

Bhure Mal Vs. Emperor

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Court : Allahabad

Decided On : Apr-11-1923

Reported in : AIR1923All606; 73Ind.Cas.801

Judge : Daniels, J.

Appellant : Bhure Mal

Respondent : Emperor

Judgement :

Daniels, J.

1. This is an application in revision against the conviction of the applicant for an offence under Section 188 of the Indian Penal Code. The charge against the applicant was, that he took part in an unlawful procession which had been prohibited by an order lawfully passed under Section 144 of the Criminal Procedure Code. The District Magistrate of Bareilly originally issued an order forbidding any procession whatever to pass down certain streets in Bareilly. This order could only remain in force for two months unless the period was extended by the Local Government under Sub-section (5). Before the expiry of the period of the order the Local Government passed an order which was duly notified in the Gazette directing that the order should remain in force until cancelled by a Notification in the United Provinces Gazette.

2. Four grounds of revision have been urged, three of them attacking the legality of the order passed by the Local Government and the fourth alleging that, even if the order was legal, the offence under Section 188 was not proved.

3. The first contention of the applicant is, that the order could only have been extended lawfully with reference to religious-processions. The learned Counsel relies on the preamble to the order in which the learned District Magistrate sets forth his reasons for passing it. The District Magistrate considered that as these particular streets were narrow in the extreme, the taking of processions through them might cause constant risk of obstruction, annoyance and injury to persons pursuing their lawful occupations, and that, further, on the occasion of religious festivals there was the added danger of riot or affray. The operative part of the order was, however, a prohibition against any procession of any kind passing down the streets in question. The Local Government was not concerned with the reasons given by the Magistrate but with the actual order passed by him, and if the Local Government considered that there was danger to human life, health or safety or likelihood of a riot or affray in allowing processions to pass down these streets the Local Government was perfectly competent, under Sub-section (5), to extend the period of the order and was not limited to any particular kind of procession.

4. The second objection taken is to the form in which the order is passed, namely, that it should remain in force until cancelled by a Notification in the Gazette. Reliance is placed on the heading of the Chapter which refers to temporary orders in urgent cases of nuisance or apprehended danger, and it is argued that the Local Government had only power to extend the order for a definite and very limited time. The Legislature has, however, not seen fit to limit the time for which the force of the order may be extended and under the terms of the section it was competent to the Local Government to extend the order so long as the danger which it apprehended continued to exist.

5. The third objection is, that the Local Government in extending the period of the order has not stated the danger which it apprehended and which led to the Notification being issued. Here, again, there is nothing in the section which

requires the Local Government to state its reasons or even to state the fact of a likelihood of a riot or affray or other danger which it apprehends, and it is not open to this Court to add to the section a condition not imposed by the Legislature.

6. The last point pressed is, that it is not shown that the disobedience on the part of the accused caused or tended to cause danger to human life, health or safety or a riot or affray within the meaning of the third paragraph of Section 188. This point was not taken in the application in revision presented to the learned Sessions Judge. The object of requiring an application in these cases to be presented first to the lower Appellate Court is that this Court in dealing with the matter may have before it a reasoned opinion of two Courts on the points at issue, and this object will be largely defeated if applicants are allowed to take in this Court points which they did not press in their application in revision in the Court below. Both Courts have, however, as a matter of fact, addressed their minds to this point. The Trial Court considered that organised flouting of standing orders of this nature, and it had no doubt that the disobedience was organised, involved considerable risk of coming into conflict at any rate with the Police, and it would be not difficult to find instances in which such conflict had led to bloodshed. The learned Sessions Judge says that to urge that there was no danger of a riot or affray in the present case appeared to him to be trifling with realities. I may point out, further, that the fine imposed was one which could have been imposed under the second paragraph of the section. It is urged that this paragraph could not apply because the Local Government could only have issued its Notification in the. Gazette on the ground that a riot or affray or danger to life, health or safety was apprehended. This is an entirely distinct consideration. The question whether the order was a legal order is an entirely distinct question from the question whether an offence has been committed in disobeying it. If the order promulgated was a legal order the Court has only to see whether the accused disobeyed that order and whether, if so, such disobedience caused or tended' to cause the effects specified in the second and third paragraphs of Section 188. All the grounds of revision, therefore, fail and I dismiss' the application.

7. The question of sentence was not originally argued but at the time of delivering judgment the learned Counsel asked the Court to reduce the sentences. I do not

think, however/that the fines imposed were excessive in the circumstances and I decline to interfere.

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