

Ankil Behera and ors. Vs. State

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Court : Orissa

Decided On : Jan-21-1966

Reported in : AIR1967Ori52; 1967CriLJ570

Judge : R.K. Das, J.

Acts : [Police Act, 1861](#) - Sections 30, 30(2) and 32; [Criminal Law Amendment Act, 1932](#) - Sections 7(1); [Evidence Act, 1872](#) - Sections 8

Appeal No. : Criminal Revn. Nos. 411, 419, 420 and 433 of 1965

Appellant : Ankil Behera and ors.

Respondent : State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Prabir Palit and ;K.P. Panda, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

R.K. Das, J.

1. The four petitioners and three others were prosecuted under Section 32 of the Police Act and under Section 7(1)(b) of the Criminal Law Amendment Act of 1932.

On the petition of the accused persons, they were tried Jointly. The trial court convicted all the accused persons under both the charges and sentenced the petitioners to undergo simple imprisonment for one month under Section 7(1)(b) of the Criminal Law Amendment Act but passed no separate sentence under Section 32. Three of the accused persons were released on probation of good conduct under the Probation of Offenders Act.

2. The petitioners are said to be the members of the Communist Party at Baripada in the Dist. of Mayurbhanj. A notification under Section 30(2) of the Police Act was promulgated and was in force in the town of Baripada for a period of three months from 15th August to 15th November 1964. As required under the said notification, a person desiring to take out a procession shall have to obtain a licence from the appropriate authorities.

It is the case of the prosecution that Ram Chandra Das, a member of the Communist Party at Baripada, made an application and obtained a licence Ext. 3 for taking out a procession. Certain conditions were imposed in the said licence. The conditions were that that the processionists shall not, from the gate of the State Transport Office till they pass the Collectorate Office building, raise slogans or use mikes and that the court premises shall not be encroached upon nor should the procession create any disturbance which would cause any annoyance in the Court area and it will not stop anywhere on road.

3. The case of the prosecution is that the accused persons on 28-8-64 violated the conditions of the licence, led the procession into the premises of the Collectorate, shouted slogans, went to the office of the Collector and A. D. M. (E) and did not disperse in spite of the direction of the Police and Magistrate. They were, therefore, arrested and prosecuted under Section 32 of the Police Act and under Section 7(1)(b) of the [Criminal Law Amendment Act, 1932](#).

4. The accused persons admitted that they went to the Collectorate in a procession with many others shouting slogans, but their case was that they came to meet the Collector and put forth their grievance before him regarding the soaring rise of prices. Though they admitted to have come in a procession, denied to have violated any of the conditions of the licence. Their further plea was that the

licence itself was handed over to the accused Ram Chandra Das (petitioner in Cri. Rev. 420/65) at the gate of the Collectorate at 1.00 p. m. on the very day only and not before.

5. In support of the prosecution story, a number of witnesses have been examined. In support of the defence, only one witness has been examined to depose that the licence was not handed over to Ramchandra Das earlier. The evidence of D. W. I was rejected by the Courts below, in view of the evidence of P. W. 5 the Sub Inspector of Police that he himself handed over the licence earlier to accused Ramchandra Das and explained the terms and conditions of the same to him and requested him not to use any mike and give slogans. The courts below relied upon the evidence of the prosecution witnesses and held that the petitioners deterred the persons in the office from transacting their business and thus made themselves liable under Section 7(1)(b) and they also violated the conditions of the licence and thus made themselves liable under Section 32 of the Police Act.

6. Mr. Palit, learned counsel for the petitioners raised the following contentions:--

(1) That for violation of the conditions of the licence, it is only the licensee Ramchandra Das who can be made liable and no other person, unless the other persons who were in the procession are aware of the conditions of the licence; and

(2) That the requisites to constitute an offence Under Section 7(1)(b) of the [Criminal Law Amendment Act, 1932](#) being absent, none of the petitioners can be convicted under that section.

7. The undisputed facts, as found by the courts below are:

(1) That a notification under Section 30 of the Police Act was in force at Baripada Town on the date of occurrence.

(2) That Ram Chandra Das, a member of the Communist Party was granted a licence to take out a procession on the date of occurrence and that the said licence imposed certain restrictions, such as, that the procession shall not enter the court premises and use mike, or raise any slogans or cause any disturbances

in between the Transport Office and the Collectorate.

(3) That the processionists including me petitioners disobeyed the order of the Police, broke the police cordon, entered the Collectorate, gave slogans, caused disturbances and thus violated the conditions of the licence.

(4) That as a result of the disturbances as caused by the processionists including the petitioners, some of the officers at or near the Collectorate premises were deterred from carrying on their normal business.

It is in the context of these findings, the case has to be examined.

8. That a notification purporting to be one Under Section 30(2) of the Police Act for regulation of assemblies and processions and requiring a licence for the same was in force on the date of occurrence is not disputed. A copy of the said notification has been placed on the record. Section 30(1) gives a general power to the Superintendent of Police as the occasion requires to direct the conduct of all assemblies and processions on public roads or streets or thoroughfares and prescribe, the route by which and the time at which such processions may pass. Sub-section (2) of that Section, however, confers a larger power on the Superintendent of Police in exercising control over processions and assemblies. He may, on being satisfied that it is intended by any person or class of persons to convene or collect an assembly on such road, street or thoroughfare or to form a procession which would in the judgment of the Magistrate of the district or of the sub-division, if uncontrolled be likely to cause a breach of the peace require by any general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a licence.

Before the police officers can exercise powers under Sub-section (2), the Magistrate of the district or of the sub-division must have applied their mind to the matter and come to the conclusion that the assembly or procession if uncontrolled is likely to cause a breach of the peace--see AIR 1954 Mad 249 in Public Prosecutor v. K. G. Sivaswamy. From the notification issued Under Section 30(2) in this case, it is manifest that the District Magistrate applied his mind to the matter and came to the conclusion that if such processions or assemblies are not

controlled, it may lead to a breach of the peace. Thus the order under Section 30(2) is a valid order.

9. The next question is whether this licensee Ram Chandra Das alone would be held liable for violation of the conditions of the licence or each of the petitioners shall be so held liable. That there was a violation of the conditions of the licence cannot be disputed. It is clear from the licence that the processionists were not permitted to encroach upon the court premises or to use mike, give slogans within that area to cause any disturbances which would cause annoyance in the court premises. As is clear from the evidence and findings of the Courts below that the processionists clearly violated the conditions of the licence by entering into the Court premises, shouting slogans, etc.

The only question would be whether the licensee alone would be liable or every other person who took part in the procession would be made liable under Section 32 of the Police Act. Section 32 of the Police Act provides that 'every person opposing or not obeying the orders issued under the last 3 preceding sections (i. e. Sections 30, 30A and 31) or violating the conditions of the licence granted for the use of music or for the conduct of assemblies and processions shall be made liable under that section'. It is, however, well settled by authorities that Section 32 is not confined only to the licensee but applied to any member of the procession who has knowledge of the terms of the licence and violates the terms of the licence in spite of such knowledge. See a Full Bench decision of the Lahore High Court reported in AIR 1941 Lah. 372 (KB) in *Emperor v. Bhagwat Singh*.

There is, however, no evidence in this case that each of the petitioners was aware of the conditions of the licence. They cannot, therefore, be convicted under Section 32 of the Police Act. Their conviction under that section must be set aside, except that of Ram Chandra Das to whom the licence was given and who was aware of the conditions of the licence. His conviction under Section 32 of the Police Act must be maintained, but under the circumstances of the case, the sentence is reduced to the period already undergone.

10. Coming to the charge under Section 7(1)(b) of the Criminal Law Amendment Act, it was urged by the learned counsel for the petitioners that there is nothing in

evidence to suggest the commission of the offence under Section 7(1)(b). Section 7(1)(b) of the Criminal Law Amendment Act runs as follows:

'7(1) Whoever-

(a)

(b) loiters or does any similar act at or near the place where a person carries on business, in such a way and with intent that any person may thereby be debarred from entering or approaching or dealing at such place, shall be punished.' It was contended by the learned counsel for the petitioners that before a case under Section 7(1)(b) made out, there must be some evidence to suggest that the petitioners were loitering at the court premises and their intention was to deter the officials from carrying on their work in those premises nor had they the necessary intention of deterring any person from entering or approaching the Collectorate premises.

A number of officers working at or near the Collectorate premises have been examined in this case to prove that it was not possible for them to carry on their usual business on account of the disturbances created by the processionists. P. W. 4 is the steno to A. D. M. (E). His evidence is that due to heavy noise caused by the petitioners, he could not transact any business. That also is the evidence of P. W. 5 Debatar Manager and P. W. 6 Sub-Post-Master whose office is situate Just near the Collectorate. The evidence of P. Ws. 7 and 8 also is to the same effect. These witnesses were not subject to any cross-examination and their evidence stands unassailed. On their evidence, the courts below came to a finding that on account of the disturbance caused, the officers working at or near the Collectorate were deterred from doing their usual business. It was contended by the learned counsel for the petitioners that in the absence of any intention to commit any specific overt act, conviction under Section 7(1)(b) is not justified.

In a case reported in AIR 1951 Bom 459, Damodar Ganesh v. State the law has been correctly laid down. It was held that under Section 7(1)(b) the offence consists of loitering at specified places with a particular intent. Under Clause (a), the intention is to cause a person to abstain from doing a thing which such person

is entitled to do, and under Clause (b) the intention is to deter a person from entering, approaching and dealing at such places. In both the cases, no overt act other than that of loitering is necessary to constitute an offence. It should be a matter of evidence whether the loitering is with specified intention or not. Such intention may have to be proved either by words uttered, leaflets distributed or gestures adopted. It may also be proved not by anything done or said at the time of loitering, but by speeches made and exhortations given long before such loitering. But the section, as it stands, requires apart from mental state signified by the word 'intention', nothing more than loitering so far as Clause (a) is concerned and loitering in a particular way so far as Clause (b) goes.

The word 'loitering' has not been defined anywhere, but according to the dictionary meaning, it means 'moving about with frequent pauses; hanging about and doing nothing'. The evidence discloses that the petitioners persisted in hanging about at the office of the Collector in spite of the request made by the A. D. M. and other officers, stayed there for an hour, raised slogans and did not disperse in spite of the orders given by the Magistrate and the Police. There is evidence to show that these activities of the petitioners interfered with the business of the officials working in the said premises. There is not be any doubt that those officials were ling at such places within the meaning of Section 7(1)(b) and the activities of the petitioners had deterred them from their dealings at their offices and the office work was paralysed for some time.

The next question would be whether they were loitering with the Intention to deter the officials from carrying on their business. No doubt the intention of the petitioners was to bring to the notice of the Collector their grievances regarding the rise of prices but they had no justification to hang on, loiter and give slogans after they were asked not to do so. Intention cannot be proved by any direct evidence and has to be gathered from the conduct of the parties and the circumstances of the case. That being the position, there cannot be any doubt that the petitioners also intended to deter the persons in the said offices from dealing at such places. Their conviction under Section 7(1)(b) must, therefore, be held to be justified.

11. In the result, the conviction of all the petitioners except that of Ram Chandra Das (petitioner in Cr. Rev. No. 420/85) under Section 32 of the Police Act is set aside. The conviction of all the petitioners under Section 7(1)(b) of the [Criminal Law Amendment Act, 1932](#) is maintained. In both the cases, the sentence undergone by the petitioners is sufficient to meet the ends of justice and is accordingly reduced to the period already undergone. Subject to the aforesaid modification in the conviction and sentence, the petitions are dismissed.

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