

REVISIONAL CRIMINAL.

Before Justice Sir Henry Scott-Smith.

BISHAN SARUP—Petitioner,

versus

THE CROWN—Respondent.

Criminal Revision No. 1521 of 1924.

Indian Railways Act, IX of 1899, section 101—Station Master endangering the safety of passengers by disobeying a rule—Defence that the engine driver could have prevented the accident.

A mixed train was approaching B. K. Station, and under rule 12 it was the duty of the Station Master, the petitioner B. S., who kept the key of the points, to give it to the passed porter, and to send him to the facing points with instructions to set and lock the points for the line on which the train was to come. It was found as a fact that B. S. neglected to send the porter to lock the points, that the signals were down to allow the train to pass into the station, but that the engine-driver should have stopped the train when he found that there was no porter at the points signalling him to pass on. The points not being locked the consequence was that some of the carriages of the train were derailed. It was contended that had the engine-driver stopped the train, as he ought to have done when he saw that there was no porter at the points, there would have been no derailment and the petitioner therefore was not directly reponsible for the derailment.

Held, that the disregard by the petitioner of rule 12 enhanced the danger to the persons travelling in the train and it was the risk thus entailed which rendered him liable to punishment under section 101 of the Indian Railways Act.

Emperor v. Ram Chandra Hari (1), followed.

Sant Das v. Empress, Chief Court Criminal Revision No. 1049 of 1894, reported in High Court Decisions of Indian Railways Cases by M. Teruvenkatacharier, 2nd Edition, at page 888 and *Hakumat Rai v. The Empress*, Criminal Revision No. 1956 of 1894, reported at page 890 *idem*, distinguished.

1925

Application for revision of the order of Rai Bahadur Lala Sri Ram Poplai, Sessions Judge, Karnal, dated the 11th October 1924, modifying that of M. Gul Nawaz Khan, Magistrate, 1st class, Karnal, dated the 12th September 1924, convicting the petitioner.

BISHAN SARUP
v.
THE CROWN.

G. C. NARANG, for Petitioner.

CARDEN NOAD, Assistant Legal Remembrancer,
for Respondent.

JUDGMENT.

SIR HENRY SCOTT-SMITH J.—This is an application for revision by Bishan Sarup, Station Master of Budha Khera Station on the East Indian Railway, who was convicted by a Magistrate under section 101 of the Railways Act, his conviction being affirmed by the Sessions Judge of Karnal. The facts are fully stated in the judgments of the lower Courts, and are briefly as follows :—

On the 6th of February 1924 a mixed train was approaching Budha Khera Station, and it was the duty of the Station Master, the petitioner, when he knew this, to send the passed porter to the facing points with instruction for him to set and lock the points for the line on which the train was to come. It has been found as a fact by both the lower Courts that the Station Master neglected to send the porter to the points, that the signals were down to allow the train to pass into the station, but that the engine driver should have stopped the train when he found that there was no porter at the points signalling him to pass on. The points were not properly locked, and the consequence was that some of the carriages of the train were derailed. No person was hurt, but there can be no doubt that the derailment of part

1925

BISHAN SARUP

v.

THE CROWN.

of the train did cause danger to persons travelling therein. The contention of counsel for the petitioner is that the omission of the Station Master to send a man to set the points was not the direct cause of the accident. He points out that no accident would have occurred had the engine driver stopped the train as he ought to have done when he found that there was no porter at the points. He has referred to *Sant Das v. Empress*, Chief Court Criminal Revision No. 1049 of 1894, reported in High Court Decisions of Indian Railway Cases by M. Teruvenkatacharier at page 888, where it was held that to constitute an offence under section 101 of the Indian Railways Act, 1890, the act or disobedience must itself endanger the safety of persons; thus where the accused by disobedience of General Rule 28 did not himself endanger the safety of any person, but merely facilitated a second act of disobedience by another person, which did endanger safety, it was held that the accused could not be convicted of an offence under section 101 of the Indian Railways Act, 1890.

In that case the facts were very different from those of the present case. There the facts were that the accused Sant Das, a Station Master, in contravention of Rule 28, which requires that a "line clear" message shall not be written out, in whole or in part, till required, wrote out such a message in his book; that the Guard entering the office during the Station Master's absence tore out the message, and started the train and caused an accident. In my opinion the present case is clearly distinguishable. Here it was the duty of the Station Master, who kept the key of the points to give it to the passed porter and to send him out to properly set and lock the points. The rule is obviously intended to ensure the

1925

BISHAN SARCUF
v.
THE CROWN.

safety of persons travelling in an incoming train, and the omission to act up to the rule certainly tended to enhance the danger to such persons. The case reported on page 890 of the same volume is also distinguishable. There it was held that the man who endangered the safety of the travelling public by not properly closing and locking the points was the *Jamadar* whose duty it was to close the points. It was pointed out that the Station Master might be departmentally liable for not having ascertained that the *Jamadar* had performed his duties.

The only reported case which I have been able to find, which at all bears on the present one, is *Emperor v. Ram Chandra Hari* (1). There the station Master disregarded the rules which lay down that when permission for a train to approach has been given no obstruction shall be permitted outside the home signals, or, on the line on which it is intended to admit the train, up to the starting signal which controls the train. In that case the signals were against the incoming train, but the engine-driver disregarded them and drove his train past them and a collision was the result. The Magistrate held that though the Station Master had broken a rule, he had not by so doing endangered the safety of any person within the meaning of section 101 of the Indian Railways Act. Upon an appeal by the Local Government the High Court held that the disregard by the accused of rule 100 enhanced the danger to passengers; and it was the risk thus entailed which rendered the rule-breaker liable to punishment.

It is not quite clear whether in the present case the engine-driver could have avoided the derailment

(1) (1913) I. L. R. 37 Bom. 685.

1925

BISHAN SARUP
v.
THE CROWN.

by stopping the train in time because it must be remembered that the signals were in his favour. But, there can be little doubt that if the Station Master had complied with the rules and had sent the passed porter out to the points to properly set and lock them, no accident would have occurred. It was stated that the points had been tampered with, but the porter, if he had gone out to set and lock them, would doubtless have noticed any defect and in all probability no derailment would have occurred. I see no reason to differ from the principle enunciated in the Bombay case, and I hold that the disregard by the petitioner of rule 12 which is set forth *in extenso* in the Magistrate's judgment, enhanced the danger to the persons travelling in the train. I, therefore, reject the application for revision and maintain the sentence as reduced by the Sessions Judge.

A. R.

Revision rejected.
