

Court has full authority to compel the appellant to bring back the money into Court to be repaid to the plaintiff [*Mrinalini v. Abinas* (1)].

The result is that the decree of the Subordinate Judge is affirmed and this appeal dismissed with costs.

N. C. S.

Appeal dismissed.

(1) (1910) 11 C. L. J. 533.

1915
 HARINATH
 CHOWDHURY
 v.
 HARADAS
 ACHARJYA
 CHOWDHURY

CRIMINAL REVISION.

Before Sharfuddin and Chapman JJ.

PARDIP SINGH

v.

EMPEROR.*

1915
 July 26.

Special Constables—Dispute regarding ferry—Proceeding for security to keep the peace drawn up against one party—Appointment of members thereof as special constables,—Refusal to act as such—Legality of appointment and of prosecution for such refusal—Police Act (V of 1861) ss. 17, 19.

The only legitimate object of appointing special constables, under s. 17 of the Police Act (V of 1861), is to strengthen the ordinary police force by the addition of suitable persons. When the appointments are not made with such an object, a prosecution under s. 19 of the Act for refusal to act as such will not be permitted.

When the members of one party to a ferry-dispute were appointed as special constables, and the circumstances showed that it was never really intended to utilize them as police officers, the High Court quashed the order of the District Magistrate directing their prosecution under s. 19 of the Act and the issue of warrants against them.

On the 14th April 1915, one Rambirich Singh and

*Criminal Revision, Nos. 794, 797 to 816 of 1915, against the order of D. Weston, District Magistrate of Mozafferpur, dated May 26, 1915.

1915
 PARDIP
 SINGH
 v.
 EMPEROR.

his son, claiming to be lessees of two Government ferries at Itwa and Dih ghats in Barpadawna and Khanwa respectively, presented a petition to the District Magistrate of Mozafferpur, alleging that, in January last, the neighbouring villagers had looted the ferries, but that the matter had then been amicably settled; that in the beginning of March they had again plundered the huts and boats at the ferry ghats, in consequence of which two complaints had been filed against some of the leaders who were put on trial; that the police had sent up the ringleaders under s. 107 of the Criminal Procedure Code, and proceedings thereunder had been drawn up against them, that the villagers nevertheless continued their hostility, and that, unless the petitioner, Pardip Singh, and the other 36 persons named were made special constables, or the ferries guarded by armed police, the villagers could commit serious breaches of the peace.

On receipt of the petition, the District Magistrate called for a police inquiry and report, observing as follows. "I am quite prepared to make special constables pending disposal of the s. 107 cases, and afterwards, if necessary, to run more in under s. 107." On the 28th April, Dwarka Nath Panday, an Inspector of police who was deputed to hold an investigation, submitted his report to the same Magistrate stating that the lessees of the ghats had for some years levied *sali* (annual payment in grains in lieu of toll) from the neighbouring villages, that the *sali* had been recently enhanced; that one Ramautar Singh, a local zamindar, had refused to pay the same and had combined with the villagers and certain influential men, including the petitioner Pardip, to stop the ferry business; that the villagers had demolished the lessees' huts at the ferry ghat on 12th January 1915, which were subsequently rebuilt, and had again collected

together on 1st March to destroy the huts; and that proceedings under s. 107 of the Criminal Procedure Code had been taken against Ramautar and others which were pending in Court. The report further continued as follows :—

“ I believe that the appointment of special constables is essential. . . . The matter cannot be set right unless special police are appointed, and I suggest that one head constable and four constables from the Reserves be, in the meantime, deputed there. There have been a series of breaches of the peace and they are still apprehended, and cannot be set right until the 27 persons named (who were the same as those mentioned in Rambirich's petition) are appointed as special police, under Act V of 1861 s. 17, for one year to see that there is no breach of the peace.

On the 4th May, the District Magistrate recorded an order expressing his willingness to make the specified persons special constables for three months, which would (he remarked) give time for the disposal of s. 107 cases, but called for a further report from the Inspector as to the local limits within which the special constables were to act. On receipt of the further report, the District Magistrate passed the following order on 9th May “ Report received. Proceedings drawn up. To District Superintendent of Police for action.” Thereafter, on the 19th, the petitioners and the others, named in the Police report, presented a petition to the District Magistrate in which they claimed to be the *maliks* of Dih Jiwar and contiguous villages, and stated that there was a dispute between the said *maliks* and the *ghatwal* of Kunwa concerning the Dih Jiwar ferry, and submitted that it would be inequitable if they were ordered to do anything to destroy their own rights.

Six of the petitioners were then offered certificates, belts and other equipments, but they refused to accept them. This fact was communicated to the District Magistrate by a police report, on the 25th May, and he thereupon rejected the petitioner's application and

1915
 PARDIP
 SINGH
 v
 EMPEROR.

1915
 PARDIP
 SINGH
 v.
 EMPEROR.

passed the following order on the 26th—“*Prosecute each separately.*” On the 28th May, when the 27 persons were present in Court as accused in the s. 107 cases, the remaining ones were offered but refused certificates and belts. The matter was reported to the District Magistrate who directed their prosecution also. The Joint Magistrate, thereupon, issued processes against the petitioner and the others under s. 19 of the Police (Act V of 1861). No instructions for the performance of police duties had been issued to any of the persons appointed as special constables.

The petitioner then moved the High Court and obtained the Rule to set aside the order of the District Magistrate directing his prosecution and the proceedings thereunder on the second and third grounds of the petition, which were as follow:—

(ii) That the only legitimate object of appointing special constables under s. 17 of Act V of 1861 being to strengthen the ordinary police force, the District Magistrate was wrong in appointing the petitioner as such on the complaint of a private person and on a police report which did not disclose that the ordinary police force was insufficient, and that the petitioner committed no offence by refusing to act as such.

(iii) That s. 17 does not contemplate the appointment of a party to a quarrel as special constable, and the petitioner committed no offence in refusing to accept the appointment.

Similar Rules were issued on behalf of twenty other petitioners and they were heard together.

Mr. W. Gregory (with him *Babu Birbhusan Dutt*), for the petitioner. The proper object of s. 17 is to strengthen the ordinary police force when insufficient to meet an emergency, and not to influence parties to a dispute to preserve the peace: *Gopinath Paryah v. Empress* (1), *Umes Chandra Gupta v. Emperor* (2), *Nanda Kishore Singh v. Emperor* (3). The police

(1) (1886) 10 C. W. N. 82.

(2) (1906) 10 C. W. N. 322.

(3) (1908) I. L. R. 35 Calc. 454.

report on which the Magistrate made the appointments does not show that the ordinary police force was insufficient. The orders directing the prosecution and the issue of warrants are illegal, and the High Court can set them aside on revision.

Mr. S. Ahmed (Deputy Legal Remembrancer for Bihar). The order of appointment of special constables is an executive one and the High Court cannot interfere with it. That the ordinary police force was insufficient is shown by the Inspector asking for the immediate appointment of constables from the Reserve.

[He subsequently informed the Court that if their Lordships considered the prosecutions ill-advised, they would be dropped.]

Cur. adv. vult.

SHARFUDDIN AND CHAPMAN JJ. These twenty-one Rules have been heard together. They were issued to show cause why the orders directing the prosecution of the petitioners upon the charge of refusing to serve as special constables should not be set aside.

The petitioners live in four villages adjoining two ferries named Dih ghat and Itwa ghat, lease of which is held by a certain Rambirich and his son under the District Magistrate and District Board of Mozafferpur. These ferry farmers complained that in January and March last there had been riotous disturbances over their use of the ferry, and in consequence proceedings were instituted against thirteen of the present petitioners under section 107 of the Code of Criminal Procedure for the purpose of binding them down to keep the peace. During the pendency of these proceedings, the ferry farmers, on the 14th April, again complained that the villagers did not allow them to

1915
 PARDIP
 SINGH
 v.
 EMPEROR.

1915
PARDIP
SINGH
v.
EMPEROR.

ply the ferry and prayed that certain persons named by them should be made special constables. The names given include all the present petitioners. The District Magistrate directed the District Superintendent of Police to depute an Inspector to enquire into the matter, intimating at the same time his willingness to appoint special constables. The Inspector reported that the disturbances had been due to the enhancement of the ferry tolls. He recommended that the persons named by the ferry farmers be appointed special constables, and that in the meantime a head constable and four constables be deputed from the Reserve. A head constable and four constables were accordingly deputed, and eventually, on the 10th May, the District Magistrate recorded an order appointing twenty-seven persons to serve as special constables within a certain area in the neighbourhood of the ferries. These twenty-seven persons were the persons originally named in the complaint of the ferry farmers and included the petitioners against some of whom, as we have said, proceedings under section 107 had then been pending for a considerable time. The petitioners heard of this order, and before it was formally communicated to them came into the town of Mozafferpur. On the 19th May they presented a petition to the District Magistrate impugning the right of the ferry farmers to the ferries and praying that they (the petitioners) should not be appointed special constables. While they were in Mozafferpur awaiting the result of their petition to the District Magistrate, six of the petitioners were met by certain police officers who asked them to take their belts and other equipment. They refused. This was reported to the District Magistrate on the 25th May. On the same date the District Magistrate recorded an order summarily rejecting the petition which the petitioners had made

to him on the 19th. On the 26th he directed the prosecution of the six petitioners above referred to under section 19 of the Police Act for refusing to serve as special constables. It does not appear whether the District Magistrate's order rejecting their petition of the 19th was communicated to the petitioners. On the 28th May they were all present in the precincts of the court-house at Mozafferpur in connection with the section 107 proceedings in which they were accused and which were that day under trial. The remainder of the petitioners were then offered appointment, certificates and belts. They refused to take them, and upon a peon being sent to call them before the Joint Magistrate, they refused to comply. An order was then issued directing the prosecution of the remainder of the petitioners.

1915
 PARDIP
 SINGH
 c
 EMPEROR

The only legitimate object of appointing special constables is to strengthen the ordinary police force by the addition of suitable persons. It has been more than once held by this Court that when such appointments are not made with the object above stated, proceedings under section 19 of the Police Act will not be permitted.

It does not appear that any instructions for the performance of any kind of police duty were even issued to the petitioners, and the circumstances above set forth compel us to come to the conclusion that it was never really intended to employ the petitioners as police officers.

We may note also that the proceedings under section 107 are now approaching termination. The matters in issue will be decided, and any further action to prevent a breach of the peace will, we hope, then be unnecessary.

In the circumstances, we direct that the proceeding against the petitioners be quashed.

1915
—
PARDIP
SINGH
v
EMPEROR.

The Code of Criminal Procedure, as it stands at present, does not provide any obvious remedy for the prevention of disturbances during the pendency of proceedings under section 107. It was the difficulty, no doubt, which led the District Magistrate to have recourse to appointing the persons reported likely to create disturbance, special constables. We cannot, however, believe that he intended to actually utilize their services on police duties, for this would have been objectionable and would have handicapped them in their defence in the section 107 case. We may point out that in the present instance an order under section 144 would probably have sufficed. We think also that the petitioners might well have been given a hearing. Ferry farmers are often exacting.

We welcomed the assurance of the Deputy Legal Remembrancer that, if we expressed the opinion that the prosecutions were ill-advised, they would be dropped.

E. H. M.

Rule absolute.