

CRIMINAL REVISIONAL.

1887
November
25.*Before Mr. Justice Mahmood.*

QUEEN-EMPRESS v. SHEODIN AND ANOTHER.

*Act X of 1872 (Criminal Procedure Code), s. 518—Duration of Magistrate's order—
Criminal Procedure Code, s. 144—Act XLV of 1890 (Penal Code), s. 188.*

In 1876 a Magistrate passed an order under s. 518 of Act X of 1872 (Criminal Procedure Code), directing the Saraogis of Etah to take one of their annual religious processions along a particular route and at a particular hour. In 1886, in which year there was no fresh promulgation of the order, the Saraogis took their procession along another route and at a different hour, and for so doing some of them were convicted and sentenced under s. 188 of the Penal Code.

Held that the conviction was wrong, the order of 1876 having a temporary operation only. *Gopi Mohun Mullick v. Taramoni Chowdhani* (1) referred to.

The facts of this case are sufficiently stated in the judgment of Mahmood, J.

Mr. J. Simeon, for the petitioners.

Babu Jogindro Nath Chaudhri and Babu Ratan Chandra, for the respondents.

MAHMOOD, J.—This case has come up before me at the instance of the petitioners for interference in revision under s. 439 of the Code of Criminal Procedure. The facts out of which the dispute has arisen may briefly be stated to be the following:—

In the town of Etah the Hindu population seems to be divided into two sections holding religious views antagonistic to each other. One of these sections, and probably, as I am informed, forming the majority of the population, are Vaishnavites, that is, the worshippers of Vishnu, who is one of the gods of the Hindu Trinity. The other sect, who are stated to be the minority of the population, are Saraogis or Jains, who repudiate entirely the sanctity of the Hindu Trinity of the Godhead and the authority of the minor gods and goddesses, and who also repudiate the sanctity of the Vedas, the Puranas, and other holy scriptures of the Hindu religion. Indeed they are a section of the Buddhists holding doctrines which also prevail in other parts of India. These conflicting doctrines have before now produced disturbances of the peace in connection with religious processions. It is stated by Mr. Simeon on behalf of the petitioners, and I myself am aware of the fact as a matter of the religious history of this part of the country (of which fact I can

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take judicial notice under the latter part of s. 57 of the Evidence Act (I of 1872), that the Hindus belonging to the Vaishnav creed look with horror upon the appearance of the idol of Parasnath, whom the Saraogis worship, and indeed regard it as a sin to look at the idol. It was no doubt in consequence of this circumstance that, on the 2nd September, 1876, the Magistrate, acting under the authority which s. 518 of the Criminal Procedure Code (Act X of 1872) conferred upon him, promulgated an order whereby it was determined that the Saraogis were to take the procession of *Rath-Jatra*, or *Parasnath-ka-Mela*, as the ritual is called there, by a particular route and at a particular time. The object of making the night as the time when the *Rath*, or chariot, was to proceed was to obviate as much as possible the Vaishnav section of the Hindu community from looking upon the image.

It appears that for some years after the 2nd September, 1876, the route and the time of the procession of this annual ceremony were duly observed, and that no occasion arose for any dispute between the two sections of the community, and it was not till 1886 that any quarrel arose in respect of the matter.

It appears that in September, 1886, when the Saraogis contemplated the performance of the ceremony of *Rath-Jatra*, or religious procession of the chariot of Parasnath, which in many respects and incidents is analogous to the procession of the chariot of Jagarnath—a Vishnava Hindu deity—they applied to the Magistrate for certain police arrangements, no doubt expecting possible disturbances by the Vaishnav section of the community. Thereupon the Magistrate, by an order of the 13th September, 1886, which may perhaps be taken to have been passed under s. 144 of the Criminal Procedure Code (Act X of 1882), issued no specific directions to the petitioners Saraogis, but directed the District Superintendent of Police to make the usual arrangements. The procession took place on the 14th September, 1886, in the forenoon of the day, and it proceeded by a route and at a time not prescribed by the Magistrate's order of the 2nd September, 1876, which pointed out night to be the time when the *Rath* was to be paraded.

Upon this state of things a complaint was made by Mr. Simeon's clients, the Vaishnav Hindus, charging Mr. Chaudhri's clients, the

Saraogis, with having committed the offence mentioned in s. 188 of the Indian Penal Code, and it resulted in a conviction of the accused and sentence of fine by the Magistrate, who held that the action of the Saraogis amounted to a disobedience of the Magistrate's order of the 2nd September, 1876. The Saraogis, who are represented before me by Mr. *Chaudhri*, appealed from such conviction to the learned Sessions Judge, who, by his order of the 2nd July, 1887, directed a further enquiry as to whether or not the original order of the 2nd September, 1876, was repromulgated in 1886. It was found by the Magistrate upon evidence, and in that conclusion the learned Sessions Judge agreed, that the order of 1876 was not repromulgated in 1886. The learned Judge, therefore, held that at the time when the procession of the *Rath-Jatra* took place on the 14th September, 1886, the Saraogis in varying the time and the route of the procession were not disobeying any subsisting order of the Magistrate, and that, therefore, they were not guilty of offence under s. 188 of the Indian Penal Code.

I am entirely of the same opinion. It seems to me that in interpreting statutes of a penal character it is important to see that the powers conferred upon the Magistrates are duly exercised with reference to the rendering unlawful of acts that would otherwise be lawful. Under the old Code, Act X of 1872, s. 518 gave to Magistrates the power to issue orders in cases of obstruction, danger to human life, or riots, and the explanation to the section clearly shows that the Legislature in conferring this power intended it only to be applied to emergent matters. That section, however, did not prescribe any limitation or duration as to the duration of the order remaining in force; but a Full Bench of the Calcutta High Court in *Gopi Mohun Mullick v. Taramoni Chowdhurani* (1) concurred in holding upon general principles of the interpretation of such statutes that the Magistrate was not empowered to pass an order under s. 518 of Act X of 1872 which would have more than a temporary operation, and that the grant of what is in effect an order for a perpetual injunction was beyond such magisterial jurisdiction. I follow the principles of that ruling, and I cannot help thinking that s. 144 of the present Code, in modifying the

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law contained in the corresponding section 518 of the old Code, takes into account what Garth, C. J., said in the Full Bench case to which I have referred, and I say this because I find that whilst s. 518 of the old Code was silent as to the duration of a Magistrate's order passed for the purposes mentioned, the present Code in the last paragraph of s. 144 contains express provisions, saying that "no order under this section shall remain in force for more than two months from the making thereof, unless in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the local Government, by notification in the official Gazette, otherwise directs." This, then, is the present law, and I think also was virtually the older law, though, of course, no duration was named in the older Code.

Applying these views to this case, it is clear that the order of the 2nd September, 1876, was not promulgated again in 1886 by the Magistrate, and that no conviction could take place because of any disobedience of the order of September, 1876, an order which cannot be held as having subsisted ten years. Mr. *Simeon* on behalf of the petitioners has indeed contended that the language of the order of the 13th September, 1886, was to incorporate all the terms, conditions and particular directions of the order of the 2nd September, 1876. I have heard the original order of September, 1886, and cannot accept this contention. The words of the order contain no specific directions either as to the time of the procession or the route through which it was to pass, and I cannot take the expression "as usual" to imply that the order of the 2nd September, 1876 was incorporated there in its entirety. And because the order of the 13th September, 1886, was silent as to this matter, no offence was committed by the Saraogis in carrying the procession by a route and at a time other than that prescribed by the Magistrate's order of 1876 as they did on the 14th September, 1886.

I hold, therefore, that the learned Sessions Judge has rightly acquitted the Saraogis, and that no interference in revision is required by this Court. The application is dismissed.

Application rejected.