

Amjad Husain vs State on 5 March, 1953

Equivalent citations: AIR1953ALL549, AIR 1953 ALLAHABAD 549

ORDER

Desai, J.

(1) The applicant has been convicted under Section 170, I, P. C. and sentenced to one year's imprisonment. It has been found by the Courts below that on 29-10-1950 the applicant personated as Assistant Shops and Commercial Establishments Inspector and in that assumed capacity tried to authorise shop-keepers to keep their shops open on a close day (i. e. the day on which under the Shops Act the shops should remain closed) and charged from them one rupee per shop-keeper. This is a finding of fact which ordinarily is not challenged in a Court of revision. It is backed by evidence which the Courts below were fully justified in acting upon. It has come in the evidence of the Shops and Commercial Establishments Inspector that he has no assistant attached to him. It was contended on behalf of the applicant that as the post of Assistant Shops and Commercial Establishments Inspector did not exist in the districts the applicant could not be convicted under Section 170 for pretending to hold that office. In support he referred to note No. 1 to Section 170 in the Law of Crimes by Ratan Lal and Dhiraj Lal Thakur to the effect that "the particular office must be an existing office." The offence of Section 170 is committed when a person pretends to hold any particular office as a public servant, knowing that he does not hold it, and in such assumed character, does or attempts to do any act under colour of such office.

Mr. Darbari referred to the use of the word "particular" and argued that the office must exist. The word used is "particular" and not "exist." What is meant by "any particular office" is "any specified office" regardless of whether such an office exists or not. If a person makes a claim in these words "I hold an office as a public servant" it will not do; he must specify or particularize the office which he claims to hold before he can be found guilty under the section. All that the law requires is that he must specify the office; it does not go further and require that the office must exist. If a person is to be convicted for making a false pretence the false pretence must be of some existing fact in distinction from a mere promise and a mere opinion (see the Criminal Law by Bishop Vol. 2, para 429), but that does not mean that for an offence under Section 170 the office must be existing.

When the applicant pretended to hold the office of Assistant Inspector, he certainly made a false pretence of an existing fact in distinction from a mere promise or a mere opinion. There can be no personating of a person who never existed (see the Criminal Law by Bishop, Vol. I p. 758) but that also does not mean that there can be no pretence to hold an office which never existed. There is a difference between pretending to be a particular person and pretending to hold a particular office. When the offence itself is of pretending to hold a particular office, there is no reason for saying that the Legislature meant to distinguish between a pretence to hold a particular existing office and a pretence to hold a particular non-existing office and to penalise the former and not the latter. I am,

therefore, unable to accept the view that the particular office which an accused pretends to hold must exist. There can certainly be a particular office though it does not exist.

(2) Even if the contrary view is accepted as the correct view, there is much to be said in support of the view that when the applicant pretended to hold office of an Assistant Inspector he pretended to hold an existing office because there does exist an office of an Inspector. That office can be said to include the office of an Assistant Inspector also. An Inspector and an Assistant Inspector are both officers in the same office and as the powers of an Assistant Inspector are ordinarily included in the powers of an Inspector the pretence to hold the office of an Assistant Inspector may be said to be the pretence to hold the office of an Inspector. I do not, however, express any definite opinion on this question because I am certain that there is nothing in Section 170 to require the particular office to exist. The case against the applicant was certainly not weaker than that against Bashir Ullah Khan, who simply pretended to be "an officer of the Criminal Investigation Department" and was still convicted under Section 170, vide -- 'Bashir Ullah Khan v. Emperor', AIR 1941 Nag 321 (A). There even the office was not specified. Here the applicant specified the office, namely that of Assistant Inspector. His pretence was more specific than it would have been if he had claimed to be an officer of the Shops and Commercial Establishments Department. Had he made that claim, no question would have arisen whether the office that he pretended to hold existed or not. If Bashir Ullah Khan was guilty in that case, the applicant was undoubtedly guilty in the present case.

(3) The applicant was rightly convicted under Section 170, I. P. C. He appears to have made a practice of, posing as an Assistant Inspector of Shops and Commercial Establishments and cheating shop-keepers by realising one rupee from each. He cheated a number of shopkeepers openly and had the audacity to repeat the claim even before the Inspector. The sentence of one year's imprisonment inflicted upon him is heavy. But I cannot say that it is so heavy that I should interfere with it in revision.

(4) The application is dismissed.