

CRIMINAL REFERENCE.

Before Rankin C. J. and Graham J.

EMPEROR

v.

B. N. SASMAL.*

1930

Dec. 16.

Breach of peace—Power of magistrates to order people to do particular things
—“*Abstain from a certain act,*” meaning of—*Code of Criminal Procedure*
(*Act V of 1898*), s. 144.

The words “to abstain from a certain act” in section 144 of the Code of Criminal Procedure do not empower magistrates to make a positive order requiring a person to do particular things.

CRIMINAL REFERENCE.

The facts of this case were as follows : Since May, 1930, Mr. B. N. Sasmal, Barrister-at-law, and other gentlemen had been holding enquiries at various places in the district of Midnapur, with respect to disturbances arising out of the Civil Disobedience Movement.

On the 24th June, 1930, Sasmal was arrested at Contai under section 17 (2) of the Criminal Law Amendment Act and, later, the Crown did not proceed with the prosecution.

On the 8th November, 1930, the Superintendent of Police requested the magistrate for an order directing Sasmal to abstain from entering the district of Midnapur, as his presence was reported to have excited people to breach of the law. An order to that effect was issued by Mr. S. K. Ghosh, Additional District Magistrate, on the 10th November, 1930.

Before the said order could be served on Sasmal personally, he had left his house at Tollygunge, *en route* for Midnapur. The order was served on his clerk and Sasmal was informed of it at Howrah, by the railway police.

*Criminal Reference, No. 261 of 1930 and Miscellaneous Case, No. 221 of 1930. Reference by T. B. Jameson, District and Sessions Judge, Midnapur, dated Dec. 6, 1930.

1930
 Emperor
 v.
 B. N. Sasmal.

On the 15th November, 1930, Sasmal interviewed Ray Bahadur S. C. Sinha, Additional District Magistrate, at Midnapur and, on the same day, he was served with a fresh order issued by the said Ray Bahadur Sinha, at the request of the Superintendent of Police. This last order is set out in the judgment.

An application under sub-section (4) of section 144 of the Code of Criminal Procedure was rejected by the Additional District Magistrate.

Thereupon, Sasmal moved the Sessions Judge, who referred the matter to the High Court, on, among others, the ground that the magistrate had no jurisdiction to completely extern Mr. Sasmal from the district, which had the effect not only of securing law and order in affected areas but also the further effect of preventing the petitioner from pursuing his normal and lawful activities.

B. M. Sen for the Crown.

Nisith C. Sen (with him *Satindranath Mukherji* and *Sukumar Hazra*) for the accused.

RANKIN C. J. In this case, the learned Sessions Judge of Midnapur has referred to us, under section 438 of the Code of Criminal Procedure, an order made by the Additional District Magistrate of that place, dated the 15th of November, 1930. By that order, after reciting certain matters, the magistrate gave the following direction :

I direct that the said Mr. B. N. Sasmal, Barrister-at-law, at present in the town of Midnapur within the local limits of my jurisdiction, under section 144, Criminal Procedure Code, to abstain from staying at the town of Midnapur or any part of the district and to leave the district by the next available train and also to abstain from returning to any place within the district with effect from the date of the orders for the statutory period of two months.

I omit all reference to other matters, which the Sessions Judge has referred to in his Reference as reasons why this order must be set aside as bad—either bad in point of propriety or bad in point of jurisdiction; but I am very clearly of opinion that when, for purposes of preventing disturbances of

public tranquillity, a magistrate is given power to direct any person to abstain from a certain act, he cannot make an order which is in effect not a direction to abstain from doing anything, but a direction upon a person to remove himself from the district and to do so by the next available train. It is not necessary for this purpose to enquire whether it would be a possible order to direct a person to abstain from coming within a district at all. It may be that such an order is a possible one; it may also be that, before such an order could stand as a proper one, very special conditions would have to be made out. I am quite clear that it was never intended by section 144, Criminal Procedure Code, that a man might be ordered to remove himself not only from his own house but also from his own district and to do so by the next available train. If the statute had intended that people were to be ordered to do these things by the next available train, I should have expected the sub-section to go on dealing with questions of railway fare and taking some other steps to make it reasonable. The very reason why the section uses the language "abstain from a certain act" is just because it is not intended to empower magistrates to make positive orders requiring people to do particular things. In my judgment, this order is bad in its character and, on that ground, it must be set aside. The Reference must be accepted.

No order is necessary on the application—the subject matter of Miscellaneous Case No. 221 of 1930.

GRAHAM J. I agree.

Reference accepted.

S. M.

1930
 Emperor
 v.
 B. N. Sasmal.
 Rankin C. J.