

CRIMINAL REVISION.

Before Teunon and Ghose JJ.

DEOKI SHA

v.

EMPEROR.*

1921

Jan. 31.

Nuisance—Sale of fish in railway shed and its precincts in prohibited quantities resulting in attraction of crowds, impeding of business, and rendering the place offensive—Railways Act (IX of 1890), s. 120 (b).

Where the Railway authorities prohibited the sale in their special delivery shed and its precincts of fish below certain quantities, but the unauthorized sales went on and attracted large crowds, obstructed the transaction of business for which the shed was intended, impeded the removal of fish therefrom, and more particularly rendered the place offensive :—

Held, that such sales amounted to a nuisance, and that the petitioners having persisted in contributing to it were guilty under s. 120 (b) of the Railways Act (IX of 1890).

The facts of the case were as follows. There is a special siding for the admittance of fish trains in the Sealdah railway station, and a special shed provided for the delivery of fish therefrom to consignees and dealers. In due course the fish should have been removed from the shed by them immediately, but the Railway authorities, by a notice posted up in the shed, permitted sale therein and its precincts of fish in quantities of 20 seers or twenty in number and more. A practice grew up, however, of sales below the prescribed figures unchecked by the Railway authorities. In November 1919 the Health Officers of the Corporation moved in the matter and desired to

* Criminal Revision Nos. 864 and 865 of 1920, against the order of the Additional District Magistrate of the 24-Pergunnahs, dated Aug. 5, 1920.

stop the unauthorized sales. Accordingly the sub-inspector in charge of the Sealdah railway police station visited the shed on the 13th, 14th and 15th January 1920, and proclaimed the prohibition of such sales. On the 15th Deoki, the petitioner in Rule No. 864, persisted in selling half a seer of fish and was arrested, and shortly after one Ram Gholam, the petitioner in Rule No. 865, was similarly arrested. The latter raised a cry whereupon his co-petitioners assaulted the sub-inspector and some constables and effected Ram Gholam's escape. The petitioners were put on trial and convicted by the Police Magistrate of Alipur on 28th June 1920. They then obtained two separate rules to set aside their conviction and sentences.

Babu Manmatha Nath Mukerjee and *Babu Apurba Charan Mookerjee*, for the petitioners.

The Advocate-General (Mr. T. C. P. Gibbons, K. C.), for the Crown.

TEUNON AND GHOSE JJ. In this case it appears that at the Sealdah railway station there is a special siding for fish trains and a special delivery shed for the consignments of fish. In proper course the consignees or dealers in fish should at once remove their goods, but in practice it appears they sell or dispose of the fish to customers within the delivery shed and its precincts. In other words, they have converted the shed and what is spoken of as its "yard" into an unlicensed market. By a notice displayed on a notice board within this shed, the Railway authorities have expressly authorized buying and selling within their premises, in so far as transactions in quantities of 20 seers or two dozen and over are concerned. The notice which has been made Ex. 5 in the case is dated 4th February 1915, and

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appears to be a reproduction of some earlier notice. The propriety of this recognition by the Railway authorities of these so-called wholesale transactions is open to serious question, but not so their prohibition of transactions in smaller quantities. Unfortunately the prohibition it appears was permitted to become a dead letter, and it was only when in November 1919 (*v* Ex. 3) the Corporation Health Officers moved in the matter that the Railway officers more immediately concerned proceeded to take action. The superintendent of railway police was approached and in effect requested to depute officers to stop the so-called retail sales in the shed and its precincts. Thereupon the sub-inspector in charge of the Sealdah railway police station, one Kishori Lal Sarkar, was deputed to put an end to these retail sales. He visited the shed on the 13th, 14th and 15th January 1920, and on all three days proclaimed the prohibition of retail sales and gave public warning to all concerned that in accordance with the notice, Ex. 5, sale in quantities of less than 20 seers or two dozen would no longer be permitted.

On the 15th when one Deoki persisted in selling about a half seer of fish he was arrested. Some five minutes later another, one Ram Gholam, who, in defiance of warnings, similarly persisted in selling about half a seer of fish, was also arrested. He raised an outcry, and thereupon he and his four co-petitioners in Rule 865 used violence towards the sub-inspector and his companion constables bringing about Ram Gholam's escape and rescue.

The main question involved in these two Rules then is whether in selling and in persisting in selling fish in the small quantities mentioned, within the delivery shed, Deoki and Ram Gholam were guilty of committing a nuisance within the meaning of section 120 (b) of the Railways Act (IX of 1890).

Now the evidence shows and the findings are that this sale by retail attracts large crowds, obstructs the transaction of the business for which the shed and its courtyard are intended, and impedes and delays the removal of the fish. Moreover, the delivery shed and its courtyard not being arranged and prepared for the purpose of a fish market, as the result more particularly of this retail sale, the place becomes offensive. This state of things, in our opinion, is a nuisance, and to this nuisance on the occasions in question the petitioners, Deoki and Ram Gholam, persisted in contributing.

Having regard, however, to the period of time over which the Railway authorities winked at or tolerated these sales, we think we may properly reduce the sentences.

In Revision No. 864 the fine imposed on petitioner Deoki will be reduced from Rs. 10 to Rs. 5, and in Revision No. 865 the fine imposed on each of the five petitioners will be reduced from Rs. 50 to Rs. 25. In default of payment of the fines imposed, Deoki will undergo simple imprisonment for fourteen days. In the case of each of the other five petitioners the sentence of imprisonment in default will stand unmodified.

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