

CRIMINAL REVISION.

Before *Cuming J.*

DEBENDRANATH MANDAL

v.

THE EMPEROR.*

1930

Nov. 11, 14.

License—General notice to take out license for procession, if competent—Police Act (V of 1861), ss. 30, 32.

Section 30 of the Police Act (V of 1861) does not empower the superintendent of police to issue a general notice that anyone taking out a procession passing a mosque must take out a license. There must be some procession or meeting actually in contemplation at the time, which in the opinion of the District Magistrate or the Subdivisional Magistrate, if uncontrolled, would be likely to cause a breach of the peace.

CRIMINAL REVISION by the accused.

The facts sufficiently appear from the judgment of the Court.

Narendrakumar Basu (with him *Siddheshwar Chakravarti*, *Gourmohan Datta* and *Santimay Majumdar*) for the petitioners. Section 30 does not empower the superintendent of police to issue a general notification containing prohibition against convening and collecting assemblies without a license. There must be some procession or meeting actually in contemplation which require to be controlled and a notice is required on each such occasion. The power given under this section is quite different from the power given to the Commissioner of Police in Calcutta by section 68, clause (h) of the Calcutta Police Act. The case of *Emperor v. Shamakandu* (1) supports the view. A contrary view was taken in the case of *King-Emperor v. Abdul Hamid* (2).

The Officiating Deputy Legal Remembrancer, B. M. Sen, for the Crown. There is no such limitation

*Criminal Revision, No. 790 of 1930, against the order of Jeebanchandra Chatterji, Subdivisional Magistrate of Hooghly, dated Dec. 23, 1929.

(1) (1917) 20 Cr. L. J. 213.

(2) (1922) I. L. R. 2 Pat. 134.

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suggested in the section itself. The language used is very wide and entitles the Superintendent of Police, with the approval of the District or the Subdivisional Magistrate, to issue a general notification prohibiting the taking out of a procession or commencing any assembly without a license. The view taken in the case of *King-Emperor v. Abdul Hamid* (1) is the correct one.

Cur. adv. vult.

CUMING J. The facts of the case, which has given rise to this Rule, are briefly as follows:—On the 30th August, 1929, the Superintendent of Police of Hooghly, with the approval of the District Magistrate, promulgated a notice requiring any person taking out a procession which might pass by the Imâmbâri or any mosque to apply to him for a license. The Superintendent of Police purported, if I understand rightly, to issue the notice under section 30 of the Police Act (V of 1861). The order was to remain in force for two months. On the 15th September of the same year, the petitioners disobeyed the order and took out a procession which passed a mosque without asking the Superintendent of Police for a license. They were convicted under section 32 of the same Act and sentenced each to pay a fine of Rs. 25. They have now moved this Court in revision.

Mr. Basu who appears for the petitioners contends that the order of the Superintendent of Police is *ultra vires* and illegal. He contends that section 30 does not contemplate a general order of the character issued by the Superintendent of Police. His contention is that on the wording of section 30, there must be some procession or meeting actually in contemplation at the time, and then and then only can the Superintendent of Police with the approval of the District Magistrate or Subdivisional Magistrate call on the convenor of the assembly or procession to apply for a license. Reading the section carefully that appears to me to be the correct interpretation

(1) (1922) I. L. R. 2 Pat. 134.

of it. The Superintendent of Police has first of all to be satisfied that it is intended by a person or a class of persons to take out a procession or hold a meeting. He has then obviously to take the opinion of the District Magistrate or the Subdivisional Magistrate and if, in the opinion of that officer, such assembly or procession, if uncontrolled, may cause a breach of the peace, he might then issue a notice general or special that these persons shall apply for a license. The section does not, I think, empower him to issue a general notice as he has done that any one taking out a procession passing a mosque must take out a license. It does not contemplate his taking any action until he is satisfied that it is intended to take out a procession which, in the opinion of the District Magistrate or the Subdivisional Magistrate, if uncontrolled, would be likely to cause a breach of the peace.

The order of the Superintendent of Police is therefore *ultra vires* and the petitioners cannot be convicted under section 32 for disobeying the order which the Superintendent of Police had no power to issue. The petitioners could only be convicted under section 32 for disobeying an order which falls within section 30. The conviction of and sentences passed upon the petitioners are set aside and they are acquitted. The fines if paid must be refunded.

Rule absolute. Accused acquitted.

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