Empress Vs. Tucker,

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Court : Mumbai

Decided On : Sep-28-1882

Reported in : (1883)ILR7Bom42

Judge : Kemball and ;Pinhey, JJ.

Appellant : Empress

Respondent : Tucker,; Norman and Thompson

Judgement :

Kemball, J.

1. This is an application for our interference under the special powers given, us by Section 147 of the High Court's Criminal Procedure Code (X of. 1875), no appeal being allowed by law: see Sections 167 and 180 of the Presidency Magistrates Act (IV of 1877). The accused appear to have been convicted under two sections of the Penal Code (sections 151 and 188), apparently, therefore, of two separate offences, the gist of each, however, being the same, viz., disobedience of lawful commands, though but one sentence has been passed, and that of almost a nominal character--a fine of Rs. 50 being inflicted in the case of Mr. Tucker and Rs. 25 upon the other two,--and the only question which we have to consider is whether a sufficient case has been made out on the merits to induce us to suppose that there has been a failure of justice. With reference to the charge under Section 151 of the Indian Penal Code it has been argued that there was no

assembly, there being merely the three accused followed, as the Magistrate said and as apparently generally agreed, by about fifty or sixty persons: and for the meaning of the word assembly we have been referred to Webster's Dictionary, it being suggested that if persons are walking along, with others following, and not standing for any length of time, that cannot be regarded as an assembly. Taking, however, a common-sense view of the matter, it seems perfectly clear that the action of these accused was calculated to draw a crowd,--in fact, their very object was to cause persons to assemble, and, therefore, the accused and those who joined them, whether stationary or moving, constituted an assembly of five or more persons.

2. Next, it has been said that it is not true that the accused refused to disperse when the other members of the assembly were ordered to and did disperse. But looking at the Magistrate's judgment there is clear evidence that, before dispersing the rest of the assembly, Mr. Brewin and Mr. Smith went to Mr. Tucker and his two companions and asked them to disperse, and that they distinctly refused to do so, and there is nothing in the affidavit before us which suggests that this statement of the evidence is incorrect. That being so, it is clear to us that the accused persons were, within the meaning of the section under consideration, knowingly continuing in an assembly after such assembly had been commanded to disperse. But it is argued that the police officers above named had no authority whatever to command the assembly to disperse and that there was no likelihood that a disturbance of the public peace would ensue. There is no definition of the term 'officer in charge of a police station', but we may assume that there are police stations in Bombay with officers in charge of them, and we think that in dealing with chap. XXXVI of the Criminal Procedure Code of 1872, which has been made applicable to the town of Bombay we may take into consideration Section 137 of the same Code, so that even assuming that Mr. Brewin was not an officer in charge of a police station--a question which was apparently not disputed before the Magistrate--we must hold that Mr. Smith, the Deputy Commissioner of Police--an officer of police undeniably superior in rank to officers in charge of police stations--had the authority contemplated in Section 480 of the said Criminal Procedure Code.

3. The remaining question raised is whether the assembly was likely to cause a disturbance of the public peace? We have been told that the opinions of any persons on this point is not evidence, and should not have been admitted; but whether a disturbance of the peace is likely to be caused, must of necessity be very much a matter of opinion, and the police officer, to whose discretion the law leaves the duty of dispersing assemblies, must of course act upon his own opinion, one way or the other; and if his opinion is relevant, the grounds on which it is based are relevant also. In cases of this kind the opinions of policemen who know the people of Bombay is obviously valuable, and the Magistrate himself must look to the surrounding circumstances and form his own conclusions, whether the acts committed were reasonably likely to lead to a breach of the peace. Knowing, as we do, the different classes who live in Bombay, their feelings and the inflammable material of which the population is made up, and knowing the views of the so-called Salvationists who style themselves an army whose avowed purpose is, as it were, to force their views upon others, it appears to us that most people of common sense would come to the conclusion that an assembly, such as that we are considering, in the public streets would probably lead to a disturbance. In this view we see no reason whatever for thinking that there has been any error of law with reference to the charge under Section 151 of the Indian Penal Code. As regards the charge under Section 188 of the Indian Penal Code, which is said to relate to the disobedience, by the accused, of the order of the Police Commissioner forbidding them to go out in procession, there is no doubt a great deal in Mr. Inverarity's argument upon Section 77 of the Police Act XIII of 1856, but we think it is unnecessary, under the circumstances, to consider whether this portion of the conviction was sustainable, or to decide whether the Police Commissioner was justified, under the said provision, in prohibiting the intended procession. An appeal is expressly prohibited by law, and in our view of the conviction under Section 151 of the Indian Penal Code we do not think our interference is required in order to promote the ends of justice. The application, therefore, stands rejected.