

1929
 MUHAMMAD
 BAKHSH
 v.
 FATEH
 MUHAMMAD.

are of opinion that the Privy Council ruling, *Coreu v. Appuhamy* (1), must be followed and we hold that the order of remand of the learned District Judge was, therefore, correct. The appeal is dismissed. Costs here will abide the event.

N. F. E.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Fforde and Mr. Justice Jai Lal.

THE CROWN—Appellant

versus

HET RAM—Respondent.

Criminal Appeal No. 122 of 1928

Indian Police Act, V of 1861, sections 30, 32—Public Procession—license—conditions of—liability for breach of—by persons who signed the license as sureties—conditions not clearly expressed.

Held, that it is only the licensee, to whom a license for the formation of a procession is given under section 30 of the Police Act, who is bound by the license and liable to be prosecuted if any member of the procession is guilty of a breach of the conditions of such license, and not the persons who signed the license as sureties ; there being no legal sanction for requiring an applicant to produce sureties.

Held also, that the licensee having assumed responsibility for the entire conduct of a procession and of its component members, cannot repudiate such responsibility by alleging that the violation of the conditions took place in his absence without his consent or even without his knowledge.

Held further, however, that the licensee cannot be prosecuted for the breach of a condition contained in the license, unless that condition is expressed in clear and unambiguous terms.

Appeal from the order of Rai Sahib Lala Shibbu Mal, Sessions Judge, Karnal, dated the 13th August 1928, reversing that of Sardar Dilbagh Singh, Magistrate, 1st class, Rohtak, dated the 16th May, 1928, and acquitting the respondent.

CARDEN-NOAD, Government Advocate for Appellant.

GOKAL CHAND, NARANG, for Respondent.

JUDGMENT.

JAI LAL J.—This is an appeal by the Local Government against the acquittal of Mutsaddi Lal, Makhan Lal, Bhagwan Das and Het Ram, residents of Rewari, in the district of Gurgaon, who were prosecuted under section 32 of the Indian Police Act, V of 1861, for violating the conditions of a license alleged to have been granted to them by the Superintendent of Police for the formation of a procession on the 4th of March, 1927. The accused were convicted by the Magistrate and sentenced to a fine of Rs. 100 each, or in default to simple imprisonment for two months. They were, however, acquitted by the Sessions Judge of Karnal on appeal.

It appears that Mutsaddi Lal is the President of the Arya Smaj, Rewari, and the other accused are either members or sympathisers of the Arya Samaj. It was decided to take a *Nagarkertan* procession of the Arya Smaj through the town of Rewari on the 4th of March, 1927, and it seems that the Superintendent of Police required Mutsaddi Lal to apply for a license for the purpose under the provisions of section 30 (2) of the Indian Police Act. Mutsaddi Lal having made such an application a license was issued describing him as "the licensee" and the other three accused

1929

THE CROWN
v.
HET RAM.

JAI LAL J.

1929
 THE CROWN
 v.
 HET RAM.
 JAI LAL J.

as "the sureties," and the case for the prosecution is that under the express terms of this license a Magistrate and a Deputy Superintendent of Police were to be in charge of the procession and the licensee and the processionists were bound to obey the orders of these two officers with regard to the conduct and management of the procession, and that such directions were disobeyed by some of the processionists.

Now, section 30 (2) provides that a District Superintendent of Police "on being satisfied that it is intended by any person or class of persons * * * to form a procession which would in the judgment of the Magistrate of the district * * * if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons * * * directing or promoting the procession shall apply for a license." Section 30 (3) provides: "On such application being made he may issue a license specifying the names of the licensee and defining the conditions on which alone such procession is to be permitted to take place and otherwise giving effect to this section." We may assume that the requirements of section 30 (2) were complied with in this case, and that an application was made by Mutsaddi Lal in pursuance of a notice duly issued to him by the Superintendent of Police. The question is whether he or the other three accused can be convicted of having violated any of the conditions of the license.

The license in this case is on a printed form in Urdu and on the first page is a column for the names of the applicants for the license, and it is to be observed that only Mutsaddi Lal with his full description is mentioned therein and the names of the other three accused do not appear. Then later, there is a

condition that " this license is granted to the above-named persons on the responsibility of the following persons and, *inter alia*, one condition hereof is that Messrs. * * jointly and severally shall be responsible for the management of the above procession, that is to say, * * * ." After this, space is left for the " detail " of the persons made responsible under the above condition. But no detail is given of such persons. It also appears that after the word " Messrs. " instead of the names of persons, there are, what purport to be, the signatures of three persons, *i.e.*, Makhan Lal, Bhagwan Das and Het Ram and also that the space after the words ' that is to say ' has been left blank. Then at the end of the document there is space for the signatures of the licensees and Mutsaddi Lal alone has signed underneath it. Mutsaddi Lal admits his signature. Makhan Lal says that he signed the document as a witness and not as a surety, while Bhagwan Das and Het Ram deny their signatures. The learned Sessions Judge holds that it has not been established that Bhagwan Das and Het Ram signed the license. We need not examine this conclusion of the learned Sessions Judge in view of our decision on the other questions involved in this case.

The first question that arises in the case is whether Het Ram, Bhagwan Das and Makhan Lal, assuming that they signed the license as sureties, as contended by the prosecution, are liable to be prosecuted for the violation of the conditions of the license. There is no provision of law which makes it incumbent on an applicant for a license to provide sureties or which authorises the officers concerned to demand such sureties. In the present case Mutsaddi Lal

1929

THE CROWN
v.

HET RAM.

JAI LAL J.

1929

THE CROWN

v.

HET RAM.

JAI LAL J.

alone is described as the licensee in the license and section 30 of the Indian Police Act, merely deals with licensees, and sub-section (3) of that section clearly contemplates the specification of the names of the licensees and the defining of the conditions on which the procession is to be permitted. It is, therefore, the applicant for the license alone to whom the license can be given and who is bound by the conditions of the license under section 30. In order to bring in other persons within the purview of the penal provisions like the present, it is necessary that there should be express sanction of the law to bind them to the conditions of the license. No such provision has been cited before us and the learned Government Advocate frankly admits that he cannot find any legal sanction for requiring an applicant to produce sureties. He also states that his object is to get a decision of this Court as to the legality of the form on which the license has been granted so as, if necessary, to amend it. I am definitely of opinion that the provision in the license as to sureties is unauthorised by law, and therefore it is Mutsaddi Lal alone who is legally responsible to see that the conditions of the license are not disobeyed.

At this stage I may deal with another aspect of the case. A contention appears to have been raised before the learned Sessions Judge that in this case, at the time of the alleged breach of the conditions of the license by the members of the procession, Mutsaddi Lal himself was not present and therefore he could not be convicted under section 32. This contention seems to have found favour with the learned Sessions Judge, though he has not expressed himself clearly on the point. Dr. Gokal Chand, Narang, who appeared

for the respondents, candidly admitted that the licensee would be liable if the conditions of the license had been broken by some of the processionists. This in my opinion is obviously the correct view of the law. A licensee, as in the present case, assumes responsibility for the entire conduct of the procession and its component members and he cannot repudiate such responsibility by alleging that the violation of the conditions took place without his consent or even his knowledge. If any member of the procession is guilty of the breach of the conditions of the license, the licensee is liable to be prosecuted for it.

It will be convenient to deal here with another question that arises. The learned Sessions Judge seems to be of opinion that "it was the duty of the Magistrate to bring this (the contravention of the conditions of the license) to the notice of the licensee and the processionists and to cancel the license and then to declare the processionists an unlawful assembly. The Magistrate never did so. The licensee and his sureties cannot be held guilty of contravening the conditions of the license." Apparently the learned Sessions Judge was thinking of section 30-A of the Police Act, which provides that "Any Magistrate or District Superintendent of Police, etc., may stop any procession which violates the conditions of a license granted under the last foregoing section, and may order it or any assembly which violates any such conditions as aforesaid to disperse," and further that "Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section shall be deemed to be an unlawful assembly." If the learned Sessions Judge considered, as he seems to have done, though the learned counsel

1929

THE CROW

v.

HET RAM

JAI LAL :

1929
THE CROWN
v.
ET RAM.
—
AI LAL J.

for the respondents contends that he did not intend to do so; that before a licensee can be proceeded with under section 32 for violation of the conditions of the license it is necessary for the Magistrate or the Superintendent of Police to take action under section 30-A, then I am bound to say that this view of the learned Sessions Judge is entirely wrong. Section 30-A merely gives an additional power to the officers concerned to stop the procession and then, if it does not disperse, to deal with its members as members of an unlawful assembly. It is not a condition precedent to the prosecution of the licensee for violation of the conditions of the license that action should first be taken under section 30-A. The matter, in my opinion, is so obvious that nothing further need be said on it.

This brings me to the question whether Mutsaddi Lal has violated any conditions of the license. The learned Sessions Judge has held that it is apparent from the evidence of the Magistrate, who was in charge of the procession, that his orders were not disobeyed. What happened was this: When the procession reached a certain spot, which was in front of a mosque, it was discovered by the Magistrate that the time for prayers in the mosque was nearing. He therefore directed the several parties of the procession, who stopped in front of the mosque, to hurry on. The parties, it appears, were on carts and the orders of the Magistrate were obeyed, but not promptly. In fact, the occupants of the last cart protested against the orders and claimed that a written order may be given to them which, having been given, they proceeded further, but only after the Magistrate had spoken to somebody, who seemed to be the leader of the party,

that he was taking a great risk in stopping longer. The procession thus passed the mosque before the prayers commenced. The Magistrate did not consider that any condition of the license had been contravened, but apparently the subordinate police thought otherwise. The learned Sessions Judge has accepted the version of the Magistrate, and I can see no valid ground for interfering with that finding on this appeal from acquittal.

There is, however, another ground on which the accused are entitled to be acquitted. The license, as I have already stated, is on a printed form. After some of the conditions on which the procession was allowed, including one that it would start at 3 o'clock and finish at 9, there is a heading for "General conditions" which are mostly printed; but between the heading "General conditions" and the first printed condition is a writing to the effect that the "speed of the procession shall be under the directions of the *Ilaga* Magistrate and the local police" It is only this condition which, it is alleged by the prosecution, was violated in this case. The question is whether the condition is expressed in such clear terms as to bring home to the licensee and the processionists that they have to obey the orders of the Magistrate and the local police or whether it can be reasonably construed, as contended by the accused, to be merely a sort of a direction to the Magistrate and the local police to regulate the speed of the procession. If the latter, then it is to be observed that both did regulate the speed of the procession. In my opinion before such a condition can be made the subject of prosecution it must be entered in the license in clear and unambiguous terms, which is not the case here, and a licensee

1929

THE CROWN

v.

HET RAM

JAI LAL J.

1929
 THE CROWN
 v.
 HET RAM,
 JAI LAL J.

cannot be prosecuted for the violation of a condition, which is so vague and indefinite that it is difficult to hold that the licensee was bound to obey the orders of the Magistrate and the local police as to the speed of the procession, specially when it is remembered that the time limit given in the license was not exceeded.

In my opinion the accused have been rightly acquitted by the learned Sessions Judge and I would dismiss this appeal.

FORDE J.—I agree.

N. F. E.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Addison.

MUSSAMMAT NUR BANO (PLAINTIFF) Appellant
versus
 GHULAM MUHAMMAD AND OTHERS (DEFENDANTS)
 Respondents.

Civil Appeal No. 1936 of 1924.

Custom—Partition—widow—right of—to claim partition of her husband's share—in undivided estate—Sukhera Rajputs, Fazilka Tahsil, district Ferozepore—Riwaj-i-am.

Held, that under the Custom prevailing among *Sukhera Rajputs* of *Fazilka tahsil*, district *Ferozepore*, a widow is entitled to her full share of the produce, and if she is obstructed in obtaining this full share, she is entitled to partition of her share, so that she may be able to enjoy without disturbance the produce she is entitled to.

And, that the defendant-collaterals, on whom the *onus* rested, had failed to prove the contrary.

Abdul Qadir v. Mst. Rabia (1), referred to.