

Emperor Vs. Bhalchandra Trimbak Ranadive

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SooperKanoon Citation : sooperkanoon.com/336421

Court : Mumbai

Decided On : Aug-05-1929

Reported in : (1929)31BOMLR1151

Judge : Patkar and; Wild, JJ.

Appeal No. : Criminal Application for Revision No. 250 of 1929

Appellant : Emperor

Respondent : Bhalchandra Trimbak Ranadive

Judgement :

Patkar, J.

1. In this case the two accused are members of the managing committee of the Girni Kamgar Union, Accused No. 2 is also a secretary of the Union and the editor of the newspaper Kranti, which is the organ of the Girni Kamgar Union, On July 12, 1929, the Commissioner of Police issued a notification, Ex. A, under Sub-section (3) of Section 23 of the City of Bombay Police Act IV of 1902 prohibiting the president, the secretary, the members of the managing committee, and the members of the Girni Kamgar Union, from holding, convening or calling together any assembly of mill hands or employees of the Textile mills of Bombay for one week from the date of the order. The notification was duly published in the mill area in the evening of the 12th. On July 13 in the morning Superintendent Mr.

Spiers got a copy of the hand-bill, Ex. C, purporting to be signed by six persons including the accused inviting the strikers to attend the meeting for women Article 3 p. m. and for men at 5 p. m. and directing that the meeting should not be stopped even if the police or anybody else made any illegal attempts to break the meeting, and the work of the meeting should be carried on even if any arrests were made. Mr. Spiers went to the Kumbhar Chawl at about 3-30 p. m. with the Chief Presidency Magistrate and the Commissioner of Police. A number of people were collected in the open space between the Chawla The Commissioner of Police, Mr. Kelly, asked both the accused whether they had convened the meeting and both of them admitted that they had convened the meeting. The Commissioner then told them ' that the meeting was illegal and in contravention of the order issued by him. They said they had taken the best legal advice as regards the order and considered it illegal. Mr. Dastur, the Chief Presidency Magistrate, then intervened and informed them that as long as they did not get a decision from the Court they were defying the order by holding the meeting, and that the police were determined to disperse the meeting if they did not disperse themselves. The Chief Presidency Magistrate suggested that the proper course for them would be to get themselves arrested and get the case decided in Court. The accused after some hesitation agreed to the suggestion of Mr. Dastur, They were then arrested under the orders of the Chief Presidency Magistrate. Accused No. 1 then addressed the meeting and informed the Commissioner that he had advised the members to disperse and not to hold any meeting till the case was decided. The audience dispersed and both the accused were released on their own recognizances. The accused were placed before the Presidency Magistrate, fifth Court, Mr. Jungalwala, and tried for an offence under Section 143 of the Indian Penal Code of being members of an unlawful assembly, The learned Magistrate, after considering the whole evidence, convicted the accused under Section 143, Indian Penal Code, and sentenced them to six weeks' rigorous imprisonment and a fine of Rs. 200 each.

2. It is urged on behalf of the accused that assuming that the common object of the assembly was unlawful on the ground that it was to commit an offence under Section 127 of the Bombay Act IV of 1902 of breach or disobedience of an order of the Commissioner, under Section 23, Sub-section (3), the offence under Section

188 was not referred to in the charge. The present is a summons case and under Section 242 of the Criminal Procedure Code it is not necessary to frame a charge. The trend of the examination and cross-examination of the witnesses on behalf of the prosecution clearly shows that the common object of the assembly alleged against the accused was an offence under Section 188 of the Indian Penal Code. Mr. Spiers in his evidence stated that he had attended meetings held by the strikers and the burden of the speeches was: 'Don't go to work, don't let others go to work'; and the result was, obstruction, annoyance, and serious injury to workmen going to work in the mill area as well as on other work, and this resulted in danger to life and human safety, e. g., the safety of the shop-keepers and others.

3. It is urged on behalf of the accused that the order passed by the Commissioner of Police under Section 23, Sub-section (3), was not an order promulgated by a public servant lawfully empowered to promulgate such order within the meaning of Section 188, and that any assembly or procession referred to in Sub-section (3) of Section 23 referred to an assembly in a public street or place where the public have a right to go, and reliance is placed on Sub-section (1) of Section 28 where the processions and assemblies in public streets are referred to. The words 'any assembly or procession' are very wide and are not restricted to an assembly or procession in a public place or street. Though processions and assemblies in streets are referred to in Clause (a) of Sub-section (1) of Section 23, there is no limitation placed on 'any assembly or procession' in Sub-section (3) of Section 23. Section 23, Sub-section (1), Clause (f), refers to a nuisance in any place including a private place, and gives the Commissioner power to summarily stop the nuisance caused by the continuance of music or other such sounds on account of the serious illness of, or because it seriously interferes with the reasonable occupation of, any person resident or lawfully engaged in the neighbourhood. Similarly, Section 23, Sub-section (2), Clause (e), would include anything, prohibited by the clause, being done in a private place. Section 24, Sub-section (1), gives the Commissioner of Police power to temporarily close or take possession of any building or place and to exclude all or any persons therefrom in certain contingencies, Section 26, Sub-section (1), may also in certain cases refer to the exercise of the power of the Commissioner in a private place. The special

orders prescribed by Chapter III of the Police Act are not confined to public streets or places. It is urged on behalf of the Crown that the place where the meeting was held was an open space between two chawls and fell within the definition of a 'street' in Section 8, Clause (i), of the Bombay Act IV of 1902. But Mr. Spiers has admitted in cross-examination that the place where the meeting was held was a private place. It is urged on behalf of the accused that Section 23 was taken from the Madras Act which referred to an assembly in a public place. We have to construe the words as they appear in the section, and think that the words used in Sub-section (3) of Section 23 are wide enough to include an assembly at the place where the meeting was held on July 13, 1929, It is a question for the Legislature to consider whether the Commissioner of Police should have the power to prohibit any assembly or procession, whether in a public or a private place.

4. It is further urged on behalf of the accused that the condition prescribed by Sub-section (3) of Section 23 was not fulfilled and that the prohibition was not necessary for the preservation of the public peace or public safety, and that the order was passed by the Commissioner of Police as the accused objected to the presence of the police reporters at the meetings of the Girni Kamgar Union. It is urged on behalf of the Crown and it has also been held by the Magistrate that the sole discretion to be exercised in such cases is that of the Commissioner of Police and that the only condition precedent to the valid issue of such an order is that it shall appear, not to the Magistrate but to the Commissioner of Police, that such prohibition is necessary for the preservation of the public peace or public safety, and reliance is placed on the decision in *Emperor v. Shivilal Motilal* : (1910)12BOMLR126 . Public authorities even acting within the defined limits of their powers must not conduct themselves arbitrarily or tyrannically: *Nagar Valab Narsi v. The Municipality of Dhandhuka* I.L.R(1887) . 12 Bom. 490. In the case of *Duke of Bedford v. Dawson* (1875) L.R. 20 Eq. 353 Sir George Jessel M.R. held that the public body are to be the judges subject to this that if they are manifestly abusing their powers, the Court will say that it is not a fair and honest judgment and will not allow it. In *Sharp v. Wakefield* [1891] A.C. 173 it was held that (p. 179) :- 'discretion' means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion...; according be law, and not

humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.

See *Bhagchand v. Secretary of State* (1923) 26 Bom. L.R. 1. In the present case on the evidence, I think the discretion was exercised by the Commissioner of Police not merely on the ground of the objection to the presence of the police reporters at the Girni Kamgar Union meetings, but for the preservation of the public peace and public safety. I think, therefore, that the order passed by the Commissioner of Police under Section 23, Sub-section (8) of the Bombay City Police Act IV of 1902 was lawfully promulgated within the meaning of Section 188 of the Indian Penal Code.

5. It is further urged that the order promulgated under Section 23, Sub-section (8), ought to have been individually served on the accused, and reliance is placed on the decisions in the cases of *Reg. v. Sukar Budhia* (1870) Unrep. Cr. C. 30 and *Queen-Empress v. Anant Shitaram Kul-karni* (1899) 1 Bom. L.R.

524. The learned Magistrate held that the manner in which such orders should be promulgated is laid down in Section 137 of the Act, It appears that e. 23 refers in Sub-section

(1) to orders either orally or in writing, in Sub-section

(2) to a notification publicly promulgated or addressed to individuals, in Sub-section

(3) to an order in writing prohibiting any assembly or procession, and in Sub-section

(4) to a public notice. The distinction between a notification, an order in writing, and a public notice has been emphasized in Section 38 of the Act, Section 137 refers only to a public notice mentioned in Sub-section

(4) of Section

23. It is conceded on behalf of the Crown that Section 137 would not apply to an order in writing under Sub-section

(3) of Section

23. Exhibit A is described as a notification but it is really an order in writing within the meaning of Sub-section

(3) of Section 23 of the City of Bombay Police Act. There is no provision in the Act as to the mode of serving such an order in writing. Under Section 134 no order shall be deemed illegal, void, invalid or insufficient by reason of any defect of form or publication or any irregularity of procedure. The order in writing is not, therefore, vitiated by the description as a notification. The order in writing has been proved under Section 133 of the Act by the Commissioner of Police who proved that he drafted the order and sent it to the Times Press to be printed, and that order was Exhibit A, and that the original was signed by him. The learned Magistrate observed in his judgment that both Mr. Kelly and Mr. Spiers proved that the accused discussed the order Exhibit A with the Chief Presidency Magistrate, Mr. Dastur, and admitted that they were aware of the order. The evidence on this point is not free from doubt, and the admission referred to by the learned Magistrate may be with reference to the order Exhibit 1 which was intended to be, but was not in fact, issued. It appears, however, that the accused were in possession of Exhibit 1 which was intended to be, but was not in fact, issued by the Police Commissioner. The accused No. 1 stated that Exhibit No. 1 was obtained by him from a man on the Fergusson Road. The Commissioner of Police is of opinion that as Exhibit 1 was not circulated, the copy of the order reached the accused in a manner in which it ought not to have reached. Exhibit A, on the other hand, was notified in a public manner, The Police Constable, Gangaram Bhawoo, proves that it was promulgated by beating the Bataki from Dadar to Kalachowki from 8 p.m in, to 8-45 p. m. on the 12th, and while beating the Bataki he read out the order Exhibit A in Marathi. The Bataki was beaten at the foot of the Curry Road Bridge about 200 yards from the Kumbhar Chawl where the meeting was held, and also at the offices of the Girni Kamgar Union at Naigaum and Poibawdi. Mr. Cooper proves that the English and vernacular copies of Exhibit A were pasted at

conspicuous place in Laxmi Cinema, Lalwadi, Sewree and Poibawdi, and on the morning of the 13th he accompanied Mr. Spiers to the Girni Kamgar Union office at Poibawdi where Mr. Spiers served Exhibit A on the general secretary of the Union who signed Exhibit B, a copy of Exhibit A, on the reverse. The copies of the order were pasted on the doors of the office of the Girni Kamgar Union and also on either side of the entrance. There is, therefore, considerable force in the remark of the learned Magistrate that accused No. 1 who had managed to obtain a copy of the order, Exhibit 1, of which no one in Bombay was aware, could not be ignorant about the order, Exhibit A, which had been widely broadcasted on the 12th and the 18th. Having regard to the provisions of Section 134, Clause (2), and Section 69, Clause (3), of the Criminal Procedure Code, and Section 89, Clause (3), of the City of Bombay Police Act, the service on the president, the secretary, the members of the Managing Committee and the members of the Girni Kamgar Union, of the order, Exhibit A, in the way in which it was done in the present case was not irregular. In *Reg. v. Sukar Budhia* (1870) Unrep.. Cr. C. 30 the place where the order was stuck up was a burial place. If the order was actually served on the accused, there would be conclusive evidence of the knowledge of the order. But the knowledge can be brought home to the accused either by actual service of the notice or may be proved by circumstances which would clearly show or give rise to an inference that the accused had such knowledge. It is permissible for a Court of fact to draw an inference as to knowledge from the proved circumstances in the case including the fact of the accused residence at the place where the order was published, or the accused being members of an incorporated body on which such an order was served. See *Ramdas Singh v. Emperor* (1926) I.L.R. 51 Cal.

152. Having regard to the facts and circumstances proved in this case, I think that there are no adequate grounds to differ from the view of the learned Magistrate that the accused had knowledge of the order, Exhibit A.

6. It is further urged that it is not proved in the case that the disobedience of the order of the Commissioner of Police would cause or tend to cause danger to human life, health or safety, or cause or tend to cause a riot or an affray. The statement in the judgment of the learned Magistrate with reference to the incident

of July 12 that both the accused were arrested, and brickbats, stones and all sorts of missiles were thrown from Kumbhar Chawl is not supported by any evidence on the record of this case. It appears that in the morning of July 13, 1929, Superintendent Spiers received a copy of a hand-bill, Exhibit C, purporting to be signed by both the accused and other persons, inviting the strikers to attend the meetings at Kumbhar Chawl, Currey Road, and directing that the meeting should not be stopped even if the police or anybody else made any illegal attempts to break the meeting, and that the work of the meeting should be carried on even if arrests were made. There is no evidence that the accused got Exhibit C printed, but it is clear from the evidence of the Commissioner of Police, Mr. Kelly, that both the accused admitted that they had convened the meeting. It would not, therefore, be unreasonable to assume that the accused were some of the persons who issued the circular, Exhibit C. There was sufficient time since the morning for the accused, if they intended, to stop the meeting, It appears from the evidence of the Commissioner of Police that¹ the meeting was dispersed after the accused addressed the meeting. Mr. Spiers in his evidence stated that since the advent of the private meetings of the Girni Kamgar Union there had been an increase in crime and produced a list Exhibit H, showing the number of cases as they stood at the Bhoiwada Police-Station seventeen days before June 26, 1929 from which date the Girni Kamgar Union held private meetings, and another list, Exhibit 1, which showed the number of cases at the same police-station for seventeen days since the advent of the private meetings, in order to invite the Court to draw an inference that there was an increase of cases of assault, intimidation, stone throwing and other cognizable cases during the latter period. The prosecution also put in Exhibit D, a list of cognizable cases in the mill area from May 1 till July 11, and another list, Exhibit F, showing the complaints recorded in the non-cognizable register in the mill area during the same period, and according to the view of the Magistrate, crime had considerably increased since the advent of the private meetings. There is some force in the contention on behalf of the accused that it may be a coincidence that the crime increased after the holding of private meetings by the Girni Kamgar Union, and the learned Magistrate has not gone into the question as to whether the charges were real or false and resulted in acquittals. Having regard to the circular Exhibit C, and the admission of the

accused that they convened the meetings, there is adequate ground for drawing the inference that the accused knew that the disobedience of the order of the Commissioner of Police would at least result in a conflict with the police. See *Emperor v. Bhure Mal* I.L.R.(1923) All. 525.

7. The explanation to Section 188 Bays that it is not necessary that the offender should intend to produce harm or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys and that his disobedience produces or is likely to produce harm. We think, therefore, that the disobedience of the Police Commissioner's order under Section 23, Sub-section (3), of the City of Bombay Police Act, in this case fulfilled all the conditions necessary to constitute an offence under Section 188 of the Indian Penal Code.

8. It is further urged on behalf of the accused that the offence created by the disobedience of the order under Section 23, Sub-section (3), constituted a new offence, and should have been dealt with as an offence under Section 127 of the Police Act and not as an offence under the Indian Penal Code, and reliance is placed on the decision of Das J. in *King-Emperor v. Abdul Hamid* I.L.R.(1922) Pat. 134 The common object of the assembly in this case was to commit an offence within the meaning of Clause (3) of Section 141 of the Indian Penal Code, Under Section 40 of the Indian Penal Code, the word 'offence' in Section 141 means the thing punishable under the special or local law if it is punishable under such law with imprisonment for a term of six months or upwards whether with or without fine. The offence of disobedience of an order under Section 23, Sub-section (3), of the Police Act, is punishable under Section 127 with imprisonment which may extend to one month or with fine and would not, therefore, be included in the word 'offence' in the third clause of Section 141. The offence which is alleged to be the common object of the assembly in the present case to commit is an offence under Section 188 of the Indian Penal Code, and would come within the first clause of Section 40. In *King-Emperor v. Abdul Hamid Mullick and Coutts JJ.* declined to interfere with the order of acquittal of the lower Court on the ground that there was no evidence on which it could be held that the common object of the unlawful assembly was to disobey a lawful order as contemplated by Section 188 of the Indian Penal Code. Das J., however, on a consideration of the authorities came to

the conclusion that the accused could not be convicted under the Indian Penal Code for an offence committed under the Police Act.

9. In *Institute of Patent Agents v. Lockwood* [1894] A.C. 347 it was held that the offence of practising as a patent agent without being on the register was a new offence and punishable with a liability to 20 penalty, and that the mode of procedure and the amount of penalty are often regarded by the Legislature as of the utmost importance when they are creating new offences, and the law would, contrary to their intention, be most seriously modified if it were held that the party committing a breach of that which for the first time is made an offence were to subject himself by so doing to proceedings of the description which might result in committal to prison.

10. In the present case the offence of disobedience of the order of the Commissioner of Police under Section 23, Sub-section (3), is made an offence under Section 127 of the Police Act and is punishable with imprisonment. Section 181 of the City of Bombay Police Act says that:-

Nothing in this Act shall be construed to prevent any person from being prosecuted and punished under any other enactment; for any offense made punishable by this Act, or from being prosecuted and punished under this Act, for an offence punishable under any other enactment: Provided that all such cases shall be subject to the provisions of Section 403 of the Code of Criminal Procedure.

11. Under the General Clauses Act X of 1897, Section 26-

where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

12. In *The Queen v. Hall* [1891] 1 Q.B. 747 Charles J. observed (p. 754) :-

The inquiry to which I have to address myself is-first, whether the offence charged is a statutory offence simply; secondly, whether, if it be so, the statute creating the

o Hence has prescribed a particular remedy in such terms as to exclude either expressly or by implication the remedy by indictment.

13. All the offences under a special law or under the Indian Penal Code are tried in accordance with the Criminal Procedure Code, and there is no special procedure prescribed for an offence under Section 127 of the Police Act for disobedience of an order under Section 23, Sub-section (3), If the Act had provided a special procedure for recovery of the penalty by a special tribunal set up under the Act, the matter would have been different.

14. In Craies on Statute Law, 3rd Edn., (1923), it is laid down as follows (p. 205):

Also where a statute makes a new offence which was in no way prohibited by the common law, and appoints a peculiar manner of proceeding against the offender, as by commitment, or action of debt, or information, &c;, without mentioning an indictment, it seems to be settled to this day that it would not maintain an indictment, because the mentioning the other methods of proceeding seems impliedly to exclude that of indictment. Yet it hath been adjudged that if such statute give a recovery by action of debt, bill, plaint, or information, or otherwise, it authorises a proceeding by way of indictment. Also, where a statute adds a further penalty for an offence prohibited by the common law, there can be no doubt but that the offender may still be indicted, if the prosecutor think fit, at the common law.

15. Reference is then made to Section 83 of the Interpretation Act of 1889 which corresponds to Section 131 of the Police Act and Section 26 of the General Clauses Act X of 1897, and it is observed (p. 206):-

Where new created offences are only prohibited by the general prohibitory clause of an Act of Parliament, an indictment will lie; but where there is a prohibitory particular clause specifying only particular remedies, then such particular remedy must be pursued, for otherwise the defendant would be liable to a double prosecution : one upon the general prohibition, and the other upon the particular specific remedy.

16. The law on this point is enunciated in Halsbury's Laws of England, Vol. XXVII, pp. 188 to 190, paragraphs 370 to 373.
17. The disobedience of an order under Section 23, Sub-section (3), is an offence under Section 127 of the Police Act. It is not an offence under the Indian Penal Code. It would be an offence under Section 188, Indian Penal Code, only if it satisfied the conditions laid down in Section 188.
18. The distinction between a statute creating a new offence with a particular penalty and a statute enlarging the ambit of an existing offence by including new acts within it with a particular penalty, is well settled. In the former case the new offence is punishable by the new penalty only; in the latter it is punishable also by all such penalties as were applicable before the Act to the offence in which it is included, See Bonnerjee's Interpretation of Deeds, Wills and Statutes in British India, Tagore Law Lectures 1901, page 210.
19. In *Lowe v. Dorling & Son* [1906] 2 K.B. 772 Farwell L.J. observed (p. 784): 'Now, the distinction between a statute creating a new offence with a particular penalty and a statute enlarging the ambit of an existing offence by including new acts within it with a particular penalty is well settled. In the former case the new offence is punishable by the new penalty only; in the latter it is punishable also by all such penalties as were applicable before the Act to the offence in which it is included. The rule was recognised by Lord Mansfield in *Rex v. Wright* (1758) 1 Burr, 543 and in a note to 2 Hawkins' Pleas of the Crown (1824 Ed.), p. 290, is thus stated :-
- The true rule seems to be this : Where the offence was punishable before the statute prescribing a particular method of punishing it, then such particular remedy is cumulative..., and does not take away the former remedy; but where the statute only enacts, 'that the doing an act, not punishable before, shall for the future be punishable in such and such a particular manner', there it is necessary to pursue such particular method, and not the common law method of indictment'.
20. In the present case, the offence of disobedience of an order duly promulgated by a public servant under certain prescribed conditions was an offence under

Section 188 of the Indian Penal Code; and Section 23, Sub-section (3), enlarged the ambit of the existing offence under Section 188 of the Indian Penal Code by including an act prohibited by Section 23, Sub-section (3), of the Bombay City Police Act within it. I think, therefore, that though the disobedience of the order of the Police Commissioner under Section 23, Sub-section (3), is an offence punishable under Section 127 of the Police Act, it would be equally punishable under Section 188 of the Indian Penal Code if all the conditions laid down by that section are fulfilled, and it is the commission of the latter offence which is proved to be the common object of the assembly in the present case.

21. Lastly, it is urged that a complaint by the Commissioner of Police would be necessary under a. 195 of the Criminal Procedure Code, for an offence under Section 188 of the Indian Penal Code, and therefore, the conviction under Section 143 cannot be sustained in the absence of a complaint by the Commissioner of Police. The offence of which the Magistrate has taken cognizance is an offence under Section 143 of the Indian Penal Code which does not require a complaint under Section 195 of the Criminal Procedure Code.

22. I think, therefore, that the conviction of the accused is correct.

23. With regard to the sentence it appears that the accused on being told by the Chief Presidency Magistrate to desist from holding the meeting and get the question of the validity of the order decided by a Court of law, went and addressed the meeting and asked the audience to disperse. This is the first offence of the accused. The question whether the Commissioner of Police has the power to prohibit an assembly in a private place under Section 23, Sub-section (3), of the Police Act has not been so far adjudicated in a Court of law. We think that the punishment to be inflicted on the accused in the first case of its kind under Section 143, Indian Penal Code, ought not to have exceeded the punishment prescribed by Section 127 of the Bombay Act IV of 1902. We would, therefore, reduce the sentence in the case of each of the accused to rigorous imprisonment for one month and a fine of Ra. 100 in default one week's rigorous imprisonment. The excess of the fine, if paid, should be refunded.

Wild, J.

24. The applicants, who are members of the managing committee of the Girni Kamgar Union, were convicted by the Presidency Magistrate, Fifth Court, Bombay, under Article 148 of the Indian Penal Code, for being members of an unlawful assembly the common object of which was to disobey the order passed by the Commissioner of Police, Bombay. They were sentenced to six weeks' rigorous imprisonment and a fine of Ra. 200 each, in default they were directed to suffer further rigorous imprisonment for six weeks.

25. The prosecution case is that on July 12 a written order which is styled 'Notification', Exhibit A, under Article 23 (3) of the City of Bombay Police Act, Bombay IV of 1902, was made by the Commissioner of Police, Bombay, The notification is to the following effect:-

Whereas rioting of a very serious nature had recently occurred in several parts of the City of Bombay resulting in murder, grievous hurt and injuries to the citizens lawfully employed and whereas there have been serious disputes and dissensions among the mill hands and employees of the textile mills of Bombay resulting In grievous hurt and other injuries to the mill hands and other employees of the textile mills of Bombay, I.P.A. Kelly, Commissioner of Police, Bombay, under Sub-section 3 of Section 23 of Act IV. of 1B02, prohibit for one week from the date of this order the President, the Secretary, the Members of the Managing Committee and the members of the Girni Kamgar Union from holding, convening or calling together any assembly of mill hands or employees of the textile mills of Bombay.

This notification was published by beat of drum in the evening of July 12 and also by pasting copies of the notification in various places in the mill area. The following morning a copy of the notification, Exhibit B, was given to one Tawde, the Secretary of the Girni Kamgar Union, and copies were pasted on the walls of the office of the Union. That day, that is to say, July 18, at 10 a.m. Superintendent Spiers received a copy of a hand-bill Exhibit C, headed 'A Private Meeting of the Textile Labourers on Strike in Bombay'. The contents of the hand-bill were as follows :-

To consider the question of strike we have decided to hold a private meeting of the mill-employees on strike at Kumbhar Chawl, Currey Road, today, Saturday July 13 at 3 in the afternoon for women and at 5 in the evening for men. No one excepting a striker should attend the meeting. Mrs. Ushabai Dange will preside over the meeting. The meeting should not be stopped even if the police or anybody else make any illegal attempts to break the meeting and the work of the meeting should be carried on even if any arrests are made.

This handbill bore the names of the two accused, of Tavde and of three others. At 3.80 p.m. on that day, that is to say, on the day of the meeting, the Commissioner of Police with the Chief Presidency Magistrate and Superintendent Spiers went to the place mentioned in the hand-bill. They found a meeting of three or four hundred people was being held at a place between two chawls by the accused who are members of the managing committee of the Girni Kamgar Union and who admitted that they had convened the meeting. The accused at first announced their intention of going on with the meeting as the order of the Commissioner of Police prohibiting it was illegal. Then the Chief Presidency Magistrate suggested that as the accused were advised that the order was illegal and the Commissioner of Police was advised that it was legal they should submit to the order and have the legality of the order tested in Court. The accused agreed to this course and told the members of the meeting to disperse and at the order of the Chief Presidency Magistrate they were arrested for contravening the order of the Commissioner of Police.

26. The accused have been convicted under Section 143 of the Indian Penal Code for being members of an unlawful assembly the common object of which was to commit an offence and the offence in question is the offence under Section 188 of the Indian Penal Code of disobeying the order of the Commissioner of Police, The first question for consideration is, therefore, whether the order of the Commissioner of Police under Section 23(3) of the City of Bombay Police Act is a legal order.

27. The argument on that point is that as there can be no procession in a house or other private place Section 23(8) cannot apply to an order to prohibit an assembly

or procession in a private place, But obviously the members of a procession may assemble in a private house and the procession may be marshalled in the compound of such a house and may start out from there and cause disturbance outside. It is further pointed out that under Section 23(1)(a) and (b) the Commissioner of Police is given power to direct the conduct of and behaviour or action of persons constituting processions and assemblies in streets and to prescribe the routes by which and the times at which any such procession may, or may not pass. And it is argued that if the Commissioner of Police has power to regulate processions and assemblies in private places it would have been so stated in Section 23(1)(a) and (b). The difference between these two parts of Section 23 is that b. 23 (1)(a) and (b) are concerned with the conduct of processions and assemblies in streets at all times, and orders with reference to them may be given by a police officer not inferior in rank to an Inspector; but an order under Section 23, Sub-section 3, may only be made by the Commissioner of Police when he considers such order to be necessary for the preservation of public peace or public safety. The order also has to be in writing and is not to remain in force for more than seven days. It is obvious that it may be necessary for the legislature to encroach on the liberty of the subject when this is necessary for the preservation of public peace or public safety and this is in accordance with the maxim value populi suprema lex. The power given to the Commissioner of Police under Section 24(1) of the Act is an instance of this kind. For, in accordance with that he may temporarily close or take possession of any building or place which obviously includes private houses. Sub-section (3) of Section 23 does not confine the order of the Commissioner of Police to public streets or places, and this omission is not due to inadvertence because in other parts of Section 23 the words 'streets' and 'public place' are to be found. The omission is clearly intentional and founded on reason. For instance, in Section 23(2)(a) the Commissioner of Police is given power to prohibit the carrying of swords, spears, etc, in any public place, but in Section 23(2)(6) there is no restriction as to place. Clause (b) of Section 23(2) refers to the carrying, collection, and preparation of stones or other missiles or instruments or means of casting or impelling missiles and it is obvious that this refers to stones which may be collected on the roof of a house or at an open door or window. If there was no prohibition of the collection of these missiles in a private

place such as a house, they could be thrown from there on to the streets, and no object would be served by merely prohibiting the carrying of weapons in a street or public place. It may be noted that the power given to the Commissioner of Police under Section 23(3) is subject to safeguards to ensure that the rights of subjects should be interfered with as little as possible. The order has to be passed personally by the Commissioner of Police and must be in writing. It can only be made if he considers such order to be necessary for the preservation of public peace or public safety and the order can only remain in force for seven days. I have no doubt then, that an order passed by the Commissioner of Police prohibiting an assembly even in a private place under Section 23(8) is perfectly valid provided that he considers the order to be necessary for the preservation of public peace or public safety.

28. It has been suggested that the condition of affairs on July 12, was not such that it was necessary for the preservation of public peace that the order Exhibit A should be made. But on this point the Commissioner of Police has not been cross-examined and he was the person who was best able to judge what were the necessities of the case. It was also hinted that the Commissioner of Police issued this order because the Girni Kamgar Union had begun to hold private meetings and did not admit police reporters to them. I decline, however, to believe that an officer of the standing of the Commissioner of Police, Bombay, would use his powers out of pique.

29. It is next argued that a copy of the order should have been served on the accused and reliance is placed on *Reg, v. Sukar Budhia* (1870) Unrep. Cr. C. 30 *Queen-Empress v. Anant Shitaram Kulkarni* (1899) 1 Bom. L.R. 524 and *Ramdas Singh v. Emperor* I.L.R.(1926) . Cal. 152 . The last two, however, merely lay down that there must be evidence that the accused had knowledge of the order in order to sustain a conviction under Section 188 of the Indian Penal Code. It is true that in the first case the head-note states that it was held that the order not having been served individually upon the accused, the conviction was illegal. But though the Court annulled the conviction it did not state that individual service was in every case necessary. In this case it is not clear from the evidence whether the accused admitted at the time when the Commissioner of Police intervened at the

meeting that they had knowledge of the order, Exhibit A, but in the circumstances of the case that they had knowledge can be inferred. A copy of the order had been that morning given to Tavde, the general secretary of the Union and copies of the order had been pasted both at the office of the Union and in the whole of the mill area. The previous evening also the order had been proclaimed by beat of drum. At the meeting it is in evidence that accused No. 1 discussed a notice, Exhibit No. 1, of July 10, which the Commissioner of Police had intended to issue. This notice was nearly to the same effect as the order, Exhibit A, but as a matter of fact it was never issued, If accused No. 1 had obtained in some unauthorised way a copy of this notice, a notice which was never issued, it is clear that the accused must have known of the order which was not only issued but was publicly promulgated in the mill area, The order Exhibit A was promulgated in the manner described in Section 137 of the City of Bombay Police Act and it is argued that that section does not apply to an order in writing passed under Section 23(3). It is correct to say that in terms Article 187 does not apply to an order under Section 23(3) because Section 137 refers to a public notice. If that be so, no manner for the promulgation of an order in writing under Section 23(3) is Provided in the City of Bombay Police Act. But the method adopted was one which in my opinion was suitable considering that it had to be addressed to a large number of people and it is sufficiently clear that the accused must have known of it.

30. It is urged that the object of accused in holding the meeting was, as stated in the hand-bill Exhibit C, to consider the question of the strike and that therefore their object was not to disobey the order of the Commissioner of Police. The contents of the hand-bill Exhibit C, however, show the frame of mind of the accused as it advises that the meeting should be carried on even if illegal attempts to break it up are made by the police. As the accused were admittedly the conveners of the meeting it is reasonable to suppose that they authorised the publication of the hand-bill Exhibit C, of which they are the signatories. If the accused knew that the meeting was prohibited, one of their objects in holding the meeting was obviously to disobey the order. That must also have been the object of the other members of the meeting who equally had knowledge of the order. Superintendent Spiers states that at first the accused announced their intention to go on with the meeting. If is, therefore, obvious that at first their intention was to

disobey the order. Their subsequent conduct in telling the members of the meeting to disperse might go in mitigation of the offence but does not show that they had no intention of disobeying the police order. The common object of the assembly was clearly then to disobey the order of the Commissioner of Police prohibiting the meeting.

31. It is next argued that it is not proved that the disobedience of the accused caused or tended to cause obstruction, annoyance or injury etc., or danger to human life, health or safety, etc. On this point Superintendent Spiers says that private meetings were held by the Girni Kamgar Union from June 26 and there was an increase of crime from that date, He further states that the slogan at these private meetings was that the strikers should not go to work themselves nor allow others to go to work. Obviously the result of such meetings with such doctrines would be that there would be obstruction to those who wanted to work by the strikers. Superintendent Spiers says that since the advent of the private meetings there has been an increase of crime such as rioting, criminal intimidation, unlawful assembly, obstruction, etc., in his division. These meetings, and necessarily disobedience of the prohibition of them, he states, cause obstruction, annoyance and serious injury to workmen going to work in the mill area and also danger to life and human safety. This no doubt is his opinion but as he is a police-officer in charge of the division, he is the person who is best qualified to know what will be the result of these private meetings of the Girni Kamgar Union, The learned Presidency Magistrate has accepted the view of Superintendent Spiers and has held that the disobedience of the accused had the tendencies mentioned in Section 188. This is a finding of fact and one which cannot be lightly disregarded in revision. The ingredients of the offence under Section 143 of the Indian Penal Code are therefore all to be found in the case of the accused.

32. It was argued that the Court was not empowered to take cognizance of the offence by reason of Section 195 of the Criminal Procedure Code. It is no doubt the case that if the accused had been charged for an offence under Section 188 of the Indian Penal Code the Court could not have taken cognizance of it except on the complaint of the public servant whose order was disobeyed. But the offence in this case is not an offence under Section 188 but an offence under Section 143.

Section 195 of the Criminal Procedure Code has, therefore, no application.

33. Lastly, it is contended that the accused cannot be convicted under the Indian Penal Code for an offence committed under the Police Act as the offence was really one of disobeying the order under Section 23(3) of the City of Bombay Police Act which is punishable under Section 127 of that Act. Reliance is placed on the case of *King Emperor v. Abdul Hamid* I.L.R(1922) Pat, 134. In that case the facts are somewhat similar to those of the present case and one of the three Judges who decided the appeal held that the respondent could not be convicted under the Indian Penal Code for an offence committed under the Police Act. He based that opinion on the principle enunciated in *2 Hawkins' Pleas of the Crown*, which is as follows (p. 289) :-

Also, where a statute makes a new offence, which was no way prohibited by the common law, and appoints a particular manner of proceeding against the offender, as by commitment, or action of debt, or information, &c;, without mentioning an indictment;, it seems to be settled at this day, that it will not maintain an indictment, because the mentioning the other methods of proceeding only, seems irapliedly to exclude that of indictment.

It is argued that Section 23(3) read with Section 127 of the City of Bombay Police Act makes a new offence and that therefore there can be no conviction under the Indian Penal Code as the penalty is provided by the statute which makes the new offence. What however is the real nature of the principle enunciated in *Hawkins' Pleas of the Crown* is obvious from the cases quoted in *King-Emperor v. Abdul Hamid*, and particularly from the first two cases. In the first case the offence was created by the Parliamentary Registration Act of 1843 which provided as penalty a fine by the revising barrister or an action of debt by the party aggrieved. It was held, therefore, that there was no remedy by indictment and the indictment was quashed. In the second case the offender was brought before the Sessions Court whereas the penalty provided was a fine to be recovered by summary conviction in a summary Court. The principle then is that where a new offence is created and the particular manner in which proceedings should be taken is laid down, then proceedings cannot be taken in any other way. In this case, however, the

procedure is the same whether the accused are prosecuted for an offence under Section 127 of the City of Bombay Police Act or under Section 188 of the Indian Penal Code and no special procedure is laid down in the Police Act in connection with the new offence. The principle, therefore, enunciated in Hawkins Pleas of the Crown does not apply to the present case. It seems anomalous that the accused should be convicted under the general law rather than under Section 127 of the City of Bombay Police Act which applies more particularly to the case. But this is allowable under Section 131 of the City of Bombay Police Act as also under Section 27 of the Bombay General Clauses Act, Bombay I of 1904.

34. For the above reasons I am of opinion that the accused were rightly convicted of offences under Section 143 of the Indian Penal Code.

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