

## CRIMINAL REVISION.

*Before Mr. Justice Mosely.*THE KING *v.* MAUNG KYI NYO.\*

1939

Oct. 25.

"Offences involving breach of the peace"—Necessary ingredient of offence—Using obscene words on a public road—Bond to keep the peace—Legality of order—Active criminal intimidation or assault necessary—Penal Code, s. 294—Criminal Procedure Code, s. 106.

The expression "offences involving a breach of the peace" in s. 106 of the Criminal Procedure Code means offences in which the commission of a breach of the peace is a necessary ingredient, or an offence the commission of which has actually led to a breach of the peace, irrespective of the party by which that breach is committed.

*Sadho Ram v. King-Emperor*, I.L.R. 7 Luck. 573, referred to.

*Abdul Gafur v. Mohamed Mirza*, I.L.R. 59 Cal. 659; *Crown v. Wet Taung*, 1 L.B.R. 262; *Emperor v. Manik Rai*, I.L.R. 33 All. 771; *Emperor v. Sayed Yacoob*, I.L.R. 43 Bom. 554; *Jib Lao Gir v. Jagmohan Gir*, I.L.R. 26 Cal. 576; *King-Emperor v. Ma Hla Bon*, 2 L.B.R. 125; *King-Emperor v. Ni Kun Ya*, (1904—06) 1 U.B.R. (Penal Code), 4; *Kuppa Reddiar v. King-Emperor*, I.L.R. 47 Mad. 846; *Queen-Empress v. Nga So Pe*, P.J.L.B. 50; *Raja Ram v. Emperor*, 37 Cr. L.J. 385, discussed.

Where a person is convicted under s. 294 of the Penal Code of the offence of using obscene words on a public road to the annoyance of others an order directing him to enter into a bond under s. 106 of the Criminal Procedure Code cannot be made unless there is a finding that active criminal intimidation or assault has actually occurred in consequence of the obscene abuse.

*Lambert* (Government Advocate) for the Crown.

MOSELY, J.—The respondent was convicted of the offence of using obscene words to the annoyance of others in a public road, an offence under section 294 of the Penal Code, and was sentenced to a sentence of fine: it was also ordered that he enter into a bond under section 106 of the Criminal Procedure Code to keep the peace for six months.

The case has been taken up on revision of this Court's own motion in order to consider the legality of the order to enter into a bond.

\* Cr. Revision No. 774A of 1939 from the order of the Subdivisional Special Power Magistrate of Ye U in Summary Trial No. 18 of 1939.

Section 106 of the Criminal Procedure Code is as follows :

"Whenever any person accused of any offence punishable under Chapter VIII of the Penal Code, (other than an offence punishable under section 143, section 149, section 153A or section 154 thereof), or of assault or other offence involving a breach of the peace, or of abetting the same, or any person accused of committing criminal intimidation, is convicted of such offence \* \* \* and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace, such Court may \* \* \* order him to execute a bond \* \* \*."

Section 196 in the Code of 1882 enabled bonds to be taken

"whenever any person accused of rioting, assault or other breach of the peace, or abetting the same, or assembling armed men, or taking other unlawful measures with the evident intention of committing the same, or any person accused of criminal intimidation by threatening injury to person or property is convicted of such offence."

Section 106 of the Code of 1898 is similar to section 106 of the Code of 1882 except that for the words "other breach of the peace" the words "involving a breach of the peace" are substituted.

The words "involving a breach of the peace" and the expression "breach of the peace" itself have been the subject of numerous and conflicting decisions. The words themselves are vague and susceptible of more than one interpretation.

The matter has been dealt with in four old rulings of the Chief Court of Lower Burma and of the Court of the Judicial Commissioner, Upper Burma, all under the Code of 1898.

In *Crown v. Wet Taung* (1) the question was considered whether a person convicted of an offence

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(1) (1902) 1 L.B.R. 262.

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under section 504 of the Penal Code could be ordered to keep the peace under section 106 of the Criminal Procedure Code.

Section 504 of the Penal Code says that

“ whoever intentionally insults, and thereby gives provocation to, any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished \* \* \* .”

It was said in *Wet Taung's* case (1) that such an offence may, but does not necessarily, involve a breach of the peace, and that even if a breach of the peace occurs, it is not the person accused under section 504 of the Penal Code who is guilty of it.

I do not think that the question by which party the breach of the peace is caused is material in considering whether a person convicted under section 504 of the Penal Code can be ordered to give a bond under section 106 of the Criminal Procedure Code. In fact I am of the opinion that the word “ involve ” was expressly used with that consideration in view.

I note that in *Kuppa Reddiar's* case (2) the same view as in *Wet Taung's* case (1) was taken, and it was said that it is of the essence of the offences specified in section 106 that in committing the offence of which the offender is found guilty he necessarily has also broken the peace.

*Wet Taung's* case (1) was briefly followed in *K.E. v. Ma Hla Bon* (3), a case where a bond had been ordered on a conviction under section 294 of the Penal Code. It was said there that obscene abuse does not necessarily involve a breach of the peace.

In *K.E. v. Ni Kun Ya and one* (4) Irwin J., who had been a member of the Bench which decided

(1) (1902) 1 L.B.R. 262.

(3) (1903) 2 L.B.R. 125.

(2) (1924) I.L.R. 47 Mad. 846.

(4) (1904-06) 1 U. B.R., Penal Code, 4.

*Wet Taung's* case (1), discriminated an offence under section 294 from one under section 504, and said that uttering obscene abuse in a public place to the annoyance of others could amount to a breach of the peace if there was a finding to that effect. He was of the opinion that the public peace could be broken by angry words as well as by blows or deeds.

An older ruling—*Q.E. v. Nga So Pe* (2)—to the opposite effect was not referred to.

Chapter VIII of the Penal Code, alluded to in section 106, deals with certain offences against the public tranquillity, namely, unlawful assembly and rioting and offences connected therewith, and also affray. Section 294 occurs in Chapter XIV.

The expression "offences involving a breach of the peace" in my opinion means offences in which the commission of a breach of the peace is a necessary ingredient, or offences the commission of which has actually led to a breach of the peace (irrespective of the party by which that breach is committed). This, I note, is the view taken in the case of *Jib Lao Gir* (3). This has been followed by the Calcutta High Court in a series of cases, the last of which is *Abdul Gafur v. Mohamed Mirza* (4).

*Jib Lao Gir's* case (3) was under the Code of 1898, and it was therefore also held there that a breach of the peace would be involved if unlawful acts were done with the evident intention of committing an offence involving a breach of the peace. The change in the Code has I think been overlooked in some of the subsequent cases, and it was held in *Abdul Gafur's* case (4), for example, that "offences involving a breach of the peace" include not only offences in which a breach of the peace is an

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(1) (1902) 1 L.B.R. 262.

(3) 1899) I.L.R. 26 Cal. 576.

(2) P.J.L.B. 50.

(4) (1931) I.L.R. 59 Cal. 659.

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essential element and in which a breach of the peace has actually occurred, but include also cases of offences in which an evident intention to commit a breach of the peace is expressly found.

I do not think that such a construction is possible under the present reading of section 106.

In *Emperor v. Manik Rai* (1) Justice Sir George Knox held that the words "involving a breach of the peace" mean not only offences which necessarily involve a breach of the peace, or in which a breach of the peace forms an ingredient, but include such an offence as in common knowledge is ordinarily or probably the occasion of a breach of the peace.

It was said that the word "involve" connotes the inclusion, not only of a necessary, but also of a probable feature, circumstance, antecedent condition or consequence.

To my mind it is impossible to construe the word "involve" as equivalent to the words "likely to lead to."

It was also said that the object of section 106 was to prevent breaches of the peace taking place, and not merely to follow up breaches of the peace which had already taken place. But that will not justify a more extended construction of the meaning of the expression than the words themselves allow.

In *Emperor v. Sayed Yacoob Sayed Lallamian* (2) Heaton J. said that the expression "offences involving a breach of the peace" covered two classes of cases. The first class, he said, is where a breach of the peace in fact has occurred. The other class is where the definition of the offence involves a breach of the peace, as it does in one of the two classes of cases which occur under section 104, that is the class of case where the

(1) (1911) I.L.R. 33 All. 771.

(2) (1918) I.L.R. 43 Bom. 554.

insult is perpetrated with the intention or knowledge that it is likely to give provocation which will cause another person to break the public peace.

In other words, it was said that an offence involving a breach of the peace was identical with an offence "intended or known to be likely to give provocation which would cause another person to break the peace." If so, there would seem to be no reason for the differentiation in the language of section 504 of the Penal Code and section 106 of the Code of Criminal Procedure.

Heaton J. also remarked that it was a possible view that a breach of the peace could be constituted by words without being necessary to come to the infliction of blows, or that the mere use of language, if it is violent enough, is a breach of the peace.

This view was tentatively approved in an Allahabad case—*Raja Ram v. Emperor* (1), where it was said that using abusive language and being generally disorderly at a railway station might amount to a breach of the peace.

I think that the correct view was taken in *Sadho Ram v. K.E.* (2), where it was said that an offence under section 504 involves only an intention to provoke a breach of the public peace, or knowledge that the provocation given is likely to cause such a breach, and that such an offence is not one involving a breach of the peace; and in *Abdulla v. Crown* (3), where it was held that an offence under section 297 (trespassing on burial places) was not an offence involving a breach of the peace, as such breach was not an ingredient in the offence, nor had any breach of the peace actually taken place.

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(1) 37 Cr.L.J. 385.

(2) (1931) I.L.R. 7 Luck. 573.

(3) (1921) I.L.R. 2 Lah. 279.

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I would hold then that the words "involving a breach of the peace" denote offences where either a breach of the peace was a necessary ingredient in the offence committed, or where a breach of the peace has actually been committed during the course of the commission of the offence by one party or the other.

I do not think that the mere use of abusive language in a public place is of itself a breach of the peace, though of course it is likely to lead to one. It is not one of the offences affecting the public tranquillity mentioned in section 106. The section itself provides for cases where threatening words amount to criminal intimidation, or where threatening gestures amount to an assault.

In my opinion the words "breach of the public peace" have not only in popular usage but in law the significance of a disturbance of the peace by something more than mere abusive or obscene words, that is to say, by resort if not to actual violence to threats of it. In other words, the word "peace" I consider is used as a synonym for security rather than for tranquillity.

I would hold that where an accused person is convicted of an offence under section 294, an order under section 106 cannot be made unless there is a finding that active criminal intimidation or assault etc., have actually occurred in consequence of the obscene abuse.

In the present case it would appear that the respondent might have been convicted of criminal intimidation as well as of the use of obscene language, though he was not charged with it. For this reason, as this revision was initiated by this Court on its own motion, on the principle enunciated in *K.E. v. Tha Byaw* (1) there will be no interference with the order of the lower Court.

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(1) 4 L.B.R. 315.