
(1923) 05 AHC CK 0031
In the Allahabad High Court

Kashi Nath

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 31-05-1923

Acts Referred:

Government of India Act, 1915 — Section 107
Legal Practitioners Act, 1879 — Section 36

Citation : AIR 1924 All 69 : 79 Ind. Cas. 693 : 74 Ind. Cas. 11

Hon'ble Judges : Grimwood Mears, C.J.; Piggott, J

Bench : Division Bench

Judgement

1. We have before us four applications from persons in respect of whom the District Judge of Benares, has passed an order u/s 36 of the Legal Practitioners" Act No. XVIII of 1879, that is to say, the names of each one of these four persons have been put by the District Judge in a list of persons who are proved to his satisfaction, by evidence of general repute or otherwise habitually to act as touts. The word "tout," we may note, is defined by Section 3 of the same Act. In the case of two of the persons concerned, namely, Kashi Nath and Sarju Dat, notice was ordered to issue and the learned Government Advocate has appeared to support the order of the District Judge. The other two applications, namely, those of Abdul Hamid and Sital Pandey, were simply ordered to be laid before this Bench, to be dealt with in such manner as this Court might see fit after hearing arguments in the other two oases. The learned Government Advocate has raised the general question of the right of this Court to interfere in revision with an order passed by the District Judge, or other competent Court, u/s 36 of Act XVIII of 1879. That is a question which has mere than once been before this Court; but the standard authority on the subject is the decision of a Bench of two Judges, one of them the then Chief Justice of this Court, passed In the matter of the Petition of Madho Ram 21 A. 181 : A.W.N. (1899) 15 : 9 Ind. Dec. 825, in the year 1899 (1). We agree with the learned Judges who decided that case, that this Court could only interfere with an order, such as that now before us, in the exercise of the general powers of superintendence conferred upon it by what is

now Section 107 of the Govern-of India Act. We are satisfied that those powers are extensive enough to authorise this Court in the exercise of its discretion to send for the record of such a proceeding in a subordinate Court, namely, the record of an enquiry conducted by a District Judge with a view to drawing up a list of persons proved to be touts, and to examine such record and thereafter issue such orders or instructions to the District Judge as might appear to be proper. The question remains, however, what principles this Court should lay down to govern the exercise of its discretion in this matter. The learned Judges who decided Madho Ram's case 21 A. 181 : A.W.N. (1899) 15 : 9 Ind. Dec. 825, above referred to laid down one principle of considerable importance. This was that this Court would not interfere in the exercise of its powers of superintendence, where the sole ground upon which interference was asked for was that the decision of the District Judge was against the weight of the evidence. We desire to stand by that principle. It is quite clear from the wording of Section 36 of Act XVIII of 1879 that the Legislature intended to confer upon the Courts therein mentioned, including the Court of a District, Judge, a very wide discretion in the matter. The District Judge is authorised to frame and publish a list of persons proved to his satisfaction, by evidence of general reputation or otherwise, habitually to act as touts. It has been pressed upon us that the word "touts" as used in this section, refers back to the definition in the preceding Section No. 3 of the same Act. This is undoubtedly so: but what is laid down in Section 36 is that the District Judge has discretion to frame and publish a list of persons who are proved to his satisfaction to behave in the manner set forth in the definition of the word "tout" in Section 3. The only qualifications imposed by the Act on the exercise of this discretion are that the District Judge must be satisfied by evidence of general reputation for otherwise, and, further, that no person's name is to be included in such a list until he has had an opportunity of showing cause against such inclusion. We may say in this connection that we should certainly hold it a valid ground for interference by this Court, in the exercise of its general powers of supervision, if the District Judge had disobeyed this latter direction and had included in his list of touts the name of a person who had never been allowed an opportunity of showing cause against such inclusion. We return now to the obvious fact that it was never the intention of the Legislature to allow anything of the nature of an appeal against the decision of a competent Court u/s 36 of Act XVIII of 1879. We cannot allow our general powers of supervision to be invoked so as, in effect, to create a right of appeal which was never intended by the Legislature. In the cases now before us it is sought to bring the matter within the scope of the revisional jurisdiction, represented as falling somewhat short of the jurisdiction exercisable by a Court of Appeal, by representing that the record of the enquiry conducted by the District Judge discloses as against each of the four persons whose petitions lie before us no legal or relevant evidence to warrant the finding arrived at by the District Judge that they habitually do act as touts. The plain fact of the matter is that, as regards each of these four persons, direct evidence was wanting; but there was laid before the District Judge certain circumstantial evidence from

which the District Judge drew the inference as against each of these persons that they were habitually acting as touts. In our opinion it would be straining the powers of superintendence conferred on this Court and setting undesirable precedent, if we were to take it upon ourselves in every instance of this kind to consider whether the circumstantial evidence relied upon by a District Judge, and set forth in his order, was or was not evidence upon which we ourselves would have drawn the same inference. We think the Legislature intended that the District Judge should be master in his own Court to this extent. The result is that we are not prepared to interfere in any one of the four cases before us, and each of the applications stands dismissed accordingly.