

REVISIONAL CRIMINAL.

Before Adami and Bucknill, J.J.

CHHEDI SINGH

v.

THE KING-EMPEROR*

1924.

April, 30.

Criminal Procedure Code, 1898, (Act V of 1898), section 106—Criminal Procedure Code, (Amendment) Act 1923, (Act XVIII of 1923)—Security for keeping the peace—Order passed against an accused person convicted under section 149, Indian Penal Code, 1860 (Act XLV of 1860)—legality of.

The amendment of section 106, Criminal Procedure Code, 1898, made by the Amending Act of 1923 has made an order under section 106 impossible when the only section under which the accused are convicted is a section of the Penal Code read with section 149.

The amendment as it stands must be read to indicate that there must be some substantive offence charged to be read with section 149 inasmuch as no offence is punishable under section 149 alone.

The facts of the case material to this report are stated in the judgment of ADAMI, J.

Gour Chandra Pal, for the applicant.

Muhammad Yusuf, for the opposite party.

ADAMI, J.—The five petitioners have been sentenced under section 325 read with section 149, Penal Code, to six weeks' rigorous imprisonment each and to a fine of Rs. 50; they have also been bound down under section 106, Criminal Procedure Code, to keep the peace for a year.

* Criminal Revision no. 194 of 1924, from an order of W. Johnston, Esq., I.C.S., District Magistrate of Shahabad, dated the 21st February, 1924, affirming an order of M. Abdul Jalil, Sub-Deputy Magistrate of Bhabhua, of the Second Class, dated the 24th January, 1924.

The case proved against these petitioners and found by the lower Courts is that they were cutting the crop of one Raghunandan Singh and when he went to protest they beat him and Deonandan and caused many injuries on the bodies of these two persons.

The petitioners have been found guilty on the facts by both the Courts below. The only questions that arise before us now are with regard to the order passed under section 106, Criminal Procedure Code, and with regard to the punishment imposed on the petitioners.

With regard to the order under section 106 it is quite clear that it cannot be upheld. The amendment to section 106 by the Act XVIII of 1923 has made an order under section 106 impossible where the only section under which the accused are convicted is a section of the Penal Code which is read with section 149. The amendment is not very happily worded for it speaks of an offence punishable under section 149. Now no offence is punishable under section 149 alone: there must be some substantive offence charged to be read with section 149.

In the present case the petitioners were convicted under section 325 read with section 149, and under section 106, as it now stands, an order cannot be passed against them under that section.

With regard to the sentence, considering the number of injuries and their severity, caused by the unlawful assembly, on the persons of Raghunandan and Deonandan, the sentence of six weeks' rigorous imprisonment and a fine of Rs. 50 each is not too severe even though most of the petitioners are members of one family.

The result is that the order passed under the provisions of section 106, Criminal Procedure Code, must be set aside but the conviction and sentences passed under section 325 read with section 149, Penal Code, must be upheld.

BUCKNILL, J.—I agree.

Order modified.

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ADAMI, J.