

Emperor Vs. Ramkrishna Gopal Bhide

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Court : Mumbai

Decided On : Sep-21-1937

Reported in : AIR1938Bom179; (1938)40BOMLR59

Judge : Barlee and ;Wassoodew, JJ.

Appeal No. : Criminal Reference No. 113 along with Reference No. 114, 116 and 130 to 137 of 1937

Appellant : Emperor

Respondent : Ramkrishna Gopal Bhide

Judgement :

Barlee, J.

1. This is a reference by the Sessions Judge of Poona who recommends that the convictions and sentences in the case of certain persons who have been convicted of offences under Section 71 of the Bombay District Police Act be set aside and the fines if paid be refunded. With this reference there are ten other references and a revision application. These cases have arisen in consequence of a notification issued by the District Magistrate, Poona, under Section 42 of the Bombay District Police Act. It runs as follows :-

Whereas at the last year's Hanuman Jayanti and Festival at the Sonya Maruti Shrine, Ravivar Peth, Poona City playing of music by the Hindus led to a grave disturbance of the public peace resulting in rioting between Hindus and Mussalmans, murders, and destructions of property in various parts of the City,

And whereas the Hanuman Jayanti and Festival which are due to begin on the 25th April, 1937, and to end on the 13th May, 1937, have not been permitted,

And whereas it is apprehended that the playing of music at the said Sonya Maruti Shrine will inflame religious animosity or hostility between Hindus and Mussalmans and incite to the commission of riots, murders, arson, etc. and lead to a grave disturbance of the public peace,

Now therefore in exercise of the powers vested in him by Section 32 of the Bombay District Police Act the District Magistrate, Poona, hereby prohibits the playing of music

(a) in or at the said Sonya Maruti Shrine

(b) within a radius of thirty yards on any street or public place to the north, west or south of the said shrine

(c) on the Laxmi Road between the Sonya Maruti Shrine and the Tamboli Mosque.

This order will remain in force from 24th April, 1937 to 14th May, 1937. This order will not be applicable to marriage or funeral processions

2. The temple of Maruti which is mentioned in the notification is in Poona City. It is a very small shrine, so small, we are told, that it is impossible for a man to enter it. Inside is a small bell and the applicants have been convicted because they went to the shrine and rang the bell. They applied to the learned Sessions Judge of Poona and contended in his Court that the notification issued by the learned District Magistrate was illegal, and, secondly, that the act of ringing the bell was not prohibited inasmuch as ringing of the bell does not amount to playing music. The learned Sessions Judge was against them on the first point. He came to the conclusion after considering the various decisions that the notification made by the

District Magistrate was neither illegal nor ultra vires : but he accepted the argument put before him that actually they did not disobey the notification inasmuch as ringing the temple bell did not amount to playing of music in or around the temple.

3. In support of this reference Mr. Patwardhan has contended, firstly, that the notification issued by the District Magistrate was not lawful, and, secondly, that his clients did not disobey it inasmuch as a mere ringing of the bell did not amount to playing of music. We do not wish to consider the first question at length. The learned advocate has cited the decision in *Muthialu Chetti v. Bapun Saib* I.L.R. (1880) Mad. 140 to the effect that an order passed by a Magistrate directing that all music should cease when any procession was passing a certain place of worship was ultra vires and the learned Sessions Judge has referred to several cases which were cited in his Court. But we need not labour this point, for in our opinion the notification issued by the District Magistrate, Poona, was certainly prima facie legal. It recites that playing of music had led to a disturbance and that he apprehended that playing of music during the festival would inflame religious animosity. This being so, the onus of showing that it was unlawful was on the persons who wished to challenge it, and the learned advocate has admitted that they led no evidence on the point at all. Therefore we do not have to consider the question whether in this case the notification is proved to have been unlawful.

4. The second point, however, is of great importance. The bell in the shrine is rung by worshippers when they visit the shrine to make darshan. It is, therefore, for all practical purposes of the same nature as a door bell. It is not a bell used normally to make music such as the bells which are sometimes used in bands. A bell is certainly not a musical instrument, though bells may be used with musical instruments for the purpose of making music; and the sound of a bell is not usually considered to be music though a pleasant sounding bell may be loosely termed 'musical.' According to the definition of music which has been read to us from Murray's dictionary, ' Music is one of the fine arts which is concerned with the combination of sounds.' If music is a combination of sounds it would appear that there must be either harmony, melody or at least rhythm, and, as each of the petitioners rang the temple bell once only, there can have been neither harmony,

melody or rhythm. The learned Advocate General refers to another definition in the same dictionary of what is called 'rough music.' But the most barbarous form of music has at least rhythm, and there was none in this case. Accordingly, though a bell can be used for the production of music, we are of opinion that the mere ringing of a temple bell, as was done in this case, did not amount to the making of music.

5. The learned Advocate General has pointed out that the continuous ringing of a bell may disturb the worship in the mosque just as much as music. But that is beside the point. A great many things which do not come within the notification may disturb the worship as much as the playing of music. The whistling of railway engines, the hooting of automobiles and such like noises are certainly very disturbing but they cannot be prohibited by a notification under the section as it stands. The example which the learned Advocate General has given us is also in our view irrelevant. Had the applicants in this case rung bells outside the mosque with the object of disturbing the worship they might have been dealt with no doubt under some section of the Police Act, but unless they rang those bells rhythmically we do not think, they would have been making music. However, the fact remains that they did not do so; all that they did was to ring the temple bell, and we think that it does not amount to making of music.

6. The learned Advocate General has cited the case of *Reg v. Clarkson* (1892) 17 Cox 483. A Salvation Army Band carrying musical instruments was marching through a town on a Sunday, a day on which the playing of music was prohibited by local regulation. One of the members of the party struck a drum or blew a horn two or three times and the party were prosecuted for playing music on a Sunday. It was held that, as it was proved that they had no intention of playing of music, the mere fact that one of them made musical sounds did not amount to playing of music on a Sunday. I do not think that it advances the argument any further. The case decides that the making of sounds without the intention of playing music was not against the regulation. But the converse is not true. The intention to disturb the worshippers in the mosque did not make the clang of the bell music.

7. To sum up, we think that in this case the applicants have been wrongly convicted inasmuch as it cannot be said that they disobeyed a notification published by the learned District Magistrate. We, therefore, accept the references, set aside the convictions and sentences, direct that the fines, if paid, should be refunded and make the rule absolute in all the references.

8. In the revision application the applicant has asked for a finding of this Court that the notification of the District Magistrate is illegal and also that he be acquitted on various grounds amongst which is the ground that the order of the District Magistrate was not contravened as the ringing of the bell does not amount to playing of music. The learned Government Pleader asks us to discharge the rule because the first contention fails. But the petitioner has succeeded on his second ground and therefore we must make the rule absolute and set aside the conviction and sentence.

Wassoodew, J.

9. I agree. The simple question is whether the notification of the District Magistrate contained or intended to convey a prohibition against the ringing of a bell in this small temple of Maruti known as Sonya Maruti. That notification derives its validity from the provisions of Section 42 of the Bombay District Police Act (IV of 1890) which empowers the District Magistrate ' whenever it shall appear necessary, to prohibit in any town or village or the vicinity thereof ' playing of music'.' The language of that section which confers emergency powers on the District Magistrate to curtail the liberty of the subject must be strictly construed. That means that no cases shall fall within it which do not fall both within the reasonable interpretation of its provisions and within its spirit. Section 42 postulates the appearance of necessity and on that point the District Magistrate is the sole arbiter. Therefore the notification in my opinion is prima facie evidence of such necessity in the absence of any other evidence to the contrary. Consequently it must be regarded as a notification within the competence of the District Magistrate.

10. But what is prohibited by that notification is the playing of music. That phrase 'playing of music' must be interpreted according to its natural, plain and etymological sense. The evidence, which supports the finding of the Courts below, suggests that only one stroke was given on the bell by the accused concerned, and I agree with my learned brother that that would not constitute 'playing of music' within the prohibition in the notification or Section 42.

11. The learned Advocate General has argued that the dominant consideration in such a case is the mens rea, and, as it was present in this case, the accused having entered the temple or rather presented himself before the temple, and, in defiance of the order, had struck the bell, no matter that the sound created might not be music in the strict and dictionary sense of the term, the accused's act nevertheless amounted to 'playing of music' within the prohibition. It is urged that unless the police, under Section 54 of the Bombay District Police Act, took preventive action, the object of the notification would be frustrated, and that consequently mens rea enters into every threat to commit breach of the notification, and renders every act committed in furtherance of that threat punishable. It is doubtful to my mind whether the mens rea can be strictly said to have been established by the facts proved in this case. The police officer is said to have prohibited the ringing of the bell in the temple. The accused, it is reasonable to suppose upon the record, thought that the police officer was acting beyond the notification and in order to test the legality and reasonableness of his order, rang the bell once. It is not established that the accused's intention was to ring the bell continuously in rhythm. If the striking of the bell once is not an offence- and I hold it is not-under the provisions of Section 71 of the Bombay District Police Act the mere existence of mens rea constituted by the facts proved is not enough. Undoubtedly mens rea enters into every offence. But it is elementary that both the intention and the act must concur before a person can be convicted. Inasmuch as the act in itself was not contrary to the notification, mere presence of mens rea is not sufficient to uphold the conviction. Therefore, I agree with the order proposed.