

REVISIONAL CRIMINAL.

Before Tek Chand J.

SHADI LAL AND OTHERS—Petitioners

versus

THE CROWN—Respondent.

Criminal Revision No. 1226 of 1930

1930

Dec. 20.

Criminal Procedure Code, Act V of 1898, section 107—Security—grounds for requiring—present (and not past) likelihood of breach of the peace.

Held, that proceedings under section 107 of the Criminal Procedure Code are intended to be preventive and not punitive, the object being to prevent persons from doing something which is likely to occasion a breach of the peace or disturbance of public tranquillity in the immediate or near future.

It is incumbent on the prosecution, therefore, to give clear proof of acts or specific conduct on the part of the person or persons proceeded against, from which a “reasonable immediate inference could be drawn” that a breach of the peace or disturbance of public tranquillity is likely.

Srikanta Nath v. Emperor (1) and *Empress v. Shimbhu Nath* (2) followed.

Held further, that acts in respect of which security is required must not be acts, the repetition of which may be merely apprehended from past commission of similar acts, but acts from which a reasonable inference can be drawn that the accused are likely (not were likely) to commit a breach of the peace.

In the matter of Basdeo, per Stanley C.J. (3), followed.

Application for revision of the order of Khan Bahadur Mian Abdul Aziz, District Magistrate, Jullundur, dated the 13th August 1930, affirming that of Chaudhri Daya Ram, Magistrate, 1st Class, Hoshiarpur, dated the 26th May 1930.

(1) (1905) 9 Cal. W. N. 898. (2) 21 P. R. (Cr.) 1888.

(3) (1904) I. L. R. 26 All. 190, 193.

1930

V. N. SETHI, for Petitioners.

SHADI LAL
v.
 THE CROWN.

CARDEN-NOAD, Government Advocate, for Res-
 pondent.

TEK CHAND J.

TEK CHAND J.—In a joint enquiry held before a Magistrate of the first class at Hoshiarpur, the three petitioners were ordered under section 107, Criminal Procedure Code, to execute bonds, with two sureties each, to keep the peace for a period of one year, or in default to undergo simple imprisonment for one year. The first petitioner, Dr. Shadi Lal M.B. B.S. is a private medical practitioner at Hoshiarpur and the other two are youths, aged about 18 years, one of them, Bhola Ram, being a student of the local Sanatan Dharma School, and the other, Gauri Shankar, a cloth merchant. The petitioners failed to execute the bonds and have been in jail from the 26th of May 1930. They appealed, but the appeal was dismissed by the District Magistrate, Jullundur, and they have preferred a petition for revision in this Court.

As the learned District Magistrate had not discussed the evidence in his judgment, but had contented himself with the observation "that the facts had been set out in the trial Court's judgment in great fullness and it would be mere waste of time to refer to them in detail." I have been through the evidence with both counsel, and have heard them at length.

The proceedings started on three separate complaints filed against each of the petitioners by the Superintendent of Police, Hoshiarpur, in the court of the Additional District Magistrate, who, after recording the statement of the complainant, issued a notice to each petitioner to show cause why he should

not be bound down under section 107. The cases were then made over to *Chaudhri* Daya Ram, Magistrate, 1st class, who passed an order on the 19th of May 1930 that the proceedings be consolidated and a joint enquiry held against all the three accused persons.

The prosecution examined 12 witnesses, who, as will appear later on, have deposed to four different incidents. The first witness is *Khan* Qurban Ali Khan, Superintendent, Police. He has no personal knowledge of any of the incidents, except that on the 14th of May 1930 after sunset, he went to the city police station and found a crowd of about 200 persons gathered outside. He asked the constable on duty as to what the matter was and was informed that one Ram Singh Jauhar (who was "wanted" in a case and had voluntarily surrendered himself at that time) had come in a motor lorry, and that the crowd had collected in connection with his arrest. The witness is positive that he did not notice Shadi Lal, petitioner, in the crowd. His evidence is, however, important in so far as he informs us that he did not receive any report from any of his subordinates in which it was stated that "Dr. Shadi Lal had ever himself uttered any provocative words to annoy the police or anybody else." Nor does he remember having received any information after the 21st March that Shadi Lal ever obstructed any police official in the discharge of his duty or that he addressed a public meeting or gathering. The witness has no personal knowledge of the activities of the other two accused. His evidence, therefore, so far as it goes, cannot support the case for the prosecution.

The next four witnesses (P. W. 2) Ram Rang, Prosecuting Inspector, (P. W. 3) Aziz Ahmad, H. V.

1930

SHADI LAL

v.

THE CROWN.

TEK CHAND J

1930

SHADI LAL

v.

THE CROWN.

TEK CHAND J.

Clerk, Deputy Commissioner's Office, (P. W. 4) Waryam Singh, Deputy Superintendent, Police and (P. W. 5) Ishar Das, Sub-Inspector, depose to an incident, which is alleged to have taken place outside the court-room of the Additional District Magistrate on the 21st of March 1930. It appears that on that date two persons, named Sham Das and Sardar Ahmad, were convicted under section 124-A, Indian Penal Code, and as they were being taken from the court-room to the jail-van, some members of the crowd, which had collected in the court compound, raised certain cries and Shadi Lal tried to garland Sham Das, but Ram Rang asked him not to do so. Shadi Lal, however, insisted upon garlanding the convict. At this stage Waryam Singh, Deputy Superintendent, Police arrived on the scene and saw "Shadi Lal and Ram Rang catching each other's hand." "On this," says Waryam Singh, "I got down the steps and *ordered the people to get back and people got back* and I asked the driver to drive away the lorry which he did." This shows that the crowd was not turbulent or threatening, and that it retired when asked to do so by the Deputy Superintendent, Police. Both Waryam Singh and Ram Rang, however, state that the crowd was agitated and they express the opinion that if the lorry had not been taken away immediately, a breach of the peace might have occurred. Both these witnesses have further stated that they did not receive information, that after the 21st March any of the petitioners ever attempted to garland any prisoner or interfered with the Police custody of any person. The third witness to this incident is Aziz Ahmad, Head Vernacular Clerk, and all that he says is that as he was leaving his office he saw a crowd, consisting of "all sorts of

people, pleaders their clerks, etc.", outside the Additional District Magistrate's court-room, that Shadi Lal had a garland in his hand, that Ram Rang was telling Shadi Lal "do not, do not," and that the witness saw nothing more. He also deposed that he did not hear Shadi Lal raise any shouts, and that he did not see any altercation on that day.

The next set of witnesses comprises (P. W. 7) *Mir Usaf Ali*, Sub-Inspector, and (P. W. 8) *Makhadum Ali*, Constable, who depose that on the 14th of April 1930 a meeting was held to protest against the arrest of *Pandit Jawahar Lal Nehru* at Allahabad, which was followed by a procession. Dr. Shadi Lal was in front of the procession and the other two petitioners were in it. The procession went round various streets of the city and on its way it halted for a few minutes in front of the police station. Neither witness, however, states that a breach of the peace or disturbance of the public tranquillity was apprehended at the time.

The third incident referred to is that on the 10th of May 1930 it was announced in a meeting that *Ram Singh, Jauhar*, to whom reference has already been made above, was expected to arrive by the evening train to surrender himself to the police, and that a procession would be taken out to welcome him. It is, however, not alleged that any of the petitioners were present at this meeting. A number of persons are stated to have gone to the Railway station, but *Ram Singh* did not come. On their way back these persons stopped for a short time in front of the house of (P. W. 6) *Sardar Harbakhsh Singh, Bar-at-Law*, whose nephew edits a vernacular newspaper called the *Shivalik Times*, and raised some shouts there. The nephew has not appeared as a witness

1930

SHADI LAL

v.

THE CROWN.

THE GRAND J.

1930

SHADI LAL

v.

THE CROWN.

TEK CHAND J.

and *Sardar Harbakhsh Singh* states that he remained inside his room and was not able to recognise anyone in the crowd. He has, therefore, not deposed anything definite against any of the petitioners. Two other witnesses (P. W. 11) *Daulat Ram* and (P. W. 12) *Banta Singh*, Constables, however, saw *Gauri Shankar* and *Bhola Ram*, petitioners, in the crowd, and heard them raise the cries. Both these witnesses state that *Shadi Lal* was not in the crowd on this occasion. They further admit that they did not make any report in writing of this incident to the higher authorities. No importance appears to have been attached to it at the time, and there is no suggestion that any breach of the peace was apprehended.

The fourth and last incident referred to is that on the 14th of May 1930 the aforesaid *Ram Singh Jauhar* came in a lorry from *Jullundur* and was met by the police outside the town. He was immediately arrested and removed in a car to the jail. A number of persons appear to have collected and raised the "usual cries." The first witness relating to this incident is (P. W. 6) *Mir Usaf Ali*, Sub-Inspector, who states that he saw *Shadi Lal* and *Gauri Shankar*, but not *Bhola Ram*, in the crowd. He also states that if "he had not driven the car quickly there was a possibility of breach of peace." He admitted, however, that he did not make any report in writing that there was any danger of a breach of the peace from the crowd. The next witness *Makhadum Ali*, Constable (P. W. 8) got into the lorry near the *Octroi* post and as the lorry approached the town he saw a crowd collect at the shouting of *Ram Singh Jauhar*; *Gauri Shankar* and *Bhola Ram* were in

the crowd and responded to the shouts of Ram Singh and followed the lorry. Shadi Lal was not there at the time, but was seen near the Police station, which is 300 or 400 *karams* from the Octroi post. This witness is contradicted by the other constable, Thakar Singh (P. W. 9), who stated that none of the accused was near the Octroi post, but that all three of them were at the shop of Milkhi Ram from where they followed the lorry. According to this witness it took only 3 or 4 minutes to shift Ram Singh from the lorry to the car. Some of the persons present in the crowd had garlands in their hands, but none of them actually attempted to garland Ram Singh. The last witness relating to this incident is (P. W. 10) Hari Singh, *lambardar* of a neighbouring village, who happened to be returning from the court to the city. He merely heard Bhola Ram and Gauri Shankar shout when Ram Singh was being removed from the lorry to the car.

1930

SHADI LAL

v.

THE CROWN.

TEK CHAND J.

This is all the evidence produced by the prosecution and, after carefully examining it, I have no doubt that it is insufficient to justify the order under revision. It is hardly necessary to point out that the object of section 107 is not to punish persons for anything they might have done in the past but to prevent them from doing something which is likely to occasion a breach of the peace or disturbance of public tranquillity in the immediate or near future. *Srikanta Nath v. Emperor* (1). These proceedings are intended to be preventive and not punitive, and as observed by Rattigan J. in *The Empress v. Shimbu Nath* (2), it is incumbent on the prosecution to give clear proof of acts or specific conduct on the part of

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1930

SHADI LAL
v.
THE CROWN.

TEK CHAND J.

the person or persons proceeded against, "from which a *reasonable immediate* inference could be drawn" that a breach of the peace or disturbance of public tranquillity is likely.

A reference to the terms of section 107 will show that there are two distinct sets of circumstances in which a Magistrate may take action under this section:—

(a) where it appears that a person is likely himself to commit a breach of the peace, or disturb the public tranquillity, by a direct act of his; or

(b) where he may be the *indirect* cause of a breach of the peace or disturbance of public tranquillity by doing a wrongful act or acts which might lead to a breach of the peace or disturbance of the public tranquillity.

It seems to have been suggested in the lower courts that this case fell under the second category, as the conduct of the petitioners was likely to provoke "the police to come into clash with the public." The learned Government Advocate, however, definitely stated before me that this was not the position which he took up and it is, therefore, unnecessary to discuss this aspect of the matter. But he, contended that the petitioners had so conducted themselves during the two months prior to the initiation of the proceedings against them that the Magistrate was justified in concluding that they were likely to disturb the public tranquillity. After giving due weight to his arguments, I am of opinion that the evidence on the record is insufficient to justify this conclusion. Much emphasis was laid on the incident of the 21st March that Dr. Shadi Lal attempted to garland a

prisoner, against the orders of the Police officer in charge, and actually caught hold of the hands of the latter in the process. This is, however, a solitary incident of its kind which has not been repeated and which there is no indication on the record, was likely to be repeated again. It may be, that by this act Shadi Lal rendered himself liable to punishment under certain sections of the Penal Code, but if that was so, the obvious and proper way to deal with him was to prosecute him for that offence and not to proceed against him under section 107 of the Criminal Procedure Code nearly two months later.

The learned Government Advocate has also referred to the opinion expressed by Deputy Superintendent, Police, Waryam Singh and Police Inspector Ram Rang, that if on the 21st March 1930 the lorry in which prisoners, Sham Das and Sardar Mohammad, were seated, had not been taken away quickly, a breach of the peace would in all probability have taken place. In the first place, the materials on the record are, in my opinion, insufficient to justify this inference, but even if the witnesses are right in their belief that a disturbance *was* likely on that occasion, it is legally insufficient to justify a finding that a disturbance of public tranquillity would be imminent two months later. As observed by Chief Justice Stanley in *In the matter of the petition of Basdeo and others* (1) "Section 107 presupposes that the person sought to be put under a rule of bail is likely (not *was* likely) to commit a breach of the peace or disturb the public tranquillity. * * * * *

The acts in respect of which security is required must not be acts, the repetition of which may be merely

1930

SHADI LAL

v.

THE CROWN.

TER CHAND J.

(1) (1904) I. L. R. 26 All. 190, 193.

1930

SHADI LAL
v.
THE CROWN.

TEK CHAND J.

apprehended from past commission of similar acts, but acts from which a reasonable inference can be drawn that the accused *are* likely (not *were* likely) to commit a breach of the peace.”

I have no doubt that the evidence produced in the case clearly falls short of proving that on the day when the complaints were lodged, or on the day when the final order binding down the petitioners was passed, they, individually or collectively, were likely to commit a breach of the peace or disturb the public tranquillity within the meaning of section 107. I must, therefore, hold that the order of the learned Magistrate was not justified.

In this view of the case, it is not necessary to consider the other points raised at the hearing, that the proceedings against the three petitioners should not have been consolidated and that the petitioners have been prejudiced by the joint enquiry.

I accept the petition for revision, set aside the order of the courts below requiring the petitioners to furnish surety under section 107, Criminal Procedure Code, and direct that the petitioners, who are in custody, be released forthwith.

N. F. E.

Revision accepted.