

## APPELLATE CRIMINAL.

Before Sir Owen Beasley, Kt., Chief Justice, and  
Mr. Justice Cornish.

PUBLIC PROSECUTOR, APPELLANT,

1930,  
December 4,

v.

V. SATYANARAYANA AND TWO OTHERS (ACCUSED 8, 10  
AND 9), RESPONDENTS.\*

*Police Act (V of 1861), sec. 30 (2)—Promulgation of order under, stating licence should be obtained before collecting assemblies, etc.—Whether execution of the law under sec. 30—Person directing procession after promulgation and with knowledge of it—Liability to conviction under section 143, Indian Penal Code (Act XLV of 1860)—Resistance to execution of the law different from refusal to comply with order to disperse—Refusal to comply with order to disperse—Whether necessary for conviction under section 143.*

The promulgation of an order by the Police, under section 30 (2) of the Police Act (V of 1861), that persons collecting assemblies or directing or promoting processions for certain purposes within their contemplation are to apply to the Police authorities for a licence before so doing is the execution of the law as laid down in section 30 of the Act; and any person who after the promulgation of the order and with knowledge of it directs such a procession will be guilty of resisting the execution of the law and therefore liable to conviction under section 143 of the Indian Penal Code (Act XLV of 1860).

Resistance to execution of the law is different from refusal to comply with an order to disperse. A conviction under section 143 of the Penal Code does not require a refusal to comply with an order to disperse.

*King-Emperor v. Abdul Hamid* (1922) I.L.R. 2 Pat. 134, referred to.

APPEAL under section 417 of the Code of Criminal Procedure against the acquittal of the accused for

\* Criminal Appeal No. 382 of 1930.

PUBLIC  
PROSECUTOR  
v.  
SATYA-  
NARAYANA.

offences under sections 143 and 145, Indian Penal Code, by the Sessions Judge of Kistna in Criminal Appeals Nos. 11 and 16 of 1930 on his file (Calendar Case No. 5 of 1930 on the file of the Court of the Subdivisional Magistrate of Bandar).

*Public Prosecutor (L. H. Bewes) for the Crown.*

*P. Satyanarayana Rao for respondents.*

### JUDGMENT.

The three respondents who were accused Nos. 8, 10 and 9 in the Court of Subdivisional First-class Magistrate, Bandar Division, at Masulipatam were convicted together with accused 1 to 7 for offences under sections 143 and 145 of the Indian Penal Code and section 32 of the Police Act (V of 1861). They were sentenced under section 143, Indian Penal Code, to one month's rigorous imprisonment and under section 145 to rigorous imprisonment for six weeks each, the sentences to run concurrently; and they were called upon to execute bonds for Rs. 200 each, with two sureties each for similar amounts, to keep for one year after the expiry of the sentences. As the accused had been sentenced under sections 143 and 145, Indian Penal Code, no sentence was passed with regard to the charge under section 32 of the Police Act. The accused 8, 9 and 10 appealed to the Sessions Judge of Kistna Division who set aside their convictions under sections 143 and 145 of the Indian Penal Code but upheld the conviction under section 32 of the Police Act. The facts of the case are as follows:—His Excellency the Governor of Madras paid a visit to Masulipatam on the 8th February last. Some public meetings were held there by Congress adherents and resolutions for boycotting the Governor's visit, for bringing about a hartal of shops in the town on the day of his visit, and for taking a

procession at the time of his visit of persons carrying black flags in their hands and crying "Governor, go back" were passed. The Circle Inspector of Police of Masulipatam apprehending a breach of the peace made a report to the District Superintendent of Police, Exhibit C, and the latter, after obtaining the permission of the District Magistrate, issued an order under section 30 (2) of the Police Act to the effect that persons collecting assemblies or directing or promoting processions as contemplated were to apply to him for a licence before so doing. This notice is Exhibit B, and was given to Valluri Rama Rao, one of the leading spirits at the meeting already referred to. A similar notice, Exhibit F, was issued which is a notice generally to all concerned. These notices are dated the 7th February 1930. On the morning of the 8th February, when His Excellency the Governor was expected to arrive, a procession of about sixty people started at about eight o'clock in the morning, and went along the Fort Road towards the Robertson Square which included a part of the route along which His Excellency was to go. Accused 1 and 2 were at the head of the procession and the other persons included in the procession were the other accused and the three respondents. The Sub-Inspector of Police, P.W. 1, met the procession on the way, and told its members about the order, Exhibit B, and served copies of it on the first and the second accused, who were leading the procession, individually. The procession then turned back and entered the premises of the Spinners' and Weavers' Association and a meeting was held there inside the building. The Sub-Inspector followed the procession to the Association but did not enter the premises but waited outside on the road. There is no evidence on the prosecution side as to what took place within the building although

PUBLIC  
PROSECUTOR  
v.  
SATTYA-  
NARAYANA.

PUBLIC  
PROSECUTOR  
v.  
SATYA-  
NARAYANA.

there is some evidence on the defence side. The first and the second accused came out of the premises, and according to the prosecution case formed themselves into a procession carrying black flags and crying "Governor, go back". As before stated the first and the second accused were leading the procession. P.W. 1 asked them whether they were going to disobey the order and, when they said that they were, he arrested them then and there. It must be remembered that they had already been served with copies of the notice, Exhibit B. The third accused then came forward and tried to lead the procession. He was also served with a copy of the order but on persisting in his attempt he was also arrested. The learned Sessions Judge finds that after the first, the second and the third accused were arrested, accused 4 to 11 one after the other put themselves at the head of the procession and began to direct it and this finding of fact is of considerable importance in this case. They were arrested by P.W. 1 one after the other. The prosecution case is that before arresting these persons P.W. 1 gave oral orders to all persons in the procession to disperse but that they refused to do so. It is only, of course, on those facts being found that the accused can be convicted under section 145, Indian Penal Code. The learned Sessions Judge goes on to say with regard to the conduct of the accused 4 to 11: "At that time they were not merely in the rank and file of the procession. They had begun to direct it". The defence version with regard to the accused at this time is that it was resolved inside the premises, in view of the order of the Superintendent of Police, that they should not go out in procession but that each man should go his own way carrying a black flag shouting "Governor, go back". That sets up the case that each person was acting individually and not

collectively with the others. That version is not accepted by the learned Sessions Judge in view of the evidence of D.W. 2 and D.W. 11. The learned Sessions Judge, however, acquitted the three respondents of the charge under sections 143 and 145, Indian Penal Code, and in acquitting them adopts the dissenting judgment of Das J. in *King-Emperor v. Abdul Hamid*(1) and dissents from the rulings of the two Judges forming the majority of the special Bench which decided that case. He says that there is no evidence that the respondents acted together with others with the common object of resisting the execution of the District Superintendent's order, and also holds that in this case there was no order to disperse and therefore no refusal, and that there was no overt act of resistance. With regard to the evidence, in this case, of an order to disperse, we think that the prosecution evidence does not sufficiently prove that any such order was given. Therefore the respondents cannot be convicted, under section 145 of the Indian Penal Code, of having refused to disperse after such an order. There remains, however, their conviction under section 143 of the Indian Penal Code. For the prosecution, it is contended that the second clause of section 141 applies to this case. Section 141 defines an unlawful assembly as follows :—

“ An assembly of five or more persons is designated an ‘unlawful assembly’ if the common object of the persons composing the assembly is—

Second.—To resist the execution of any law, or of any legal process;”

The prosecution case is that the respondents resisted the execution of the law, namely, by directing a procession without a licence. For the accused, it is argued that the order, Exhibit B, is not a law that neither was

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

PUBLIC  
PROSECUTOR  
v.  
SATYA-  
NARAYAN.

the law being executed and, that there has been no resistance. To constitute resistance, an overt act, it is argued, is required, and there is the authority of *King-Emperor v. Abdul Hamid*(1) already referred to in support of that argument. In that case it was held that resistance connotes some overt act, and that mere words, when there is no intention of putting them into effect, will not be sufficient to prove an intention to resist. Where there is, as in the Patna case, a refusal to disperse at the command of the Police, that clearly constitutes an overt act. Here, it is argued by the defence that in this case there was no order to disperse given by the police and therefore no refusal, and that there has been no overt act which would connote resistance. This argument appears to us to be based upon a mistake which the learned Sessions Judge has made. Resistance to execution of the law is one thing and refusal to comply with an order to disperse is another thing. Section 145 is an aggravated offence. A conviction under section 143 does not require any refusal to comply with an order to disperse at all. The question to be considered is whether the accused in this case have been guilty of some overt act, and in paragraph 11 of his judgment the learned Sessions Judge finds facts which clearly do amount to overt acts because he agrees that the accused 4 to 11 one after the other put themselves at the head of the procession and began to direct it. If the Police order, not to direct a procession without a licence, is the execution of the law, then clearly the direction of the procession, after such an order or after the respondents became aware of such an order, amounts to resistance of the execution of the law. It is perfectly clear that, after the procession had been stopped in the first instance and the first and the second

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

accused personally served with a copy of Exhibit B, the procession turned back to the premises of the Spinners' and Weavers' Association and there held a meeting. It is obvious that the subject under discussion at the meeting was the Police order not to continue the procession without a licence. At the end of the meeting the accused came out, the first two at the head of the crowd, and after they had been arrested, the other accused in turn put themselves at the head of the procession. Obviously it had been decided at the meeting that the procession should go on without a licence from the Police: the learned Sessions Judge has rejected the defence story that each of the accused was acting independently of his fellowmen in going out and carrying black flags. The evidence clearly points to an agreement by all the members of the procession to defy the police order and that all the accused had that common object. We are amazed at the statement of the learned Sessions Judge in paragraph 9 of his judgment where he says: "So far as these appellants are concerned there is not even an iota of evidence on the prosecution side tending to show that they either collected assemblies of men or directed or promoted processions along with others forming an association of five or more with the common object of resisting the execution of law. P.W. 1's very words quoted above only show that each one of the accused 4 to 11 acted individually when he came forward to direct the procession, and his evidence renders it impossible to attribute concerted action and a common object to these appellants." In view of the fact that in paragraph 3 he has rejected that contention of the respondents, his observations in paragraph 9 are amazing, and in paragraph 11 he contradicts what he has said in paragraph 9. If any support to the prosecution case is required,

PUBLIC  
PROSECUTOR  
V.  
SATYA-  
NARAYANA.

the evidence of D.W. 2 provides it. He says, "From the conduct of the procession I inferred and thought that the decision was to go out in procession and disobey the orders issued under the Police Act. I thought that they were purposely disobeying orders." This being so, the only question that remains to be considered is whether the Police order was the execution of law. In *King-Emperor v. Abdul Hamid*(1), to which reference has already been made, the majority view was thus expressed :

"When a notification is issued by an executive authority in exercise of a power conferred by statute, that notification is as much a part of the law as if it had been incorporated in the body of the statute at the time of its enactment. The command is in effect a command by the appropriate legislative authority. In the present case if the notification was in compliance with section 30 of the Police Act, then, in my opinion, it was a law and certainly a legal process."

We are not prepared to say that such an order is a legal process but it appears to us quite clear that the Police order is an execution of the law. The law is enacted in section 30 of the Police Act and it is, that under certain circumstances persons directing a procession shall apply for a licence. The conditions are that such a procession, in the judgment of the Magistrate of the district or the Subdivisional Magistrate, if uncontrolled, would be likely to cause a breach of the peace. Then in such cases the District Superintendent of Police or the Assistant District Superintendent of Police may issue an order requiring the person directing such procession to apply for a licence. The issuing of the order by the Police is the execution of the law as laid down in section 30 of the Police Act, and it seems to us to make no difference whatever that a discretion is given

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



to the District Superintendent of Police or the Assistant Superintendent of Police to execute the law. When he exercises his discretion in issuing a notice, he is executing the law ; and for the reasons already stated, the respondents, in directing the procession after the promulgation of the notice by the Police and after they were aware of such a notice, were resisting the execution of the law. Hence their conviction under section 143, Indian Penal Code, by the Subdivisional Magistrate of Bandar was perfectly correct. We agree that the conviction of the respondents under section 145, Indian Penal Code, cannot be upheld and that the learned Sessions Judge was correct in setting it aside. The order here is that the judgment of the learned Sessions Judge setting aside the conviction of the three respondents under section 143 of the Indian Penal Code must be reversed and the order of the Subdivisional Magistrate, Bandar, restored. As the respondents cannot also be sentenced under section 32 of the Police Act, the sentences passed upon them by the learned Sessions Judge under that section must be set aside.

PUBLIC  
PROSECUTOR  
V.  
SATYA-  
NARAYANA.

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