

APPELLATE CRIMINAL.

Before Mr. Justice E Maung.

1947

Oct. 29.

MAUNG KAN NYUNT (APPLICANT)

v.

THE KING (RESPONDENT).*

Police Act—Ss. 43 (a) and 43 (d)—Protest against an order of reversion—Whether offence under s. 43 (d)—Absence from duty for strike—Offence under s. 43 (a)—Sentence.

Held: Protest for an order of reversion to the Headquarters Assistant is not an offence under s. 43 (d) of the Police Act. That section penalizes violation of duty or wilful breach of any rule or order. That rule or order should relate to the duties of a police officer in discharge of his function, not a private protest against an order of reversion.

If a police officer absents himself from duty without leave, by joining a strike, he is guilty of offence under s. 43 (a) of the Police Act.

But where out of 72 strikers only four were selected and sent up for trial and others equally guilty were not prosecuted at all, nominal punishment should meet the end of justice.

E MAUNG, J.—This is a joint application by four persons who had been convicted by the District Magistrate, Minbu, in his Criminal Regular Trial No. 2 of 1947 of offences under sections 43 (a) and 43 (d) of the Police Act, 1945.

Maung Kan Nyunt, the 1st applicant, had been found guilty of an offence under section 43 (d) of the Act and had been sentenced to pay a fine of Rs. 65 or in the alternative to undergo imprisonment for 21 days. The learned District Magistrate has acquitted him of the charge under section 43 (a) of the Act and with that order of acquittal I am in entire agreement. I must say, however, that I cannot see my way to agree with the learned District Magistrate in convicting the applicant Maung Kan Nyunt of an offence under section 43 (d) of the Police Act. What has been

* Criminal Revision No. 181B of 1947 being review of the order of Mr. G. L. Merrells, District Magistrate of Minbu, in Criminal Regular Trial No. 2 of 1947.

found established against him is that on receipt of an order reverting him from the position of a Police Station Inspector to that of a Sub-Inspector of Police, he in the company of several other persons went to the Headquarters Assistant (Police) and protested against the order of reversion. It is not for me to go into the question whether the reversion was justified or whether the protest was made for good reasons, but I am clearly of the opinion that a police officer by merely protesting against an order of reversion to the Headquarters Assistant (Police) does not commit an offence under section 43 (d) of the Police Act. Section 43 (d) of the Police Act penalizes a police officer who is guilty of any violation of duty or wilful breach or neglect of any rule or order made by a competent authority. I cannot see that there has been any violation of duty or wilful breach or neglect of any rule or order made by a competent authority in Maung Kan Nyunt making a protest against the order reverting him from the post of a Police Station Inspector. It seems to me quite clear that the words "any rule or order" in section 43 (d) of the Police Act do not extend to an order of the nature in the present case. The rule or order contemplated by the Act in this behalf must be a rule or order relating to the duties of a police officer in the discharge of his functions, namely, maintenance of law and order. An order, for instance, made by a competent authority under the Criminal Procedure Code would be such an order, but a mere executive order reverting a police officer from a higher appointment to a lower one is not such an order and a protest against such an order or a request to have the order revised cannot fall within the purview of section 43 (d) of the Act.

The applicant Maung Kan Nyunt is accordingly acquitted. The fine which he has paid will be refunded to him.

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In the case of the other three applicants, however, it is clear that they have been convicted on their own admissions of having kept away from their duty without the necessary leave being granted to them to be so absent. They are therefore clearly guilty of the offence under section 43 (a) of the Police Act. But from the materials on the record I am not prepared to hold that these applicants should have been so severely dealt with as they have been by the trial Magistrate. In fact the learned trial Magistrate himself, in the course of his judgment, said: "But it appears that there is no reason to penalize them heavily merely because they have been selected from a large number of possible accused persons." As the learned Magistrate pointed out there were no less than 72 police constables and other officers involved in the strike, each of whom had been as guilty as any of these three applicants of an offence under section 43 (a) of the Police Act. The other 69 persons have not been prosecuted and no action whatsoever appears to have been taken against them. I feel therefore that a nominal sentence would meet the ends of justice in the case of these three applicants in these circumstances.

I accordingly confirm the conviction of the applicants Maung Than Shein, Maung Sint and Maung Thwin under section 43 (a) of the Police Act, 1945, but reduce the fine in the case of each of them to a sum of Rs. 5 only. The difference between the amount which each of them has paid, and Rs. 5 which is now imposed on each of them, will be refunded to them.