

In relation to the question of the applicability of the *sanad* there is another point in controversy between the parties. The *sanad* (exhibit 11) on the face of it relates only to the taluqa of Simri in the district of Rae Bareilly and, therefore, does not cover by its terms the taluqa of Patantadassi in the district of Unao. On behalf of the plaintiff it was argued that if the *sanad* applied at all the bar of limitation could affect the suit in respect of the taluqa of Simri only. On behalf of the defendant it was contended that by the effect of section 3 of the Oudh Estates Act, 1869, the condition of the *sanad* relating to inheritance would govern the succession to the Unao property also.

It is not necessary for us to decide the controversy because the appeal wholly fails on the question of pedigree. We dismiss the appeal accordingly. As to the costs we uphold the order of the trial Judge in so far as the costs in his court are concerned. As regards the costs of the appeal the plaintiffs-appellants shall bear their own costs and pay only one set of costs of the defendants-respondents

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Muhammad Raza and Mr. Justice H. G. Smith.

SADHO RAM, ACCUSED-APPLICANT *v.* KING-EMPEROR,
COMPLAINANT-OPPOSITE PARTY.*

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Criminal Procedure Code (Act V of 1898) section 103—Indian Penal Code (Act XLV of 1860), section 504—Conviction under section 504 of the Indian Penal Code only—Security under section 106 of the Code of Criminal Procedure, whether can be rightly taken.

An offence punishable under section 504 of the Indian Penal Code does not necessarily involve a breach of the peace.

*Criminal Revision No. 100 of 1931, against the order of S. Asghar Hasan, Sessions Judge of Hardoi, dated the 20th of June, 1931.

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It involves only an intention to provoke a breach of the "public peace", or knowledge that the provocation given is likely to cause a breach of the "public peace". On the whole, such an offence cannot be said to be one "involving a breach of the peace", and if a conviction takes place under section 504 of the Indian Penal Code and no other section, an order under section 106 of the Code of Criminal Procedure cannot properly be made. *Emperor v. Sayed Yacooob Sayed Lallamian* (1), *Asoke Prasanna Bal v. Emperor* (2), and *Arun Samanti v. Emperor* (3), referred to.

Mr. *Ali Jawwad*, for the applicant.

The Assistant Government Advocate (Mr. *Ali Mohammad*), for the Crown.

RAZA and SMITH, JJ. :—This criminal revision has been referred to a bench of this Court in view of the conflicting views of various High Courts on the matter at issue.

The facts appear in the order of one of us by which the matter was referred to a bench. The question is whether the applicant, having been convicted under section 504 of the Indian Penal Code only, was rightly called on for security under section 106 of the Code of Criminal Procedure.

Two rulings exist with reference to that very section (section 504). One is reported in 43 Bombay, 554 (of the year 1918), and the other in 129 I. C., 413 (of the year 1930). The latter is a Calcutta ruling. In the Bombay case—*Emperor v. Syed Yacooob Syed Lallamian* (1)—it was held that an order under section 106 of the Code of Criminal Procedure could rightly be made when a conviction has taken place under section 504 of the Indian Penal Code. In the Calcutta case—*Asoke Prasanna Bal v. Emperor* (2)—it was held that an order under section 106 of the Code of Criminal Procedure cannot be passed upon a conviction under section 504 of the Indian Penal Code. The Calcutta case follows

(1) (1918) I.L.R., 43 Bom., 554. (2) (1930) 129 I.C., 413.

(3) (1902) I.L.R., 30 Calc., 366.

the interpretation put upon the words "offence involving a breach of the peace" in an earlier Calcutta ruling, *Arun Samanti v. Emperor* (1) of the year 1902. In that ruling section 110(e) of the Code of Criminal Procedure was under consideration,—the words "offences involving a breach of the peace" therein occur. It was held that those words mean offences in which a breach of the peace is an ingredient, and not offences provoking or likely to lead to a breach of the peace. The ruling reported in 43 Bombay, 554, was referred to in 129 I.C., 413, and was impliedly dissented from. So also was a ruling reported in 33 All. 771. In that ruling, an order under section 106 of the Code of Criminal Procedure was under consideration which had followed upon a conviction under section 424 of the Indian Penal Code. That order was upheld. Discussing the meaning of the words "offence involving a breach of the peace" the learned Judge who decided the case said:—

"The word 'involve' in my opinion connotes the inclusion, not only of a necessary, but also of a probable feature, circumstance, antecedent condition or consequence."

The ruling reported in 30 Calc., 366 was expressly dissented from, as were also two other Calcutta rulings (30 Calc., 93 and 35 Calc., 315). In 30 Calc., 93 the convictions were under sections 447 and 426 of the Indian Penal Code, and in 35 Calc., 315 under section 143 of the Indian Penal Code. In each case a consequent order under section 106 of the Code of Criminal Procedure was held to be bad. The Allahabad ruling above referred to dissented also from one reported in 29 Mad., 190. In that ruling an order under section 106 of the Code of Criminal Procedure was under consideration which had followed upon a conviction under section 143 of the

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(1) (1902) I.L.R., 30 Calc., 366.

1931 Indian Penal Code. The order was set aside on the reasoning that "the words 'involving a breach^s of the peace' in the section, require that a breach of the peace should be an ingredient of the offence proved, and that before the section can be put in force there must be a finding that a breach of the peace has occurred." The ruling reported in 30 Calc., 93 was followed, as also was an earlier Madras ruling (26 Mad., 469). Offences punishable under section 143 of the Indian Penal Code, we may point out, are now expressly excluded from the purview of section 106 of the Code of Criminal Procedure.

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The last ruling we propose to refer to is reported in 2 Lahore, 279 (of 1921). In that case the convictions were under sections 143 and 297 of the Indian Penal Code, and a consequent order under section 106 of the Code of Criminal Procedure was set aside. The rulings reported in 30 Calc., 366, 35 Calc., 315 and 26, Mad., 469 were followed. In the Lahore case, it was said :

"The Magistrate passed that order in view of the fact that intimidation in a public place was one of the ingredients of the offences committed. It is, however, not sufficient, in order to justify the passing of an order under section 106 of the Criminal Procedure Code against any person, that he should have committed the offence of criminal intimidation, but it is necessary, as is clear from the section itself, that he should have been convicted of that offence. In this case the petitioner has not been convicted of criminal intimidation. Nor was either of the offences of which he was convicted one involving a breach of the peace, as no breach of the peace actually took place."

That case resembles the present one before us inasmuch as here the convicted man is said to have raised a *lathi* at the complainant, and hence, as was pointed

out in the order of reference to this bench, he might have been convicted under section 352 of the Indian Penal Code, in which case an order under section 106 of the Code of Criminal Procedure would undoubtedly have been justified. He was not so convicted, however, and what we have to look at is the nature of the offence of which he was convicted. We agree on that point with what was said in the passage we have quoted from the Lahore ruling, so what remains to be considered is whether, when a conviction takes place under section 504 of the Indian Penal Code, an order under section 106 of the Code of Criminal Procedure can rightly be made. An offence punishable under section 504 of the Indian Penal Code does not necessarily involve a breach of the peace. It involves only an intention to provoke a breach of the "public peace", or knowledge that the provocation given is likely to cause a breach of the "public peace." On the whole, (we think that) such an offence cannot be said to be one "involving a breach of the peace", and that if a conviction takes place under section 504 of the Indian Penal Code and no other section, an order under section 106 of the Code of Criminal Procedure cannot properly be made. We adopt, that is to say, the narrower view of the meaning of the words, "offence involving a breach of the peace," that has been taken at Calcutta, Madras and Lahore, in preference to the wider interpretation that has found favour at Allahabad and Bombay.

The result is that we allow this revisional application, as far as the order under section 106 of the Code of Criminal Procedure is concerned. We set that order aside. If the applicant did not furnish the security demanded of him, and is consequently in jail, he must be released at once. If he furnished it, his bond and his surety's bond are discharged.

Application allowed.

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