

**REVISIONAL CRIMINAL.***Before Mr. Justice Harrison.*

KHAZAN CHAND AND ANOTHER, Petitioners

*versus*

THE CROWN, Respondent.

**Criminal Revision No. 395 of 1926.**

*Criminal Procedure Code, Act V of 1898, section 107—  
Security demanded from persons doing a lawful act because  
it was objected to by other persons and likely to lead to a  
breach of peace on their part.*

The accused, *Chamars*, were required to give security to keep the peace under section 107 of the Code of Criminal Procedure in respect of a lawful act of drawing water from a public well, on the ground that it was likely to lead to a breach of peace by those persons who objected to their taking water from that well.

*Held*, that as the accused were doing a lawful act the order demanding security from them was not justified.

*Emperor v. Muhammad Yakub* (1), referred to.

*Application for revision of the order of Kanwar Raghbir Singh, District Magistrate, Ludhiana, dated the 30th January 1926, affirming that of Sardar Sahib Sardar Amar Singh, Magistrate, 1st Class, Ludhiana, dated the 30th November 1925, ordering the accused to furnish security.*

TEK CHAND, for Petitioners.

*Nemo*, for Respondent.

**JUDGMENT.**

HARRISON J.

HARRISON J.—Two men, Khazan Chand and Garja Singh, were put on security under section 107, Criminal Procedure Code, by *Sardar Sahib Sardar Amar Singh* and their appeals have been dismissed by the District Magistrate. They have applied for re-

vision and the facts are simple enough. These two men are *Rahtia Aryas*, being the sons of *Rahtia Sikhs*, that is to say, they are *Chamars*. Khazan Chand is practising as a *Hakim* and the Hindu witnesses for the defence have stated that all classes including *Brahmins* take medicine from him. Garja Singh is a fitter in a mill. Both men claimed a right to draw water from a certain public well situated in Khanna town in the Ludhiana District and a section of the population objected. A year ago the Deputy Commissioner by an executive order directed them to obtain the water they required by means of a *Jhiwar*, who was to be maintained at their expense. After two months, this *Jhiwar* refused to continue working and the trouble began afresh and it is stated by several witnesses that there is likely to be a breach of peace, and the *Chamars* are likely to suffer at the hands of those who disapprove of their taking water from this public well. The District Magistrate says in his order that, had they been prepared to give an undertaking not to draw water from this well, he would have accepted their appeal. Where, as in this case, the anticipated breach is to be committed by the other side, the only point to be seen is whether the act which brings about that breach is wrongful in itself. This was laid down in *Emperor v. Muhammad Yakub* (1) and many subsequent rulings, and this view is in accordance with the clear wording of the section. It is not even alleged that it is a wrongful act for these *Chamars* to draw water from a public well as opposed to one, which has been built for or dedicated to the use of any particular religion or class of the population. Indeed, one of the witnesses—a Muhammadan named Imdad Hussain—says that if a sweeper turns Muhammadan there is no objection to his draw-

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ing water from such a public well. Fifteen defence witnesses, all Hindus of the upper classes, appeared and stated that the majority of the population did not object. It is clear, therefore, that the objectors form a section, large or small, of the population of this town but do not constitute the whole and, even if they did, it would not affect the question materially. So long as these *Chamars* are doing a lawful act, there can be no reason for putting them on security and it would appear to be more reasonable to take proceedings against those who are expected to commit the breach of the peace and offer violence to law-abiding citizens.

I accept the application for revision and set aside the order demanding security.

A. N. C.

*Revision accepted.*

### APPELLATE CRIMINAL.

*Before Mr. Justice Broadway.*

GHULAM MUHAMMAD, Appellant

*versus*

THE CROWN, Respondent.

**Criminal Appeal No. 364 of 1926.**

*Indian Penal Code, 1860, sections 366 and 376—Abduction with intent—Rape—section 71—whether parts of one offence — Same transaction — Separate sentences — whether legal.*

A charge under section 366 of the Indian Penal Code involves elements and questions of facts different from a charge under section 376. Where, therefore, the appellant had forcibly carried away the complainant and had subsequently raped her—

*Held*, that he had brought himself within the purview of section 366 the moment he forcibly carried her away with the intention required by that section, and the infliction of

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June 1.