

CRIMINAL REVISION.

Before Mallik and Patterson JJ.

ABDUL GAFUR

v.

MAHAMMAD MIRZA.*

1931

July 10.

Breach of Peace—"Offences involving a breach of the peace", meaning of—Code of Criminal Procedure (Act V of 1898), s. 106.

The expression "offences involving a breach of the peace" in section 106 of the Code of Criminal Procedure includes not only offences of which a breach of the peace is a necessary ingredient and in which a breach of the peace has actually occurred, but includes also cases of offences in which an evident intention to commit a breach of the peace is expressly found.

Asoke Prasanna Bal v. King-Emperor (1), *Arun Samanta v. Emperor* (2), *Rafatulla Pramanik v. Rajek Sardar* (3), *Abdul Ali Chowdhury v. Emperor* (4) and *Jib Lal Gir v. Jogmohan Gir* (5) referred to.

RULE in favour of the accused.

The case for the prosecution was that, on the 15th June, 1930, the complainant Mahammad Mirza, went to realise rent from one Panchu, a tenant occupying one room in a house belonging to the complainant, when he was told that the three accused petitioners had forcibly realised the rent from him on the previous evening on the allegation that the house belonged to them. At that moment, the accused appeared and, on the complainant protesting against their conduct, they threatened him and abused him in filthy language. Apprehending that a breach of the peace might follow, the complainant retired. Some days earlier, on the 1st June, 1930, another tenant of the complainant had been driven away by the petitioners. The petitioners were tried by Mr. K. Ray Chaudhuri, Honorary Magistrate of Alipore, and convicted under

*Criminal Revision, No. 171 of 1931, against the order of K. Mukherji, Additional District Magistrate of Alipore, dated Dec. 9, 1930, affirming the order of Kalikumar Ray Chaudhuri, Honorary Magistrate of Alipore, dated Sep. 25, 1930.

(1) (1930) 34 C. W. N. 651.

(3) (1930) 34 C. W. N. 988.

(2) (1902) I. L. R. 30 Calc. 366.

(4) (1915) I. L. R. 43 Calc. 671.

(5) (1899) I. L. R. 26 Calc. 576.

section 504 of the Indian Penal Code. The learned magistrate came to the conclusion that there was ample evidence to show that the accused wanted to break the peace and consequently directed the petitioners to execute bonds under section 106 of the Code of Criminal Procedure.

Diptendramohan Ghosh for the petitioner.

Sureshchandra Talukdar for the opposite party.

MALLIK J. The three petitioners in this case have been convicted under section 504 of the Indian Penal Code. They have also been directed to execute bonds under section 106 of the Code of Criminal Procedure. The petitioners obtained the present Rule on the ground that the order under section 106 of the Code of Criminal Procedure is illegal, inasmuch as the requirements of law under that section are not satisfied.

The only point that arises for consideration in the present Rule is what interpretation is to be put on the expression "offences involving a breach of the "peace", that is to be found in section 106. On behalf of the petitioners, it was said that this expression means only offences of which a breach of the peace is a necessary ingredient and in which the occurrence of a breach of the peace is actually found. On behalf of the opposite party, it was urged that this expression should be given a wider interpretation and it should be held to include not only offences of which a breach of the peace is a necessary ingredient and in which the occurrence of a breach of the peace is actually found but also cases of offences where an evident intention to commit a breach of the peace is expressly found. The views that have been taken by the different High Courts on this point are divergent and the decisions of this High Court on the point are also far from uniform. In the case of *Asoke Prasanna Bal v. King-Emperor* (1), Mr. Justice Cuming following the case of *Arun Samanta v.*

Emperor (1), took the narrow view of the expression, while Mr. Justice Jack, in *Rafatulla Pramanik v. Rajek Sardar* (2), was inclined to put the wider interpretation on the expression. Having regard to the object underlying section 106, which is prevention of offences, I am inclined to put a wider interpretation on the clause "offences involving a breach of the "peace" and to hold that the clause includes not only offences of which a breach of the peace is a necessary ingredient and in which a breach of the peace has actually occurred, but includes also cases of offences in which an evident intention to commit a breach of the peace is expressly found. This view finds support from a decision in *Abdul Ali Chowdhury v. Emperor* (3), which is the latest decision on the point by a Division Bench of this High Court. In this case, the learned Judges, relying on an earlier decision of the Calcutta High Court, in *Jib Lal Gir v. Jogmohan Gir* (4), accepted the view that the expression "offences involving a breach of the peace" should be interpreted in the wider sense. In the present case, both the courts below not only found the petitioners guilty under section 504 of the Indian Penal Code, but clearly held in addition that the petitioners had the intention to break the peace.

For the reasons stated above, I would discharge the Rule.

PATTERSON J. I agree.

Rule discharged.

A. C. R. C.

(1) (1902) I. L. R. 30 Calc. 366.

(3) (1915) I. L. R. 43 Calc. 671.

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