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Court : Allahabad

Decided On : Dec-13-1934

Reported in : AIR1935All657; 155Ind.Cas.605

Appellant : Qasim Raza

Respondent : Emperor

Judgement :
ORDER

1. This is an application for the revision of an appellate order of the Sessions Judge of Agra, dismissing an appeal from an order of the City Magistrate in which he convicted the applicant of an offence under Section 30 of the Police Act of 1861 and sentenced him to pay a fine of Rs. 100. It appears however that the Magistrate intended to convict the applicant of an offence under Section 32 of the Act, which provides a penalty for disobeying orders issued under the three preceding sections or for violating the conditions of a licence. The circumstances of the case are fully stated in the orders of the Magistrate and the Sessions Judge. It is only necessary to repeat here that, the applicant, who is a Shiah Muhammadan had been, up to 1931 in the habit of taking out a procession called the 'Duldul' procession from his house in the City of Agra, that in 1931 and the two following years the procession had been discontinued owing to pertain orders passed by the authorities, and that in 1934 the applicant applied both to the District Magistrate and to the Superintendent of Police for permission to take out a procession. On, a report by the Superintendent of Police, this application was

refused, apparently by both the authorities applied to. After this, some time in April 1934, notices were issued by the Superintendent of Police, and one of these was affixed to the applicant's house. It evidently purports to be a notice under Sub-section (2) of Section 30, Police Act, and it contains the following order:

Besides the persons who have already obtained permission no other person without obtaining permission of the Superintendent of Police will be authorized to take a procession on the public way and thoroughfare.

2. On April 23, the applicant made another application by telegram to the District Magistrate informing him that he was proposing to take out the procession, and this was forwarded to the Deputy Magistrate in charge of the mohalla, who sent for the applicant and informed him that his application had already been refused. We are informed by Counsel that after this the applicant asked for a written order for his use in the Civil Court, and: then decided to take out a formal procession, which he did. The procession was stopped about five paces; from his house and no trouble resulted. But the applicant was prosecuted and convicted, as described above. Both the Courts have convicted the applicant on the grounds that order refusing permission to take out a prosession was issued under Sections 30 and 31 Police Act and that as the applicant disobeyed that order, he is therefore liable to punishment under Section 32. But it has been argued by Mr. Dube that the conviction is illegal, because the order refusing permission to takeout the procession was in itself not a legal order, and in any case was; not an order passed under the provisions of Sections 30 and 31 of the Act. We may mention that two other matters were argued which may at once be disposed of. It was said that on the facts as stated by the witnesses, for the prosecution the procession was stopped before any harm was done and therefore there was no offence. This however is irrelevant, as the question is whether a legal order under the Police Act has been contra veined. It was also said that the applicant had committed no offence because the road on which he had actually taken out the procession was his private property. It has not however been, proved: that this road is his private property, and as it has been admitted that this; road is freely used as a public thoroughfare, the objection cannot be seriously considered. The more technical objection however is not so easily disposed of. Section 30, Police Act, as the

marginal note shows, is one for 'regulating-of public assemblies and processions, and licensing of same.' Sub-section (1) shows that:

The District Superintendent or Assistant. District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads or in the public streets and thoroughfares and prescribe the routes from which or the time at which such processions may pass.

3. Sub-section (2) says:

If he is satisfied that it is intended by any person or class of persons to convene or collect, an assembly in any such road, street or thoroughfare or to form a procession which would, in the judgment of the Magistrate of the District or of a Sub-Division, if uncontrolled, be likely to cause a breach of the peace, he may require by general or special notice that the person convening or collecting such assembly or directing or promoting such procession shall apply for a licence.

4. The third sub-section shows that when such application has been made,

he may issue a licence specifying the names of the licencees and defining the conditions on which alone such assembly or such procession is to be permitted to take place, and otherwise giving effect to the section.

5. In the present case, it is not denied that the applicant had applied for a licence, and that the application had been rejected. The learned Judge has remarked that under Sub-section (3) of Section 30, the Magistrate may issue a licence, and that this means that he has the power to refuse to issue one, otherwise the word 'shall' would have been used. It appears to us that under the section it is the Superintendent of Police and not the Magistrate who may issue the licence, but this is not a matter of importance in the present case. We may agree with the learned Judge that there could be no obligation on the Superintendent pf Police to issue a licence merely because an application has been made for one. What the Judge does not appear to have considered however is what the effect of 'refusing togrant' a licence will be. We have used the expression 'refusing to grant a licence' because that is in fact what the authorities did or claimed to have done. But we

think we shall be following the wording of the section more closely if we hold that the Superintendent of Police under Sub-section (3) of Section 30 either may issue a licence or may not issue a licence, because when the matter is put in this way it is clear that the Superintendent of Police is authorised by the Act to issue a licence, if he thinks it necessary, or not to issue a licence, if he thinks it unnecessary to do so. The Act does not in terms give him authority to refuse to issue a licence, for the purpose of preventing a. procession from being taken out. It is quite conceivable that after an application for a licence has been made and the Superintendent of Police has satisfied himself, after examining the application and. if necessary, questioning the applicant, that there is no danger to the public peace, it may be unnecessary to issue a licence or regulate or direct the conduct of the procession at all, and in this case he would, presumably not issue a licence and not lay down any conditions.

6. In such a case it could hardly be contended that it would be an offence to take out a procession merely because no licence had been issued. In fact it has not been suggested to us that the act of taking out an unlicensed procession is in itself an offence against any law. It is the right of a citizen to use the public thoroughfares, provided that he commits no offence in doing so, and the taking out of a procession is not in itself an offence, nor does it require a special licence, except as provided by Section 30 Police Act. That is a section which empowers the authorities to control processions, and the manner in which they are to be controlled, if it is necessary to control them, is set forth in Sub-section (2). Neither in the marginal note, nor in the body of the section, is any express power given to the authorities absolutely to forbid the taking out of a procession. It has been argued by Dr. Wali Ullah, on behalf of the Crown and again, this must be obvious- that if this interpretation of the section is correct, then a person whose application for a licence under Sub-section (2), Section 30 has been refused is in a better position than one whose application has been accepted and who has obtained a licence, because the procession of the latter will be regulated by the conditions of his licence, whereas the unsuccessful applicant will not be fettered in any way. The apparent paradox however appears to us to be due to a misreading of Section 30 of the Act. If once it is admitted that the Superintendent of Police has no power under the Act absolutely to forbid a procession, but only has the power to regulate

one, it becomes clear that it is his duty to regulate a procession, if he thinks that it requires regulating, in the manner prescribed by the Act, that is to say, by the issue of a licence, or to leave it alone; and thus the issue of a licence imposes a liability on the applicant and not a privilege.

7. We are far from saying that the Act has been worded as clearly as it might have been, but we have to interpret it strictly, and we consider that it is impossible to read into it any authority for absolutely refusing permission to take out a procession. We have been referred to a decision of a Full Bench of the Patna High Court in the case of Emperor v. Abdul Hamid 1923 Pat 1, in which there are some passages which support the argument of the learned Assistant Government Advocate in this case. In the course of his judgment Mullick. J., remarked:

Now Section 30, Police Act, though not happily worded appears to mean this. The Superintendent of Police has to be satisfied that an assembly or procession is in the judgment of the District Magistrate likely to cause a breach of the peace. He may then issue a notice upon the person to apply for a licence. It is contended that the Superintendent is not authorized to issue a general order, but roust call upon the convenor, or promoter of the assembly or procession to take out a licence for the occasion. In my opinion, the words are sufficiently general to enable the Superintendent to issue a general notification coat, lining a prohibition from convening or collecting an assembly or promoting or directing a procession without a licence. The terms of the section are also wide enough to cover a prohibition without any limit of time. If the person or parsons against whom the notice is directed convene or collect an assembly or promote or direct a procession without licence, he or they will be punishable under Section 32 of the Act.

8. This is an obiter dictum, as the persons who were convicted in that case were not convicted under the provisions of the Police Act, but under the Penal Code and we notice that Das, J., disagreed with the other two learned Judges in the interpretation of the Police Act. In a later case, that of Sitaram Das v. Emperor 1926 Pat 173 in dealing with a case under Section 32, Police Act, it was remarked:

So far as I can see the police have no power to forbid the issue of a procession. The power to control does not include the power to forbid.

and that is the view we have taken in the present case. It was, believed by the Legislature that it should be possible for the authorities so to regulate a procession by the conditions of a licence that no danger to the public peace would be likely to arise, and for this reason it was not thought necessary to restrict the liberties of the subject further than has, been already done in Section 30 of the Act.

9. It has been remarked by the Magistrate that the present applicant gave a promise to the Superintendent, of Police that he would not take out the procession and that he broke this promise, and if this is so his conduct was most improper. But to break a promise to the Superintendent, of Police is not to disobey an order issued under the Act, and we must therefore hold that the applicant has been wrongly convicted. We therefore set aside the orders of the Courts below convicting the applicant and direct that he be acquitted and that the amount of the fine, if paid, be returned to him.

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