

CRIMINAL REVISION.

Before Cuming J.

RADHARAMAN SHAHA

v.

EMPEROR.*

1931

Feb. 24;
Mar. 2.

Harbouring—Harbouring person knowing that he had joined or was likely to have been a member of an unlawful assembly, whether an offence—Indian Penal Code (Act XLV of 1860), s. 157.

An act of harbouring a person, with the knowledge that, in some time past, he had joined or was likely to have been a member of an unlawful assembly, is not an offence under section 157 of the Indian Penal Code.

Section 157 of the Indian Penal Code clearly refers to some unlawful assembly in the future and provides for an occurrence which *may happen*, not which *has happened*.

RULE in favour of the accused.

On 9th September, 1930, about a month after Government, by promulgation of Ordinance V of 1930, had declared picketing of shops to be an offence, two Congress "volunteers", who had been enrolled as such and had been doing the work of picketing shops in batches of 5 or 6, entered the house of the accused, and, on producing a ticket bearing the seal impression of the local Congress Committee, were served with meal in the kitchen of the accused. After they had finished their meal, the two "volunteers" were arrested by the police and taken to the *thâná*, and, later, the accused, Radharaman Shaha, and his servant, Sukhlal, were sent up for trial under section 157 of the Indian Penal Code for harbouring a member of an unlawful assembly, a charge to which they pleaded not guilty. The magistrate, who tried the case, held that Radharaman Shaha was cognisant of the fact that the two

* Criminal Revision, No. 8 of 1931, against the order of J. M. Chaudhuri, Magistrate of Barisal, dated Nov. 3, 1930.

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“volunteers” had joined or were likely to have joined an unlawful assembly of picketers, the common object of which was the commission of an offence punishable under section 4 of Ordinance V of 1930, and, with this knowledge, had harboured them. He, therefore, convicted him under section 157, Indian Penal Code, and sentenced him to a fine of Rs. 200, in default to suffer rigorous imprisonment for two weeks, and acquitted the other accused, Sukhlal. Radharaman then moved the Sessions Judge, who refused to refer the matter to the High Court, for revision of the said order.

The petitioner, thereupon, moved the High Court and obtained this Rule.

Gunendrakrishna Ghosh for petitioner.

Debendranarayan Bhattacharya for the Crown.

Cur. adv. vult.

CUMING J. The fact of the case will appear from the judgment of the learned magistrate. The petitioner has been convicted under section 157, Indian Penal Code.

The case is briefly that, on a certain day, two persons, who are what are described as volunteers, came to the house of the petitioner and he gave them food.

The magistrate finds that, by so doing, he harboured these persons and that he was aware that these two had formed or were likely to have formed an unlawful assembly, the common object of which was the commission of an offence punishable under section 4 of Ordinance V of 1930. On the findings of the learned magistrate, no offence under section 157 has been committed.

The magistrate finds that the petitioner was aware that, in some past time, the two volunteers had formed or were likely to have formed an unlawful assembly.

Section 157, Indian Penal Code, clearly refers to some unlawful assembly in the future. It provides

for an occurrence which may happen, not which has happened. The findings of the learned magistrate do not justify a conviction under section 157.

The conviction and sentence must, therefore, be set aside and the petitioner acquitted. The fine if paid must be refunded.

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Rule absolute.

A. A.