1940

EMPEROR v. ABDUL RAHMAN

control. Even if this spear belonged to one of his sons, would it be possible to say that Abdul Rahman had actual possession and actual control of it? I am doubtful. I do not think it would. It would not have been his to possess and it would not have been his to control, and, as I have already pointed out, we are dealing with actual possession and actual control and not with constructive possession and constructive control. It seems to me for these reasons that the requirements of section 19(*f*) have not been fully complied with and that the prosecution in this case has failed to show that Abdul Rahman was in possession or in control of this spear in the sense in which the terms "possession" and "control" are used in the Act.

I accordingly allow this revision——not without some hesitation——and set aside the conviction and sentence. The bail bond will be discharged.

Before Mr. Justice Braund

1940
July, 23

EMPEROR *v.* BHAGWATI PRASAD AND OTHERS*

Criminal Procedure Code, section 144(3)—"*Particular place*" *must be exactly specified and defined—Owners of private houses can come within the scope of the sub-section.*

An order under section 144(3), directed to the public generally with respect to "a particular place", must exactly and with particularity specify and define that place so that the public may be informed with certainty of the exact place in, at or within which the proscribed acts are forbidden to them. So, where the order provided that "this order shall remain in force within the local limits of the boundary of Haswa", it was *held* that the "particular place" was not specified with such certainty as was requisite to leave no reasonable room for mistake, and the order was therefore invalid.

A privately owned house or building is not beyond the reach of an order addressed to the public at large under section 144 (3) of the Criminal Procedure Code, even so far as its owner or occupier is concerned. A member of the public who owns

*Criminal Revision No. 118 of 1940, from an order of Brij Behari Lal, Sessions Judge of Fatehpur, dated the 11th of September, 1939.

or occupies a house within a defined area comes within the category of those who "frequent" that area. The words, "the public generally when frequenting or visiting a particular place", are wide enough to include all members of the public when within the defined area or at the defined place, whether he or she is present there "frequently", e.g. as a resident, or merely casually or occasionally, e.g. as a "visitor". So, where the order was one prohibiting the public generally against the collection of brickbats or other missiles in the village, it was held that the order would be operative to prohibit the owners or occupiers of private houses in the village from collecting such missiles in their houses.

Mr. *S. N. Verma,* for the applicants.

The Deputy Government Advocate (Mr. *Sankar Saran*), for the Crown.

BRAUND, J.:—This revision application must be allowed. It is an application by three men, Bhagwati Prasad, Bajrang Bali and Prag, who have been convicted and sentenced by a Magistrate of Fatehpur, under section 188 of the Indian Penal Code, in respect of an alleged disregard by them of an order under section 144 of the Criminal Procedure Code promulgated by a Sub-Divisional Officer.

It seems that, at the time, disturbances were feared in the village of Haswa between the Hindus and the Muslims of the place. The Sub-Divisional Officer, therefore, thought it right to make an order under section 144 of the Criminal Procedure Code prohibiting the collection of bricks and other materials that might be used as missiles in the village. I have carefully read the whole of this order. It is a long, loosely worded and rambling order which leaves much, in my opinion, to be desired. Orders of this kind should, I think, be short, simple and absolutely clear. If they are not, they lose almost the whole of their value and become extremely difficult of enforcement. This particular order was one purporting to be addressed to the "public generally" under sub-section (3) of section 144 of the Criminal Procedure Code, and not to any particular

1940

EMPEROR v. BHAGWATI PRASAD

individual. But, as far as I can see, the only indication in the order from first to last as to the "particular place" its operation is intended to cover is an unobtrusive, and almost parenthetic, statement at the very end of this long and complicated document that it ". . . shall remain in force within the local limits of the boundary of Haswa". The facts have been clearly found in both the courts below. They are that the applicants were residents of the village and that heaps of bricks and other missiles were found on (among other places) the roofs of their houses. This has been proved and I accept it. I accept it also that the applicants have been proved to have known of the existence of the order.

The point which has been argued before me is that the order itself is an unlawful one. As I understand it, this is put upon two grounds.

It is said in the first place that no person can, under an order addressed to the public generally, be prohibited from making such use as he pleases of his own premises. Put in another way, it is said, I think, that a person who lives in a particular house cannot be said to be "frequenting or visiting a particular place" at the time of doing an act or acts upon his own premises, notwithstanding that the premises themselves may be within the defined prohibited area. To support this contention, I have been referred to an authority of the Madras High Court, *In re Sriramamurty* (1). The learned Judge who decided that case observes: "No order can be passed against the public without that limitation as to place, namely that it must be one, whether publicly or privately owned, which, at the time when the prohibition operates, the public frequent or visit. They may have a right to frequent the place as in highways and places of public resort or they may be allowed or invited to visit it as at a public meeting held in private premises. But the place must be one which is open to the public as such And this involves that the public cannot be

(1) A.I.R. 1931 Mad. 242(245).

prohibited from putting up flags in private houses, first because those who put up the flags are owners or occupants of such houses, and second because the public as such neither frequent nor visit private houses. It is a misuse of language to call house-owners who use their houses members of the public for the purpose of this section, and I have not been shown any instance of such a use of the section."

With great respect, I have some difficulty in following this reasoning. I do not understand why a privately owned house or building should be beyond the reach of an order addressed to the public at large under section 144, even so far as its own occupier is concerned. And it appears to me to put a somewhat narrow construction on the word "frequenting" to exclude a member of the public who occupies a house within a defined area from the category of those who frequent that area. I prefer the reasoning of KENDALL, J., in our own Court who, in the case of *Shander* v. *Emperor* (1), has said: "It has next been argued that as the applicants are themselves residents of one of the areas specified in the notice, they can not be said to be frequenting that area. To live in an area is, of course, to frequent it, though a resident would ordinarily be said to reside in and not to frequent his part of the city." With this I respectfully agree. I think myself that the words, "or to the public generally when frequenting or visiting a particular place", are wide enough to include all members of the public when within the defined area or at the defined place, whether he or she is present there "frequently", e.g. as a resident, or merely casually or occasionally, e.g. as a "visitor".

The ground, however, upon which, in my judgment, this revision must be entertained is the other ground taken before me that in this order there is no sufficient definition of the particular place where it is to operate. The purpose of the Criminal Procedure Code in requiring an exact definition of a "particular place" is obvious.

(1) A.I.R. 1935 All. 552.

1940

EMPEROR v. BHAGWATI PRASAD

because it would be manifestly unjust to the public to promulgate a prohibitive order, leading possibly to penal consequences, without making it quite clear what exactly it is that the public is forbidden to do and in what particular place or places. When, therefore, the Act says that a "particular place" has to be defined, it means, I think, what it says, namely, that the public must be informed with certainty of the exact place in, at or within which the proscribed acts are forbidden to them. It must not be a matter of doubt, inference, calculation or inquiry. The order itself must, I think, define with particularity the place to which the prohibition extends. I have been referred to a number of authorities to this effect, with which I respectfully agree; see *Belvi* v. *Emperor* (1), *Emperor* v. *Sat Narain* (2).

In the present case I do not think that the somewhat casual reference to the village of Haswa in the words "this order shall remain in force within the local limits of the boundary of Haswa" is a sufficient compliance with section 144 (3) of the Criminal Procedure Code. What, may I ask, are "the local limits of the boundaries of Haswa"? I doubt very much if the villagers themselves know. And, as I have already said, the order must, in my view, specify the place or area of its operation with such certainty that, in the minds of those to be affected by it, there can be no reasonable room for mistake.

For these reasons, I allow this revision, set aside the convictions and remit the fines, which must be refunded if they have already been paid.

(1) A.I.R. 1931 Bom. 325. (2) I.L.R. [1939] All. 934.