CRIMINAL REVISION.

Before Cuming J.

1931

Jan. 6.

RAMGOPAL ADHIKARI

v.

EMPEROR.*

Confinement—Police officer under suspension, if can be confined for an indefinite period—Indian Police Act (V of 1861), ss. 7, 29—Police Regulations, Bengal, Rule 1067, if ultra vires.

Section 7 of the Indian Police Act does not authorise an order of confinement of a member of the police force for an indefinte period.

Ram Gopal Ghosh v. *King-Emperor* (1) followed.

To order a police officer to live in the lines until further orders and not to leave the lines without permission is to confine him in those lines. Rule 1067 of the Police Regulations, Bengal, directing officers and men under suspension to reside in the lines and rendering persons absent therefrom without permission liable to prosecution under section 29 of the Act is *ultra vires* and illegal. Disobedience to such order is no offence under the Act.

Confinement contemplated by section 7 is an alternative punishment to suspension and not in addition thereto.

CRIMINAL REVISION.

The material facts appear from the judgment.

Sudhanshushekhar Mukherji for the petitioner.

Lalitmohan Sanyal for the Crown.

CUMING J. The facts of the case, out of which this Rule arises, are these. The petitioner, Ramgopal Adhikari, is a dismissed Assistant Sub-Inspector of Police. Apparently, certain charges were brought against him. What those charges were it is impossible to discover from the record. Neither the learned advocate, who appears for the petitioner, nor the learned advocate, who appears for the Crown, has been able to enlighten me on this point. He was, however, committed to the Sessions Court on these charges and ultimately acquitted. Be that as it may,

*Criminal Revision, No. 1114 of 1930, against the order of S. P. Ghosh, Subdivisional Magistrate of Burdwan, dated June 18, 1930, confirming the order of A. Bhattacharya, Subdivisional Magistrate of Asansol, dated April 14, 1930.

(1) (1905) 2 C. L. J. 616.

he was placed under suspension by the District Superintendent of Police on the 6th May, 1929, and was ordered to live in the police lines until further orders and also directed not to leave the lines without permission. He made several applications to the Police Superintendent on various occasions for permission to absent himself from the lines and those petitions, apparently, were all rejected—why, it does not appear. Finally, according to his case, and this portion of his case has not been controverted, on the 23rd of September, 1929, he received a telegram that his wife was dangerously ill. He had before this applied, on the 17th September, for a week's time to see his ailing wife and child, but that petition was rejected. On receiving the telegram that his wife was dangerously ill, he applied to the Superintendent of Police for leave and left the lines in anticipation of the permission and, for so doing, he was prosecuted under section 29 of the Police Act and ordered to pay a fine of Rs. 20 only.

It is clear to me that the order of the Police Superintendent, confining the petitioner to the police lines for an indefinite period, is an illegal order. Section 7 of the Police Act is the only section under which he could have been ordered to be kept in confinement and that section provides confinement for a term not exceeding 15 days as an alternative punishment for suspension. But the section does not contemplate confinement in addition to suspension and certainly not indefinite confinement. To order the petitioner to live in the police lines until further orders and not to leave the lines without permission is to confine him in those lines. The order is clearly illegal. I have been referred to Rule No. 1067 of the Police Regulations, which states as follows:—"Police "officers and men, while under suspension, shall reside "in the lines unless permitted by the superintendent "to reside elsewhere and shall attend the fixed roll-"calls. Those absent without permission render "themselves liable to prosecution under section 29, "Act V of 1861." It seems to me that this Rule is

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clearly *ultra vires* and illegal. The present case is on all fours with the case of *Ram Gopal Ghosh* v. *King-Emperor* (1). There, it is held that an order for suspension and confinement of a police officer for an unlimited period of time exceeding the limits laid down in clause (*b*) of section 7 of Act V of 1861 is illegal and is not an order which a District Superintendent of Police can legally pass at all, nor one which he can pass in the alternative under section 7 of the Act; and no conviction under section 29 of the Act for disobeying such an order is maintainable.

Looking at the order itself, it was apparently an unreasonable order. The Assistant Sub-Inspector of Police was under suspension. Certain serious charges had been brought against him and he was under trial for these charges. His petition shows that, at one time, he applied for permission to leave the lines in order to get money for conducting his defence and this was refused. How difficult it would be for the petitioner to manage his defence in the criminal case, while he was kept in confinement in the lines, can easily be realised. Even if the order in this case had been a legal one, it was certainly, as far as I can see, an entirely unreasonable one. The Assistant Sub-Inspector had no work to do in the lines or anywhere else. He was under suspension and I cannot see for what purpose he should, in such circumstances, be confined to the lines. He should, on the contrary, have been given every opportunity to prepare his defence and not be hampered. Be that as it may, the order is an illegal one and the conviction of the petitioner under section 29 of the Police Act is bad. The conviction of and the sentence imposed upon the petitioner are, therefore, set aside and he is acquitted. The fine, if paid, must be refunded.

Rule absolute. Accused acquitted.

A. C. R. C.

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CRIMINAL REVISION.

Before Rankin C. J. and Graham J.

INDUBHUSHAN MUKHERJI

v.

NILMANI GHOSH.*

1931
Jan. 9.

Encroachment—Public road—Notice to remove encroachment, irregularity in—Bengal Municipal Act (Beng. III of 1884), s. 202.

The only requirement of section 202 of the Bengal Municipal Act is that the commissioners shall issue a notice which shall show to the opposite party, in a way in which he can understand, what the obstruction or the encroachment is that he is required to remove. The fact that they describe it as road-side land and not a road has no importance at all, provided always that it is found as a fact that the obstruction is an obstruction of a road over which the public have a right of way.

CRIMINAL RULE.

On the 21st July, 1927, a notice purporting to be under section 202 of the Bengal Municipal Act was served on the opposite party, under orders of the Chairman of the Meherpur Municipality. The notice directed him to remove a tin-shed which had been erected by the opposite party, and was described in the notice as being on municipal *sadar* road-side land. The opposite party did not comply with the requisition, whereupon the petitioner lodged a complaint on the 28th August, 1929.

The defence of the opposite party was firstly that the hut complained of was not on the public road, but on private road-side land belonging to the Midnapur Zemindari Society, under whom the accused was a *bona fide* tenant and secondly the notice was bad in law.

The magistrate found that the encroachment was in fact on the public road from Krishnagar to Meherpur but acquitted the accused on the ground that the notice was bad in law.

*Criminal Revision, No. 397 of 1930, against the order of Gunamay Chatterji, Magistrate (1st Class), Meherpur, dated Nov. 29, 1929.

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Indubhushan Mukherji v. Nilmani Ghosh.

Thereupon, the complainant obtained this Rule.

Santoshkumar Basu (*Manindranath Banerji* and *Parimal Mukherji* with him) for the petitioner. The notice purports clearly to be under section 202, and the fact that the encroachment is described as being on road-side land does not make it bad. At most, it is an irregularity.

U. N. Sen Gupta (*Probodhkumar Das* with him) for the opposite party. If the offence consists of the encroachment complained of, this prosecution is out of time. If it is mere non-compliance with the notice, it is within time, but then the notice must be valid under the law. The notice in this case is not within the purview of section 202, since it talks of the hut as being put upon road-side land and not on the road. There is no evidence that this land was a part of the road or that the public had a right of way over the same.

If your Lordships are against me there must be a retrial.

[RANKIN C. J. Can we not pass a sentence here?]

Section 439, clause (4), shows that your Lordships can only order a retrial.

RANKIN C. J. In my opinion, this Rule must be made absolute. It appears that the municipality wanted the opposite party before us to remove a hut. It has been found by the magistrate that this hut is an encroachment upon a public road in the sense of the Bengal Municipal Act, that is to say, a road over which the public have a right of way. Under section 202 of the Bengal Municipal Act, it is open to the commissioners to issue a notice requiring any person to remove any obstruction or encroachment which he may have erected in or on any road or open drain sewer or aqueduct. This is not a question of open drain or a sewer or an aqueduct and I need make no further reference to these matters. The municipality issued a notice in Bengali headed section 202 of this Act. It pointed out quite specifically what the hut

was that the opposite party was directed to remove and it described it as being upon the road-side land; and the magistrate has come to the conclusion that, although the hut is in fact an obstruction of the public road and although section 202 is expressly referred to in the notice, the notice is bad because it describes the hut as having been put upon the road-side land and not as having been put upon the road. That is the gist of his finding. In my opinion, the magistrate is entirely wrong. The only requirement of section 202 is that the commissioners shall issue a notice which shall show to the opposite party, in a way in which he can understand, what the obstruction or the encroachment is that he is required to remove. The fact that they describe it as road-side land and not a road has no importance at all, provided always that it is found as a fact that the obstruction is an obstruction of the public road in the sense defined in the Act. If there is any desire on the part of the opposite party to challenge the finding as to whether this land is part of the public road either by appeal from the decision made against him or otherwise, that is a matter upon which I say nothing and with which we have nothing whatever to do. In the circumstances, the order of the magistrate will be set aside and the case must be sent back to him to give judgment in accordance with law.

GRAHAM J. I agree.

Rule absolute; case remitted to court below.

S. M.