
(1871) 07 CAL CK 0004

Calcutta High Court

Case No: None

The Queen

APPELLANT

Vs

Ramkrishna Das and
Another

RESPONDENT

Date of Decision: July 24, 1871

Judgement

Ainslie, J.

We are of opinion that the view taken by the Magistrate is correct. Section 21, clause 9, includes among public servants ■every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty." The Deputy Magistrate reads this as if the word ■and" were substituted for the first "or,"--that is, as if the clause stood--"every officer in the service of Government and paid by the Government, or remunerated by fees or commission;" but the words of the law are more extensive. Explanation 2 appended to the said section, disposes of the objection that the employment of the accused was in contravention of a rule of the Board of Revenue. As said in the commentary on the Penal Code by Messrs. Morgan and Macpherson, ■According to the second explanation, the person who in fact discharges the duties of the office which bring him under some one of the descriptions of public servant, is for all the purposes of the Penal Code rightfully a public servant, whatever legal defect there may be in his right to hold the office." The accused person was, wrongly perhaps, appointed to discharge the duties which should have been entrusted to a paid servant of the Government; but if he (to use the words of the commentary above quoted), ■being to all appearance a public servant" (which unquestionably he was), accepted a bribe, or was obstructed in the execution of his duty, the penal provisions of the Code are applicable, and he will be punished in the one case, and protected in the other, notwithstanding that there may be legal defects in his right to the office." The order for the discharge of Ram Charan Sing and Ramkrishna Das must therefore be set aside, and the trial of the charges-against them must be proceeded with.