

CRIMINAL REVISION.

Before Henderson and Khundhar J.J.

ANKU LAL SHAHA

v.

SADHAN CHANDRA MANDAL.*

1939

April 26.

Security—*Security for keeping the peace, when can be ordered—Code of Criminal Procedure (Act V of 1898), s. 106.*

The words "other offences involving a breach of the peace" in s. 106 of the Code of Criminal Procedure refer to the actual definition of an offence in the substantive law, that is to say, the commission of or intention to commit a breach of the peace must be one of the elements which would go to make up the offence. The section does not apply to a case where an accused is convicted of an offence of which it is not an essential ingredient even though it is found in fact that the accused intended to commit a breach of the peace.

Abdul Gafur v. Mahammad Mirza (1) dissented from.

Asoke Prasanna Bal v. King-Emperor (2) and *Rafatulla Pramanik v. Rajek Sardar* (3) referred to.

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

Rajendra Bhusan Baksi and *Ram Mohon Bhattacharya* for the petitioner.

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

Suresh Chandra Taluqdar and *Biswanath Dhar* for the complainant.

HENDERSON J. This is a Rule calling upon the Chief Presidency Magistrate of Calcutta to show

*Criminal Revision, No. 215 of 1939, against the order of E. C. Modon, Presidency Magistrate of Calcutta, dated Jan. 24, 1939.

(1) (1931) I. L. R. 59 Cal. 659.

(2) (1930) 34 C. W. N. 651.

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

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cause why an order made against the petitioner under s. 106 of the Code of Criminal Procedure should not be set aside.

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The petitioner has been convicted of an offence punishable under s. 504 of the Indian Penal Code. The facts are as follows:—

The complainant accompanied the police as a search witness when they went to search a gambling den. The petitioner was in the street apparently standing by the door of the den. I suppose his duty was to examine the would-be entrants. At any rate, the next morning he came to the complainant's house armed with a knife, abused him in filthy language and threatened to kill him.

The question that arises for decision in this Rule is whether on such a conviction the Magistrate had jurisdiction to pass an order under s. 106 of the Code of Criminal Procedure.

The authorities are not consistent. Broadly speaking, there are what may be described as two interpretations—the wide interpretation and the narrow interpretation. The latter found favour with Cuming J. in the case of *Asoke Prasanna Bal v. King-Emperor* (1); the former with Jack J. in the case of *Rafatulla Pramanik v. Rajek Sardar* (2).

These decisions were considered by Mallik and Patterson JJ. in the case of *Abdul Gafur v. Mahammad Mirza* (3). They were inclined to accept the wider interpretation. In giving judgment Mallik J. said this:—

Having regard to the object underlying s. 106, . . . 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.

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

(2) (1930) 34 C. W. N. 988.

(3) (1931) I. L. R. 59 Cal. 659, 661.

Now I am bound to say that in a matter of this kind I should expect the words "other offences involving a breach of the peace" to refer to the actual definition of an offence in the substantive law, that is to say, the commission of or intention to commit a breach of the peace must be one of the elements which would go to make up the offence. Supposing a man were convicted of defamation and there were a finding of fact that he intended to commit a breach of the peace, it could hardly be said that defamation is an offence involving a breach of the peace.

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Although we are not prepared to follow this decision, in our opinion, it is not necessary to refer the matter to a Full Bench. The Magistrate has stated that he accepted the evidence given on the side of the prosecution that the petitioner rushed at the complainant to assault him armed with a knife. He was, therefore, guilty of an assault and should have been convicted thereof. The error in the Magistrate's order is one of form only and not of substance.

The Rule is accordingly discharged.

KHUNDKAR J. I agree.

Rule discharged.

A. C. R. C.