

Debendranath Mandal Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/853639

Court : Kolkata

Decided On : Nov-14-1930

Reported in : AIR1932Cal286

Appellant : Debendranath Mandal

Respondent : Emperor

Judgement :

Cuming, J.

1. The facts of the case, which have given rise to this rule, are briefly as follows: On 30th August 1929, the Superintendent of Police of Hooghly, with the approval of the District Magistrate, promulgated a notice requiring any person taking out a procession which might pass by the imambari or any mosque apply to him for a license. The Superintendent of Police purported, if I understand rightly, to issue the notice under-S. 30, Police Act (5 of 1861). The order-was to remain in force for two months. On 15th September of the same year, the petitioners disobeyed the order and took out a procession which passed a mosque without asking the Superintendent of Police for a license. They were convicted under Section 32 of the same Act and sentenced each to pay a fine of Rs. 25. They have now moved this Court in revision.

2. Mr. Basu who appears for the petitioners contends that the order of the Superintendent of Police is ultra vires and illegal. He contends that Section 30

does not contemplate a general order of the character issued by the Superintendent of Police. His contention is that on the wording of Section 30 there must be some procession or meeting actually in contemplation at the time, and then only can the Superintendent of Police with the approval of the District Magistrate or Subdivisional Magistrate call on the convenor of the assembly or procession to apply for a license. Reading the section carefully that appears to me to be the correct interpretation of it. The Superintendent of Police has first of all to be satisfied that it is intended by a person or a class of persons to take out a procession or hold a meeting.

3. He has then obviously to take the opinion of the District Magistrate or Subdivisional Magistrate and if, in the opinion of that officer, such assembly or procession, if uncontrolled may cause a breach of the peace, he might then issue a notice general or special that these persons shall apply for a license. The section does not I think empower him to issue a general notice as he has done that any one taking out a procession passing a mosque must take out a license. It does not contemplate his taking any action until he is satisfied that it is intended to take out a procession which, in the opinion of the District Magistrate or the Subdivisional Magistrate, if uncontrolled would be likely to cause a breach of the peace. The order of the Superintendent of Police is therefore ultra vires and the petitioners cannot be convicted under Section 32 for disobeying the order which the Superintendent of Police had no power to issue. The petitioners could only be convicted under Section 32 for disobeying an order which falls within Section 30. The conviction of and sentences passed upon the petitioners are set aside and they are acquitted. The fines if paid must be refunded.