

Before Mr. Justice Piggott.

EMPEROR v. MURLI SINGH.*

1911
June 15.

Criminal Procedure Code, section 107—Security to keep the peace—Circumstances in which the performance of religious ceremonies may amount to a wrongful act likely to occasion a breach of the peace.

Held that persons who performed religious ceremonies in a place not set apart for the purpose and where no such ceremonies had been performed before, and who did so with the deliberate intention of triumphing over, insulting, and wounding the religious feeling of their neighbours, committed a wrongful act and one which might probably occasion a breach of the peace or disturb the public tranquillity within the meaning of section 107 of the Code of Criminal Procedure.

THE facts of this case were briefly as follows :—

Certain Muhammadans, residents of the Kathgarh mohalla of the city of Bareilly took exception to the performance, in the house of one Bajrang Das in the said mohalla, of certain religious rites or ceremonies accompanied by the blowing of a conch. A prosecution was instituted against Bajrang Das for an offence under section 298 of the Indian Penal Code, but he was acquitted by the Sessions Court. Some Hindus of the neighbourhood thereafter proceeded to perform ceremonies of some kind involving the blowing of a conch in a grove or orchard near the house of Bajrang Das. This innovation was strongly resented by the Muhammadans who lived near, and the police authorities found that there was a serious danger of a breach of the peace. Proceedings under section 107 of the Code of Criminal Procedure were taken against both parties, which resulted in the Muhammadans being discharged, and in five Hindus being bound over to keep the peace for a period of one year. The Hindus appealed to the District Magistrate, who set aside the order, except as against one man, Murli Singh, who was found to be the man in possession of the grove or orchard in which the obnoxious proceedings had taken place. Murli Singh applied in revision to the High Court.

Mr. D. R. Sawhny, for the applicant.

The Assistant Government Advocate (Mr. R. Malcomson),
for the Crown.

* Criminal Revision No. 214 of 1911, from an order of P. U. Allen, District Magistrate of Bareilly, dated the 31st of March, 1911.

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PRIGOTT, J.—This is an application in revision against an order of the District Magistrate of Bareilly, which had the effect of confirming an order passed by a Subordinate Magistrate whereby the applicant was bound over under section 107 of the Criminal Procedure Code to keep the peace for one year. The facts found are simple. Some months previous to the institution of the present proceeding certain Muhammadan residents of the Kathgarh mohalla of Bareilly city took exception to the performance in the house of one Bajrang Das in the said mohalla of certain religious rites or ceremonies accompanied by the blowing of a conch. A prosecution was instituted against Bajrang Das for an offence under section 298 of the Indian Penal Code, which resulted in his acquittal by the Sessions Court. Some Hindus of the neighbourhood, not satisfied with the victory thus gained, proceeded further and began to perform ceremonies of same sort involving the blowing of a conch in a grove or orchard situated near the house of Bajrang Das. This innovation was strongly resented by the Muhammadans of the neighbourhood, and the police authorities found that there was serious danger of a breach of the peace. Proceedings were instituted against both parties, that is to say, against the Hindus and Muhammadans both; but the Joint Magistrate came to the conclusion that the Muhammadans before him had done nothing to justify their being bound down to keep the peace. He accordingly discharged them, and bound over five Hindus for a period of one year. The latter appealed to the District Magistrate, who found on the evidence that it was not proved as regards four out of the five appellants before him that they had been guilty in the past of any such conduct as would justify him in inferring that they personally were likely to do any wrongful act that might probably occasion a breach of the peace or disturb public tranquillity. He accordingly set aside the order passed by the first court as against these four persons. He held that Murli Singh, who was admitted before him to be in possession of the grove or orchard in which the obnoxious proceedings had taken place, was a proper subject for the order passed by the Joint Magistrate. I have to consider in the first place whether the blowing of a conch in the grove or orchard under the circumstances

found by the lower court was or was not a wrongful act. The blowing of a conch in a public place for one's personal amusement, or with any other lawful and innocent motive, and without any intention of thereby annoying or hurting the religious feelings of any other persons, is not a wrongful act. The blowing of a conch in connection with ceremonial acts of worship, in accordance with established usage, in a place fixed for the occasional or periodical performance of such ceremonies or worship, will not as a rule be a wrongful act, even though there may be persons within hearing of the sound who find their religious feelings hurt in consequence. In the present case I take it from the findings before me that certain Hindus of Bareilly commenced to perform ceremonies involving the blowing of a conch in a place in no way set apart for the purpose, and where no such ceremonies had hitherto been performed, and that they did it with the deliberate intention of triumphing over insulting and wounding the religious feelings of their Muhammadan neighbours. I hold that this was a wrongful act. As there can be no doubt that it was also an act likely to provoke a breach of the peace and disturb the public tranquillity, any persons found to be responsible for such conduct were proper subjects for an order under section 107, Criminal Procedure Code. As regards Murli Singh personally, the view taken by the District Magistrate is that, whoever may or may not have blown the conch, and whoever may or may not have been present on any particular occasion when it was blown, the circumstances of the case as a whole justified the inference that the objectionable proceedings could not have been started, and could not have been continued in that grove or orchard, without conduct amounting to abetment of the said proceedings on the part of the person in possession of the grove. This is in my opinion a conclusion which it was fairly open to the District Magistrate to arrive at on the facts before him, and I decline to interfere with it in revision.

I have already said enough to dispose of Murli Singh's application with reference to the grounds of revision set forth in his petition to this Court. I am disposed however to add a few words regarding matters which were made the subject of a

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considerable amount of discussion before me at the hearing. Murli Singh is a jail darogah in the public service in these Provinces; and though he was on leave at Bareilly at the time of the proceedings now before me in revision, I may take it that he either has returned, or is likely very shortly to return, to his duties at a station a considerable distance from Bareilly. It has been suggested before me that as matters stand it is difficult to see what practical purpose is served by the existence of the security bond which Murli Singh has furnished in this case, or what effect could be given to the provisions of that bond in the event of disturbance occurring at Bareilly (no matter what the immediate cause of the disturbance might be) while Murli Singh was engaged in watching over the comfort and security of the convicts in a jail two hundred miles distant. Exception was also taken to the actual finding of the District Magistrate regarding Murli Singh's possession over the grove in question, and it was pointed out to me that in the order of the Joint Magistrate and in the evidence upon which it proceeds, the place in question is spoken of as the grove of Jai Singh; also that a Hindu of that name was one of the persons who appeared along with Murli Singh as appellant before the District Magistrate. In his petition addressed to this Court Murli Singh does not suggest any such line of argument as this; and in any case I cannot permit myself in revision to go behind the express finding of the District Magistrate that the possession of Murli Singh over this grove was not merely a fact, but an admitted fact, in his Court. This is no case of a clerical error, for the District Magistrate's order shows clearly that he understood the admission as to possession to be made in respect of Murli Singh a jail darogah on leave. The actual result of the admission was that the District Magistrate holds a security bond as to the practical utility of which there certainly seems room for doubt, while the man Jai Singh, who was spoken of as the owner of the grove or orchard in the first Court, and who appears to be a permanent resident of Bareilly, has been discharged without security. I do not feel it incumbent on me to take upon myself duties and responsibilities which section 125, Criminal Procedure Code, lays upon the District Magistrate. I have thought the matters above referred

to worth noting for the information of the said Magistrate or his successor in office. The order against Murlī Singh, at the time when it was passed, was in my opinion a proper and legal order upon the facts found, and I shall not interfere with it. The application is dismissed.

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APPELLATE CIVIL.

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June 16.

Before Mr. Justice Banerji and Mr. Justice Tudball.

BAHORAN UPADHYA (DEFENDANT) v. UTTAMGIR (PLAINTIFF).*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 21—Occupancy holding—Mortgage—Suit by mortgagor to recover possession—Illegal contract—Restitution of benefit.

Held that the mortgagor of an occupancy holding who has put the mortgagee in possession cannot recover possession upon the ground merely that the mortgage is void under the provisions of the Agra Tenancy Act, 1901, without repaying to the mortgagee the money which he has received from him. *Fath-ud-din v. Karamat-ullah* (1) followed.

THIS appeal arises out of a suit brought by the plaintiff respondent for possession of an occupancy holding which he mortgaged to the defendant appellant under a mortgage deed, dated the 5th of August, 1905, by which a principal sum of Rs. 499 was secured. The grounds on which the claim was put forward were, that the land mortgaged was the cultivatory holding of the plaintiff; that under the provisions of the Agra Tenancy Act the mortgage of such land was void; that there was no consideration for the mortgage, and that it was nominal and fictitious. It is admitted that under the mortgage the mortgagee obtained possession of the property and that he is still in possession. The court of first instance decreed the suit simply on the ground that the property mortgaged was the cultivatory holding of the plaintiff, and the mortgage of it was void. The defendant appealed to the lower appellate court and raised two contentions; first, that the holding was a fixed rate tenancy, and secondly, that the court of first instance should have ordered the plaintiff to refund the mortgage money before obtaining back possession of the property. On the first point the lower appellate court found that the tenancy was an occupancy holding. On the second point it

* Appeal No. 93 of 1910 under section 10 of the Letters Patent.