RAMA-CHANDRIAH, *In re.*

doing an official act which was held not proved on the facts. None of these cases therefore are of any assistance to the petitioner. I therefore do not see that any error of law has been committed by the lower Courts and the conviction is proper and must stand.

I am asked to reduce the sentence, but having regard to the necessity for severely punishing attempts to foul the purity of official administration, I am not prepared to interfere. I therefore dismiss this petition.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Curgenven.

In re VEERABADRA PILLAI AND FIFTY OTHERS (ACCUSED), PETITIONERS.*

1927, May 3.

Indian Penal Code, sec. 143—*Assembly of five or more persons—maintenance by force or show of force a right* bona fide *believed in, and not enforcement of a right or supposed right—if an unlawful assembly.*

Where five or more persons assemble for maintaining by force or show of force a right which they *bona fide* believe they possess, and not for enforcing by such force or show of force a right or supposed right of theirs, they do not constitute an unlawful assembly punishable under section 143 of the Indian Penal Code.

Pachkauri v. *Queen-Empress*, (1897) I.L.R., 24 Calc., 686, *Silajit Mahto* v. *Emperor*, (1909) I.L.R., 36 Calc., 865, *Bagh Singh* v. *Emperor*, (1924) 81, I.C., 113, followed; *Ganouri Lal Das* v. *Queen-Empress*, (1889) I.L.R., 16 Calc., 206, not followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Subdivisional

* Criminal Revision Case No. 873 of 1926.

VEERABADRA PILLAI, *In re.*

Magistrate of Devakottai in Criminal Appeals Nos. 38 and 40 of 1926, preferred against the judgment of the Court of the Taluk Magistrate of Sivaganga in Calendar Case No. 161 of 1926.

The facts necessary for this report appear in the judgment.

V. L. Ethiraj, *V. Rajagopala Ayyar* and *S. Nagaraja Ayyar* for petitioners.

Public Prosecutor for the Crown.

JUDGMENT.

The petitioners, 54 in number, were convicted of forming members of an unlawful assembly, under section 143, Indian Penal Code, by the Taluk Magistrate of Sivaganga, and these convictions were confirmed on appeal to the Subdivisional Magistrate of Devakottai. For the purposes of this revision petition the following facts may be accepted. Sevalkanmoi, to which the petitioners belong, is a proprietary village and possesses a tank which irrigates their lands. The tank is fed by a channel, and a dispute arose with the ryots of Thevadiakanom village which is included in the Sivaganga Zamindari as to the right to the supply of water through this channel. The latter ryots erected a bund, marked BB, in the Commissioner's plan, which had the effect of diverting the water from the Sevalkanmoi tank and leading it to Thevadiakanom lands. The proprietor of Sevalkanmoi sued the ryots of Thevadiakanom (O. S. No. 107 of 1923) and obtained a decree directing them to remove the bund BB-1 and restore it to its original position AD. This was done by a commissioner, in execution of the decree, on 28th and 29th October 1925. It may be noted that, whether by deliberate intention or otherwise, the Sivaganga Estate, which was under the Court of Wards, was not made a party to the

proceedings. Subsequently the proprietor of Sevalkanmoi and some others, apprehending that the bund as restored by the Commissioner would be interfered with, petitioned the Subdivisional Magistrate, who passed an order under section 144, Criminal Procedure Code, on 28th December 1925, prohibiting those ryots of Thevadiakanom who had been parties to the suit from "preventing the petitioners in maintaining the original state of the bund." He declined to pass any such order against the Court of Wards Assistant Tahsildar and some of the estate servants, on the ground that they were not parties to the suit. Matters standing thus, on 25th February 1926, a large number of Sevalkanmoi ryots, including the petitioners, assembled at the scene, armed with sticks and spades clearly prepared to exert force should occasion arise. Intimation was sent to the police, and a sub-inspector marched this body of persons to the police station, disarmed them, released them on bail, and charge-sheeted them under section 143, Indian Penal Code.

The point which Mr. Ethiraj seeks to make in revision of the convictions under this section is that, granting the truth of the prosecution case (which indeed appears to me to be incontestable) the petitioners were concerned not to enforce their right or supposed right to the supply of water but merely to maintain it; and that mere maintenance of a right by force or show of force will not constitute an assembly of five or more persons an unlawful assembly. The judgment of the learned Taluk Magistrate contains a clear finding that at the time of the occurrence the bund was in the condition to which the Commissioner had restored it. The learned Subdivisional Magistrate's finding upon the point is very obscure, but if it amounts to holding that the petitioners' opponents had, after the execution of the decree by the Commissioner, restored the bund

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to the line BB-1, the learned Public Prosecutor is willing to concede that there is nothing in the evidence to support this finding. I may take it, therefore, that what the petitioners did was to assemble in force with the intention of resisting an apprehended attempt on the part of the estate officials or ryots to interfere with the bund as fixed by the Commissioner, that is to say, as it originally stood before the Thevadiakanom ryots changed its side. Now as against those of the ryots who had been parties to the suit, the petitioners had obtained a declaration of their right to have the bund as they wished it, and it had been so restored. It is true that they had not made the Estate itself a party but it may, I think, be taken that even as against the estate they entertained a *bona fide* belief that they were entitled to maintain the *status quo*. It is further clear that the petitioners were in actual possession of this right or supposed right at the time when the occurrence took place. That being so, there is clear authority in support of Mr. Ethiraj's proposition. A common illustration of the maintenance of a right by force is where persons receive information that the opposing party is going to dispossess them of a piece of land, and collect upon the land in force in order to resist such an attempt. An example of this class of case is *Pachkauri* v. *Queen-Empress*(1), where it was held that in such circumstances the accused were justified in taking such precautions as they thought were required, and in so doing could not rightly be held to be members of an unlawful assembly. A similar case was similarly decided in *Silajit Mahto* v. *Emperor*(2). For an instance of the maintenance by force of a right to a water-supply, reference may be made to *Bagh Singh* v. *Emperor*(3). A more extreme case of the same kind, where the accused

(1) (1897) I.L.R., 24 Calc., 686. (2) (1909) I.L.R., 36 Calc., 565.
(3) (1924) 81 I.C., 113.

cut a bund which, in disobedience to an injunction, the complainant's party had constructed, was decided in the same sense in *Ram Nandan Prosad Singh* v. *Emperor*(1). The learned Public Prosecutor has drawn my attention to *Gauri Lal Das* v. *The Queen-Empress*(2), which also related to the forcible demolition of a bund which the accused considered to be an infringement of their rights. The facts of that case may be distinguished from those of the present case, as they have been distinguished in *Pachkauri* v. *Queen-Empress*(3), on the ground that when the accused's party arrived in force upon the scene their right had already been infringed. But it is certainly true that the judgment does not proceed upon the distinction between "enforcement" and "maintenance" and clearly lays down that to defend a right by force is to enforce it. I do not think that this view has been followed, and, if I may say so with all respect, I do not find that the passages cited from Dalton's Justice of the Peace and from Russell as expounding the English Law, afford any authority for it. They relate to such assertive acts as making a forcible entry upon land to which a title is claimed, and removing a nuisance in a violent and tumultuous manner. I prefer accordingly to follow the other cases which I have cited, because it appears to me little short of self-evident that in defending what they are possessed of and *bona fide* believe they have a right to—whether it be tangible property or such a right as that to a supply of water—persons who have formed an assembly for that purpose do not render themselves criminally punishable.

I accordingly allow the petition, set aside the convictions and sentences, and direct that the fines, if paid, be refunded.

B.C.S.

(1) (1913) 20 I.C., 623. (2) (1889) I.L.R., 16 Calc., 206.
(3) (1897) I.L.R., 24 Calc., 686.