

In Re: P. Abdul Sattar and ors.

In Re: P. Abdul Sattar and ors.

SooperKanoon Citation : sooperkanoon.com/372228

Court : Karnataka

Decided On : Oct-10-1960

Reported in : AIR1961Kant57; AIR1961Mys57; 1961CriLJ291

Judge : A. Narayana Pai and ;M. Ahmed Ali Khan, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 114, 141, 142, 143, 147, 148, 149, 307, 332, 339 and 341; [Constitution of India](#) - Article 19

Appeal No. : Criminal Appeal No. 356 of 1958

Appellant : In Re: P. Abdul Sattar and ors.

Advocate for Def. : B.A. Mahishi, Adv.

Advocate for Pet/Ap. : Shamanna and ;H.L. Narasimhasastry, Advs.

Judgement :

Narayana Pai, J.

1. On 16-8-1957, there were under the aegis of the Government country-wide celebrations of the centenary of a historic event which happened in 1857, formerly called the Sepoy Mutiny, now thought of as India's first war of Independence against foreign, domination.

2. In the municipal town of Hospet in Bellary District, the celebrations were organised by a committee formed for the purpose under the chairmanship of the local Tahsildar, A. M. Kotriah P. W. 9. Among the items in the programme of celebrations was a procession of Mahatma Gandhi's photo and Indian National Flag mounted on a double-bullock cart, scheduled to start from the Municipal Office, go round the town along a specified route and to terminate in a public meeting under the presidency of Murari Venkataswamy P. W. 3, one of the leading citizens of the place.

Though it was originally proposed to start at 2.30 p. m., it had to be postponed owing to heavy rains. Actually, it started at about 5.30 p. m. Along the route marked out for the procession and not very far away from the Municipal Office, there is a mosque called the Dargah mosque. When the procession came near the precincts of the mosque, its further progress was sought to be barred by a number of Muslims who had strong objection to any procession passing in front of the mosque accompanied with music.

This procession was accompanied with music consisting of nagaswaram, drums, thappates, etc. Though attempts appear to have been made to dissuade the obstructionists from acting in the manner they did, all such attempts proved unsuccessful. Stones, brick-bats and soda-water bottles were flung at the processionists in an attempt to obstruct or disperse the procession and to prevent its taking its normal course as originally scheduled.

Some persons in the procession including Government officials and Police officers received injuries. The disturbance continued until two police officers who were accompanying the procession, viz., P. W. 1 Viswpswnriah, the Sub Inspector of Police, and P. W. 44 Siddiah, the Circle Inspector of Police, opened fire with the revolvers in their hands. Thereupon, the miscreants ran away and the procession proceeded on its journey.

3. In connection with this disturbance, 47 Muslims were tried by the learned Sessions Judge of Bellary Division in Sessions Case No. 9 of 1938 on his file for various offences, viz., those punishable under Sections 143, 147, 148, 149, 341, 332, 307, 114 and 34 of the Indian Penal Code. 44 witnesses were examined for

the prosecution, and 15 for dc-force. After trial, the learned Sessions Judge acquitted Abu Syed, S. G. M. Pasha, B. Khaja Moheedin Saheb, Katigi Imam Saheb, C. Hussain Saheb. Shaik Honnur Saheb and Bommagatti Nabi Saheb who were respectively accused Nos. 20, 21, 22, 23, 32, 35 and 43, of all the charges.

He convicted the rest of the 40 accused of the offence of rioting armed with deadly weapons punishable under Section 148 of the Indian Penal Code and sentenced each of them to two years' rigorous imprisonment. He convicted accused Nos. 1, 2, 3, 4, 5, 7, 37, 38 and 40 individually for the offence of causing wrongful restraint punishable under Section 341 of the Indian Penal Code, and sentenced each of them to undergo rigorous imprisonment for one month and to pay a fine of Rs. 500/- with a default sentence of one month's rigorous imprisonment.

The remaining 31 accused were convicted of the same offence by virtue of their membership of the unlawful assembly, reading Section 341 with Section 149 of the Indian Penal Code, and each of them was sentenced to undergo rigorous imprisonment for one month and to pay a fine of Rs. 300/-. with a default sentence of three weeks' rigorous imprisonment. The learned Sessions Judge also directed all the sentences to run concurrently. These 40 accused persons so convicted under two heads were acquitted of the rest of the charges levelled against them.

4. This appeal is by the forty convicted accused against the conviction and sentences imposed upon them as aforesaid.

5. That a procession was taken out and was attacked or disturbed by some Muslims in the manner spoken to by the prosecution witnesses, admits of no doubt whatever. The general features of the actual incident which is the cause of these proceedings, are spoken to not only by such respected citizens of Hospet as P. W. 2 Rao Bahadur A. D. Thandu Mudaliar, P. W. 3 Murari Venkataswamy and by responsible officials like the Assistant Commissioner P. W. 10 S. Ramanna, the Tahsildar P. W. 9 Kotriah, but also by several other witnesses whose evidence in this regard, there is no reason whatever to disbelieve.

Besides, no attempt has been made on the part of the accused to deny the very incident itself, the general features of the defence taken and the line of cross-

examination pursued having been either to prove the case of alibi put forward by certain of the unused persons or to discredit the evidence of particular witnesses tending to specifically implicate one or some of the accused persons.

6. In the appeal before us, apart from arguments in respect of certain details or with reference to particular accused persons which we shall consider in due course, the one basic or general argument has been that, in the circumstances of the case as disclosed by the evidence, there is no firm basis for coming to the conclusion that the accused persons either by themselves or in the company of others constituted themselves into an unlawful assembly and that, in the absence of any such conclusion, the evidence relating to individual acts of particular accused must be regarded as vane and inconclusive or, at any rate, of such a nature as to make it unsafe for the Court to convict particular accused for such acts.

There are two aspects of this argument. The first is that all the evidence may be reasonably said to indicate is that the procession was obstructed or disturbed by an unruly mob devoid of any coordinated leadership and that, therefore, the several accused persons spoken to by the witnesses as either offering obstruction to the processionists or as throwing missiles at them may, at best, be described as acting with distinct individual objects which may be similar in nature but not with any single common object.

On this aspect of the matter, the learned counsel for the appellants wants us to take judicial notice of the fact that in almost all disturbances of this nature, violence is resorted to not by a body of persons acting under the command of a leader or leaders but by unsocial elements acting on their own taking advantage of the situation. The second aspect of the argument is that the common object alleged by the prosecution, viz., that of preventing the procession from playing music in front of the mosque, can be said to be an illegal object or an offence only if it is established that the processionists have a right to take a procession playing music in front of the mosque.

It is pointed out that the offence of wrongfully restraining any person as defined in Section 339 of the Indian Penal Code, consists in preventing that person from

proceeding in the way he has a right to, whereas the muslims in this case have clearly stated that they have no objection to the procession going in front of the mosque at any time, provided only that they do not play music in front of the mosque.

Alternatively, it is argued that there being no right in the processionists to take a procession with music before the mosque, the criminal force or show of criminal force which the accused or any of them may be said to have employed, cannot be described as one so employed to compel the processionists to omit to do what they are legally entitled to do, within the meaning of the fifth clause of Section 141 of the Indian Penal Code.

7. In the light of these arguments, the first and principal point for consideration in this appeal is whether there can be said to have existed in or around the precincts of the Dargah mosque in Hospet on the evening of the 16th of August 1957, an assembly consisting of the accused and other muslims with the common object of preventing the procession in connection with the centenary celebrations from going with music in front of the said mosque and whether the said object may be said to be of such a nature as to convert that assembly into an unlawful assembly.

8. The salient facts bearing on this matter, i.e. those relating to the procession and the reactions of the muslims thereto, may now be briefly summarised. As already stated, the programme of celebrations was settled by a committee under the chairmanship of the Amildar A. M. Kotiah P. W. 9. According to him, the route which the procession was to take, had been fixed as early as on the 12th of August 1957. It has been suggested on behalf of the appellants that this was made known only on the morning of the 16th through a certain handbill. The only evidence in support of this suggestion to which our attention has been drawn, is a single sentence in the cross-examination of P. W. 36 B. R. Gundu Rao, Deputy Superintendent of Police, to the effect.

'According to the hand-bills distributed, the procession was scheduled to start at 2-30 p.m.'

This, however, does not contradict the evidence of P. W. 9 that the route had been fixed on the 12th itself. It can, therefore, be safely said that the evidence of P. W. 9 represents the facts correctly, and that though the procession was to be taken out only on the 16th, the route marked for it was known to all on the 12th or immediately thereafter, long before the 16th.

9. On the 16th, the first four accused persons presented a petition in the form of a letter address-ed to the Assistant Commissioner, Hospet, P. W. 10, with copies to the Municipal President Lakshmana Setty P. W. 8. the Amildar or Tahsildar Kotriah P. W. 9, the Assistant Superintendent of Police. Hospet, (apparently the Deputy Superintendent of Police Gundurao P. W. 36), the Circle Inspector of Police Siddiah P. W. 44 as well as to the District Superintendent of Police of Bellary and the Deputy Commissioner of Bellary.

The Assistant Commissioner P. W. 10 Ramamia deposes that he received the same before 2 p.m. on the 16th August 1937. The Circle Inspector Siddiah P. W. 44 received it at about 2 p.m. The Deputy Superintendent of Police Gundurao P. W. 36 deposes that the first four accused persons came to him with a copy of the petition at about 2-30 p.m. The first accused delivered a copy thereof to P. W. 9, the Amildar, also about the same time, when he was at the Municipal Office.

The Municipal President Lakshmana Setty P. W. 8 states that when he went to office at about 2-30 p.m., a copy of the petition had already been received in his office. Exs. P-2 and P-4 are produced as the copies. Ex. P-2 contains the signature of the first four accused persons. Ex. P-4 also contains the signatures of the first four accused with the words written thereunder 'and many many others'. The text of both is the same and reads as follows:

'To the Assistant Commissioner,' Hospet.(Bellary Dt.)

Sir,

We came to know that a Procession is being taken today (16-8-1957) in front of the Dargah Mosque Road with Music. It is highly objectionable to proceed with Music before the Mosque.

The Procession can proceed without Music before the Mosque at any time.

In case the Procession goes with Music before the Mosque we want to launch a peaceful Satya-grdha before the procession which please note.

This is for your kind information.

Thanking you, Hospet. We remain, Sir,D/- 16-8-57. Yours faithfully,.'

10. Though the procession was scheduled to start at 2-30 p.m., it could not do so owing to heavy rains. Consequently, the starting time was postponed to about 5-30 p.m. But, around 2 p.m. people had already started gathering at the Municipal Office. P. W. 3 Murari Venkataswamy, the proposed president of that evening's public meeting; P. W. 8 the Municipal President, F. W. 9 the Amitdar, P. W. 10 the Assistant Commissioner, P. W. 36 the Deputy Superintendent of Police and several others were present. Among the accused persons, accused 20, 21 and 22 were there.

It also appears from the evidence that several other muslims were standing outside the municipal premises. At that time, accused Nos. 20, 21 and 22 appear to have raised objections to the procession going with music in front of the Darfah mosque stating that the music would disturb the muslims performing 'Namaj' within the mosque. After an inconclusive discussion, accused Nos. 20 and 21 in the company of the Assistant Commissioner and the Deputy Superintendent of Police, went to the house at P. W. 2 Rao Bahadur A. D. Thandu Mudaliar, an old and respected citizen of Hospet, to discuss matters with him. P. W. 2 states:

'A-20, A-21 and Assistant Commissioner the the A. S. P. came to my residence. I understood from A-20 and A-21 that some of the Muslims objected to the procession being taken out in front of the Darga Mosque. However, both of them agreed to abide by my decision. Then I told A-20 and A-21 that it was not fair on their part to object for the procession being taken out in front of the mosque in the public street. They agreed with me.. Then all the five of us went to the Municipal Office. * * * A-20 and A-21 and others again liased the same objection ' * '.

At that stage, P. W. 3 Murari Veukataswamy stated that an agreement had already been reached between the contending parties at the time of the Independence Day Celebrations of 1950 to which he was one of the signatories and the main purport of which, according to him, was that whatever may be the position on ordinary occasions, the muslims of Hos-pet had distinctly agreed that they would not raise any objection on the score of music being played in front of the mosque on occasions of national celebrations like the Independence Day.

His interpretation was, however, not accepted by Accused 20 and 21. One of them is said to have gone home and brought the copy of the agreement to the Municipal Office for discussion. When A-20 and A-21 found themselves opposed by others, in their interpretation of that agreement, they stated that some of their elders had been fasting from the morning of that day, and that they would feel that It would be a mourning day for them and not a national festival.

At this P. W. 3 remarked that if that was how the Muslims felt about the matter, they could as well give up the idea of taking out a procession. The Assistant Commissioner P. W. 10 Ramanna also suggested that the procession might be stopped if the muslims were not going to cooperate. Ultimately, however, after further discussion, accused Nos. 20 and 21 withdrew their opposition and agreed themselves to accompany the procession. They actually did so.

11. Nothing of any importance happened until the procession reached the gate of the Hospital which is quite close to the compound wall of the mosque. Although the main gate of the mosque was further up, there was, according to the evidence, an opening in the compound wall of the mosque quite close to the hospital gate on the other side of the road. Some Muslims came' through that opening holding placards with the text written on them both in English and Kannada reading 'Mosque, stop music'.

One of them is said to have gone and caught hold of the feet of P. W. 3. Some of them prostrated in front of the bullock-cart carrying the photo of Mahatma Gandhi and the national Hag. The citizens and the officers in the procession tried to persuade these men to desist from the obstruction. As peaceful persuasion tailed, the Police Officers and other police men on Bandobast duly in the procession

pushed them aside, and the procession proceeded.

By the time it could take a few steps forward, there was, according to all the witnesses, a serious disturbance created by the Muslims in and around the mosque by flinging brick-bats, stones and soda-water bottles. These missiles were flung by the Muslims standing not only inside the mosque but also at vantage points outside the mosque, such as shop fronts or terraces of houses etc., situated close to the mosque described as Cowl pet area in the evidence. This disturbance, as already stated, continued until P. Ws. 1 and 44 opened fire.

12. It is on the interpretation or the effect of these facts, the parties are at variance on the question whether there was or was not an unlawful assembly of the Muslims on the occasion.

13. In order to substantiate his argument that this was a mob devoid of leadership, the learned counsel for the appellants relies upon the fact that the trial Judge has acquitted accused Nos. 20, 21, 22, 23 as well as accused No. 43, whom a good number of witnesses has described as persons actually instigating others to throw stones and other missiles. He also urges that accused 1 to 4 who presented the petition evidenced by Ex_s. P-2 and P-4, though convicted by the trial Judge, must on the evidence be held not to have been present on the occasion. The point in this argument is that the only persons who, according to the learned counsel, are sought to be made out by the evidence as leaders or instigators of this disturbance, are the said accused persons, of whom all have been acquitted by the trial Judge except accused Nos. 1 to 4 who also should have been acquitted.

(After discussing evidence the judgment proceeds):

14-17. It has been fairly conceded by the learned counsel for the appellants that if (be first four accused or accused 20 to 22 and offered obstruction, their previous conduct would furnish sufficient justification to come to the conclusion that they were acting as a body with the common object of obstructing the procession. The only reason stated for not imputing the same common object to the rest of the Muslims is that they are not leaders who can be said to have influenced their followers to act with the same common object. Although accused 20 and 21 have,

on the findings of the court below, to be taken to have been in the procession itself and not with their co-religionists in the mosque, the same cannot be said of accused 1 to 4.

It is difficult to accept the suggestion made on their behalf by their learned counsel that all that they did was to simply present the petition evidenced by Exs. P-2 and P-4 and ceased to interest themselves further in the matter, hoping that their requests would be accepted by the authorities. The probabilities are wholly in favour of the view that there were not only these four accused persons but several others who wanted to prevent the procession passing in front of the mosque with music, whether that object was to be achieved by what is described as Satyagraha or by other means, violent or non-violent.

18. Quite apart therefore from the fact whether these particular accused were or were not the leaders and quite apart from the above concession made by the Learned counsel for the appellants, it is abundantly clear that there was a large number of muslims intent upon obstructing the procession and there is no difficulty in holding that they were acting with the said common object and not, as suggested by the learned counsel, with distinct and different though similar objects.

This inference is further supported by the proved facts of the case, v-z., that there were in and around the mosque 100 to 150 or more muslims when the procession came to the spot, that in the first instance, some of them came forward with placards and prostrated themselves before the procession and that when they were pushed aside by the police, there was immediately a shower of stones, brick bats and sodawater bottles. It has been suggested that the time when the procession came near the mosque, was the normal time for the evening 'Namaj' and that furnished a legitimate reason for the muslims to congregate in the mosque.

This does not, however, explain why a number of muslims had congregated outside the precincts of the mosque near the shops and on the terraces of shops on a day on which, according to the evidence, normally the muslim shops remain closed. Further, the throwing of stones and other missiles at the processionists

from within the mosque cannot possibly be described as the conduct of persons peacefully assembled for the purpose of prayer.

19. We hold, therefore, that there was an assembly of muslims congregated in and around the mosque with the common object of preventing the procession from going in front of the mosque with music. Although the idea might have been to offer peaceful resistance in the first instance, the use of violence if the original procedure failed, was not entirely beyond their contemplation.

20. On the question whether this common object was lawful or unlawful, it has been strongly contended that it will be wrong to proceed on the basis that the processionists had an inviolable right to play music in front of the mosque. This argument is based largely, if not solely, upon the agreement of 1950 already referred to. It is described as a resolution of a Peace Committee of both the Hindus and Muslims formed at the time of the Independence day celebrations of 1950. Because it appears from the oral evidence that this agreement was the subject of discussion or interpretation at the gathering of people at the Municipal Office before the procession started, it is suggested that all concerned treated that agreement as the only source of the right to take out a procession and play music in front of the mosque. It is further argued that because P. Ws. 3 and 10 went to the extent of remarking that if the muslims felt so strongly about the matter, the procession itself might be dropped, it must be held that there was at least one possible view that the agreement disentitled the people from taking a procession before the mosque with music.

21. There are several reasons why this line of argument cannot be accepted. In the first place, the agreement has not been produced before Court and there is no way of testing the correctness of the contentions put forward on behalf of the appellants. Secondly, even according to the evidence, the alleged agreement is not in the nature of a decree of Court or an award of arbitrators defining and declaring the rights of the parties.

Considering that it was no more than a resolution adopted by what is described as a Peace Committee, it could only be a suggestion made by the Committee in the interests of peace, which the parties then accepted with a view to prevent breach

of peace, irrespective of the fact whether or not the rights claimed by the contending parties existed or were well-founded. Thirdly, it is well-established that the right to use a public high-way is not a right which originates either in agreement or in custom. The very fact that a particular path or a road is a public highway means that every member of the public has a right to use it.

These principles have been stated by a Bench of this Court in the case reported in *Ranga Setty v. Rangnaika*, 38 Mys LJ 203 after referring to the rulings of the Privy Council reported in *Manzur Hassan v. Muhammad Zaman* and *Martin and Co. v. Faiyaz Hussain*. Although those cases were cases of religious processions along public streets, the principles stated therein do not become inapplicable to processions which are not religious.

That right of using the public highway is subject only to similar rights of other members of the public to use the public high-way and to the power of the State to regulate traffic and to prevent disturbances or breaches of public peace. Although the right to use public highways in this manner is not expressly described as a fundamental right in the Constitution, it can reasonably be stated to partake of the fundamental right to assemble peaceably and without arms and to move freely throughout the territory of India guaranteed under Article 19 of the Constitution.

22. It follows therefore that the processionists had the right to come in procession along the public high-way, whether with or without music, so long as they did so peaceably without being armed and subjected themselves to control by the State in the interest of regulation of traffic or use of the public ways by others and in the interest of public peace. It also follows that neither the accused nor any other person had any right to prevent them from proceeding along the public high-way in a procession in that manner. The common object, therefore, of the above assembly of muslims was clearly to restrain the processionists from proceeding in the way they have a right to, and to compel the processionists to omit to do what they were legally entitled to do, by means of criminal force or show of criminal force.

23. We hold, therefore, that the said assembly of muslims was clearly an unlawful assembly within the meaning of Section 141 of the Indian Penal Code, and every

person who, being aware of the facts which rendered that assembly an unlawful assembly, joined or continued in that assembly, would be a member of that unlawful assembly within the meaning of Section 142 of the Indian Penal Code, and rendered himself open to punishment under Section 143 of the Indian Penal Code.

Further, when the assembly used violence or force by throwing stones, brick-bats or other missiles, every member of that assembly became guilty of rioting and such of them as were armed with those deadly weapons, viz. stones, brick-bats and soda water bottles became guilty of the offence punishable under Section 148 of the Indian Penal Code.

In the circumstances of the case, there can be no doubt that every person who was a member of that unlawful assembly, knew that the offence of causing unlawful restraint punishable under section 341 of the Indian Penal Code would be committed in the prosecution of the common object and every one of them would, therefore, be guilty of that offence by virtue of the provisions of Section 149 of the Indian Penal Code.

24. The next question is whether all or any of the forty appellants before us have been shown to have been members of this unlawful assembly.

(After discussing evidence in this respect the judgment proceeds):

25-32. The only reasonably safe test which we could adopt is the ordinary test of known human probabilities, remembering at the same time to attach value to the opinions of the trial Judge who has seen the witnesses deposing before him. The first thing to remember in cases of this nature is that where a large number of persons has assembled and some of them resort to violence or otherwise misbehave, it need not necessarily mean that every one of the persons present actually shares the opinions, intentions or objects of those who misbehave or resort to violence.

In fact, the possibility of some of the persons actually resenting or condemning the activities of the misguided persons cannot be ruled out. Caution should, therefore,

be exercised while deciding which of the persons present can be safely described as members of an unlawful assembly. Although, as a matter of law, an overt act on the part of a person is not a necessary factor bearing upon his membership of an unlawful assembly, in a case of this nature it will be safer to look for some evidence of participation by him before holding that he is a member of the unlawful assembly.

Otherwise there is a serious danger of innocent bystanders being punished for no fault of theirs. It is also obvious that in a general attack or disturbance of the type with which we are now concerngd, every one of the persons in the crowd will not be in a position to observe every thing that goes on, His observations are likely to be confined to a small area around him; he might be able to observe things occurring at some distance, only if there is nothing to obstruct his line of vision and nothing near at hand diverting his attention.

Hence, when a witness gives a list of large number of accused and attributes different acts to different accused individually, it will be safer not to place too much reliance on his observation. On the contrary, if a witness names just a few of the accused and no particular interestedness can be attributed to him, there is no reason to doubt the veracity of his statement made on oath in Court.

(After discussing further evidence the judgment proceeds):

33-38. On the whole, we think it is safe to conclude that the several accused named by these witnesses took actual part in the attack on the processionists and should therefore be held to have been the members of the unlawful assembly. They are, accused 1 to 9, viz., P. Abdul Sattar, P. Abdul Mazeed, P. Mahammad Hayat, Sherifuddin, Gadi Khasim Saheb, K. Allauddin, Mahammad Khasim Sab, Jaffar Saheb, Rahiman Saheb, accused 11 to M. viz., Shaik Jani Saheb. B. Abdul Khaddar, K. Namazmali and Shaik Nabi, Saheb, A-19 M. S. Abdul Mazid, A-24 D. K. Khasim Sab, A-25 Baildar Hussain Saheb, A-30 Abdul Sattar Saheb, A 36 Usuf Saheb, A-37 Chittawadigi Sherman Saheb, A-39 Bekari Syed Ghouse, A-40 Bekari Akbar, and accused 44 to 47, viz., Naralli Rajanni, Naralli Mahahoob Saheb, Bashu, Bommagetti Mehaboob.

39. As already stated, these accused who have been clearly shown to have been the members of the unlawful assembly knew that in prosecution of the object of the unlawful assembly the procession would be prevented from proceeding in the way it was entitled to, and hence every one of them would be guilty of the offence punishable under Section 341 of the Indian Penal Code read with Section 149. The learned Judge has no doubt separately convicted accused Nos. 1 to 5, 7, 37, 38 and 40, individually for the offence punishable under Section 341.

But the obstruction consisted not merely in carrying placards or prostrating on the ground but also in throwing missiles. We think that in view of the general nature of the incident itself and in view of the fact that even these accused would be liable to punishment by virtue of Section 149 of the Indian Penal Code, it will be more proper and more logical not to record a separate conviction against these accused in respect of individual acts.

Out of these accused so convicted, accused No. 38 Gadi Khadar Saheb is not among the accused found by us to be a member of the unlawful assembly as stated above. We are also of the opinion that when a substantial sentence of two years' rigorous imprisonment has been awarded in respect of the offence punishable under Section 148 and when the sentence of one month's simple imprisonment under Section 341 read with Section 149 of the Indian Penal Code is the maximum sentence of imprisonment under Section 341, the additional sentence of fine is uncalled for.

40. The result is as follows :-- The conviction of the twenty five accused persons named above for the offence punishable under Section 148 of the Indian Penal Code and the sentence of two years' rigorous imprisonment imposed on them for it are confirmed. The conviction of A-1 P. Abdul Sattar, A-2 P. Abdul Mazeed, A-3 P. Mahammad Hayat, A-4 Sherifuddin, A-5 Gadi Khasim Saheb, A-7 Mahammad Khasim Sab, A-37 Chittawadigi Slierman Saheb and A-40 Bekari Akbar under section 341 alone is altered into one under Section 341 read with Section 149 of the Indian Penal Code, and the conviction of the remaining seventeen out of the said twenty five under Section 341 read with section 149 is confirmed; in respect of this offence under Section 341 read with section 149 of the Indian Penal Code,

the sentence awarded to each one of these twenty five accused will be one month's simple imprisonment; the sentences of fine imposed by the Court below are set aside.

41. In the case of each of the convicted accused, the two sentences of imprisonment will run concurrently. These twenty five convicted appellants will surrender to their bail.

42. There conviction and sentences imposed upon the following accused persons, viz., A-10 Abdul Khuddus Saheb, A-15 K. Shaik Saheb, A-16 Baildar Ameer Saheb, A-17 B. Usman Saheb, A-18 Mohadin Saheb, A-26 K. M. Bazhu, A-27 H. Mahammad, A-28 K. Raja Saheb, A-29 Mahammad Ummar Saheb, A-31 Khasim Saheb, A-33 Hakim Fakruddin Sab, A-34 P. Silar Ahmmad Saheb, A-38 Gadi Khadar Saheb, A-41 Malayagar Mahabooh and A-42 Ahmed Saheb, are set aside and all of them are acquitted. Their bail bonds shall stand cancelled.

ORDER

Narayana Pai, J.

43. After signing the judgment in this appeal, it is brought to cur notice that the fines imposed by the Court below have already been paid, fully by some of the accused and in part by others. In view of our order setting aside the sentences of fine imposed by the Court below, it is stated that further direction by us for the refund of fines, if any, paid by the accused is necessary, so that there may not be any doubt about the effect of our order. We make an order accordingly.

44. Order accordingly.