Before Mr. Justice Kendall and Mr. Justice Iqbal Ahmad

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May, 26

EMPEROR *v.* NAZIRUDDIN AND OTHERS*

Criminal Procedure Code, section 106—Security for keeping the peace upon conviction for simple hurt—"Breach of the peace", not necessarily of the public peace—Simple hurt is an offence involving breach of the peace—Whether reasons for requiring security must be recorded.

The words "assault or other offence involving a breach of the peace" in section 106 of the Criminal Procedure Code include the offence of causing hurt under section 323 of the Indian Penal Code, and a person convicted of that offence can be ordered to find security to keep the peace under section 106 of the Criminal Procedure Code.

A "breach of the peace" does not necessarily mean a breach of the public peace, and the offence of causing hurt to a person involves a breach of the peace, whether it takes place in a private room or in the open street. From the language of section 107 of the Criminal Procedure Code it appears that a "breach of the peace" is to be regarded as something distinct from a "disturbance of the public tranquillity".

Muhammad Rahim v. *Emperor* (1) and *Emperor* v. *Atma Ram* (2), dissented from.

The law does not provide that the court acting under section 106 of the Criminal Procedure Code shall record its reasons for forming the opinion that it is necessary to take security in the case; but it is desirable for the court to do so in order that an appellate court may be in possession of the reasons if they are not apparent on the face of the record.

Mr. *M. A. Aziz*, for the applicants.

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

KENDALL and IQBAL AHMAD, JJ. :—This is an application for the revision of an order of Mr. L. G. Lyde, City Magistrate of Cawnpore, who convicted the applicants of offences under section 323 of the Indian Penal

*Criminal Revision No. 246 of 1933, from an order of J. Allsop, Sessions Judge of Cawnpore, dated the 4th of March, 1933.

(1) (1925) 23 A.L.J, 1053. (2) (1926) I.L.R., 49 All., 131.

Code and sentenced them to small fines, and further passed an order binding them over to keep the peace under section 106 of the Code of Criminal Procedure. The Sessions Judge has already rejected an application for revision. So far as the facts of the case are concerned it is only necessary to state that the applicants and the opposite parties have a quarrel which dates back over 30 years, and that there has been a great deal of litigation between them. The incident out of which this case arose has been decided by the City Magistrate in accordance with the statements of the witnesses before him and we see no reason to examine them in order to decide in revision whether his decision appears to be justified by the evidence. The point that has been argued before us is a legal one, namely, whether the Magistrate was legally justified in passing an order under section 106 of the Code of Criminal Procedure.

Mr. *Aziz* has argued, firstly, that the order of the Magistrate does not clearly show that there was an offence under section 323 of the Indian Penal Code; secondly, that there is no clear finding that there was a breach of the peace; thirdly, that an offence under section 323 of the Indian Penal Code does not necessarily involve a breach of the peace; and fourthly, that the court has not recorded a separate finding that it is necessary to require the applicants to execute bonds for keeping the peace.

The Magistrate has not given a detailed account of the evidence, but his conclusion is: "I have no real doubt that the accused beat the complainant. I convict them accordingly under section 323 of the Indian Penal Code." This is the reply to the first argument of Mr. *Aziz*.

We may take the second and third pleas together. There has been some difference of opinion as to whether

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an offence under section 323 of the Indian Penal Code necessarily involves a breach of the peace; and, if it does not, there is some force in the contention that in order to take proceedings under section 106 of the Code of Criminal Procedure the Magistrate must record a finding that in the particular case before him a breach of the peace is involved. Mr. *Aziz* has referred in the first place to a decision of a Bench of the Calcutta High Court in the case of *Abdul Ali Chowdhury* v. *Emperor* (1), in which it was held that in order to bring a case within the terms of section 106 of the Code of Criminal Procedure, the Magistrate should expressly find that the acts of the accused involved a breach of the peace or were done with the evident intention of committing the same, or at all events the evidence must be so clear that, without an express finding, a superior court is satisfied that such was the case. The Bench was dealing with a case in which there had been a conviction under section 143 of the Indian Penal Code and it was pointed out that a conviction under that section does not necessarily carry with it the implication that the persons convicted had the intention of committing a breach of the peace. Mr. *Aziz's* argument is that at the time of this decision in 1915 section 143 of the Indian Penal Code was one of those for which accused persons could be bound over under section 106 of the Code of Criminal Procedure, and he seeks apparently to draw an inference from this fact that in the case of every offence mentioned in section 106 of the Code of Criminal Procedure it is necessary for the Magistrate to record a separate finding, in accordance with the dictum of the Calcutta High Court, that there has been a breach of the peace, in addition to holding that the actual offence has been committed. We quite agree that the offence of being a member of an unlawful

(1) (1915) I.L.R. 43 Cal., 671.

assembly does not necessarily imply a breach of the peace, although it is one of those offences enumerated in chapter VIII of the Indian Penal Code as offences against the public tranquillity. It does not follow from this, however, that the offence of causing simple hurt, which is one of those offences enumerated in chapter XVI of the Code as offences affecting the human body, does not necessarily imply a breach of the peace. There is, it must be admitted, some authority for this proposition. We have been referred especially to the decisions of a single Judge of this Court in the cases of *Muhammad Rahim* v. *Emperor* (1), and *Emperor* v. *Atma Ram* (2). In the earlier of these cases BANERJI, J., remarked that "in the absence of a finding that the assault which took place involved breach of the peace or public tranquillity, the Magistrate cannot merely on the ground that the parties were on bad terms bind the accused down." In the later case, which was also one under section 323 of the Indian Penal Code, the Sessions Judge who referred the matter to the High Court remarked: "Now section 323 of the Indian Penal Code is not an offence referred to in section 106 of the Code of Criminal Procedure, but even then an order can be passed after a conviction under this section if it was found by the Magistrate that the offence involved a breach of the peace. But there must be a finding of the Magistrate; otherwise his order is not justified." The reference was accepted by the same learned Judge who had decided the earlier case. These two decisions amount to this that although it is legal to demand security under section 106 of the Code of Criminal Procedure on a conviction under section 323 of the Indian Penal Code, it is necessary for the Magistrate to come to a separate and distinct finding that in that particular case there has been a breach of the peace, and the inference may

(1) (1925) 23 A.L.J., 1053. (2) (1926) I.L.R., 49 All. 131.

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logically be made from this that an offence under section 323 of the Indian Penal Code does not necessarily involve a breach of the peace. A similar view was taken in a case dealt with in the court of the Judicial Commissioner of Oudh, *Dubri* v. *Emperor* (1). This was a case under section 325 of the Indian Penal Code in which the Judicial Commissioner, Mr. Lindsay afterwards a Judge of this Court, briefly discussed the expression "breach of the peace" and remarked that "using that phrase in the accepted meaning which it bears in England, it implies some offence against the public"; and as in the case before him it had not been proved that there was any offence against the public, or that there was any likelihood of any offence being committed which would amount to a breach of the peace in the sense just mentioned, he discharged the order for taking security from the accused. A similar view was taken in the case of *Durga Bharathi* v. *Emperor* (2); but in a later case, *Emperor* v. *Ramanuj* (3), a Bench of the Oudh Chief Court differed from the pronouncement of the Judicial Commissioner and held that the words "assault or other offence involving a breach of the peace" in section 106 of the Code of Criminal Procedure clearly include the offence of causing hurt under section 323 of the Indian Penal Code, and a person convicted of the latter offence can be ordered to find security to keep the peace under section 106 of the Code of Criminal Procedure.

It appears to us that this view of the law, as it stands today, is the correct one. Under section 106 of the Code of Criminal Procedure, "Whenever any person accused of any offence punishable under chapter VIII of the Indian Penal Code, other than an offence punishable under section 143, section 149, section 153A or section 154 thereof, or of assault or other offence

(1) (1920) 71 Indian Cases, 691. (2) (1922) 72 Indian Cases, 955.
(3) (1926) 99 Indian Cases, 352.

involving a breach of the peace . . . . . is convicted of such offence . . . . and such court is of opinion that it is necessary to require such person to execute a bond for keeping the peace, such court may, at the time of passing sentence on such person, order him to execute a bond . . . . for keeping the peace during such period, not exceeding three years, as it thinks fit to fix." It is to be observed that the words used are "assault or other offence involving a breach of the peace", and the natural interpretation of these words is that an assault involves a breach of the peace, otherwise the words used would have been "assault or any offence involving a breach of the peace". An assault is defined in section 351 of the Indian Penal Code as follows: "Whoever makes any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault." The offence of assault, therefore, is one that is committed against a person and not against the public. According to our interpretation of the words "assault or other offence involving a breach of the peace" the legislature clearly intended to convey that the offence of assault did involve a breach of the peace, and *a fortiori* the offence of actually causing hurt to a person must also involve a breach of the peace. It is not necessary that the public should be assaulted or hurt, or that the offence should take place in public. The offence itself is a breach of the peace, whether it takes place in a private room or in the open street. We may notice that under section 107 of the Code of Criminal Procedure security may be demanded from any person who is "likely to commit a breach of the peace or disturb the public tranquillity", that is to say, a breach of the peace is to be regarded as something distinct from a disturbance of the public tranquillity

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and we can find no justification in the Criminal Procedure Code or the Indian Penal Code for the view that a breach of the peace necessarily means a breach of the public peace. If this is so it follows that the offences of assault and of causing hurt necessarily involve a breach of the peace, and we, therefore, feel compelled to disagree, with all respect, from the pronouncements of BANERJI, J., which we have quoted above, and which contain the implication that there may be instances of causing hurt which do not involve a breach of the peace within the meaning of section 106 of the Code of Criminal Procedure. Consequently if a Magistrate finds that an offence of causing simple hurt has been committed, it is not necessary for him to come to a separate finding that a breach of the peace was involved.

It does not follow that in every case the court is bound to take security from a person convicted of an offence which involves a breach of peace. The court must be "of opinion that it is necessary to require such person to execute a bond for keeping the peace", and in many cases, of course, it may be quite unnecessary. The law does not provide that the court shall record its reasons for forming that opinion, but we have no doubt that it is desirable for the court to do so in order that an appellate court may be in possession of the reasons if they are not apparent on the face of the record. We are not in the present case called upon to decide whether, if there are no reasons apparent on the face of the record and no reasons have been recorded by the court for having formed the opinion that it is necessary to require the security, the order would be an illegal one. The order of Mr. Lyde makes it clear that there were sufficient reasons for demanding security, and he has stated them: "Parties have already had two civil and revenue and six criminal cases between them. The punishment, therefore, should be such as to prevent

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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.