

REVISIONAL CRIMINAL

Before Mr. Justice Ziaul Hasan

MUNESHWAR BUX SINGH (ACCUSED APPLICANT) v. KING-
EMPEROR (COMPLAINANT OPPOSITE-PARTY)*

1938
December,
13

Indian Penal Code (Act XLV of 1860), sections 224, 349, 351 and 353—Assault, meaning of—Accused making gesture to his men to advance in a threatening manner, whether amounts to assault—Criminal force, what is—Sub-Inspector of Police laying hand on accused without intimating him the offence for which he was being arrested—Accused whether can be said to be charged with an offence within the meaning of section 224, I. P. C.—“Charged with an offence”, meaning of.

According to the definition of assault in section 351, I. P. C., the apprehension of the use of criminal force must be from the person making the gesture or preparation and if that apprehension arises not from that person but from somebody else it does not amount to assault on the part of that person. Further according to section 349, I. P. C., criminal force can not be said to be used by one person to another by causing change in the position of another human being.

Where, therefore, the accused himself did nothing which could come under the definition of assault but simply made a gesture at which his followers advanced a little forward towards the complainant in a threatening manner, he cannot be said to be guilty of the offence of assault under section 353, I. P. C.

The mere fact that a sub-inspector of police put his hand on the shoulder of the accused or caught hold of his wrist without the least intimation to him for what offence he was being arrested cannot amount to the accused being “charged” with an offence under section 224, I. P. C.

Dr. J. N. Misra and Mr. Azizuddin, for applicant.

Asst. Govt. Advocate, for the Crown.

ZIAUL HASAN, J.—This is an application by Thakur Muneshwar Bakhsh Singh for revision of an order of the learned Sessions Judge of Sitapur dismissing his appeal against his convictions and sentences under sections 353 and 224, I. P. C.

*Criminal Revision No. 143 of 1938, of the order of G. S. Varma, Esq., Additional Sessions Judge of Sitapur, dated the 31st October, 1938.

1938

MCNESHWAR

BUX
SINGHv.
KING-
EMPERORZiaul
Hasan,
J.

The applicant and four others were prosecuted under sections 143/341, 353 and 224/225, I. P. C. in the Court of the Sub-Divisional Magistrate, Misrikh.

The case for the prosecution was as follows:

On the 15th March last, while a fair known as Paikarma fair was going on in Misrikh, Babu Kamta Prasad, Joint Secretary of the *mela*, came to the Sub-Divisional Magistrate, Mr. Mohammad Husain, P. W. 7, who was in camp in the *mela*, at about 11 p.m. and informed him that a band of rogues was molesting women and that the Thakur of Baniamau (namely the present applicant) with his followers armed with *lathis* had completely blocked up one of *mela* lanes and that there was a danger of a breach of the peace. The Sub-Divisional Magistrate ordered the second officer of the thana, who was present, to go and look into the matter. Mr. T. N. Kaul, I.C.S., an Assistant Magistrate, who had been deputed to the *mela* by the District Magistrate to take cognizance of cases of petty offences in the *mela*, was also present. He volunteered to go with the sub-inspector to the place where, according to Babu Kamta Prasad's statement, there was danger to public peace. He was taken to a square on the eastern side of which was a lane in which there was a gathering of some forty persons armed with *lathis* who had completely obstructed the way. Kamta Prasad also pointed out to Mr. Kaul the present applicant who was settling a bargain about a ring at a jeweller's shop. The men armed with *lathis* informed Mr. Kaul that they were sepoy's of the Raja of Baniamau. He asked them to move on and not to obstruct the way but was told that they would move from the place if ordered to do so by the Raja of Baniamau. The naib-tahsildar who was also with Mr. Kaul asked the present applicant to remove his men from the place but the applicant retorted—

“Who are you to threaten me?”

Mr. Kaul then himself went up to the applicant and asked him to remove his *lathbands* from the place as

they were a danger to the peace owing to their carrying their *lathis* in an unusual manner. The applicant however replied—

“I don't care for anyone.”

Then the naib-tahsildar for the first time brought to the notice of the applicant that the person who was speaking to him was the Joint Magistrate and told him to be polite in his speech. To this the applicant replied—

“You are threatening me.”

According to the evidence of Mr. Kaul each time that the applicant said that he was being threatened by the naib-tahsildar or by him (Mr. Kaul) he (the applicant) beckoned to his men and they advanced a little, brandishing their *lathis*. Mr. Kaul apprehending an immediate breach of the peace directed the sub-inspector to arrest the present applicant, whereupon Hasib Khan, Sub-Inspector, immediately laid his hand upon the applicant's shoulder and also seized him by the wrist but the Thakur wrenched himself free and being surrounded by his followers, escaped from the *mela*. The authorities and the police constables followed him to some distance but the applicant disappeared. Mr. Kaul went back to the Sub-Divisional Magistrate and informed him of the incident. Then they all went to the applicant's camp in the *mela* and arrested some persons there. Subsequently the applicant and four others were prosecuted for the offences mentioned above.

The trying Magistrate acquitted three out of the five persons but convicted the present applicant and one Raja Pande of all the charges brought against them. They were also ordered under section 106, Cr. P. C., to execute bonds to keep the peace for the period of one year. Both of them appealed to the Sessions Judge and the learned Judge while acquitting Raja Pande altogether acquitted the present applicant of the charges under sections 143/341, I. P. C. He however maintained the convictions of the applicant under sections 353 and 224, I. P. C., but made the sentences of six

1938

MUNESHWAR

BUX
SINGHv.
KING-
EMPERORZiaul
Hasan,
J.

1938

MUNESHVAR
BUX
SINGH
v.
KING-
EMPEROR

Ziaul
Hasan,
J.

months' rigorous imprisonment, awarded by the Magistrate under each of the charges, concurrent. The fine of Rs.250 imposed under each section was maintained. Nothing was said by him as to the order made by the trying Magistrate under section 106, Cr. P. C.

It is contended on behalf of the applicant that no offence under section 353 or 224, I. P. C., has been made out against the applicant. The charge against all the accused was as follows:

"Firstly, that you on or about the 15th day of March, last at about 10.30 p.m. did obstruct a public right of way in the fair at Misrikh and thereby committed an offence punishable under section 143/341, I. P. C., and within my cognizance.

"Secondly, that you having on the same occasion been duly directed by the Assistant Magistrate present to clear the said public way did seek to deter him from his duty by show of criminal force and thereby committed an offence punishable under section 353, I. P. C., and within my cognizance.

"Thirdly, that you on or about the 15th day of March, last on the same occasion upon one of your number, namely, Muneshwar Bakhsh Singh being arrested by the sub-inspector present did with intent assist the said Munneshwar Bakhsh Singh when he knowingly resisted his legal apprehension and thereby committed an offence punishable under section 224/225, I. P. C., and within my cognizance."

The applicant has been acquitted under sections 143 and 341, I. P. C., as mentioned above and the question is whether or not he was guilty under sections 353 and 224, I. P. C. The learned Assistant Government Advocate bases the applicant's conviction under section 353 on the following portion of Mr. Kaul's evidence:

"Then the naib-tahsildar pointing to me said 'You must speak politely to the Joint Magistrate.' This further infuriated him (the present applicant) and he again said to the naib-tahsildar 'You are threatening me' and again

beckoning his men caused them to advance another foot brandishing their *lathis*."

It is argued that the applicant was guilty of an assault on Mr. Kaul with intent to prevent or deter him from discharging his duty of dispersing the crowd by beckoning to his followers and causing them to move brandishing their *lathis*. "Assault" under section 351, I. P. C., is defined thus:

"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."

According to this definition the apprehension of the use of criminal force must be from the person making the gesture or preparation and if that apprehension arises not from that person but from somebody else, it does not amount, in my opinion to assault on the part of that person, so that even if the applicant's followers moved a little forward at a gesture from him, it cannot to my mind amount to an assault by the applicant. This is further clear from section 349, I. P. C., which defines "using force" to another. That section runs as follows:

"A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First—By his own bodily power.

Secondly—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly—By inducing any animal to move to change its motion or to cease to move."

1938

MUNESHWAR
BUX
SINGH
V.
KING-
EMPEROR

Ziaul
Hasan,
J.

1938
 MUNESHWAR
 BUX
 SINGH
 v.
 KING-
 EMPEROR

*Ziaul
 Hasan,
 J.*

As under section 47 of the Code the word "animal" does not include a human being, it follows that according to section 349 force cannot be said to be used by one person to another by causing change in the position of another human being. Therefore, as nothing is said to have been done by the applicant himself which could come under the definition of "assault", he was not guilty of any offence under section 353, I. P. C.

Now remains the alleged offence of the applicant under section 224, I. P. C. That section runs as follows:

"Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished."

For this section to apply it is necessary that the applicant, who was charged under it, must have been lawfully apprehended or lawfully detained in custody and this in its turn depends on whether or not Mr. Kaul had power to order the applicant's arrest. The learned Assistant Government Advocate relies on section 64 of the Code of Criminal Procedure, which lays down that when an offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender and may thereupon, subject to the provisions contained in the Code as to bail, commit the offender to custody. The learned counsel for the applicant argues that under this section it was the Sub-Divisional Magistrate and not Mr. Kaul who should have arrested or ordered the arrest of the applicant but in view of the Deputy Commissioner's order deputing Mr. Kaul to the *mela* I cannot accept this contention. The material portion of that order which is dated the 23rd February is as follows:

"Mr. T. N. Kaul, I.C.S., Assistant Magistrate, will be the Paikarma Mela Magistrate He will dispose of all

petty cases on the spot that may come up in connection with the Paikarma fair ”

1938

In the face of this order it cannot be said that the *mela* was not within the temporary jurisdiction of Mr. Kaul. It appears to me, however, that an offence under section 224, I. P. C., too has not been made out against the applicant. In the first place, it is very doubtful if the applicant can be said to have been “charged” with any offence in the present case. The mere fact that the sub-inspector of police put his hand on the applicant’s shoulder or caught hold of his wrist without the least intimation to the applicant for what offence he was being arrested can hardly amount to the applicant being “charged” with any offence. In the second place, the only offence which is said to have been committed by the applicant in the presence of Mr. Kaul is said to have been one under section 353, I. P. C.; but it has already been held that no offence under that section was committed by him. In these circumstances Mr. Kaul cannot be said to have had power to arrest the applicant or cause him to be arrested. He himself says that he arrested him under section 128, Cr. P. C., but that section has nothing to do with the general power of arrest possessed by a Magistrate and only lays down the circumstances in which an assembly may legally be dispersed by force. No doubt it authorizes arrest in certain cases, namely, when the assembly on being commanded does not disperse or conducts itself in such a manner as to show determination not to disperse, but nothing of the kind occurred in the present case.

For reasons given above, I am of opinion that no offence was committed by the applicant either under section 353, I. P. C., or section 224, I. P. C. I therefore set aside the applicant’s convictions and sentences. The order under section 106, Cr. P. C., will be automatically set aside.

MUNESHWAR
BUX
SINGH
v.
KING-
EMPEROR

Ziaul
Hasan,
J.

Revision accepted.