

Kishan Chand
and Om
Parkash
v.
Rakesh
Kumar and
others

Khosla, J.

The rest is merely a question of fact and the findings of fact arrived at by the lower appellate Court cannot be challenged in second appeal. It has been found that consideration to the extent of Rs. 429 in respect of the first mortgage and to the extent of Rs. 275 in respect of the second mortgage has been proved and on this finding the decision of the lower appellate Court must be upheld. Nor is there any force in the cross-objections in which the sons seek to disown even the amounts found proved by the lower appellate Court. I, therefore, dismiss both the appeal and the cross-objections, but in the circumstances make no order as to costs.

SUPREME COURT

Before B. Jagannadhadas and Bhuvaneshwar

Prasad Sinha, JJ.

THE STATE OF PUNJAB,—*Appellant.*

versus

KHARAITI LAL,—*Respondent.*

Criminal Appeal No. 140 of 1954.

1956

May, 8th.

East Punjab Essential Services (Maintenance) Act (XIII of 1947)—Section 5(b)—Person absenting from work—Nature of offence—Whether different from a case where there is neglect of duty—Work assigned cancelled later on—Effect—Police Act (V of 1861)—Section 29.

Held, that neglect of duty as contemplated by section 29 of the Police Act, 1861, is quite different from abandoning an employment or of absenting himself from work without reasonable cause which is the particular offence contemplated by clause (b) of section 5 of the East Punjab Essential Services (Maintenance) Act, XIII 1947.

Where on account of physical infirmity or deficiency the work assigned to a police constable governed by the East Punjab Essential Services (Maintenance) Act, 1947, has been cancelled he cannot be said to have been assigned any work within the meaning of section 5(b) of the Act.

(On appeal by special leave granted by the Supreme Court from the judgment and order, dated the 23rd July, 1953, of the Punjab High Court in Criminal Revision No. 487 of 1953, arising out of the judgment and order dated the 17th April, 1953, of the Court of the Sessions Judge at Hoshiarpur in Criminal Appeal No. D/1 of 1953.

For the Appellant: MR. N. S. BINDRA, Senior Advocate, (MR. P. G. GOKHALE, Advocate, with him).

For the Respondent: MR. A. N. CHONA and MR. K. L. MEHTA, Advocates.

JUDGMENT

The Judgment of the Court was delivered by—

SINHA, J.—This is an appeal by special leave from the judgment of a single Judge of the High Court of Judicature of Punjab at Simla in Criminal Revision No. 487 of 1953, dated the 23rd July, 1953, acquitting the respondent, a constable in the police force of the State, of an offence under section 7 of the East Punjab Essential Services (Maintenance) Act, XIII of 1947 (which hereinafter will be referred to as "the Act"), for which he had been convicted by a Magistrate of the First Class at Dharamsala by his judgment dated the 30th March, 1953, and sentenced to 15 days' rigorous imprisonment, which orders of conviction and sentence had been affirmed by the Sessions Judge of Hoshiarpur, Camp Dharamsala, by his judgment and order, dated the 17th April, 1953.

Sinha, J.

The facts leading up to this appeal may shortly be stated. The respondent was prosecuted on a complaint filed by the Superintendent of Police, Kangra District, in the Court of the Ilaqa Magistrate, Dharamsala, District Kangra, for an offence under section 7 of the Act. The allegations against the respondent were that he joined the Police Department as a constable in Jullundur District in 1947, that in December, 1952, he was transferred from Jullundur

he State of District to Kangra District, and posted to Police
Punjab Lines, Kangra, as a constable on general duty at
v. Lal Seraj police station; that in January, 1953, he came
haraiti to Police Lines, Dharamsala, for monthly training
Sinha, J. (refresher course), that on the 2nd February, 1953,
at the time of roll call at 7 p.m. the appellant was
assigned the duty as sentry No. 1 without rifle behind
the Police Lines Armoury, Dharamsala, from 9 p.m.
to 11 p.m. The respondent, though informed of the
assignment of the aforesaid duty to him, refused to
obey that order or to perform any other duty in the
Lines. Thereupon his name was struck off from the
Duty Roster and another foot constable was duly
placed in that post of duty. On the night between
the 2nd and 3rd February, 1953, at 11-30 p.m. a sur-
prise roll call of the employees of the Police Lines
was duly made by means of an alarm sounded with a
bugle which was blown continuously for about
15 minutes. The respondent was found absent on
such a roll call and another constable was deputed to
search for the respondent but he could not be found.
He appeared the next morning at about 9-30 a.m.
after remaining absent from the Police Lines with-
out offering any explanation for his unauthorised
absence. The gravamen of the charge as laid in the
petition of complaint was that he refused to carry out
the order of his superior officer who had assigned a
duty to him and that he remained absent from his
official duty in the Police Lines without obtaining
permission and without any cogent reasons, from
11-30 p.m. on the 2nd February, 1953, till 9-30 a.m.
on the day following. Thus he was said to have com-
mitted an offence under section 7 of the Act.

On those allegations the respondent was placed
on his trial before the Magistrate of the First Class at
Dharamsala. After recording the prosecution evi-
dence the learned Magistrate framed a charge under

section 7 of the Act under two heads, firstly, that he had, on the 2nd February, 1953, at Dharamsala, as a foot constable in the police force of the Kangra District, disobeyed the lawful orders given by a superior officer who had assigned to him a duty as such foot constable of a sentry without rifle in the rear of the armoury in the Police Lines from 9 p.m. to 11 p.m. and, secondly, that on the same date and at the same place he had absented himself from duty as a foot constable without reasonable excuse and had thus remained absent from 11-30 p.m. on the 2nd February, 1953 to 9-30 a.m. of the following day.

Sinha, J.
The State of
Punjab
v.
Kharaiti Lal

The respondent's defence, as disclosed in his answers to questions put by the court under section 342, Criminal Procedure Code, was one of denial of the charge. His substantive defence may be stated in his own words :—

“ On 2nd February, 1953, at 7 p.m. my duty was allotted to me and I signed at Ex. P. D. | I. I then told Raghbir Singh, P. W., that according to the Civil Surgeon, Jullundur, I cou'd only be given sitting or office duty. I showed him the copy Exhibit D. E. I also told him that the Civil Surgeon, Dharamsala, had also examined that very day on 2nd February, 1953. Thereupon Raghbir Singh, P. W. cancelled my said duty. I was lying ill in the Police Lines Barracks and did not hear the bugle. In the morning of 3rd February, 1953, I came to know that my absence had been noted. Thereupon I presented myself for duty to the Head Constable and signed at Exhibit P. E. | I. My leg was burnt in rescue work at Gujranwala when I was in the special Police Lines ”.

The State of Punjab
v.
Kharaiti Lal
Sinha, J.

He also examined a number of defence witnesses including the Civil Surgeon of Jullundur, who deposed to have examined the respondent on the 27th February, 1953, "and found that he had got extensive burn scars on the back of the right thigh and leg crossing the knee. Hence he could not perform any strenuous duty like standing for long hours. In my opinion he could be given some light duty in the office. Ex. D. W. 1/D is a true copy of my medico-legal report of this case".

The learned Magistrate acquitted the accused in respect of the first part of the charge relating to his alleged disobedience of the lawful orders of his superior officer to perform sentry duty. But he convicted him of the second part of the charge, namely, absence from duty and sentenced him to 15 days' rigorous imprisonment. On appeal by the accused, the learned Sessions Judge affirmed the findings of the trial Magistrate and held that the appellant before him was absent from duty without permission during the night between the 2nd and 3rd February, 1953. He accordingly dismissed the appeal.

On a revisional application made by the convicted person, the learned single Judge who heard the case, came to the conclusion that the accused had not offended against any provisions of the Act. Accordingly he acquitted him. The ratio of his decision may be given in his own words as follows :—

"This Act does not appear to me to apply to the kind of act which the constable is said to have done. He had been called to Dharamsala on a refresher course and on the night in question and in the early morning he appears to have been not present at the same time when he according

to the prosecution should have been pre-
 sent. This, in my opinion, does not at-
 tract the attention of the Essential Ser-
 vices Maintenance Act. It is possible
 that if he is guilty he is liable to some
 disciplinary punishment, but his prosecu-
 tion under the East Punjab Essential Ser-
 vices Maintenance Act is in my opinion
 not justified. I ho'd that he has not
 offended against the provisions of this Act
 and therefore he has not committed any
 offence under this Act".

The State of
 Punjab
 v.
 Kharaiti Lal
 Sinha, J.

Against this order of acquittal the State of Punjab obtained special leave to appeal to this Court, apparently because the judgment of the learned Judge of the High Court involved very important questions as to the scope and effect of the Act and the question of law decided by the High Court was of great public importance.

This case was first placed on the 11th April this year before another Bench of this Court and learned counsel for the respondent raised a preliminary objection to the maintainability of the prosecution on the ground, it was alleged, that there was no proper complaint under section 7(3) of the Act and as this question had not been raised in any of the courts below and as counsel for the appellant was taken by surprise, the Bench granted two weeks' time to enable him to satisfy the court that there was a proper compliance with the provisions of section 7(3) of the Act. When the matter came up before us for hearing, the learned counsel for the appellant placed before us the following notification by the Punjab Government authorising all police officers above the rank of Deputy Superintendent of Police and the Heads of the various Government Departments to make complaints in

The State of writing to a court in respect of alleged offences against
Punjab the Act :—

Kharaiti Lal

Sinha, J.

Dated Simla-2, the 20th January, 1948.

No. 1248-H Camp-48/2075.—In exercise of the powers conferred by sub-section (3) of section 7 of the East Punjab Essential Services (Maintenance) Act, 1947, the Governor of the East Punjab is pleased to authorise all police officers of and above the rank of Deputy Superintendent of Police and the Heads of the various Government Departments to make complaints in writing to a court against persons of their respective Departments, who are alleged to have committed offences against the Act.

Sd. NAWAB SINGH,
Home Secretary to Govt. of East Punjab.

On a reference to the notification quoted above, it is clear that the complaint filed by the Superintendent of Police, Kangra District, in the court of the Ilqa Magistrate, Dharamsala in the district of Kangra, was filed in compliance with the provisions of sub-section (3) of section 7 of the Act which is in these terms :—

“No court shall take cognisance of any offence under this Act except upon complaint in writing made by a person authorised in this behalf by the State Government.”

But it was argued on behalf of the respondent that there was nothing to show that the complaint on the basis of which the prosecution had been initiated in this case had been authorised by the State Government. The law does not require that the particular

complaint should have been authorised by the State Government. What is required is that the complaint should have been filed by a person authorised by the State Government to do so. The notification has authorised a Superintendent of Police to file a complaint in respect of a contravention of the provisions of the Act by a person in his department. It is not denied that the respondent was such a person. Hence the preliminary objection must be overruled.

The State of
Punjab
v.
Kharaiti—Ld
Sinha, J.

Coming to the merits of the decision, it is a little surprising that the learned Judge should have completely ignored the opening words of section 3 of the Act which completely answer the ratio of the decision under appeal.

“This Act shall apply to all employment under the State Government.” (omitting words not material for the present case).

The learned Judge of the High Court has quoted the provisions of sections 5 and 6 of the Act in support of his conclusion that the Act is “intended to be applied in special cases of dislocation of essential services because of extraordinary events such as strikes or because of political agitation or similar circumstances”. The relevant portion of section 5 is in these terms :—

“Any person engaged in any employment or class of employment to which this Act applies who—

- (a) disobeys any lawful order given to him in the course of such employment, or
- (b) without reasonable excuse abandons such employment or absents himself from work,

.....
is guilty of an offence under this Act”.

The State of
Punjab
v.
Kharaiti Lal
Sinha, J.

The opening words of section 5 have reference to the opening words of section 3 so far as an employee under the State Government is concerned. As the learned Judge missed these opening words as indicated above, he fell into the error of supposing that a person in the position of the respondent was not intended to be governed by the Act. It is manifest that the learned Judge has acquitted the appellant, not on a misreading of the provisions of the Act, but by ignoring the opening words of section 3. It must therefore be held that the judgment of the High Court cannot be sustained.

But it still remains to consider whether the orders passed by the High Court acquitting the respondent should be interfered with. The courts below have acquitted the respondent of the first part of the charge which could have come within clause (a) of section 5 which lays down offences under the Act. The respondent had been convicted by the first two courts of an offence referred to in the second part of the charge, namely, of his having absented himself from duty. Under section 22 of the Police Act, V of 1861, every police officer is to be considered to be always on duty and may at any time be employed as a police officer, and on the findings of the courts of fact that the respondent had absented himself from the Police Lines during the night between the 2nd and 3rd February, 1953, he may have made himself liable to the penalty for neglect of duty under section 29 of the Police Act, or may have made himself liable to departmental punishment for absence from the police lines without permission. But we are not concerned here with these provisions. The respondent had been found guilty under clause (b) of section 5, that is to say, for the offence of absenting himself from work. Neglect of duty as contemplated by section 29 of the Police Act is quite different from abandoning

an employment or of absenting oneself from work without reasonable cause which is the particular offence contemplated by clause (b) of section 5. As already indicated, on account of the respondent's physical infirmity or deficiency the work assigned to him had been cancelled and he was expected to be in police lines during the material time without apparently doing any "work". It is clear from the record that he had not been assigned any "work" within the meaning of clause (b) of section 5. Hence his absence from Police Lines during the relevant time may have amounted to neglect of duty; but, in our opinion, is not synonymous with absence from work or abandonment of employment which has been made penal under clause (b) of section 5.

For the reasons aforesaid it must be held that the respondent had been rightly acquitted, though for wholly wrong reasons. The appeal must therefore stand dismissed.

Before Vivian Bose, B. Jagannadhas and

Bhuvaneshwar Prasad Sinha, JJ.

SHRI RAM NARAIN,—Appellant.

versus

THE SIMLA BANKING AND INDUSTRIAL CO.,
LIMITED,—Respondent.

Civil Appeal No. 313 of 1955.

Banking Companies Act (X of 1949), as amended by Banking Companies (Amendment) Act (LII of 1953)—Section 45A—Application by a Displaced Creditor against a non-displaced bank under the Displaced Persons (Debts Adjustment) Act (LXX of 1951) before a Tribunal at Banaras—During the pendency of the application under the Displaced Persons (Debts Adjustment) Act, proceedings for the winding up of the bank taken in the Punjab High Court—Decree obtained before Tribunal at Banaras—Whether Punjab High Court had exclusive jurisdiction to deal with proceedings in execution and other incidental matters—Non-obstante clause in each of the Acts—Effect of—Which is the latter Act—Subsequent Act amending an earlier one—Effect.

1956

May. 9th

The State of
Punjab
v.
Kharaiti Lal
Sinha, J.