CRIMINAL REVISION.

Before Henderson and Khundkar JJ.

NIHARENDU DATTA MAJUMDAR

v.

EMPEROR.*

1939

July 5, 10.

Prohibitory Order—*Order prohibiting the holding of public meeting within a certain area, if valid—Knowledge of the person disobeying such order, how to be proved—Code of Criminal Procedure (Act V of 1898), s. 144—Indian Penal Code (Act XLV of 1860), s. 188.*

Before a person can be convicted for the disobedience of an order under s. 144 of the Code of Criminal Procedure, it must be shown that its terms were communicated to him, specially when the order is capable of more interpretation than one.

An order prohibiting the holding of public meeting in any area in a sub-division, except with special permission, is neither indefinite nor in contravention of the provisions of s. 144(3) of the Code of Criminal Procedure.

D. V. Belvi v. *Emperor* (1); *Motilal Gangadhar Kabre* v. *Emperor* (2) and *Vasant B. Khale* v. *Emperor* (3) referred to.

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The material facts of the case and the arguments in the Rule appear sufficiently from the judgment.

Narendra Kumar Basu and *Abani Kanta Roy* for the petitioners.

The Officiating Deputy Legal Remembrancer, Debendra Narayan Bhattacharyya, for the Crown.

Cur. adv. vult.

HENDERSON J. The petitioners have been convicted of an offence punishable under s. 188 of the Indian Penal Code for disobeying an order made by the Sub-Divisional Magistrate of Barrackpore under s. 144 of the Code of Criminal Procedure.

*Criminal Revision, No. 606 of 1939, against the order of M. H. B. Lethbridge, Sessions Judge of 24-*Parganâs*, dated May 26, 1939, affirming the order of A. Wooler, Sub-Divisional Magistrate of Barrackpore, dated April 17, 1939.

(1) [1931] A. I. R. (Bom.) 325. (2) [1931] A. I. R. (Bom.) 513.
(3) (1934) I. L. R. 59 Bom. 27.

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The facts which gave rise to the prosecution are briefly as follows: It is said that communal tension had been aroused in the locality in connection with a strike. After setting out the matters which gave him jurisdiction, the Sub-Divisional Magistrate passed an order under s. 144. Altogether, that order contained three directions and the petitioners are alleged to have disobeyed the third which was in these terms:—

> That no public meeting shall be held in any area in the subdivision so long as this order is in force, except on special permission from me, which must be applied for at least 24 hours before the said meetings are held.

On December 9, 1938, the officer-in-charge of the *thânâ* at Titagarh was informed that the first petitioner and others had come to Titagarh and were holding a meeting in front of a certain dispensary. He went to the spot with some police and found the first petitioner addressing a crowd. He ordered the crowd to disperse as, in his opinion, they were violating the order made by the Magistrate. The contention of the prosecution is that in taking this action the petitioners were guilty of an offence punishable under s. 188 of the Indian Penal Code. They were convicted by the Magistrate of Barrackpore. As their appeal to the Sessions Judge was dismissed, they obtained this Rule.

The Rule was pressed on two grounds: (1) The order itself is illegal, (2) That there is no evidence to show that the petitioners had any knowledge of it.

The first ground is based upon cl. (*3*) of s. 144 of the Code of Criminal Procedure which is in these terms:—

> An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

This particular order was addressed to the public when visiting any part of the Barrackpore subdivision.

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In support of this ground, Mr. Basu contended that the scope of the order was far too wide and drew a distinction between a particular place and an area. In support of his contention, he relied upon the cases of *D. V. Belvi* v. *Emperor* (1) and *Motilal Gangadhar Kabre* v. *Emperor* (2). On the other hand, the learned Deputy Legal Remembrancer relied upon the case of *Vasant B. Khale* v. *Emperor* (3).

In my opinion, it is necessary to distinguish carefully between the jurisdiction of the Magistrate to make an order and a possible practical difficulty in showing that it has been disobeyed. It does not follow that, because it is difficult for the Crown to secure a conviction, that the order itself was made without jurisdiction. If we apply the test laid down by the learned Judges in these two Bombay cases, it would be very difficult to say where a place ends and an area begins. It is obvious that a line would have to be drawn somewhere and, for my part, I should find it very difficult to draw such a line. Nor is the matter of much practical importance, for example, if an area may be said to contain 150 places, the Magistrate could pass 150 orders in identical terms and the result would be exactly the same. In our opinion, the order is a definite order and it does not contravene the provisions of s. 144.

On the second point, the learned Deputy Legal Remembrancer conceded that he had no evidence apart from the evidence relating to what took place at the actual meeting. It is said that the petitioners knew of the order, because they were told of it by the Sub-Inspector while the meeting was actually going on. The evidence on the point is extremely scanty and is to be found in the deposition of prosecution witness No. 1, prosecution witness No. 3 and prosecution witness No. 4. Prosecution witness No. 1, the Sub-Inspector, says that he ordered the

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crowd to disperse as they had assembled in violation of the order. The order was given in an audible voice and part of the crowd actually dispersed. It is, of course, difficult for him to say whether the order was audible to other persons or not.

Prosecution witness No. 3, the Town Inspector, corroborates this account of the action taken by the officer-in-charge of the *thânâ* and adds that the first petitioner and five other persons were addressing the meeting at the time.

Prosecution witness No. 4 merely says that the police arrived and began to move people telling them that there was a s. 144 order. It appears, therefore, that his version is not quite the same.

From this evidence it is abundantly clear that no personal communication was made to any of the petitioners. There is no distinct evidence as to the relative positions of the petitioners and the *thânâ* officer in the crowd. The learned Judge did not consider whether it necessarily follows that the first petitioner heard what was said by the Sub-Inspector at a time when he himself was actually delivering a speech. The prosecution really did not take sufficient trouble to see that the evidence on this very essential point was sufficient and clear.

Then in the second place, the order itself is not very happily worded. It does not clearly forbid attendance at a meeting or making speeches at a meeting. The use of the words "no public meeting "shall be held" seems to suggest something in connection with the organisation of a meeting. From the evidence it appears that the petitioner Majumdar did nothing more than behave like a Hyde Park orator. The actual order is capable of more interpretation than one. Before it can be said that the petitioners had knowledge of the order, it must be

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shown that its terms were communicated to them. Instead of doing that, the Sub-Inspector merely gave his own interpretation of it, which is quite a different thing.

We must accordingly accept the contention raised in the second ground that there is no evidence upon which it can be held that the petitioners had any knowledge of the order.

The Rule is accordingly made absolute, the convictions and sentences are set aside and the petitioners are discharged from their bail.

KHUNDKAR J. I agree.

Rule absolute, accused acquitted.

A. C. R. C.