

## REVISIONAL CRIMINAL.

*Before Mr. Justice Lindsay.*

EMPEROR v. KRISHNA LAL.\*

1916  
July, 25.

*Act No. V of 1861 (Police Act), sections 31 and 32—Jatrawals—Competence of police to issue general order for the control of the business of Jatrawals.*

*Held*, that it is not competent to a Superintendent of Police to issue a general order forbidding persons of a certain class to frequent certain specified places without having first obtained a licence.

In this case the Superintendent of Police at Benares, purporting to act under section 31 of the Police Act, 1861, issued a general order forbidding persons carrying on the trade, a business of *jatrawals*, from frequenting the railway station at Moghal Sarai and the thoroughfares and other public places at Moghal Sarai without having previously obtained a licence for that purpose.

One Krishna Lal, a *gangaputra*, was convicted under section 32 of the Police Act, in that he disobeyed this order by practising as a *jatrawal* at Moghal Sarai without having obtained a licence. Against his conviction and sentence Krishna Lal applied in revision to the High Court.

Mr. J. Nehru, for the applicant.

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

LINDSAY, J :—This is an application for revision on behalf of one Krishna Lal who has been convicted of an offence under section 32 of the Police Act (V of 1861). The conviction has been upheld in appeal by the District Magistrate. The above mentioned section of the Police Act provides for the punishment of persons who oppose or disobey orders issued under the three preceding sections of the Act or who violate the conditions of any licence granted for the use of music or for the conduct of assemblies and processions. The order which the accused is said in this instance to have disobeyed purports to have been issued under section 31 of the Act and the principal matter to be considered here is whether this order is valid and one which could lawfully issue under section 31.

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\* Criminal Revision No. 899 of 1916, from an order of G. B. Lambert, District Magistrate of Benares, dated the 29th of February, 1916.

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A copy of the order is on the record. It is in the form of a printed proclamation issued over the name of the Superintendent of Police, Benares, and contains elaborate directions for the conduct of *jatrawals* whose business takes them to the Railway Station at Moghal Sarai for the purpose of escorting pilgrims to Benares. It is not necessary to refer in detail to all the rules set out in this proclamation. It is sufficient to say that it is ordered that no one plying the trade of a *jatrawal* is to be allowed to frequent the Moghal Sarai Railway Station and the thoroughfares and other public places in Moghal Sarai without having first obtained a pass or licence from the Superintendent of Police or District Magistrate.

The accused here who describes himself as a *gangaputra* is said to have been acting as a *jatrawal* in Moghal Sarai without having obtained a licence.

A reference to the language of section 32 of the Act and of the three preceding sections satisfies me that the Superintendent of Police had no authority under section 31 of the Police Act to issue any general order of this kind. The order is *ultra vires*. The only licences which can lawfully be issued by a Superintendent of Police are those referred to in section 30 of the Act in connection with the conduct of assemblies and processions and the use of music on the occasion of festivals and ceremonies. There is no authority to regulate by licence the resort of any persons or class of persons to any public place or thoroughfare, nor can it be argued that because the police are, under section 31, assigned the duty of "keeping order" at places of public resort and of "preventing obstructions" on certain occasions in such places, they are authorized to give any general order of the kind now under consideration. I hold therefore that the accused was not liable to conviction under section 32 of the Act, the order which he is found to have disobeyed was not a lawful order. I set aside the conviction and sentence and direct that the fine, if paid, be refunded.

*Conviction set aside.*