

Before Mr. Justice Banerji.

HUSAIN *v.* NOTIFIED AREA OF MAHOBA.*

1926
July, 27.

Act (Local) No. II of 1916 (United Provinces Municipalities Act), sections 337 and 314—Notified Area Committee—Authority for prosecution by—Daily fine.

One Husain having disobeyed an order of a Notified Area Committee for the demolition of a certain building, the Committee passed a resolution that he should be prosecuted, and a copy of this resolution was sent by the President to the District Magistrate.

Held, that this was a sufficient authority for the prosecution within the meaning of section 314 of the United Provinces Municipalities Act, 1916.

Held also, that in cases where an accused person may incur a daily fine for continued disobedience to an order, it is not competent to the court to fix the amount of such fine in advance. *Emperor v. Kashmiri Lal* (1) and *Emperor v. Amir Hasan Khan* (2), followed.

THIS was an application in revision against an order passed by the District Magistrate of Hamirpur. The facts of the case, so far as they are necessary for the purpose of this report, sufficiently appear from the judgement of the High Court.

Mr. M. A. Rawat, for the applicant.

Munshi D. C. Singh, for the opposite party.

BANERJI, J. :—This is an application in revision under the following circumstances :—

Husain, the petitioner, was served with a notice on the 15th of December, 1925, that he should demolish within 24 hours certain constructions. I must say that the notice was a most unreasonable one, in that the petitioner was asked to demolish the house within 24 hours; but I have got nothing whatever to do with that: all that I have got to see is whether Husain has been rightly convicted.

* Criminal Revision No. 394 of 1926, from an order of S. S. Nehru, District Magistrate of Hamirpur, dated the 17th of May, 1926.

(1) (1921) I.L.R., 43 All., 644.

(2) (1918) I.L.R., 40 All., 569.

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It has been argued on behalf of Husain that the prosecution is incompetent, because no person has filed the complaint and has been examined as a prosecution witness, who had been authorized by the Notified Area of Mahoda under section 314 of the United Provinces Municipalities Act. In my opinion there is no force in this contention. I have examined the record, and I find that on the 2nd of February, 1926, the Notified Area of Mahoda did pass a resolution unanimously that the petitioner should be prosecuted for disobeying the notice which was served on him on the 15th of December, 1925. I have looked at the notice. It is a notice signed by the President of the Notified Area, and, therefore, the petitioner can have no legitimate ground for complaint that the notice is not a legally proper notice. It appears that the Chairman of the Municipality sent a copy of the resolution of the Municipal Board to the Magistrate of the district, and thereupon the case against Husain was started. I am of opinion that this is a substantial complaint within the provisions of section 314, in that that section requires "upon information received from the Board" a prosecution could be started. The Municipal Board could not send information except through some officer, and I am of opinion that the President was the proper officer to inform the Magistrate of the resolution of the Board. I am, therefore, of opinion that the conviction of Husain is correct.

After inflicting a fine on Husain, the learned Magistrate, who tried the case, went on to impose a daily fine of Re. 1. This order offends against a number of rulings of this Court, see *Emperor v. Kashmiri Lal* (1) and *Emperor v. Amir Hasan Khan* (2). An application for revision was put in before

(1) (1921) I.L.R., 43 All., 644.

(2) (1918) I.L.R., 40 All., 569.

the learned District Magistrate and he has got behind these rulings by saying that this is really a second conviction. I have searched the record all over, and I find that this statement of the Magistrate is absolutely incorrect. I, therefore, set aside that part of the order of the Magistrate which imposes a daily fine. The application is otherwise dismissed.

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MISCELLANEOUS CRIMINAL.

Before Mr. Justice Sulaiman and Mr. Justice Banerji.

EMPEROR *v.* RAM SARUP.*

Criminal Procedure Code, section 561A—Bail—Inherent powers of High Court in the case of an applicant whose appeal is pending in the Privy Council.

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A High Court has inherent jurisdiction to stay the execution of its own order when the ends of justice require it. It can, e.g., admit to bail a convicted person whose appeal has been admitted by the Privy Council.

King-Emperor v. Diwan Chand (1) and Queen-Empress v. Subrahmania Ayyar (2), referred to.

THE facts of this case are fully stated in the judgement of the Court.

Pandit *Uma Shankar Bajpai*, for the applicant.

The Government Advocate (*Mr. G. W. Dillon*), for the Crown.

SULAIMAN and BANERJI, JJ.:—Criminal miscellaneous applications Nos. 185 and 186 are connected and are applications for bail together with a prayer for stay of proceedings. It appears that the two applicants appeared before Election Commissioners and gave evidence. The Commissioners came to the conclusion that they were respectively guilty of forgery and perjury, and started proceedings under section 476 of the Code of Criminal Procedure. The High Court in revision held that

* Criminal Miscellaneous No. 185 of 1926.

(1) (1908) P. R., No. 15.

(2) (1900) I.L.R., 24 Mad., 161.