

CRIMINAL REVISION.

Before Mukerji and Roy JJ.

RAMDAS SINGH

v.

EMPEROR.*

1926

Aug 13.

*Public Servant—Disobedience of order duly promulgated by a public servant
—Necessity of proof of knowledge of the order—Penal Code (Act XLV
of 1860), s. 138.*

To sustain a conviction under s. 138 of the Penal Code there must be evidence that the accused had knowledge of the order, with the disobedience of which he is charged. Mere proof of a general notification promulgating the order does not satisfy the requirements of the section.

Emperor v. Abdullah (1) followed.

It is open to the Magistrate, in determining the question of such knowledge, to take into consideration the facts and circumstances of the case, including the fact that the accused lived at a place where the order was duly promulgated.

THE facts of the case were as follows. On the 4th April 1926, the Chief Presidency Magistrate issued an order, under s. 144 of the Criminal Procedure Code, directing the public not to proceed, after 5 P.M., in parties of more than five in number, within his jurisdiction in certain prescribed areas. The order was duly promulgated in those areas under s. 134 (2) of the Code. The petitioners, who were residents of the locality where the order was published, were arrested in Cotton Street on the 23rd April, 1926, and taken to the Burra Bazar *thana*. On the 13th May the officer in charge of the *thana*, applied to the Chief Presidency Magistrate for a complaint under s. 138 of the Penal

* Criminal Revision No. 635 of 1926, against the order of H. G. Bivar, Additional Presidency Magistrate of Calcutta, dated June 21, 1926.

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Code. The complaint was made the next day, and forwarded "to the Magistrate for necessary action". The Additional Presidency Magistrate, Mr. H. G. S. Bihar, thereupon summoned the petitioners under s. 188 of the Penal Code. They were convicted and sentenced thereunder, and thereafter obtained the present Rule.

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Babu Suresh Chandra Taluqdar and *Babu Mahendra Kumar Ghose*, for the petitioners.

Babu Manindra Nath Banerji, for the Crown.

MUKERJI AND ROY JJ. The petitioners, who are five in number, have been convicted by the Additional Presidency Magistrate of Calcutta, under section 188 of the Indian Penal Code. The charge against the petitioners was that they had disobeyed an order which was passed under section 144 of the Code of Criminal Procedure by the Chief Presidency Magistrate on the 4th April, 1926. The order directed the public generally not to assemble or proceed in parties of more than five in number when frequenting streets and public places of Calcutta within a certain specified area. That the petitioners violated this order is clear from the finding of the learned Additional Presidency Magistrate. To convict the petitioners under section 188 of the Indian Penal Code, however, it is necessary that it should be established that the petitioners knew that there was such an order which prevented them from assembling or proceeding in groups of more than five as referred to in the order. As regards this the learned Additional Presidency Magistrate held that there was a proper promulgation of this order in accordance with the provisions of section 134, clause (2) of the Code of Criminal Procedure. The learned Magistrate was also of opinion that because such a promulgation has been proved, it was not open to the

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petitioners to plead ignorance of the contents of the order. In my opinion the learned Magistrate was not right in the view that he has taken of the matter. Section 188 of the Indian Penal Code requires that it should not merely be proved that there was an order which was duly promulgated, but also that the accused person who is going to be convicted under the section was aware of it. That the promulgation is not sufficient to establish this knowledge has been held by the Lahore High Court in the case of *Emperor v. Abdullah* (1). In that case the learned Judges observed that it is the duty of the prosecution, in a case under section 188 of the Indian Penal Code, to prove by positive evidence that the accused had knowledge of the order with the disobedience of which he is charged, and that a proof of general notification promulgating the order does not satisfy the requirements of the section. With this observation of the learned Judges I entirely agree. It is true that it was open to the learned Magistrate to take into consideration the facts and circumstances of the case, including the fact that the petitioners lived at the place where, according to the police officer, the order was duly promulgated in accordance with the provisions of section 134, clause (2), and to come to a finding that the petitioners individually had knowledge of the order itself. The learned Magistrate, however, has not thought fit to draw any such inference from the facts and circumstances of the case; and the materials that have been placed before us by the learned vakil for the Crown in this Rule do not satisfy us that in point of fact it may be held, with any degree of certainty, that the petitioners had any such knowledge. For these reasons we are of opinion that one of the cardinal elements necessary to justify a conviction under section

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188 has not been established, and that the petitioners' conviction under that section should, accordingly, be set aside.

In the result, we make the Rule absolute, set aside the conviction of the petitioners under section 188 of the Indian Penal Code, and the sentences that have been passed on them all, and direct that the petitioners be acquitted and discharged.

E. H. M.

Rule absolute.

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CRIMINAL REVISION.

Before Mukerji and Roy JJ.

ALI MIA

v.

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 Aug 16.

Conspiracy—Conspiracy to import, transport and possess opium without license—Consent of Local Government obtained before the framing of the charge—Cognizance, when taken by the Magistrate—Criminal Procedure Code (Act V of 1898), s. 196 A—Opium Act (I of 1878), s. 9.

Where on an ambiguous report of an excise inspector alleging offences under s. 120B of the Penal Code read with s. 9 of the Opium Act (I of 1878), warrants were issued, on the 18th August 1925, against the absent accused under s. 9 of the Opium Act only, and the consent of the Bengal Government to the institution of a prosecution under s. 120B of the Penal Code, read with s. 9 of the Act, was given on the 12th September, and charges framed under s. 120B of the Penal Code read with s. 9 of the Act, and also for substantive offences under the latter section on the 13th December :—

Held, that the Magistrate did not take cognizance of the charge of conspiracy, till after the consent of the Bengal Government had been obtained, and that the conviction there for was not illegal under s. 196A of the Criminal Procedure Code.

* Criminal Revision Nos. 493 and 494 of 1926, against the order of J. W. Nelson, Sessions Judge of Chittagong, dated May 4, 1926.