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future squabbles." By punishment the Magistrate apparently meant to include the order demanding security. We, therefore, hold that the application for revision must fail and it is dismissed.

Before Mr. Justice Kendall

EMPEROR *v.* PARSHOTTAM DAS TANDON*

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Criminal Procedure Code, section 435—Revision in High Court without first applying to Sessions Judge—Practice—Criminal trial—Proof—Conviction must be based on sufficient evidence and is not justified by apathy of accused or his willingness to go to jail—Duty of court.

In a prosecution under section 17(2) of the Criminal Law Amendment Act, 1908, the evidence was not sufficient to establish the charge and the Magistrate, without being entirely satisfied that the charge had been proved, accommodated the accused, who made no serious effort to avoid a conviction and was willing from political motives to go to jail, by convicting and sentencing him to imprisonment. The Secretary of the District Bar Association filed a revision in the High Court from this order. *Held*—

The High Court is not bound to refuse an application in revision in every case merely because it had not been presented first in the court of the District Magistrate or Sessions Judge, and it can not be questioned that the High Court has jurisdiction, notwithstanding such omission of the applicant, to intervene in revision where it is necessary for the ends of justice. The rule of practice laid down in *Sharif Ahmad* v. *Qabul Singh* (1) has no doubt been generally but not invariably followed, and has been departed from in cases where there are special circumstances, such as where an application is presented by an outsider to the proceedings, or where the appeal from the court whose order is challenged lies direct to the High Court.

*Criminal Revision No. 107 of 1933, from an order of F. H. Logan, Magistrate, first class of Allahabad, dated the 9th of December, 1932.

(1) (1921) I.L.R., 43 All., 497.

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The courts are bound to protect the liberty of the individual, and even where the accused person does not claim their protection and shows himself ready to be sent to jail, whether from political or economical motives, it is nevertheless the duty of the courts to sift the evidence for the prosecution and to refuse to convict if that evidence is insufficient to prove the charge, not only because this is required by the law but also because the courts have a duty to protect the tax-payer from the unjustifiable expenditure of maintaining such accused person in jail.

Mr. *K. D. Malaviya*, for the applicant.

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

KENDALL, J. :—This is an application made by one Mr. R. N. Basu, as Secretary of the District Bar Association of Allahabad, for the revision of an order of a Magistrate convicting B. Parshottam Das Tandon of an offence under section 17(2) of the Criminal Law Amendment Act and sentencing him to six months' rigorous imprisonment. That term of imprisonment has, I understand, already been served and the application is made on legal and technical grounds. A preliminary objection of some difficulty has been raised to the hearing of the application on the ground that no application was first made to the Sessions Judge. In the case of *Sharif Ahmad* v. *Qabul Singh* (1) it has been laid down by a Bench of this Court as a rule of practice that an application to the lower court should be considered an essential step in the procedure, and that should be so, whether the District Magistrate or the Sessions Judge has power to grant the relief or not. "In future, therefore, failure on the part of the applicant to submit his application to the lower court will operate as a bar to the application being entertained by the High Court." If this rule of practice had been followed, the present application would have been rejected on the ground that it had not been presented to

(1) (1921) I.L.R., 43 All., 497.

the Sessions Judge. The rule of practice has been followed in numerous cases, but it has been pointed out that it has not been invariably followed. In the case of *In the matter of Narain Prasad Nigam* (1), STUART, J., pointed out that the High Court had jurisdiction to call for and examine the record of proceedings in a Magistrate's court, however the matter is brought to its notice. This decision is one year later than that of the Bench which lays down the practice of the court, but there is nothing in it to show that the decision of the Bench was brought to the notice of the learned Judge who so emphasised the powers of intervention by the High Court. In the much more recent case of *Girdhari Lal Agarwala* v. *King-Emperor* (2), a Bench of this Court also interfered in revision with the order of the District Magistrate in spite of the fact that no application had been presented to the court of the Sessions Judge. In both these cases it is to be noted that the application was presented, not by the person who had been convicted by the Magistrate, but by some person who was no party to the proceedings at all and who wished to intervene either as *amicus curiae* or it may be in the interests of the public. In still another case, *Emperor* v. *Balkrishna Sharma* (3), the present CHIEF JUSTICE admitted an application for revision when no application had been made to the Sessions Judge, and remarked: "No doubt it is the general practice of this Court not to entertain a revision when the applicant could have gone to the superior court of the District Magistrate or the Sessions Judge. But, of course, even a settled practice does not oust the jurisdiction of the High Court." This was not a case in which a third party had intervened, but there was a special circumstance in that the offence was one under section 124A, which is triable by either the District

(1) (1922) I.L.R., 45 All., 128. (2) [1930] A.L.J., 1535.
(3) (1931) I.L.R., 54 All., 331.

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Magistrate or the Sessions Judge, and the appeal lies in either case direct to the High Court. No doubt the practice laid down in *Sharif Ahmad* v. *Qabul Singh* (1) has been followed in numerous cases but it has not been invariably followed, and, as I have shown, there is authority for departing from it in cases where an application is presented by an outsider to the proceedings, or where the appeal from the court whose order is challenged lies direct to the High Court. It can, of course, not be questioned that the High Court has jurisdiction to intervene in revision where it is necessary for the ends of justice, and although I think it must be taken still to be the invariable practice of the Court to refuse to entertain applications in revision where there are no special circumstances such as those that I have referred to above, it cannot be held to be bound to refuse an application in every case merely because it had not been presented in the lower court of appeal. I have therefore heard this application and the connected one on their merits.

There is a special reason for admitting and hearing the present application, for the case appears to be one in which the person convicted, B. Parshotam Das Tandon, was by no means unwilling to be convicted, and the Magistrate has accommodated him without being entirely satisfied that the charge had been proved by the prosecution. This charge was of having persisted in the management of the Allahabad Town Congress Committee, an unlawful association. It has been pointed out by Mr. *K. D. Malaviya* that although the Allahabad Town Congress Committee has been declared to be an unlawful association by the Local Government, there are several branches of the Congress organization which have not been declared to be unlawful, and there was no positive evidence in this case to prove that the accused had been assisting the Allahabad Town Congress

(1) (1921) I.L.R., 43 All., 497.

Committee as distinguished from other associations. The evidence against him was of three kinds. There was that of a sub-inspector, Amjad Ali, to testify that it was to his personal knowledge that the accused had been collecting subscriptions on behalf of the Congress and meeting Congress leaders. He may well have done so, but unless it could be proved that he had been collecting subscriptions on behalf of the Allahabad Town Congress Committee the statement of the witness does not definitely show that the accused was assisting that committee. It was further shown that the accused with some others made himself prominent in connection with a meeting called in the Parshottam Das Park which the Magistrate has found to be a "Congress meeting". But there is no evidence to show that it was convened or held under the auspices of the Allahabad Town Congress Committee. Lastly, there was the evidence of some accounts, on which, however, the Magistrate has not relied because he has accepted the word of the accused that they were purely private accounts and had nothing to do with the Allahabad Town Congress Committee. As the Magistrate himself says, the prosecution evidence was not very strong or very circumstantial, and in order to convict the accused he was compelled to rely on the fact that the accused himself, although he made a statement apparently of considerable length and referred to the accounts, did not deny that he had been doing work for the Congress.

I think it is clear from the judgment of the Magistrate that he was doubtful of the soundness of the case and would have acquitted the accused if the accused himself had made any serious effort to avoid a conviction. The circumstances, as I have suggested earlier in this judgment, evidently were that the accused was anxious or willing to go to jail, and the Magistrate was ready to accommodate him. This, however, was not

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a judicial point of view. The courts are bound, of course, to protect the liberty of the individual, but even when the individual does not claim their protection and is ready to forgo his liberty the courts have to consider that there are other questions than the wishes of the parties to the proceedings, by which they have to be guided. If the accused is sent to jail he has to be confined there and maintained there at the expense of the public, and whether his wish to go to jail arises from political or economical motives, it is the duty of the courts to protect the tax-payer. I think, therefore, that the present applicant is entitled to succeed, and that the order convicting B. Parshottam Das Tandon and sentencing him to six months' rigorous imprisonment must be set aside on the ground that no offence has been proved by the evidence for the prosecution, and I order accordingly.

Before Mr. Justice Kendall

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Police Act (V of 1861), section 30—Public thoroughfare—Public park with paths across it—Whether the "park" as a whole is a "thoroughfare".

The accused and other persons convened a meeting to be held in a public park, whereupon the accused was served with an order under section 30 of the Police Act directing him to apply for a license for holding the meeting in the park. The order having been disobeyed, the accused was convicted under section 32 of the Police Act. *Held*, in revision, that the order issued under section 30 was *ultra vires;* the order related to the park, and the park as a whole could not be deemed to be a public "thoroughfare", although there were paths in it, used by the public, which led to public roads. There might or might not be a public right of way through the park, but

*Criminal Revision No. 106 of 1933, from an order of F. H. Logan, Magistrate of the first class of Allahabad, dated the 9th of December, 1932.

certainly the park was not intended to be exclusively used as a thoroughfare and this was not its chief or primary object. It was no doubt a public place, but section 30 of the Police Act did not refer to a "public place".

Mr. *K. D. Malaviya*, for the applicant.

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

KENDALL, J. :—This application is connected with Criminal Revision No. 107 of 1933, and has been made like that by Mr. R. N. Basu, Secretary of the District Bar Association, Allahabad, on behalf of the accused B. Parshottam Das Tandon, who was fined Rs 200 under section 32 of the Police Act by the City Magistrate of Allahabad. I have discussed in the connected case the question of whether an application for revision can be entertained by the High Court without having been presented in the sessions court, and held that in certain specified cases such an application may be entertained; and I have held further that even where an accused person, as in the present case, refuses to plead and shows himself ready to be sent to jail, it is nevertheless the duty of the court to sift the evidence for the prosecution and to refuse to convict the accused if that evidence is insufficient to prove a definite offence, not only because this proceeding is required by the law but also because the courts have a duty to protect the taxpayer from expenditure which cannot be justified. In the present case the accused was served with an order under section 30 of the Indian Police Act of 1861 directing him and the other conveners of a meeting to apply for a license. They did not apply for a license, and when there were preparations to hold the meeting without it the accused attempted to harangue a crowd which had collected, and was promptly arrested. The facts are given fully and clearly in the judgment of the learned City Magistrate and the only question that arises in revision is whether the Parshottam Das Park can be held to be a "public road", "street" or "thoroughfare"

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within the meaning of those words as used in section 30 of the Police Act. The accused was actually convicted under section 32 of the Act for having disobeyed the order passed under section 30, and as he undoubtedly disobeyed the order the question is whether that order was *ultra vires* or not. If the Parshottam Das Park cannot be held to be a public "thoroughfare" the conviction must be held to be invalid.

The learned Magistrate has pointed out that the park is a public place, being maintained by the municipality for the benefit of the public, and according to his dictionary a "thoroughfare" is defined as "a way by which people pass". The park contains two gates with paths leading from one to the other and is surrounded on all sides by important roads, so that people do pass through it. He, therefore, concluded that "the park or at any rate the paths through it come within the strict definition of a thoroughfare, though I agree that this is not exactly the everyday way in which one uses the word." He further went on to say that in the order issued by the police under section 30 the words "Parshottam Das Park" were used as a convenient way of describing the central point of the proposed meeting and "must be presumed to include the immediately adjoining roads by which people had to arrive and on to which the meeting was likely to overflow." The orders, however, related to the Parshottam Das Park, and if the meeting were held or an attempt were made to hold it on adjoining roads and not in the park itself, I think it is clear that the order under section 30 could not be applied. However, the question is whether the order itself was *ultra vires*, and on this point, after hearing counsel on both sides and considering the matter to the best of my ability, I have come to the conclusion that I cannot agree with the Magistrate.

There may be a public right of way through the Parshottam Das Park, but this has not been proved one

way or the other. I understand that the Municipal Board have powers to close the park to the public on certain conditions. It is certain, however, that the park is not intended to be exclusively used as a thoroughfare, or as a way by which people pass, and this is not its chief or primary object. It is no doubt a public place, but section 30 of the Police Act does not refer to a public place. Presumably the park contains grass, flower beds, etc., and although the public may have a right to walk through it, it does not follow from that that they have a right to play on the grass or to trample on the flowers, and an order that would apply to the paths would not necessarily apply to the grass and the flowers and the other parts of the park, nor would orders that would prevent the abuse of the grass and the flowers necessarily affect the paths. It cannot in fact be said that the whole of the park is a thoroughfare, and in my opinion the police authorities were not justified by law in calling the whole of the park a thoroughfare and in issuing an order under section 30 relating to the whole park on the ground that it was a public thoroughfare. If there were any doubt on the point it was the duty of the court to give the benefit of the doubt to the accused and not to the prosecution. I must, therefore, allow the revision, and I set aside the order of conviction and the sentence passed by the Magistrate. The fine, if paid, will be refunded.