

Pradip Chowdhury Vs. the State

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Court : Guwahati

Decided On : Apr-22-1959

Judge : G. Mehrotra, J.

Appellant : Pradip Chowdhury

Respondent : The State

Judgement :

G. Mehrotra, J.

1. This is a revision against the order of the Sessions Judge, Cachar, dated 18-6-1958 by which he affirmed the conviction and sentence passed against the applicant Under Section 188, Indian Penal Code. The Magistrate convicted the applicant Under Section 188, Indian Penal Code and sentenced him to undergo simple imprisonment for al day and to pay a fine of Rs. 10/-, in default, to a further simple imprisonment for 5 days. In view of the fact that the accused is a young man bo4 longing to a respectable family, the Magistrate treated him leniently and awarded simple imprisonment.

2. The charge against the applicant is that on 18-8-1956 duo to the impending visit of the Chief Minister, Assam, to the town of Karimganj apprehending breach of the peace in the town, the Sub-Divisional Officer, Karimganj promulgated an order Under Section 144, Criminal Procedure Code prohibiting any meeting, procession, demonstration or obstruction to or of traffic or assembly of five or more persons

within the limits of the Karimganj Town or within five miles of such limit for a period of 15 days with effect from 18-8-56. On that day the accused was found along with 7 or 8 others coming in a procession wearing black badges on that chest pockets.

When the police party found and apprehended them the other processionists took to that heels and the applicant alone was arrested by the police. There was an attempt on the part of this accused also to run away and as a result he sustained some injuries. On these allegations he was charged Under Sections 143 and 188, Indian Penal Code. So far as Section 143. Indian Penal Code is concerned. the Magistrate found that no common object was proved and he accordingly acquitted him under this Section.

He however, found that the petitioner violated the order Under Section 144, Cr. P.C. lawfully promulgated by the authority, and as such, he was found guilty Under Section 188, Indian Penal Code and convicted and sentenced. The judgment of the Magistrate was affirmed by the Sessions Judge, The defence taken by the petitioner was that he was at the shop of Ganapati Book Stall when he was arrested by the Superintendent of Police, dragged out of the shop and was belaboured. That defence has been disbelieved.

It is however, not necessary for me to go into the defence taken by the petitioner for two reasons: firstly, both the courts below have found against the petitioner, and secondly as the action of the Superintendent of Police, as it appears from the judgment, is subject-matter of knottier complaint filed by the petitioner against the Superintendent of Police any observation made about the defence by this Court is likely to prejudice that trial.

2a. The main argument addressed before me by Mr. Ghose, the counsel for the petitioner, is that there has not been any disobedience of the order Under Section 144, Cr. P.C., nor has the prosecution established that the breach of the order, if any, was likely to cause any obstruction or tended to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person lawfully employed.

The contention is that mere disobedience of an order promulgated Under Section 144, Cr. P.C. will not be an offence Under Section 188, Indian Penal Code unless the prosecution further proves that as a result of the disobedience there was an obstruction, annoyance or injury, caused or the disobedience tends to cause such obstruction or annoyance. Unless the consequence of the act of disobedience is proved, a person cannot be convicted Under Section 188, Indian Penal Code. No objection can be taken to this proposition of law.

The words of Section 188, Indian Penal Code are clear enough to point out that mere disobedience is not an offence Under Section 188, Indian Penal Code. Before however, I come to this part of the case, I would like to deal with the first argument addressed by Mr. Ghose that in this case there was no disobedience of the order Under Section 144, Cr. P.C. In order to appreciate this argument, it will be better to read the preamble of the order.

The preamble to the order states that 'Whereas it has been made to appear to me from credible information received from the Police that meetings, processions, demonstrations and obstructions to traffic on the public roads and thoroughfares are likely to be organised or caused the order Under Section 144, Cr. P.C. was passed.' The order is in the following terms : 'I do hereby prohibit Under Section 144, Criminal Procedure Code, any meeting, procession, demonstration or obstruction, to or of traffic or an assembly of five or more than five persons for the aforesaid purpose or purposes, ancillary thereto.

3. It appears from the evidence that when the Chief Minister was to visit the town the police apprehended a black badge demonstration before him, It was Chief Minister's impending visit which prompted the police to pass an order Under Section 144, Cr. P.C. It is not contended by the prosecution that there was any attempt on the part of the petitioner to hold any meeting or to organise any procession or to cause any obstruction to any traffic. The only part of the order which is said to have been violated is the prohibition of demonstration or that which prohibits holding of an assembly of five or more persons. The question, therefore, to be considered is whether from the evidence it can be said that the petitioner either demonstrated or formed an unlawful assembly of five or more persons thus

violating the order promulgated Under Section 144 Cr. P.C.

4. The only eyewitness to the occurrence is P.W. 3 Hirendra Paul the Sub-Inspector of Police, he stated that on 18-8-1956 he was attached to the Silchar Police Station and he was deputed by the Officer-in-charge to Karimganj on duty. On that day an order Under Section 144, Cr. P.C. had been promulgated by which the assembly of five or more persons and, demonstrations were prohibited. He states that he was deputed to see that the order Under Section 144, Cr. P.C. was not violated and to maintain peace. At about 1 P.M. when he was coming from a bridge towards west on road, near a medical pharmacy he saw seven or eight persons in a batch on the main road wearing black badges on the chest pockets of their shirts.

Seeing them he advanced towards them because demonstrations were prohibited. Seeing him all of them ran away and he arrested the applicant who also wanted to go away. In cross-examination he stated that he saw the group of boys standing on the road gossiping. He did not see any other people moving in groups with badges. They were standing in a scattered condition on the road near the pharmacy about 11/2 cubits off. He further says that by demonstration he meant expressing certain resentment against the order.

Of course the Sub-Inspector is not right in saying that demonstration referred to in the order,, meant resentment against the order promulgated Under Section 144, Cr. P.C. The reason for promulgating the order Under Section 144 Cr. P.C. was that there was likely to be some demonstration: against the Chief Minister. Therefore, the word '4. demonstration referred to in the order cannot mean, resentment against the order Under Section 144, Cr. P.C., But apart from that the evidence clearly shows that these boys were not in a group and they could not be said to have formed an assembly of five or more persons.

As regards the demonstration no other fact has been proved by the prosecution so as to suggest that there was any attempt to stage any demonstration by the applicant. The mere fact that he appeared on the street wearing a black badge will not amount to demonstration. Demonstration always means expression of resentment by a number of persons grouped together. In the absence of anything

to show that any attempt was made to stage a demonstration before the Chief Minister, it cannot be said that mere putting on the black badge by an individual will amount to demonstration.

It was contended by the counsel for the State very strenuously that the conduct of the petitioner has to be judged from the circumstances. After the police had to prohibit any demonstration by promulgating the order Under Section 144, Cr. P.C. there was any attempt on the part of any individual to appear in public with a black badge, they will amount to demonstration. I do not think that such a wide proposition can be accepted. The question whether the conduct of the petitioner amounts to a demonstration will have to be gathered from the circumstances of each case.

In the light of the surrounding circumstances and the nature of the activities of the petitioner it will have to be judged whether his conduct amounts to a demonstration which had been prohibited under the order Under Section 144, Cr. P.C. The only evidence produced on behalf of the prosecution is that of P.W. 3 which I have already referred to above. It is difficult to say on this evidence that there was any attempt on the part of the petitioner to stage any demonstration. Nor has it been established by the prosecution that the petitioner with others formed an unlawful assembly of five or more persons.

As regards, the second question whether the disobedience caused any obstruction, annoyance or injury, there is nothing on the record to prove it. There is no finding by either of the courts on this point. But it has been rightly contended by the counsel for the petitioner that if there is no finding on the point, this Court can examine the evidence and come to the conclusion as to whether there was any offence committed or whether there was any disobedience. Mr. Medhi for the State contended that the whole object of promulgating the order Under Section 144, Cr. P.C. was to stop demonstration and if in the teeth of such an order any demonstration was staged it must result in the annoyance of the authority and thus the case is covered by Section 188, Indian Penal Code.

I do not think that there is any substance in this contention. In order to establish that annoyance was the result of the disobedience of the order, there must be

some proximity between the conduct of the accused and disobedience. The annoyance has to be proved as a fact; mere mental annoyance of the authorities concerned does not come within Section 188, T P. C. If that interpretation be accepted then Section 188 will apply in all cases of the breach of order. Where an order has been passed and if any breach is committed of that order the authorities can legitimately say that the breach itself has led to that annoyance.

But that is not contemplated by Section 188, IPC Unless the conduct of the accused is pointed out which in the circumstances of the case would have caused annoyance or interfere with, the public safety or had the natural tendency to create annoyance or interference with the public safety Soc. ISS is not attracted. It cannot be said that the prosecution has succeeded in establishing that the breach of the order results or tends to result in annoyance of the authorities lawfully constituted. It is not necessary to refer to a number of authorities cited by the counsel for the parties.

The language of the Section is clear and unambiguous. The prosecution has failed to prove the necessary ingredients of the offence against the petitioner.

5. In the result, therefore, I allow the revision and set aside the conviction and sentence passed against the petitioner.

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