1929.

LEDA BHAGAT v. KING-EMPEROR.

COURTNEY TERRELL, C. J.

five years' rigorous imprisonment to a period of two years' rigorous imprisonment in each case.

ROWLAND, J.—I agree.

Conviction upheld.

Sentence modified.

MISCELLANEOUS CRIMINAL.

Before Macpherson, J.

1930.

October 31, November 3, 10.

KULO SINGH

v.

KING-EMPEROR.*

Police Act, 1861 (*Act V of* 1861), *sections* 17 *and* 19—*discretion as to the personnel of special Police Officers confided to police authority—requisite qualifications, what should be—physical strength, whether sole or predominant qualification—resident of the neighbourhood being influential or respected or of mature years, whether a disqualification—test of valid appointment—prosecution for refusal to act as special constables—High Court, when should interfere in a case pending in a subordinate court—test.*

Section 17, Police Act, 1861, does not circumscribe the discretion of the Inspector of Police or other senior officer as to the personnel of the special police officers. Suitability indeed depends upon numerous and varying factors and, as in the appointment of the regular police, the discretion is confided to the Police authority.

Umes Chandra Gupta v. *Emperor*(1) (*judgment of Brett, J.*), followed.

Physical force is not the sole or even necessarily a predominant qualification of a police officer even in the regular force and still less when the appointment is under section 17.

It is open to the requisitioning officer to place value upon age or youth, physical strength, intelligence, temperament, especially patience and self-control in the face of galling

* Criminal Miscellaneous Cases nos. 59, 60, 62 and 63 of 1930.

(1) (1906) 10 C. W. N. 822.

provocation, social position and influence and other qualifications in accordance with the requirements of the particular situation confronting him. The appointment cannot be adjudged punitive because he lays stress upon any one or more particular qualifications.

It is certainly not a disqualification under section 17 that a resident of the neighbourhood is influential or respected, or is of mature years.

The Magistrate is ordained to appoint as police officers the residents named by the requisitioning officer unless he sees reason to the contrary.

Where, therefore, it was found that there was an apprehension of a breach of the peace and the police force ordinarily employed for preserving the peace was not sufficient for the protection of the inhabitants of the affected area, and the Magistrate, on the requisition of the Inspector of Police for appointment of special constables, issued notices to some of the influential and respectable residents of the village named in the police report, and, no cause having been shown to the contrary, appointed them as special constables under section 17, Police Act, 1861, but these persons refused to act as such and where there was no proof, or even a trace of reasonable suspicion, that the appointment was punitive or made from any other improper or unjustifiable motive,

Held, that the appointment was warranted by section 17 of the Police Act, 1861, and, therefore, that the refusal on the part of the persons appointed to act as special constables made them liable to prosecution under section 19 of the Act.

Gopinath Paryah v. *Empress*(1), *Benimadhab Singh* v. *Emperor*(2), *Radhakant Lal* v. *King-Emperor*(3), *Pradip Singh* v. *Emperor*(4), distinguished.

The High Court will not interfere in a case during its pendency in a subordinate court unless it is of an exceptional nature; and one—and the usual—test of its being of such a nature is that a bare statement of the facts of the case

(1) (1886) 10 Cal. W. N. 82.
(2) (1908) 12 Cal. W. N. 366.
(3) (1908) 8 Cal. L. J. 66.
(4) (1915) I. L. R. 43 Cal. 277.

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without any elaborate argument should be sufficient to convince the High Court that the case is one fit for its interference at an intermediate stage.

Choa Lal Das v. *Anant Pershad Misser*(1), followed.

The facts of the case material to this report are stated in the judgment of the Court.

C. C. Das and *Baldeo Sahay*, for the petioners.

Jafar Imam, for the Crown.

MACPHERSON, J.—These four rules which have been heard together have been issued to consider whether the prosecution of the petitioners under section 19 of the Police Act should not be quashed, or, in the alternative, the cases against them should not be transferred from the Court of the Sub-Deputy Magistrate of Begusarai to another Court.

On the 21st August the Inspector of Police of Begusarai reported that in a notoriously turbulent and litigious village called Ramdiari situated in the diara three miles from the Begusarai police-station the villagers of which are mostly Babhans "the most terrorising people in the subdivision", most of the Babhans had enrolled as "volunteers" and these "volunteers" had been molesting peaceful customers of excisable articles in neighbouring villages, advocating non-payment of chaukidari-tax and by threats compelling chaukidars and member-panches to resign, not without considerable success, and had generally been spreading disaffection and ensuring that no information under section 45 of the Code of Criminal Procedure should reach the police from the village since the last week of July. They had prevented two constables who had been sent to get information from entering the village, and were endeavouring to undermine the present system of Government by threatening law-abiding people and committing various wrongful acts by which disturbance of the peace was reasonably

(1) (1897) I. L. R. 25 Cal. 233.

apprehended. It was, therefore, "essential to call on the leading and influential men of the village to assist the Government in preserving the peace". He accordingly applied that twelve "influential men whose authority was likely to be respected by the mass of the population" may be appointed as special police officers for a period of six months for ten neighbouring hamlets which he mentioned, because the staff at Begusarai police-station was altogether insufficient to cope with the situation there, and he named twelve persons including the petitioners.

This application was forwarded by the Assistant Superintendent of Police at Begusarai to the Sub-divisional Magistrate with a note setting out that through the forced resignation of chaukidars in Ramdiari police work was completely paralysed. There were no chaukidars in the village with the result that "volunteers" were carrying on propaganda for non-payment of taxes and boycott of loyal men without any hindrance and obstacles were placed in the way of police officers visiting the village in the performance of their duties. Besides a strong section of Babhans the village contained other castes which were living in continual dread of molestation at the hands of the Babhans unless they submitted to all their unreasonable demands; persons who were willing to work as chaukidars were afraid to do so unless backed by a strong police force or assured that they would not be molested. The Begusarai police-station had a staff of only a few constables, so that in the exacting circumstances of the present situation it was impossible to reserve any of them solely for the work of assisting the chaukidars of one village, or to spare any constables from the armed reserve. Accordingly the only way of maintaining peace and order in that village was to enlist the co-operation of leading villagers as special constables and the list submitted contained the names of villagers whose help was necessary for the preservation of order in the locality.

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The report and note having been placed before the Subdivisional Magistrate on the 26th August, he held that disturbance of the peace may reasonably be apprehended in that neighbourhood and that the police force ordinarily employed in the neighbourhood was insufficient for the preservation of the peace, so that it was necessary to appoint as special constables the persons mentioned in the report. On notice issued to them eight of those persons appeared before him on the 30th August and he then explained the police report to them. No cause being shown to the contrary he appointed them to act as special police officers under section 17 of the Police Act for a period of three months. The five petitioners in case no. 60 refused to receive the written orders of appointment or to serve as special police officers. The Magistrate thereupon directed their prosecution under section 19 of the Act and on the 1st September made over the case for disposal to the Sub-Deputy Magistrate who granted time until the 12th September. On the 6th September each of the petitioners in the other three cases, Kulo Singh, Soma Singh and Parmeshwari Thakur, also refused by petition to act as a special constable and thereupon the Magistrate took cognizance in respect of them also of an offence under section 19 and on the 20th September made over the cases to the Sub-Deputy Magistrate for disposal. The eight petitioners then moved this Court and secured the present rules.

In support of the first portion of the rules, the contention of Mr. C. C. Das is that the appointment of the petitioners as special constables was not warranted by section 17 of the Police Act and they were accordingly justified in refusing to act as special police officers and consequently the prosecutions under section 19 are illegal. He relies on the judgment of Stephen, J. in *Umes Chandra Gupta* v. *Emperor*(1), and further refers to *Gopinath Paryah* v. *Empress*(2),

(1) (1906) 10 Cal. W. N. 822.
(2) (1886) 10 Cal. W. N. 82.

Benimadhab Singh v. *Emperor*(1), *Radhakant Lal* v. *King-Emperor*(2) *and Pardip Singh* v. *Emperor*(3) On the facts he contends, first, that the petitioners are neck-deep in the anti-Government movement so that they cannot reasonably be called upon to perform functions contrary to the policy which they have been advocating, and generally that the Magistrate's order being made with an object that was illegal—in particular in respect of five of them who being old men are unfit to be made special constables, so that their appointment must have been punitive—the prosecutions have no basis in law. He goes so far as to suggest that the circumstances are " that the whole of the community to which the petitioners belong residing within the locality are engaged in the present political movement which has resulted in wholesale resignations of chaukidars, and extensive propaganda for non-payment of chaukidari-tax " and that the necessity is " to have special constables to perform functions which chaukidars used to perform " and, therefore, no Babhan can be appointed a special constable. It would appear that the number of Babhans in the subdivision is approximately one lakh.

On behalf of the Crown reliance is placed by Mr. Jafar Imam on the judgment of Brett, J. in *Umes Chandra Gupta* v. *Emperor*(4) and he contends further that the facts appearing in the present case are such that even on the judgment of Stephen, J. in that case the appointments are prima facie valid and the High Court is not warranted in interfering at the present stage.

In my judgment the contention of Mr. Jafar Imam cannot be gainsaid. With the views expressed in the judgment of Brett, J. I would respectfully concur holding that it sets out the law on the subject correctly. But even on the view of Stephen, J., which

(1) (1908) 12 Cal. W. N. 366.
(2) (1908) 8 Cal. L. J. 66.
(3) (1915) I. L. R. 43 Cal. 277.
(4) (1906) 10 Cal. W. N. 322.

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with respect I am unable to accept, the petitioners have no case on the facts.

Before the facts are dealt with, it may be recalled that the High Court will not interfere in a case during its pendency in a subordinate court unless it is of an exceptional nature; and one—and the usual—test of its being of such a nature is that a bare statement of the facts of the case without any elaborate argument should be sufficient to convince the High Court that the case is one fit for its interference at an intermediate stage [*Choa Lal Das* v. *Anant Pershad Misser*(1)].

There was indeed interference by the High Court in the four decisions cited by Mr. C. C. Das. But each of them arose out of a purely civil dispute between two private parties in which it was clear on a bare statement of the case that the appointment of the petitioners was made from an improper motive of partisanship and apparently, as was said in the latest of the cases, " it was never really intended to employ the petitioners as police officers " or, as in another case, it was doubtful if there was ever any danger of a breach of the peace. These decisions are of no assistance in the present case in which no improper motive can be discerned and it is not even suggested that there is not an apprehension of a breach of the peace. In fact the applications on which the rules were obtained are lacking in candour. There is no basis for the statement that the whole of the Babhan community is infected with the civil disobedience virus or for any suggestion that any of the petitioners are so infected. Nowhere do the petitioners assert or even suggest that such is the case, or that they have enrolled as volunteers or participated in disloyal activities. From what has been set out it rightly appeared to the Subdivisional Magistrate that a disturbance of the peace may reasonably be apprehended in the locality mentioned and

(1) (1897) I. L. R. 25 Cal. 233.

it is manifest that in the circumstances detailed the police force ordinarily employed for preserving the peace is not sufficient for the protection of the inhabitants of Ramdiari and its neighbourhood. There is nowhere on the materials any proof, or even a trace of suspicion that the appointment was punitive or made from any other improper or unjustifiable motive. Prima facie it is a straight-forward effort to secure the assistance of leading and influential men whose authority is likely to be respected by the villagers, in the preservation of peace and order in the conditions set out in section 17. It cannot be conceded for a moment that physical force is the sole or even necessarily a predominant qualification of a police-officer even in the regular force and still less when the appointment is under section 17. Indeed many of the permanent force and those not the least efficient, possess no great physical development and in all ranks character and position in society are very important considerations. Section 17 does not circumscribe the discretion of the Inspector of Police or more senior officer as to the personnel of the special police officers. The idea of suitability has slipped into several of the reported decisions but obtains no support in the enactment. Suitability indeed depends upon numerous and varying factors and as in the appointment of the regular police the discretion is confided to the police authority. Here it was open to the requisitioning officer to place value upon age or youth, physical strength, intelligence, temperament, especially patience and self-control in the face of galling provocations, social position and influence and other qualifications in accordance with the requirements of the particular situation confronting him. The appointment cannot be adjudged punitive because he lays stress upon any one or more particular qualifications. Indeed where as here assistance was really required, the Magistrate would not requisition as adjutant police either useless men or malevolent non-co-operators. Then the Magistrate is ordained to

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appoint as police officers the residents named by the requisitioning officer unless he sees reason to the contrary. In the present instance none of the petitioners showed reason to the contrary and the Magistrate could not possibly hold that any such reason transpired from the papers before him. It is certainly not a disqualification under section 17 that a resident of the neighbourhood is influential or respected. Neither is it necessarily a disqualification that he is of mature years and that judgment and discretion is a more prominent characteristic than biceps. On the contrary the former would certainly and the latter may well enhance his suitability for the particular public duty of assisting to prevent or to allay a disturbance of the public peace in the neighbourhood of which he is a resident.

It is then contended in particular that section 19 which only penalises neglect or refusal to serve as a special police officer when such neglect or refusal is without sufficient cause, does not apply in the case of five of the petitioners because they are old or very old men. That is to say, they rely upon their age as furnishing sufficient cause for their refusal or neglect. They allege themselves to be 60, 65, 70, 75 and 85 years of age respectively. Obviously these ages in round quinquennia are set out on mere guess, and it is common knowledge that in such cases age after 40 or 45 is enormously exaggerated. Prima facie it is altogether incredible that the Subdivisional Magistrate before whom they appeared in person, would appoint a man of 70, not to say a man of 85, as a special police officer, however high might be his other qualifications for that position in the neighbourhood. There is nothing reliable on record to indicate that the petitioners are not reasonably active men in possession of their faculties, such as would alone be of use to the requisitioning police officer. At any rate the plea that their age constituted sufficient cause is pre-eminently one which should properly be advanced

in defence before the Magistrate who tries the charge against them. This Court is not in a position to deal with it.

Prima facie, therefore, the appointment of the petitioners as special police officers was warranted by section 17, the sole object being thereby to strengthen the ordinary police. Furthermore, the prosecution under section 19 followed their admitted refusal or neglect to act as such. No ground is made out for quashing the proceedings.

In support of the application for transfer, the only ground advanced is that the Sub-Deputy Magistrate, when application was made to him between the 1st and 12th September by the petitioners in Case no. 60 for copy of the report of the Divisional Inspector, rejected it and the petitioners suspected that the refusal was due to administrative considerations leading to an apprehension on their part that they would not have a fair trial in the subdivision "as the Subdivisional Magistrate is naturally feeling annoyance" over the large number of resignations of chaukidars in the thana of Begusarai. But for this suspicion there is no basis at all. The trial Court refused copy at that stage on the usual ground that it could not be given until exhibited at the trial. No inference can be drawn from that refusal. Indeed there is no ground whatever to suppose that petitioners will not have a fair trial in his Court. The impression created by perusal of his proceedings is that so far from exhibiting harshness towards them he has treated them with indulgence. Furthermore, the Subdivisional Magistrate has not displayed any animus against petitioners either in the course of the proceedings or in the cause which he has shown against the rules.

Thus the rules are without merits and they are accordingly discharged. Had the facts been correctly presented to this Court the rules would not have been issued.

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Let the records be sent down forthwith so that the trials so long interrupted may proceed.

Rules discharged.

FULL BENCH.

Before Jwala Prasad, Wort and Kulwant Sahay, JJ.

1931.

January, 20.

TILAK MAHTON

v.

AKHIL KISHORE.*

Civil Procedure Code, 1908 (Act V of 1908), Order XLIV, rule I—application for leave to appeal in forma pauperis admitted—notices issued—final hearing—Court, jurisdiction of, to consider whether decree contrary to law or usage or otherwise erroneous or unjust.

When an application for leave to appeal in forma pauperis is admitted and the court orders notices to issue to the opposite party and the Government Pleader, it is open to them, at the final hearing of the rule, to show that the case does not satisfy the proviso to rule 1 of Order XLIV, Code of Civil Procedure, 1908, and the Court has to consider the question whether the decree is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust.

Raghunath Prasad v. *Musammat Rampiari Kuer*(1), *Bachan Dai* v. *Jugal Kishore*(2) and *Musammat Bibi Sogra* v. *Radha Kishun*(3), overruled.

Basant Kuer v. *Chandulal*(4), followed.

Krishnasami Panikondar v. *Ramasami Chettiar*(5), *Sakubai* v. *Ganpat Ramkrishna*(6), referred to.

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* Pauper Application no. 7 of 1929.

(1) (1927) I. L. R. 6 Pat. 687.
(2) (1924) 8 Pat. L. T. 119.
(3) (1928) 10 Pat. L. T. 46.
(4) (1929) A. I. R. (Lah.) 314.
(5) (1917) I. L. R. 41 Mad. 412, P. C.
(6) (1904) I. L. R. 28 Bom. 451.