Devendra Nath Mazumdar Vs. Emperor

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Court : Kolkata

Decided On : Feb-14-1933

Reported in : AIR1933Cal333

Appellant : Devendra Nath Mazumdar

Respondent : Emperor

Judgement :

Pearson, J.

1. This Rule was issued on the Deputy Commissioner of Sylhet calling on him to show cause why the conviction and sentence passed on the petitioner's daughter and the other accused should not be set aside. It appears that the two accused in the case were two ladies, named Probhabati Dhar and Suro bala Dey, and that they were convicted and sentenced under Section 4, Ordinance 5 of 1932 to undergo six months' rigorous imprisonment each and a fine of Rs. 150 each. In default of the payment of the fine they were to undergo one month's rigorous imprisonment in each case. The decision of the Magistrate was given on 16th February 1932. Neither of the accused appealed against the decision, but an application was made on 1st March 1932 by the present applicant, the father of one of the accused, to the Sessions Judge of Sylhet. That Judge decided that he should not go into the merits and that it was not open to him to entertain an application of that nature made by a third person.

2. The present Rule was issued on 6th June 1932 at which time the accused had served some three and a half months out of the sentence. At the time of the issue of the Rule an order was made staying the payment of the fine and permitting the two accused persons to be released on bail to the satisfaction of the Deputy Commissioner. The term of imprisonment has however now been served out due to the fact that neither of the accused thought fit to avail themselves of the bail order. So far as the application before us is concerned it has not been contended by the Crown, for the purposes of the present application, that this Court has no jurisdiction or no right to deal with the matter although it is presented to the Court by some person other than the accused themselves. But the contention of the Crown is that upon the facts it is not such a case in which this Court should interfere in the exercise of its powers. The learned advocate for the applicant, the father of one of the accused, has argued before us that once we assume the right to deal with the matter we ought to interfere in the case, because the matter is one in which it appears that the Magistrate in passing his order has not in fact come to sufficient findings to bring the matter within the provisions of Section 3, Ordinance 5 of 1932, and also on the ground that the evidence on which he does rely amounted to evidence of confession to a Police Officer: it therefore ought to be rejected, or at any rate no conviction should be based upon it.

3. The allegation in the case was that the accused were picketing in front of foreign cloth shops in that locality on this particular day, and that in so doing they were guilty of an offence under Section 4 of the Ordinance. It appears that the accused declined to cross-examine and when asked at the trial whether they had anything to say to the evidence against them they both said they have nothing to say. In these circumstances, as the

Magistrate points out, the allegations on the side of the prosecution were uncontradicted, and after a reference to the evidence in the case he found them guilty under Section 4 of the Ordinance, because he says that by loitering around foreign cloth shops they were intentionally interfering with and obstructing customers in their legitimate rights. In dealing with the evidence, he in the main insists upon the evidence of the Sub-Inspector, P W. 3, and that part of the evidence in particular in which he deposed that he explained to the accused that picketing was illegal under the Ordinance and tried to persuade them to move off, but on finding it useless and receiving replies from one of them that she was not recognizing any authority, but that of the Congress and from the other that she was going to picket, he ordered their arrest.

4. It is said that so far as that part of the Magistrate's judgment is concerned, he was not relying on the evidence that picketing had already taken place, but that they were, going to picket. It is quite clear from a reference to the evidence which has been placed before us that there was evidence on the record of more than one witness to the effect that both of the accused were in fact picketing in front of the foreign cloth shops in the bazar, and that they were preventing purchasers from buying English cloths. It appears to me clear enough, having regard to that evidence, that it is not a matter in which we ought to interfere in revision, and that the evidence as it stands is quite sufficient to bring the matter within the terms of the Ordinance referred to. More than that, I would say that a proper appreciation of the Magistrate's judgment does in fact show that he was relying upon that evidence, because he found them guilty under Section 4 of the Ordinance on the ground that by loitering around foreign cloth shops they were intentionally interfering and obstructing customers in their legitimate rights. It is quite clear that he does accept that part of the evidence though he does also rely upon portions to which he has referred in greater detail, namely, as regards the immediate reasons for ordering the arrest of those two accused.

5. Mr. Basu has also contended that seeing that it is now a matter of fine it is not one that ought to be now brought against the accused. In certain cases it is correct to say no doubt that where a substantial term of imprisonment has been inflicted it may be inappropriate to add a fine, but it is difficult to see how we can apply a principle of that kind to the present case, in particular to this class of offence, and more especially when the Ordinance specifically provides for the imposition of a fine either separately or along with a substantial term of imprisonment. I am quite satisfied that this is a case in which we ought not to interfere in any particular in favour of the accused persons. I accordingly discharge this Rule.

Patterson, J.

6. I agree.