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multiply authorities on the point. In my opinion the plea of acquiescence is fully applicable to the facts of the case as stated above. The claim of the plaintiffs must fail on this ground. Having come to this conclusion, it is not necessary for me to discuss the other points raised on behalf of the appellant.

Srivastava, J.

The result is that I allow both the appeals and dismiss the two suits with costs in all the courts.

Appeal allowed.

REVISIONAL CRIMINAL

Before Mr. Justice E. M. Nanavutty

KING-EMPEROR (COMPLAINANT) *v.* NIAZOO KHAN (ACCUSED-OPPOSITE PARTY)*

1934 *February*, 2

Indian Penal Code (Act XLV of 1860), section 188—Criminal Procedure Code (Act V of 1898), section 144—Disobedience of order under section 144, Criminal Procedure Code—Accused's knowledge that disobedience of order was likely to produce harm—No actual breach of peace—Case, whether covered by section 188, Indian Penal Code.

In a case under section 188 of the Indian Penal Code, it is sufficient that the accused knew that his disobedience of the order promulgated under section 144 of the Code of Criminal Procedure was likely to produce harm in the sense of creating a breach of the peace and it is not necessary that the action of the accused led to or caused a breach of the peace. *Ramgopal Daw* v. *Emperor* (1), dissented from.

Assistant Government Advocate (Mr. *H. K. Ghosh*), for the Crown.

Mr. *Nasirullah Beg*, for the accused.

NANAVUTTY, J.—These are two connected references made by the learned Additional Sessions Judge of Hardoi recommending that the conviction and sentence passed upon the accused Niazoo Khan and Raunak Ali Khan be set aside.

*Criminal Reference No. 61 of 1933, made by Mr. G. B. Chatterji, Additional Sessions Judge of Hardoi.

(1) (1905) I.L.R., 32 Cal., 793.

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I have heard the learned counsel for the accused as well as the learned Assistant Government Advocate on behalf of the Crown and examined the evidence on the record. The accused Niazoo Khan and Raunak Ali Khan were tried separately under section 188 of the Indian Penal Code. The trials were summary under section 260 of the Code of Criminal Procedure but the learned trial Magistrate wrote a most elaborate judgment in each case. The learned Sessions Judge has in his order of reference accepted the contentions urged on behalf of the accused and they have been repeated before me by the learned counsel today. I will therefore deal with the points of law argued before me on behalf of the accused by their learned counsel.

In the first place it was urged that there is no definite finding of the Magistrate that the action of each accused led to or caused a breach of the peace, and in support of this contention the learned counsel has cited a ruling reported in *Ram Gopal Daw* v. *Emperor* (1). There is no force in this contention. The Explanation appended to section 188 of the Indian Penal Code runs as follows:

> "It is not necessary that the offender should intend to produce harm or contemplate that his disobedience is likely to produce harm. It is sufficient that he knows of the order which he disobeys and that his disobedience produces or is likely to produce harm."

It is clear from the facts of this case that both the accused knew that their disobedience of the order promulgated under section 144 of the Code of Criminal Procedure was likely to produce harm in the sense of creating a breach of the peace. The ruling of the Calcutta High Court cited above, in my opinion seems to go beyond the express provisions of section 188 of the Indian Penal Code itself.

In the second place, it was contended that the order under section 144 of the Code of Criminal Procedure

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was not clear and that it was very indefinite. There was reference in it to customary rules and to customary timings in the matter of taking out *tazias*. In my opinion there is no force also in this contention. It seems to me that the order is quite clear and very definite. It was for the accused to find out what the customary rules and timings were if they wished to take out a *tazia* in the procession.

In the third place, it was argued that there is no definite proof on the record of any knowledge on the part of the accused that they were aware of this order under section 144 of the Code of Criminal Procedure. I cannot for a moment entertain this contention. Every person who applies to take out a *tazia* in a procession is given permission to do so subject to general orders passed by the Magistrate as regards the time and place as to when and where they can carry these *tazias*. In these circumstances the accused cannot claim that they were acting in good faith.

In the fourth place it was argued that there was no evidence on the record to prove that this order under section 144 of the Code was promulgated by the police. This contention is not correct. The Sub-Inspector has deposed that the order issued by the Magistrate was duly promulgated and the fact that a Bhangi and a constable who actually proclaimed the order by beat of drum were not produced in Court does not in any way prove that the order was not promulgated.

Lastly it was contended that this order under section 144 of the Code of Criminal Procedure is a mandatory order and the mere act of the accused in slowing down the procession does not come within the ambit of this section. I confess I do not follow this contention of the learned counsel. Section 144 of the Code authorises a Magistrate to direct any person by written order to take a certain order with certain property in his possession and in the present case the learned Magistrate was perfectly competent to pass the order which he did pass.

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In my opinion there is no reason to interfere with the conviction and sentence passed upon the accused Niazoo Khan and Raunak Ali Khan by the learned trying Magistrate. The convictions are perfectly legal and the sentences of fine imposed are by no means too severe. I accordingly reject this reference and direct that the files be returned.

Nanavutty, J.

Reference rejected.

APPELLATE CRIMINAL

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice Rachhpal Singh

1934 *January*, 29

BHAGWAN DIN (BHAGAN) (APPELLANT) *v.* KING-EMPEROR (COMPLAINANT-RESPONDENT)*

Confession—Elements of a valid confession—Rules to be observed in recording confessions—Indian Penal Code (Act XLV of 1860), section 302—Requirements of a valid confession not made out—Accused, whether entitled to benefit of doubt.

Held, that it is most desirable that the accused should be sent to jail custody and removed from police influence before they are placed before Magistrates for the recording of their confessions. It is also very necessary in the interests, both of the accused and of the prosecution, that the accused, after their confessions have been recorded, should not be sent back to police custody and that at the time when the confessions are recorded they should be assured that they need be under no fear of going back into the custody of the police. The Magistrates ought also to see that where confessions of several accused are recorded, one accused should not be able to hear the statement made by another.

Where the accused are produced before a Magistrate from police custody for the recording of their confessions and after the confessions have been recorded they are handed back to police custody and the Magistrate does not inquire from the accused if they had been beaten by the police or if any promise had been made by the police to make any of them approver

*Criminal Appeal No. 545 of 1933, against the order of Pandit Tika Ram Misra, Additional Sessions Judge of Unao, dated the 9th of December, 1933.