

Before Mr. Justice Dalal.

EMPEROR v. SHANKAR SINGH AND OTHERS.\*

Act No. V of 1861 (Police Act), section 30—Regulation of music in the streets at festivals and ceremonies—Extent of regulation—Total prohibition of such music—Indian Penal Code, section 188.

1928  
November, 20.

The powers given to the police by section 30(iv) of the Police Act to regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies do not extend to the passing of an order that no crowds attended by music shall pass within the inhabited parts of a particular city during the Holi. A total prohibition is not covered by the word "regulate."

THE facts material for the purpose of this report appear from the judgement of the Court.

Mr. Nehal Chand and Munshi Sarkar Bahadur Johari, for the applicants.

The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

DALAL, J. :—[A portion of the judgement, not material for the purpose of this report, is here omitted.]

The Superintendent of Police of Moradabad issued an order under section 30 of Act No. V of 1861 during the Holi of this year, on the 3rd of March, 1928, that no crowds attended by music shall pass within the inhabited parts of the city. There is a finding of fact that the large number of applicants whose case is before me in revision did pass through a locality in the Moradabad city known as Katghar during the Holi in a procession accompanied with music. The applicants have been convicted and fined under section 188 of the Indian Penal Code for disobeying an order promulgated by a public servant lawfully empowered to promulgate such order. The lawful authority of the Superintendent of Police in

\* Criminal Revision No. 581 of 1928, from an order of Raghunath Prasad, Sessions Judge of Moradabad, dated the 7th of July, 1928.

1928

EMPEROR  
v.  
SHANKAR  
SINGH.

Moradabad to issue the notification of the 3rd of March, 1928, is impugned here. There are two questions for decision: (1) Whether the officer was so empowered under section 30 of the Police Act, and (2) whether he was so empowered by a notification of Government, dated the 18th of May, 1877. The District Magistrate was of opinion that prohibition of music was covered by the authority given to the District Superintendent of Police under section 30 of the Police Act to regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies. I do not agree with the District Magistrate that a prohibition of every kind of music would be covered by the word "regulate." A power to regulate is given as regards some matter which is in existence, and it would be a misnomer to direct regulation of a thing that does not exist. Regulation of traffic, for instance, assumes the existence of traffic. That would not empower the police to confine every citizen to his house and prohibit all traffic. Under section 31 of the Police Act the police are empowered to keep order on public roads and in the public streets, thoroughfares, *ghats* and landing places and at all other places of public resort. In Benares in pursuance of this authority an order was issued that a certain class of people, the *Jatrawalas*, that is, people who take charge of pilgrims to the sacred city, were prohibited from visiting a railway station. In that case a learned Judge of this Court held that it was not competent to the Superintendent of Police to issue a general order forbidding persons of a certain class to frequent certain specified places, on the strength of his authority to keep order in a public place. The reasoning was the same as here: *Emperor v. Krishna Lal* (1). The keeping of order did not imply the confining of people to their own houses so that no need may arise for the keeping of order.

(1) (1916) I.L.R., 39 All., 131.

I have studied the notifications. [The judgement then dealt with the question whether a certain Notification of Government, dated the 18th of May, 1877, was still in force, and decided it in the negative.]

1928

---

 EMPEROR  
 S.  
 SHANKAR  
 SINGH.

There is, therefore, no power left with the Superintendent of Police of Moradabad to deal with music in streets during festivals and ceremonies independently of the authority given to him under section 30 (iv) of the Police Act.

I accept the reference of the learned Sessions Judge, set aside the conviction and sentence, and order the fine, if any recovered, to be refunded.

---

 REVISIONAL CIVIL.
 

---

*Before Mr. Justice Sulaiman.*

KALI PRASAD (DEFENDANT) v. PARMESHWAR PRASAD  
 (PLAINTIFF).\*

---

 1928  
 November, 25
 

---

*Act No. IX of 1908 (Limitation Act), section 5, article 163  
 —Civil Procedure Code, order IX, rule 4—Application  
 for restoration—Extension of time—Jurisdiction.*

Section 5 of the Limitation Act does not apply to an application under order IX, rule 4, of the Civil Procedure Code for restoration of a suit dismissed for the plaintiff's failure to pay process fee, and the court has no jurisdiction to extend the 30 days' limitation fixed by article 163 of the Limitation Act for such an application.

THE facts of the case fully appear from the judgement of the Court.

Munshi Sri Narain Sahai, for the applicant.

The opposite party was not represented.

SULAIMAN, J. :—This is a defendant's application in revision from a decree of the Court of Small Causes.

---

\* Civil Revision No. 222 of 1928.