

CRIMINAL REVISION.*Before Chotzner and Gregory, JJ.*

RAM GOPAL GOENKA

v.

NARAYAN DAS CHANDRA.*

1928

Jan. 18

Market—Rival bazar—Breach of the peace likely—Jurisdiction—Injunction, temporary—Criminal Procedure Code (Act V of 1898), s. 144.

In the case of a dispute between the owners of two rival bazars a Magistrate has jurisdiction and is amply justified in passing an order under section 144 of the Code of Criminal Procedure restraining one owner temporarily from holding his new market where there was a series of acts committed by his servants in holding such market likely to lead to a breach of the peace.

Bykuntram Shaha Roy v. Meajan (1) followed.*Satish Chandra Roy v. Emperor* (2) and *Bidhu Ranjan Mazumdar v. Romesh Chandra Roy* (3) dissented from.

RULE obtained by Ram Gopal Goenka, accused.

The facts of the case out of which this Rule arises are stated fully in the judgment of the Additional Sessions Judge of Howrah which was as follows :—

“ Proceedings under section 144, Criminal Procedure Code, were started on the petition of Narayan Das Chandra, an officer of the estate of the heirs of the late Kirti Chandra Daw, and the subsequent Police report. On 27-7-1927 Ram Gopal Goenka was prohibited by an injunction under section 144 Criminal Procedure Code from holding a new market on the premises, Nos. 97 and 99, Haraganj Road, Salkea.

* Criminal Revisions Nos. 952 of 1927, against the decision of N. K. Bose, Additional Sessions Judge of Howrah, dated Sep. 19, 1927, confirming the order of H. C. Bose, Deputy Magistrate of Howrah, dated July 27, 1927.

(1) (1872) 10 B. L. R. 434 ;

18 W. R. Cr. 47.

(2) (1906) 11 C. W. N. 79.

(3) (1906) 11 C. W. N. 223.

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" This was done after hearing the learned pleaders appearing on behalf
" of both the parties. The case was adjourned on that date to 5-8-1927
" for hearing the accused and the opposite party if necessary. On
" 29-7-1927 Ram Gopal Goenka moved the District Magistrate under
" section 435 Criminal Procedure Code against the order dated 27-7-1927.
" The District Magistrate after hearing the advocate appearing for Ram
" Gopal Goenka refused to interfere at that stage of the case and rejected
" the application under section 435 Criminal Procedure Code. The case
" was then duly heard by Mr. H. C. Bose, Magistrate, 1st class, Howrah.
" He examined the witnesses for the parties on 15-8-1927, 16-8-1927 and
" 17-8-1927 and passed the final orders, making his order under section
" 144 Criminal Procedure Code absolute, on 18-8-1927.

" Ram Gopal Goenka now prefers this petition under section 435
" Criminal Procedure Code against the final order dated 18th August
" 1927. There is no force in the contention of the learned vakil for the
" opposite party that this application under section 435 Criminal Procedure
" Code cannot be entertained under clause (4) of section 435 Criminal
" Procedure Code. The application under section 435 Criminal Procedure
" Code to the District Magistrate was against the order dated 27th July
" 1927. The present application under section 435 is against the final
" order dated 18th August 1927.

" The holding of a *hât* on one's property is certainly not a wrongful
" act by itself. But in the present case, as I have said, the petitioner,
" Ram Gopal Goenka, was holding the market there unlawfully in
" defiance of the authority of the Chairman of the (Howrah) Municipality
" and the police. In the present case he was holding the market daily.
" It is not a case of holding a *hât* on a particular day of the week other
" than that on which the old *hât* is held. He molested the stall-keepers
" of the old market in various ways. He has by force been preventing
" people from attending the old market of the Daw Babus. The act of
" the accused was not lawful, and *there is a likelihood of an imminent*
" *breach of the peace*. In these circumstances the learned Magistrate has
" been justified in not rescinding his order of injunction dated 27-7-1927
" and in making the said order absolute".

Thereupon Ram Gopal Goenka moved the High Court and obtained a Rule which also directed that the injunction should continue in force pending the hearing of the Rule after the Long Vacation. The Rule, however, was not heard till 18th January 1928.

Babu Mritunjoy Chatterjee, for the opposite party, raised a preliminary objection that the order of injunction having run out under section 144, Criminal Procedure Code, by two months' efflux of time the Rule had become infructuous.

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Mr. Langford James (with *Mr. A. C. Mukherjee* and *Babu Sures Chandra Taluqdar*), for the petitioner. A decision of the High Court on the legality of this order of injunction is necessary as the petitioner is being prosecuted under section 188 Indian Penal Code for disobeying that injunction under section 144 Criminal Procedure Code. I rely on the decision in *Chandra Nath Mukherjee v. East Indian Railway* (1). Proceedings under section 107 Criminal Procedure Code should have been instituted against the durwans who were guilty of the acts of violence complained of. The Legislature never contemplated the use of section 144 Criminal Procedure Code in a dispute between the owners of rival markets. *Vide Satish Chandra Roy v. Emperor* (2) and *Bidhu Ranjan Mazumdar v. Romesh Chandra Roy* (3).

Babu Mritunjoy Chatterjee (with *Babu Manindra Nath Banerjee, No. II*, and *Babu Sitansu Bhusan Bose*), for the opposite party. As the wording of section 144 Criminal Procedure Code is very clear and comprehensive, the Magistrate has jurisdiction and can in certain circumstances order any person, including the proprietor, not to hold a market on his own land. In this view I am fortified by the decision of the Full Bench in *Bykuntram Saha Roy v. Meajan* (4) which is still good law although decided so long ago. The acts of violence by the

(1) (1918) 23 C. W. N. 145.

(3) (1906) 11 C. W. N. 223.

(2) (1906) 11 C. W. N. 79.

(4) (1872) 10 B. L. R. 434 ;

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durwans of Ram Gopal Goenka were clearly in the interests of their master and his new market; and, unless the source of the trouble were removed by restraining their employer, the petitioner, it is useless to bind down under section 107 Criminal Procedure Code only some of the miscreants who would immediately be replaced by others for the same purpose.

Mr. Langford James, in reply. A person has an absolute right to use his property as he pleases.

Cur. adv. vult.

CHOTZNER AND GREGORY JJ. This Rule has been granted in regard to an order made by the Deputy Magistrate of Howrah under section 144 Cr. P. C. The material portion of the order was in these terms:—

“Whereas it appears from the petition filed on 21-7-1927 by “Naraindas Chandra of 12 Shib Kristo Daw Lane, Calcutta, and the report “dated the 26th July 1927 submitted thereupon by the Sub-Inspector of “Golabari Police Station that Ram Gopal Goenka of 20 Central Avenue, “Calcutta, is holding a new market at Nos. 97 and 99 Haraganj Road, “Sulkea, adjacent to the old Haraganj Bazar belonging to the Daw Babus “of Jorasanko, Calcutta, for which a breach of the peace is apprehended: “I do hereby prohibit the said Ram Gopal Goenka from holding a new “market at Nos. 97 and 99 Haraganj Road as the holding of such market “will lead to an imminent breach of the peace”.

Now, the order was only in force for two months and it expired on the 27th of September 1927. *Prima facie*, therefore, the necessity for vacating it is not clear except on the ground that proceedings have been taken against the petitioner under section 188 I. P. C. for violating it.

There is no dispute that the market which has been prohibited is situated on the petitioner's own land. The findings in the present case are that he applied to the Howrah Municipality for sanction to

construct certain buildings upon this land and, according to the petition, sanction was first accorded by the Municipality but was afterwards revoked on the 30th June 1927. The facts found by both the Courts below are that the petitioner continued the work of construction in spite of the fact that sanction had been withdrawn. It is said also that he had no license as required under the Municipal Act, though this matter does not appear to be entirely clear. The further finding is that certain Nepali durwans in the employ of the petitioner forcibly dragged vendors to the new market and otherwise molested the public by conducting passers-by into the market presumably with the view of making them buy their commodities there rather than in the adjacent bazar belonging to the Daw Babus. Both the lower Courts have found that it was likely to result in an imminent breach of the peace. The question, therefore, we have to consider is, "whether the Magistrate was in these circumstances justified in passing an order which admittedly is intended to operate only in cases of extreme urgency?". Mr. Langford James, who has appeared for the petitioner, has contended that section 144 Cr. P. C. is never intended to be used in any case of dispute between the owners of two rival bazars and that, if some servants of one of these owners are shown to have acted illegally or oppressively, section 107 Cr. P. C. is the proper section to be proceeded under to bind them down and to restrain them from committing further offences. He has referred to two cases, namely, the cases of *Satish Chandra Roy v. Emperor* (1) and *Bidhu Ranjan Mazumdar v. Romesh Chandra Roy* (2). The learned Judges who decided the first of these two cases were of opinion that the Magistrate could not by passing successive orders

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under section 144 Cr. P. C. extend the operation of the order beyond the time limited by sub-section (5) of section 144 Cr. P. C. and that the most appropriate section of the Code to deal with cases of rival *hats* which might cause a breach of the peace was section 107 of the Code. No doubt that view must be treated with respect. But we are of opinion that the powers of a Magistrate to deal with the situation, where a breach of the peace is in his opinion imminent, have been so clearly defined in the Full Bench case of *Bykuntram Shaha Roy v. Meajan* (1) to which our attention has been drawn by Mr. Chatterjee, who appears for the opposite party, that we cannot do better than set down some of the findings therein contained. What the learned Chief Justice, Sir Richard Couch, in interpreting the words of the section, said is this: "The word 'certain' placed before the word act and afterwards repeated twice in the expression 'to take certain order with certain property in his possession' leaves no reasonable doubt in our minds that the Legislature intended to give full and ample powers to the Magistrate—the Chief Officer entrusted with the duty of preserving the peace of the district—to restrain any person from doing any act or to command him to hold any property in his possession subject to any condition, whenever such Magistrate shall consider that such a course of procedure is likely to prevent or even tends to prevent a riot or an affray"; and again the learned Chief Justice said, "A particular act or a particular mode of enjoyment of property might be perfectly innocent or lawful in itself. But the act may be done or the property enjoyed in that particular

(1) (1872) 10 B. L. R. 434 ; 18 W. R. Cr. 47.

“mode under circumstances calculated to lead to a
 “serious breach of the peace attended even with loss
 “of human life; and it would be by no means proper
 “or desirable to hold that even in such cases the
 “chief peace officer of the district has no power to
 “issue an order such as that contemplated by section
 “62 of Act XXV of 1861”. While, therefore, in the
 present case, it may be conceded that the petitioner
 has an absolute right to use his property as he pleases,
 yet, if the mode of enjoyment of this property,
 innocent and lawful as it might be, resulted or tended
 to result, as the Magistrate has found, in a series of
 acts committed by the petitioner’s servants which, in
 the Magistrates’ judgment, were likely to lead to a
 breach of the peace, we cannot but think that the
 order under section 144, Cr. P. C., restraining the
 petitioner temporarily from holding his market there
 was amply justified. We accordingly discharge this
 Rule.

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Rule discharged.

G. S.