

## APPELLATE CRIMINAL.

*Before Mr. Justice Lentaigne.*

PARSODAN

v.

KING-EMPEROR.\*

1924

July 30.

*Habitual Offenders' Restriction Act (Burma Act II of 1919) -- Necessity of a preliminary order in writing specifying the substance of information and the period of restriction—Section 4 (a) of the Act—Section 13 of the Act—Rule 12 of Rules framed under the Act—Order of restriction made without recording the preliminary order—Correct procedure—Code of Criminal Procedure, sections 110 (f), 112, 117, 118—Powers of the District Magistrate under section 13.*

*Held*, that proviso (a) to section 4 of the Burma Habitual Offenders' Restriction Act, 1919, makes it essential that the preliminary order required under section 112 of the Code of Criminal Procedure shall set forth the substance of the information received and shall state the term during which the order of restriction shall be in force, and where these provisions are not complied with, the entire proceeding must be treated as irregular, and the orders passed therein, must be set aside.

*Held, also*, that where it is proposed to take action under section 110 (f) of the Criminal Procedure Code, the preliminary order required under the provisions of section 112 of the Criminal Procedure Code, must state the amount of the bond to be executed and the term for which the bond is to be in force.

*Held, further*, that where it is intended to take preventive action under section 7 of the Burma Habitual Offenders' Restriction Act, 1919, the same procedure, with necessary modification and addition, must be followed as is prescribed under section 117 of the Criminal Procedure Code.

*Held, also*, that the power of converting an order, under section 118 of the Criminal Procedure Code, requiring security for good behaviour into an order of restriction under the Habitual Offenders' Restriction Act can be exercised by the District Magistrate alone and that too only where there has been a proper preliminary order and the District Magistrate has good reason for the change.

*Keith and Young*—for the Petitioner.

LENTAIGNE, J.—The Subdivisional Magistrate of Thayetmyo has passed an order directing that the applicant, Parsodan, be restricted to the Town of Allanmyo for one year under section 7 of the Burma Habitual Offenders' Restriction Act, 1919, and that

---

\* Criminal Revision No. 461B of 1924 from the order of the Subdivisional Magistrate, Thayetmyo, in Criminal Miscellaneous Trial No. 37 of 1924.

he do report once in every three days at 9 a.m. to the police-station at Allanmyo. The applicant, who is the nephew of a wealthy mill-owner, appealed against that order to the District Magistrate, but his appeal was dismissed, and he now applies that such orders be revised by this Court.

On a perusal of the Subdivisional Magistrate's record, it is obvious that the orders must be set aside, in any case, on the technical ground that the Magistrate has failed to comply with the procedure specifically prescribed for such a proceeding, because the preliminary order dated the 27th March, 1924, did not comply with the provisions of proviso (a) to section 4 of the Burma Habitual Offenders' Restriction Act, 1919. That proviso makes it essential that the preliminary order required under section 112 of the Code of Criminal Procedure shall set forth the substance of the information received and shall state the term during which the order of restriction shall be in force. If the additional requirement, as to the term during which a proposed restriction is intended to be in force, is not specified in such preliminary order, no order under section 7 of the Act should be passed. A perusal of the proceedings shows that the defence was materially misled by this omission, because no attempt was made to produce evidence on the question of restriction; whilst several witnesses expressed their willingness to become sureties for the good behaviour of Parsodan.

It is quite true that the record now commences with a formal order which, if read with the preliminary evidence would purport to be a compliance with the provisions of the proviso in question; but such order is dated the 3rd April, 1924, and is, therefore, subsequent in date to the recording of all

1924

PARSODAN  
v.  
KING-  
EMPEROR.  
LENTAIGNE,  
J.

1924

PARSODAN

v.

KING-  
EMPEROR.LENTAIGNE,  
J.

the defence evidence on the 1st and 2nd April. Likewise, all the prosecution evidence had been previously recorded on the 29th March.

The order, as passed on the 27th March, which was really the order on which the proceeding was initiated, appears on the reverse of page 10 of the record, and from its wording, it suggests that it is an order under section 110, clause (f), of the Code of Criminal Procedure; but it is not even a proper order for that purpose in so far as it does not state the amount of the bond to be executed, or the term for which the bond is to be in force, as required under the provisions of section 112 of the Code of Criminal Procedure.

Section 117 of the Code of Criminal Procedure shows clearly the procedure that is contemplated at the hearing of the case after the preliminary information has been recorded, and after the accused has been brought before the Court; and the same procedure, with necessary modification and additions, must be followed, where it is intended to take preventive action under section 7 of the Burma Habitual Offenders' Restriction Act, 1919. As the proper preliminary procedure has not been adopted prior to the recording of the evidence for the prosecution and for the defence, the entire proceeding must be treated as irregular.

Section 13 of the Burma Habitual' Offenders Restriction Act, 1919, cannot be relied on as justifying the special procedure of this case, because the District Magistrate is the only Magistrate empowered under that section, and even the District Magistrate could not have intervened in the present case unless there had been a proper preliminary order and unless the Subdivisional Magistrate had also previously passed his order under section 118 of the Code. In such

a case, it would be the duty of the District Magistrate to have some good reason for the change over to the Burma Habitual Offenders' Restriction Act, 1919; and Rule 12 of the Rules framed under that Act indicates the class of reason which would justify such a change.

I may add, however, that, even if the proper preliminary order had been passed in this case, and even if the various allegations made against Parsodan are true, it is open to question whether this is the class of case to which the Burma Habitual Offenders' Restriction Act, 1919, is intended to apply. It is not suggested that Parsodan goes out of the local area in which he lives for the purpose of committing breaches of the peace in other local areas, but merely that he worries certain people in the local area in which he lives, because he is said to be a bully. It is therefore, difficult to see any possible object in the order except to deport him from Ledaingzin, because he has made himself objectionable to certain residents of that place. Likewise, it is difficult to see what useful public purpose would be served by an order expressly prohibiting him from moving into other areas where, he would not be likely to do any harm, or by such operation of such an order in presumably curtailing his means of livelihood as a broker to his uncle's cotton mill. Moreover, the suggestion, that the order restricting him to the Town of Allanmyo will permit him to act as a cotton broker to his uncle's cotton mill at Ledaingzin on the Thayetmyo side of the river, appears to overlook the difficulty of a broker taking orders from his master, or bringing samples to his master, or his supervising deliveries of cotton to his master's mill, if he is not permitted to go to his master's mill. I notice, however, a later passage in which the Magistrate

1924

PARSODAN  
vs.  
KING-  
EMPEROR.

LENTAIGNE,  
J.

1924  
 PARSODAN  
 v.  
 KING-  
 EMPEROR.  
 LENTAIGNE,  
 J.

states that:—"I decided that accused ought to be restricted in Allanmyo for one year. He is not so very far from his home and can still carry on his business *there*." I am not sure whether the word "there" is intended to refer to "home" or to "Allanmyo." If the latter is the intended meaning the above points require consideration, but, if the former is the intended meaning, it is not clear who is to give Parsodan his daily passes over to Ledaingzin in order to enable him to carry on his business *there* or how this modification of the scheme of the Act is to be worked.

The case has other peculiar features because the action under the preventive sections was initiated on the formal complaint of a private individual; no police officer has been examined, and there are alleged to be cross cases in the Courts, and some suggestions of stone throwing by both sides. It appears to be assumed that there is only one bully, and that there is only one side to some incidents which may be only the prosecution version of incidents connected with a series of squabbles, the details of which have not been disclosed to the Court. It is, however, unnecessary to discuss the merits of this evidence at this stage, because the order must be set aside on technical grounds.

For the above reasons I must set aside the order of restriction passed against Parsodan without the proper procedure having been complied with,