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Court : Allahabad

Decided On : May-29-1933

Reported in : AIR1933All614; 145Ind.Cas.738

Appellant : Emperor

Respondent : R.N. Basu (for B. Parshottam Das Tandon)

Judgement :
ORDER

Kendall, J.

1. This application is connected with Criminal Revision No. 107 of 1933 Vide : AIR1933 All612 Ed. and has been made like that by Mr. R.N. Basu, Secretary of the District Bar Association, Allahabad, on behalf of the accused B. Parshottam Das Tandon, who was fined Rs. 200 under Section 32, Police Act, by the City Magistrate of Allahabad. I have discussed in the connected case the question of whether an application for revision can be entertained by the High Court without having been presented in the Sessions Court, and held that in certain specified cases an application may be entertained, and I have held further that even where an accused person, as in this present case, refuses to plead and shows himself ready to be sent to jail, it is nevertheless the duty of the Court to sift the evidence for the prosecution and to refuse to convict the accused if the evidence is insufficient to prove a definite offence, not only because this proceeding is

required by the law but also because the Courts have a duty to protect the tax-payer from expenditure which cannot be justified. In the present case the accused was served with an order under Section 30, Police Act of 1861, directing him and the other conveners of a meeting to apply for a license. They did not apply for a license, and when there were preparations to hold the meeting without it the accused attempted to harangue a crowd which had collected, and was promptly arrested. The facts are given fully and clearly in the judgment of the learned City Magistrate, and the only question that arises in revision is whether the Parshottam Das Park can be held to be a 'public road,' 'street' or 'thoroughfare' within the meaning of those words as used in Section 30, Police Act. The accused was actually convicted under Section 32 of the Act, for having disobeyed the order passed under Section 30, and as he undoubtedly disobeyed the order the question is whether the order was ultra vires or not. If the Parshottam Das Park cannot be held to be a public thoroughfare, the conviction must be held to be invalid.

2. The learned Magistrate has pointed out that the park is a public place, being maintained by the Municipality for the benefit of the public, and according to his dictionary a 'thoroughfare' is defined as 'a way by which people pass.' The park contains two gates with paths leading from one to the other and is surrounded on all sides by important roads, so that people do pass through it. He therefore concluded' that:

the park or at any rate paths through it come within the strict definition of a thoroughfare, Though I agree that this is not exactly the everyday way in which one uses the word.

3. He further went on to say that in the order issued by the police under Section 30, the words 'Parshottam Das Park' were used as a convenient way of describing the central point of the proposed meeting and:

must be presumed to include the immediately adjoining roads by which people had to arrive and. n to which the meeting was likely to overflow.

4, The orders however related to the Parshottam Das Park, and if the meeting were held or an attempt were made to hold it on adjoining roads and not in the

park itself, I think it is clear that the order under Section 30 cannot be applied. However the question is whether the order itself was ultra vires, and on this point, after hearing counsel for both sides and considering the matter to the best of my ability, I have come to the conclusion that I cannot agree with the Magistrate. There may be a public right of way through the Parshottam Das Park, but this has not been proved one way or the other. I understand that the Municipal Board have powers to close the park to the public on certain conditions. It is certain however that the park is not intended to be exclusively used as a thoroughfare, or as a way by which people pass, and this is not its chief or primary object. It is no doubt a public place, but Section 30, Police Act, does not refer to a public place. Presumably the park contains grass, flower-beds, etc., etc., and although the public may have a right to walk through it, it does not follow from that that they have a right to play on the grass or to trample on the flowers, and an order that would apply to the paths would not necessarily apply to the grass and the flowers and the other parts of the park, nor would orders that would prevent the abuse of the grass and the flowers necessarily affect the paths. It cannot, in fact, be said that the whole of the park is a thoroughfare, and, in my opinion, the police authorities were not justified by law in calling the whole of the park a thoroughfare and, in issuing an order under Section 30 relating to the whole park on the ground that it was a public thoroughfare. If there were an doubt on the point it was the duty of the Court below to give the benefit of the doubt to the accused and not to the prosecution. I must therefore allow the revision, and I set aside the order of conviction and the sentence passed by the Magistrate. The fine, if paid, will be refunded.

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