration. That is a section under which any member of the community is punishable, and it is one under which the essence of the offence is that the person to be dealt with must know, or have reason to believe, that an offence has been committed. This is an offence applying only to public servants, and an act of a certain kind is made punishable as an offence when such act is done knowingly against the direction of the law and with the intention of saving a person from legal punishment, whether the person so intended to be saved from punishment had committed the offence or not.

2. I think, therefore, that the conviction in this case was right and that the appeal must be dismissed.