

CRIMINAL MOTION.

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

GOLAP PANDEY (PETITIONER) v. R. H. BODDAM (OPPOSITE PARTY).*

1889
June 8.

Summary Trial—Magistrate, power of, to try case summarily—Criminal Procedure Code (Act X of 1882) s. 260—Criminal Trespass—Penal Code (Act XLV of 1860), s. 447.

A complainant applied to a Magistrate for process against certain persons under ss. 447, 146, 148, and 149 of the Penal Code. The Magistrate, having perused the petition of the complainant and examined him on oath, issued summonses against the persons named under those sections. The complainant was not himself an eye-witness of the occurrence, and merely stated in his petition and evidence what he had been told by his servants. Subsequently, before the accused appeared, the Magistrate examined an eye-witness, and issued a fresh summons under s. 447 only, and then proceeded to try the case summarily and convicted one of the accused. It was contended that he had no power so to try and dispose of the case.

Held, that the Magistrate had power to try the case summarily.

When a Magistrate ascertains that the facts which are alleged to have taken place disclose only an offence triable summarily, he can dispose of such case summarily, and the mere fact that a complainant enumerates sections of the Penal Code relating to offences not triable summarily does not affect the jurisdiction of the Magistrate, unless the facts of which he really complains disclose such offences.

During the pendency of a civil suit, certain persons, on behalf of the plaintiff, went on to the premises belonging to the defendant for the purpose of making a survey and for getting materials for a hostile application against the defendant. They went (some of them armed) and without the permission of the defendant, and in his absence, and when the defendant's servants objected to their action, they persisted in their trespass, and endeavoured to prevent opposition by making false statements as to the authority under which they were acting,

Held, that their actions amounted to criminal trespass.

THE facts of this case were as follows :—

Mr. R. H. Boddam, the complainant, was the lessee of a tract of land from the Raja of Palganj on the Parasnath Hill, which was a hill sacred to the Sitambari Society of the Jain community,

* Criminal Motion No. 192 of 1889, against the order passed by W. H. Thomson, Esq., Deputy Magistrate of Giridih, dated the 22nd of April 1889.

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and on and about which were situate temples belonging to that society. The complainant had originally a tea garden on his land, but finding that it would apparently be a profitable business he set up a hog's lard manufactory on his land. This action gave offence to the society, and various proceedings were taken with a view to put a stop to the manufactory which ultimately resulted in a civil suit being filed against Mr. Boddam and his lessor, which suit was pending at the time of these proceedings. On the 23rd March 1889, Mr. Boddam laid a complaint before the Deputy Magistrate of Giridih, charging the petitioners Golap Pandey and others with offences punishable under ss. 447, 146, 148 and 149 of the Indian Penal Code, and asking that they might be bound down to keep the peace under s. 106 of the Criminal Procedure Code.

The complaint was based on a petition of Mr. Boddam in which he set out the facts leading up to the civil suit, and the annoyance he had suffered in consequence, and stated that on the 24th February, when he was away in Calcutta, a large party under the leadership of Golap Pandey, acting under the orders of the temple authorities, trespassed on to his garden, and made a survey of his lands; that two of the party were armed with swords and a number of the others with *lathies*; that they threatened his servants, and in spite of their objections, proceeded to make a survey of the land; and that their proceedings nearly resulted in a breach of the peace. Mr. Boddam's deposition was recorded by the Magistrate in support of his application, and it appeared that his knowledge of the occurrence was derived from information received from his servants, as he himself was away in Calcutta at the time.

The Magistrate, on this application, issued summonses against the persons named, under the sections named in Mr. Boddam's petition.

On the 6th April, the returnable date of the summons, none of the accused appeared owing to their inability to reach the Court on that day. The Magistrate on that day appeared to have examined one witness named Bhuttu Maji, who was an eye-witness of the occurrence complained of by Mr. Boddam, and upon his evidence issued fresh summonses to the accused under s. 447 of the Penal Code only.

On the 13th April, the case came on before the Magistrate, who tried it summarily and convicted the accused Golap Pandey of an offence under s. 447, and sentenced him to pay a fine of Rs. 100.

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The judgment of the Deputy Magistrate was as follows :—

Mr. R. H. Boddam, of Parasnath, states on oath, that he has the lease of a large tract of land from the Raja of Palganj, on an eastern spur of the Parasnath Hill, a hill which is sacred to the Sitambari Society of the Jain community. This society has temples at Madhuban, the foot of the hill, and on the top of the hill ; they have also several shrines on the several peaks. These temples and shrines are visited at various times of the year by Jain pilgrims. The leaders of the society are Rai Budrinath Das of Calcutta and Rai Dhunput Singh of Moorshedabad. Accused Golap Pandey is their agent at Madhuban, and is manager of the various temples and shrines. Mr. Boddam does not know the other two defendants. Mr. Boddam has a tea garden on the lands leased him, and in the midst of this garden he has recently established a piggery and a lard manufactory. This action on the part of Mr. Boddam seems to have given the Sitambari Society great offence, and whereas the former and the representatives of the latter used to be very friendly before, they are now, I may say, rancorous enemies. The Sitambari Society have for some time been trying to force Mr. Boddam to close up his piggery and lard manufactory. They at first worked through the Bengal Government, and then instituted a civil suit. An injunction was issued by the Deputy Commissioner of Hazaribagh, directing Mr. Boddam to stop all business at his manufactory, until the disposal of the civil suit. Mr. Boddam appealed to the High Court, and on the 12th February the injunction was set aside. Mr. Boddam at once issued orders for the resumption of operations, and he says that the Sitambari Society almost simultaneously adopted ways and means to terrorize his workmen, and induce them to desert, and thus smash up his (Mr. Boddam's) business. While Mr. Boddam was away at Calcutta, a large party, acting under the orders of the temple authorities, trespassed into Mr. Boddam's garden and made a survey ; Mr. Boddam says this took place on the 24th February, but the evidence heard by me, shows it was on Monday, the 26th February. Mr. Boddam insinuates that the survey was all sham, that the party simply came to intimidate his workmen, and they succeeded in this, some of his workmen have run away, and his munshi, Bhaitu, has served a notice to quit. Mr. Boddam also states, that the leaders of the society have often told him that if he persisted in carrying on the lard manufactory, he would be jeopardizing his life. Mr. Boddam wants defendants to be punished for their trespass, and also to be bound down to keep the peace under s. 106, Criminal Procedure Code. I find that, under Mr. Boddam's lease, he is bound to give up to the Sitambari Society any portion or portions of the lands

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leased him, if it is needed by them for the purpose of erecting temples, shrines or dharmshalas ; Mr. Boddam is entitled to an abatement of rent for each such relinquishment. There is a Government road from Madhuban to the top of the hill. This road runs through Mr. Boddam's garden. Mr Boddam's bungalow is a good way off the road, and a private road leads to it from the Government road. This private road continues on to the lard manufactory, which is further interior. *Bona fide* visitors are allowed access to the garden, but Mr. Boddam says that the public have no right to make use of his private roads and paths for any and every purpose they may choose. Recently Mr. Boddam has made a cart track, which passes by his lard manufactory ; this track acts as a short cut for his workmen who come up from the foot of the hill ; it is also admitted by Mr. Boddam's witnesses that jungle people take their carts along the track.

Bhattu Manji, aged 35, son of Gopal, is Mr. Boddam's munshi, and is in charge of the lard manufactory ; in general matters he is second in authority to Kishen Manji, aged 25, son of Bilsa. The latter remains in charge of the garden during Mr. Boddam's absence. Hulas Singh, aged 30, son of Bhavani, is Mr. Boddam's bungalow peon. These three men have been examined as witnesses by the prosecution. Bhattu's deposition shows that, on a Monday, Golap Pandey Lukshmi Chand and a Bengali Amin all of a sudden turned up in doolies at the lard manufactory. Each dooly had four bearers ; defendants Gonder and Amrit accompanied the party and also a flag bearer. The party came up by the jungle cart track, referred to above, and not by the Government road. Witness insinuates that this route was adopted, because the party wished to avoid being observed by Mr. Boddam's workmen and labourers, whom they would have met, had they come up by the regular road. Gonder and Amrit had each a sword, and there was also a sword in Lukshmi Chand's dooly. The party began a survey ; witness remonstrated with them for attempting such a thing in his master's absence, and without his previous permission ; he was scolded into silence, and was told that the party were acting under the orders of the Bengal Government. He withdrew further opposition, and the party after taking bearings to a peak on the top of the hill, and making a survey of the piggery and the lard manufactory, proceeded towards the bungalow, measuring the road as they went. Witness did not follow them. Witness gives some hearsay evidence regarding the threats to the workmen, referred to by Mr. Boddam, and says that two workmen, Birbal and Roopun, have run away, and he himself intends leaving. Witness says that before the survey began, an offering of a piee was made to a stone near the piggery, he does not remember having seen any offering made to the stone previous to this, nor has he heard it styled " Bhoirubsthan." On reaching Mr. Boddam's bungalow, the party were confronted by Hulas Singh, and a scene similar to what occurred between them and Bhattu again took place. Witness snatched the flag and refused to give it up. Matters stood thus, when Kishen Munshi

appeared on the scene, he bid the peon stand aside, and entered into a conversation with the party himself. This witness, Hulas, says that the stone to which offerings are made, is not on Mr. Boddam's land. Kishien Manji says the party boasted of having received orders from the Bengal Government to make the survey; witness asked for the order; it was not produced, but he was told that Rais Dhunput Sigh and Budri Dass were great friends of Government, and had ordered the survey. While this conversation was going on, the party finished their work and left. Witness at first said that, when he appeared on the scene, Hulas was having a peaceful conversation with the trespassers, but he corrected himself immediately after, and said that angry words were passing between them.

Such is the case for the prosecution, a very much tamer affair than I had supposed it to be. Golap Pandey says that private business took him to the vicinity of the piggery; an amin was going up to survey the piggery and the "Bhoirubsthan" in it, and he accompanied him to show him the latter place. The other two defendants simply acted as attendants. Golap Pandey seems to think his action quite legal; he says he has always had free access to Mr. Boddam's house lands and premises, and that he was not legally bound to take previous permission for the purpose of an entry to make a survey. The presence of the sword is ascribed to the practice of jungle travellers always having such weapons with them for the purpose of defence against wild beasts. Prosecution witness, Bhutta, distinctly says that the object of the trespassers was to make a survey. The evidence of Ishri Pershad, aged 28, son of Tejnarain, shows that the Deputy Commissioner's injunction was set aside, because in the plaint which accompanies the application made by the Jains for the injunction the boundaries of the tract in lease to Mr. Boddam were not given, nor were the interior details of his garden and piggery fully and properly described. The High Court transferred the civil suit to the Subordinate Judge of the 24-Pergunnahs, and the legal advisers of the Jains advised the making of another attempt for an injunction after obtaining all the necessary materials. They directed Lukshmi Chand to have the tea garden surveyed and to prepare a map, showing its boundaries and the position of the piggery, lard manufactory, and Mr. Boddam's bungalow in it. Witness cannot say whether the leaders of the community were consulted in this matter, or whether their permission was obtained to the making of a survey; so far as witness' knowledge goes, Lukshmi Chand was given full powers to exercise his discretion in this matter by the legal advisers, and he appointed an amin, whose name witness does not know, and had the survey made. Witness files the map prepared by the amin which is marked Exhibit I. On all the facts before the Court, there is hardly a doubt that the real object of the trespass was to make a map of Mr. Boddam's lands and premises for the purpose of the civil suit, but they ought to have known that doing this in the illegal way they did would cause Mr. Boddam annoyance.

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Poran Chand, aged 28, is one of the managers at Madhuban. He swears to the existence of the most friendly relations between his community and Mr. Boddam, prior to these complications; when the lard business was first started, witness, under orders from his principals, visited the place without obtaining previous permission, and was shown over the works by the *ekota sahib*, and afterwards by Mr. Boddam himself. Witness says that Mr. Boddam's garden paths are used as a short cut by him and pilgrims; that he has never been stopped while passing through the garden. He says there is a "Bhoirubsthan" near the piggery, which pilgrims visit while descending from the shrines on the top of the hill; witness says he has seen offerings being made to this idol, which, he says, is in Mr. Boddam's compound. To a question put by the Court, witness said that pilgrims have a right to visit the "Bhoirubsthan," but Mr. Boddam may send them away, if he finds them straying about in other portions of his lands without his permission. Witness was asked whether the Jain community had a right to enter on Mr. Boddam's lands, and do any act they pleased; after a deal of hesitation he gave a reply in the affirmative, and said they could build temples and shrines on any portion of Mr. Boddam's lands, without taking his previous permission. Witness says he was away at Moorshedabad when the amin visited the place, and he cannot say under whose orders the survey took place.

Admitting all that defendants urge, which are: (1) that the Jain community have a right to make Mr. Boddam deliver to them lands they may need for sacred purposes; (2) that they use the garden paths as a short cut; (3) that they have a right to visit a "Bhoirubsthan" near the piggery; (4) that they are admitted into Mr. Boddam's lands as sight-seers; (5) that previous to these complications the temple people were allowed to go in and out of Mr. Boddam's lands without any let or hindrance, nevertheless, it is very clear that they have not the right to go on Mr. Boddam's lands, and do any or every act they please. Defence witness, Poorno Chunder, distinctly says that Mr. Boddam would be perfectly justified in sending out of his premises any member of the community he may find straying about portions of his lands other than that occupied by the "Bhoirubsthan."

Defendants' vakil urges that all the facts set forth by the prosecution do not constitute criminal trespass, for proof of motive to annoy on the part of his clients is absent. He urges that a survey for the purpose of a civil suit pending was absolutely necessary, and an entry for the purpose of such a survey does not amount to criminal trespass. A distinct provision is made in the Civil Procedure Code for such a case; if the vakil's interpretation of the law were correct, the Code would have said that the person wishing to make the survey was at liberty to enter his adversary's lands and make the survey, without being liable to be treated as a trespasser; on the contrary, the Code lays down that the survey in such a case is to be done through the Court. Defendants admit having acted all along under legal advice.

and they ought to have known what the correct procedure is; they departed from the correct procedure wilfully, and it is absurd for them to argue, that they had no idea that their conduct would cause Mr. Boddam annoyance. Their action did cause annoyance; they must have known very well that they would cause annoyance, and the Court holds that all the elements necessary to make a trespass—criminal trespass—existed. The Court is distinctly of opinion that defendant Golap Pandey ought to have taken Mr. Boddam's permission before he made the survey, and that his having done so without permission, amounts to an entry for the purpose of causing annoyance. The Court finds Golap Pandey guilty of criminal trespass to cause annoyance, and, under s. 447 of the Penal Code, sentences him to a fine of Rs. 100. As regards the other two defendants, the evidence shows they followed Golap Pandey simply as attendants, and on the facts before the Court, it would not be fair to hold that they were participators in the offence committed by Golap Pandey, the Court therefore acquits them under s. 245, Criminal Procedure Code.

The Court does not consider action under s. 106 Criminal Procedure Code needed.

Golap Pandey thereupon applied to the High Court under its revisional power for a rule, calling on the Deputy Magistrate and the opposite party to show cause why the conviction and sentence should not be set aside, upon, amongst others, the following grounds :—

(1). That the Deputy Magistrate had no jurisdiction to try the case under s. 260 Criminal Procedure Code, and the said trial was illegal and improper, and as such ought to be set aside.

(2). That the proceedings and the judgment of the Deputy Magistrate did not comply with the provisions of s. 264 Criminal Procedure Code, and therefore the conviction and sentence based thereon ought to be set aside.

(3). That the lands in dispute being the subject-matter of the civil suit in which the complainant had been sued as a trespasser on the said lands, the petitioner, the servant of the plaintiffs therein, was not guilty of an offence under s. 447 Penal Code, for a *bona fide* entry therein for the purpose of a survey, under legal advice, for the purpose of the said suit without any intention of either committing any offence or intimidating or insulting or annoying the complainant.

(4). That there being no evidence or finding that the complainant was the owner of the lands (and, as a matter of fact, a

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bond fide civil suit being pending in the Civil Court with respect to the title thereto) the conviction under s. 447 was illegal.

(5). That, admittedly the Jain Sitambari Society having a right to go over the Hills for the purpose of worshipping or selecting a site for any new temple thereon, the entry, as alleged and found against your petitioner, did not constitute any offence under s. 447 Penal Code.

(6). That as there was no evidence that the petitioner entered the land with the intention of committing any offence or intimidating or insulting or annoying the complainant or his men, the learned Deputy Magistrate was wrong in convicting the petitioner under s. 447 Penal Code.

(7). That the findings of the Deputy Magistrate do not support a conviction under s. 447 Penal Code.

Upon this application, a rule was issued, which now came on to be heard.

Mr. *Woodroffe* and Baboo *Dwarkanath Chuckerbutty* for the petitioner.

Mr. *Hill* and Baboo *Dwarkanath Mookerjee* for the opposite party.

The arguments advanced at the hearing of the rule are sufficiently stated in the judgment of the High Court (*TREVELYAN* and *BEVERLEY, JJ.*), which was as follows:—

The first question which we must decide in this case is whether we ought to hold that the Magistrate had no power to try this case summarily, and that his proceedings are illegal.

Learned counsel for the accused cited to us cases to show that the offence was, for the purposes of s. 260 of the Criminal Procedure Code, determined by the complaint, and that if a complaint be made of an offence not triable summarily, the Magistrate cannot under any circumstances investigate the complaint summarily.

Although there are expressions used in some of the cases sufficient to justify this argument, we do not think that the cases are so unanimous as to force us to the same conclusion.

We say this as it appears to us that there may frequently be cases in which the charge has been exaggerated, and is, on exami-

nation by the Magistrate before process is issued, reduced to its proper proportions. This is notoriously the case in respect of many charges, which, according to the complaint, would be triable exclusively by a Court of Session, but which when shorn of their exaggeration the Magistrate very properly finds to be comparatively slight offences within his own cognizance.

If the complainant does not complain of this course, it is difficult to see why the Magistrate should adopt the procedure applicable only to the exaggerated charge.

In the case of *The Empress v. Abdool Karim* (1), Mr. Justice Ainslie, with the concurrence of Mr. Justice Broughton, says: "If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggerations and not to be believed." In another case, *The Queen v. Aboo Sheikh* (2), where a man was charged with rioting, and the Magistrate tried the case summarily as one of mischief and unlawful assembly, Phear and Ainslie JJ, declined to interfere at the instance of the accused person.

In the matter of *Mewa* (3), it was held that a Magistrate has a discretion to enquire into and try a person on any charge which he may consider covered by the facts reported without reference to the particular charge which may have been pressed, and without reference to the procedure, which, when he has determined the offence with which he will charge the accused, it will be competent for him to adopt. In the two latter of these cases the Judges do not seem to have heard any argument, but the same observation can be made with regard to the cases of *The Queen v. Johria Singh* (4) and *Ram Chunder Chatterjee v. Kanye Laha* (5) cited to us by Mr. Woodroffe for the petitioner.

In the present case the complaint was made by Mr. Boddam, who did not pretend to be an eye-witness of what had occurred. The Magistrate, before issuing process against the accused, exa-

(1) I. L. R., 4 Calc., 18 of. p. 20.

(3) 6 N. W., 254.

(2) 23 W. R., Cr., 19.

(4) 22 W. R., Cr., 28.

(5) 25 W. R., Cr., 19.

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mined an eye-witness, one of Mr. Boddam's servants, and his statement showed what the real complaint was. We think that this case comes within the class of cases contemplated by Mr. Justice Ainslie, and that when the Magistrate ascertains that the facts which are alleged to have taken place disclose only an offence triable summarily, he can dispose of such case summarily. The mere fact that the complainant enumerates sections of the Penal Code relating to offences not triable summarily, does not, we think, affect the jurisdiction of the Magistrate unless the facts of which he really complains disclose such offences.

We think that this case was triable summarily. It has also been urged before us, that no offence has been committed, the object of the intruders only being to survey the premises.

No doubt that was their primary object, but when we find them going on to the premises in Mr. Boddam's absence and without his leave, and taking three swords with them, we think it clear that they intended to intimidate Mr. Boddam's servants into not opposing their entering upon the premises, which, from their relation with Mr. Boddam, they must have known he would have objected to their entering. It is true that they seem to have to some extent attempted to avoid discovery, but when accosted by Mr. Boddam's servants they persisted in their trespass, and endeavoured to prevent opposition by the false statement that they had been sent by the orders of the Bengal Government.

The trespass was most unwarrantable, and if it were to be tolerated that while two persons are litigating as to a property, one may go armed on to the property of which the other is in possession for the purpose of getting materials for an hostile application, breaches of the peace would be frequent.

We think, therefore, that the conviction must stand, and we do not think that the fine was under the circumstances excessive.

The rule is, therefore, discharged.

H. T. H.

Rule discharged.