

the action suggested. The provisions of section 439 itself empower the High Court in revision to enhance a sentence, but it is clear that no sentence has been passed in the present case. The court *instead of sentencing* the accused has ordered him to enter into a bond to appear and receive sentence when called upon. The point of law thus taken may appear a technical one, but it is closely connected with another question of considerable importance, viz., the question whether an appeal lies against an order under section 562 of the Code of Criminal Procedure. I have recently followed the Punjab Chief Court in holding that an appeal does lie, and that question necessarily depends upon the soundness of the contention that in a case like the present no sentence has been passed. It follows, therefore, that if this Court interferes at all in this matter it can only order the case to be re-tried. Under all the circumstances of the case I do not think it worth while to take this step. Let the record be returned.

Record returned.

Before Mr. Justice Piggott.

EMPEROR v. BRIJNANDAN PRASAD AND OTHERS.*

Criminal Procedure Code, section 107—Security for keeping the peace—Evidence—Nature of findings required to justify a Magistrate in passing an order under section 107.

In proceedings under section 107 of the Code of Criminal Procedure, it is not enough for the Magistrate to find that unless the persons before him are bound over to keep the peace, there is likely to be a breach of the peace or disturbance of the public tranquillity. He has to find in respect of each and all of such persons that they are likely to commit a breach of the peace or disturb the public tranquillity, or that they are likely to do some wrongful act which may occasion such a disturbance. *Queen Empress v. Abdul Qadir (1)* and *Jagat Narain v. King-Emperor (2)* referred to.

THE facts of this case were, briefly, as follows :—

There was a controversy between the Hindu and the Muhammadan inhabitants of Najibabad concerning the route of the Dasehra procession. The Hindus were desirous of taking it by a particular route which was objectionable to the Muhammadans, and had been combining to induce the local authorities to sanction the particular route which they wanted; but the

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* Criminal Revision No. 843 of 1914 from an order of L. M. Stubbs, District Magistrate of Bijnor, dated the 8th of September, 1914.

(1) (1886) L. L. R., 9 All., 452. (2) (1910) 7 A. L. J., 1161.

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authorities had refused to do so. Shortly before the last Dasehra, the District Magistrate, thinking it likely that there might be a breach of the peace in connection with the forthcoming procession owing to the somewhat strained relations between the two classes, proceeded to bind over some of the leading Hindus to keep the peace. The persons so bound over applied in revision to the High Court.

Babu *Satya Chandra Mukerji* and Pandit *Rama Kant Malaviya*, for the applicants.

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

PIGGOTT, J.—This is an application in revision against an order passed by the learned District Magistrate of Bijnor, directing the twelve applicants to furnish security for keeping the peace under section 107 of the Code of Criminal Procedure. One of the original applicants has since died and the petition has been prosecuted on behalf of the remaining eleven. I may add that the District Magistrate's immediate object in taking the proceedings resulting in the present order was to provide for the preservation of the public peace in the town of Najibabad during the last Dasehra festival. This has now passed off quietly, and from one point of view it might be said that, even though the period for which the applicants were required to furnish security has not yet expired, it has ceased to be a matter of serious importance whether the Magistrate's order is now affirmed by this Court or set aside. The question, however, is one of some public importance, and, if I may judge from the account of the state of public feeling in the town of Najibabad given in the Magistrate's order, it is unfortunately probable that the matter may come up again in one form or another before the district courts, and eventually before this Court. I think it advisable, therefore, to deal with the application as it stands, that is to say, I propose to consider whether the order under revision was or was not a good and proper order on the materials on the record, at the time when it was passed by the Magistrate on the 8th of September last.

One point taken in the petition of revision before me is that the District Magistrate has imported into his judgement

a number of facts personally known to him, of which there is no legal evidence on the record. The District Magistrate frankly admits that he was necessarily in possession, at the time when he instituted this inquiry, of a great deal of information of one kind or another bearing on the question of the propriety or otherwise of binding over these applicants to keep the peace. He suggests that the parties before him were fully aware of this fact, and that their acquiescence in his proceeding with the inquiry, instead of applying for a transfer of the case to some other court, virtually licensed him to import his own personal knowledge into the decision of the case to such extent as he might think proper. I may say that I regard it as a very satisfactory feature of the case that these applicants, while fully aware that the Magistrate of their district had had occasion to make personal inquiries of various kinds into the question of the disputes pending between different classes of the community in their town, felt such complete confidence in his impartiality and his anxiety to do justice between all classes of the community, that they had no desire to get the inquiry into this particular matter transferred to any other court. At the same time, they were entitled to ask that the final decision should be based simply and entirely upon evidence legally brought on to the record. To some extent at any rate, it seems to me that this has not been done. There are references in the Magistrate's judgement to confidential papers in his own possession and to other matters which cannot possibly have been in evidence in the case. It may no doubt have been inevitable under the circumstances that the District Magistrate should have possessed outside knowledge of these matters, but he would have exercised a sounder discretion if he had kept that knowledge out of the judgement and endeavoured to base his decision entirely upon the relevant evidence in the case.

Another and more important point raised by this application may be stated in this form:—that the findings of fact arrived at, no matter how, by the District Magistrate, are not such as to warrant the order which has been passed requiring these applicants to furnish security. The Magistrate's judgement is a long one and contains a most interesting exposition of the circumstances which led up to the institution of the present proceeding

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and of the existing state of parties and of public feeling in the town of Najibabad. I have found it a little difficult, however, to disentangle from this general exposition of the facts the precise findings on the strength of which the order requiring the applicants to furnish security has been passed. What the law requires to justify this order is a finding that these applicants were likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. These provisions have been interpreted by this Court in a number of rulings, beginning with the elaborate exposition of the law to be found in the case of *Queen Empress v. Abdul Qadir* (1). Of later cases the one most in point is in my opinion that of *Jagat Narain v. King-Emperor* (2). It is not enough for the District Magistrate to record his opinion that, unless these persons are bound over to keep the peace, there is likely to be a breach of the peace or disturbance of the public tranquillity. He has to find in respect of each and all of these persons that they are likely to commit a breach of the peace or disturb the public tranquillity, or that they are likely to do some wrongful act which may occasion such a disturbance.

The point essentially in issue admits of being briefly stated. The Hindus of the town of Najibabad had expressed a desire to take the Dasehra procession along a route which appeared to the local authorities a highly objectionable one. The District Magistrate has evidently come to the conclusion that this desire on the part of the Hindu community of Najibabad, or on the part of some members of that community, is perverse and provocative. To put the matter bluntly, he obviously thinks that no Hindu can have any desire to take the Dasehra procession along that particular route except for the purposes of irritating and provoking his Muhammadan fellow citizens. He finds it proved as against all these applicants that they have been working in various ways in order to secure for the community of which they are members a recognition of their right to take the Dasehra procession along this particular route. He argues that they are, therefore, likely to do something which will occasion a breach

(1) (1886) I. L. R., 9 All., 452.

(2) (1910) 7 A. L. J., 1161,

of the peace or disturb the public tranquillity. The position taken up by the applicants in arguing their case before me seems to be substantially that which was taken up by them in the Magistrate's court. I am not satisfied that it has been properly appreciated or considered by the Magistrate. The applicants contend that they themselves and the members of their community are entitled, in the lawful exercise of their religion and of their rights as citizens of the town of Najibabad, to take the procession down this particular route. They desire to contend that, if any breach of the peace results from their doing so, the blame would not lie on them, but on any other residents of the town of Najibabad who may take it on themselves to use force in order to interfere with persons exercising their lawful rights. They desire to persuade the authorities responsible for keeping the peace in the town of Najibabad that this view is the correct one. However mistaken this view may prove to be, if it is held in good faith, the persons so holding it are entitled to combine together for the purpose of pressing it on the notice of the authorities. The question to my mind is whether the evidence on this record justifies the conclusion that the present applicants, either as members of the Hindu community of the town of Najibabad, or as persons entitled by custom to take a particular part in the annual Dasehra procession, have done anything more than what has been suggested above. Is it correct to say that it is proved in respect of these persons that they are likely themselves to commit a breach of the peace, themselves to disturb the public tranquillity, or to do any wrongful act which may occasion such breach of the peace or disturbance? Indeed, I may put this point even more strongly, and ask myself whether, apart from any question as to the effect of the evidence on the record, there has been any finding by the District Magistrate himself which goes so far as this against the petitioners. The District Magistrate has discussed the proceedings of the Hindu committee in Najibabad to which the majority of these applicants belong. If that committee is a seditious or illegal association it ought to be proceeded against under the ordinary law. The evidence on this record would not justify a finding that the mere fact of membership of that committee would be sufficient to render any

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person liable to be bound over to keep the peace, nor do I understand that the District Magistrate wishes to arrive at any such finding. The essential finding at which the District Magistrate has arrived seems to be embodied in the following words in his judgement:—"They (i.e., the petitioners) wish to get what they want for the future, and with this idea they have instituted a committee which collects funds in order to obtain the object they failed in last year. The attainment of this object would inevitably mean a breach of the peace between Hindus and Muhammadans." I think the District Magistrate might have paused to ask himself more definitely what the "object" above referred to was. It does not seem a sufficient answer to this question to say that the object was that the Dasehra procession might be taken down a particular route. Was the object of the petitioners to take the Dasehra procession, or to cause it to be taken, down that particular route, forcibly and in defiance of any prohibition which might be issued by the authorities; or was it to obtain the recognition by the authorities of their claim to be entitled to follow that route, and so to take the procession along the same with the sanction and under the protection of the authorities? In the former case the applicants have been rightly bound over to keep the peace, in the latter case they have not. Now it does not seem to me that the District Magistrate has come to a finding that, if these applicants were not restrained by an order binding them over to keep the peace, they would be likely to take the Dasehra procession, or to cause it to be taken, down this particular route without the permission of the authorities, or in defiance of any prohibition which the local authorities might issue. Indeed the expression about obtaining "the object failed in last year" suggests a contrary conclusion. What was the object in which the petitioners are alleged to have failed in the previous year? So far as I can gather it was in an attempt to persuade the authorities to permit them to use this route and to enforce, as against any person who might desire to contest the same, the petitioners' alleged right to do so. That the object in question at last year's Dasehra festival was not to take the procession by this route forcibly, and in defiance of the wishes of the authorities seems to be a matter of fair inference from the fact that, when

the local authorities refused such permission, no attempt was actually made to take the procession by the objectionable route. Those members of the Hindu community who were dissatisfied with the decision of the authorities in the matter no doubt protested against the same, and appealed to superior authority; but it does not seem that they made any attempt to override that decision by criminal force. There is no doubt another passage in the District Magistrate's judgement which, if it stood alone, might suggest a different conclusion and an intention on his part to hold that, if securities were not taken from these applicants, there might be an attempt, as he puts it, "to force the route which was refused last year." This expression, however, seems to me difficult to reconcile with other passage in the same judgement. Moreover, it is not as it stands a sufficient finding of fact to justify the order complained of. It is too vague. It only expresses an apprehension on the Magistrate's part that an attempt might be made by some person or persons unspecified. To justify the order which has been passed in this case, I should require a clear finding, resting upon reasonable evidence, that these applicants, if not bound over to keep the peace, would have been likely to employ force, or to incite other persons to employ force, in order to take the Dasehra procession along the objectionable route without the permission of the local authorities, and in defiance of any prohibition which those authorities might see fit to issue. It does not seem to me that there has been any such clear finding against the applicants in the present case. For these reasons I accept this petition of revision. I set aside the order complained of and direct that the security bonds furnished by these applicants be discharged. If the applicants, or any of them, have failed to furnish the required security they should be released from confinement.

Order set aside.

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