

REVISIONAL CRIMINAL.*Before Din Mohammad J.*

MOHAMMAD ABDUL QAYUM AND OTHERS

Petitioners,

versus

THE CROWN—Respondent.

Criminal Revision No. 1559 of 1938.

Criminal Procedure Code (Act V of 1898), S. 107 — Security for keeping peace — Essential requisites before action can be taken under the section — Petitioners belonging to two sister communities bound over as influential members of their respective communities — No proof that any of the petitioners was likely to commit a breach of the peace — Order of the lower Court supported on the ground of convenience and its usefulness for the prevention of breach of peace — Legality thereof.

The petitioners in the two cross cases belonged to two sister communities of a town, relations between whom were strained for a long time which resulted in certain members of both the parties losing their heads and leading to a breach of the public peace. Considering that the petitioners as influential members of their respective communities, were chiefly to blame for the disunity that was the bane of the town, the authorities called upon them to show cause why they should not be ordered to execute a bond for keeping the peace for one year. The only allegation against the petitioners was that they held respectable positions in their respective communities and wielded an enormous influence with its members. There was nothing on the record to show that any of the petitioners himself was likely to commit the breach of peace or to disturb the public tranquillity or to do any wrongful act which may cause the breach of the peace. The Crown, however, justified the order on the ground that the drastic measures taken against the petitioners proved fruitful and that everything had passed on peacefully since then.

Held, that before a person can be called upon to show cause why he should not execute a bond under s. 107 of the

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Code of Criminal Procedure it must be established that he is:—

(a) likely to commit a breach of the peace or disturb the public tranquillity; or

(b) to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity.

It is the individual who is contemplated in the section and it is the individual act that may be brought home to him. The only case in which a person can be punished for the wrongs done by others is where he abets or instigates the offence. Failing that, no person can be visited with any penalty for the acts done by others on whom he has no control and for whose conduct he cannot be held responsible.

No penal action can be taken against the subject, however reprehensible his conduct may be and however convenient it might prove to the authorities to take that action, unless the law warrants it.

Held (setting aside the order) that a person who is doing a lawful act cannot be called upon to execute a bond under s. 107, Criminal Procedure Code, merely because some other person might commit the breach of the peace and offer violence to law-abiding citizens.

Khazan Chand v. The Crown (1) and *Thakar Singh v. The Crown* (2), relied upon.

Shadi Lal v. The Crown (3) and *Mirza Zulfakar Beg v. King-Emperor* (4), referred to.

Revision from the order of Mr. Ghulam Mustafa, District Magistrate, Rohtak, dated 2nd October, 1938, modifying that of Mr. C. H. Disney, Magistrate, 1st Class, Karnal, dated 30th March, 1938, ordering the petitioners to execute bonds.

BARKAT ALI, for Petitioners.

V. N. SETHI, for Advocate-General, for Respondent.

(1) I. L. R. (1926) 7 Lab. 482,

(2) I. L. R. (1927) 8 Lab. 98.

(3) I. L. R. (1931) 12 Lab. 467.

(4) 1927 A. I. R. (Pat.) 231.

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DIN MOHAMMAD J.—This judgment will dispose of Criminal Revision No.1559 of 1938 and Criminal Revision No.41 of 1939.

The petitioners in both these cases belong to the town of Panipat in the district of Karnal where unfortunately the relations between the Hindus and the Muslims have been strained for a long time. On every occasion that a religious procession is to be taken out, certain members of both the communities lose their head and forget all feelings of amity and friendship. The result is that the authorities are compelled to take extraordinary measures to ensure that the public tranquillity is not disturbed or the public peace is not broken. In October 1937, a similar occasion arose when a *nagar kirtan* procession was organised by the local Arya Samaj. The procession was to be taken out on the 1st October and on the 30th September some representatives of both the communities including the petitioners came together in the form of a unity board and arrived at a certain understanding. On the following day, however, the Muslims observed *hartal* thus evidencing a breach of agreement reached on the previous day but fortunately no untoward incident happened and the procession passed on peacefully. Considering that the petitioners as influential members of their respective communities were chiefly to blame for the disunity that is the bane of the town, the authorities called upon them to show cause why they should not be ordered to execute a bond for keeping the peace for one year. Both these cases were tried by the Additional District Magistrate and in both orders under section 118, Criminal Procedure Code, were made. Both parties then appealed to the District Magistrate. He did not interfere with the order in the main but reduced the period of security to the

period already expired which too was close on a year. Both sides have now put in their petitions for revision and challenged the orders of the Courts below on the ground that legally no proceedings could be taken against them on the allegations made by the prosecution and that the orders complained of were consequently bad in law.

However deplorable the state of affairs that prevails in the town and however urgent the necessity on the part of the authorities to ensure the peace, any action taken by them which does not conform to the provisions of the law as laid down in the Criminal Procedure Code cannot be maintained. No penal action can be taken against the subject, however reprehensible his conduct may be and however convenient it might prove to the authorities to take that action, unless the law warrants it. Looking at the cases before me from this point of view, and this is the only point of view with which I am concerned, I have no hesitation in remarking that there is not a shred of evidence on the record to prove these conditions which have been expressly laid down in section 107, Criminal Procedure Code, before any action under the section can be taken. The material portion of that section runs as follows:—

“ Whenever a Presidency Magistrate * * * or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the Magistrate * * may * * * require such person to show cause why he should not be ordered to execute a bond * * * ”

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It would be obvious therefore that before a person is called upon to show cause why he should not execute a bond, it must be established * * that he is likely (a) to commit a breach of the peace or disturb the public tranquillity or (b) to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. It is the individual who is contemplated in the section and it is the individual act that must be brought home to him. The only case in which a person can be punished for the wrongs done by others is where he abets or instigates the offence. Failing that, no person in the world can be visited with any penalty for acts done by others on whom he has no control, and for whose conduct he cannot be held responsible.

The only circumstance that has been alleged against the petitioners before me is that they hold a respectable position in the community to which they belong and wield enormous influence with its members. Counsel for the Crown has frankly admitted that beyond this there is nothing on the record to show that any of the respondents himself was likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion the breach of the peace or disturb the public tranquillity. All that he has urged in support of the order complained of is that the drastic measures taken against them proved fruitful and that everything passed on peacefully when the petitioners were removed from the field of action. This may be so, but it is to say the least irrelevant for the purpose of this case. The authorities might strike terror in the minds of the people and might thus achieve their object but in a Court of law it is the order that matters and not its

effect. Despotism is unknown to law and it is only legal orders passed in a legal manner that can be countenanced by the judicial tribunals of the land. To be a leader of one's own community is no crime and no person can be hauled up merely because he claims obedience from the members of his own community.

Even apart from these considerations, the order complained of cannot stand. It is well-established that a person who is doing a lawful act cannot be called upon to execute a bond under section 107, Criminal Procedure Code, merely because some other person might commit the breach of the peace and offer violence to the law-abiding citizens. Reference in this connection may be made to *Khazan Chand v. The Crown* (1) and *Thakar Singh v. The Crown* (2). It is further clear 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. See *Shadi Lal v. The Crown* (3) and *Mirza Zulfakar Beg v. King-Emperer* (4).

Holding, therefore, that there was absolutely no legal justification for the orders complained of to be made against the petitioners in both these petitions, I set them aside. I am aware of the fact that the term for which the bonds were executed expired long ago and that any order made by me to-day will offer no real relief to the petitioners. It was necessary, however, to lay down the law, as I understand it to

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(1) I. L. R. (1926) 7 Lah. 42.

(3) I. L. R. (1931) 12 Lah. 457.

(2) I. L. R. (1927) 8 Lah. 93.

(4) 1927 A. I. R. (Pat.) 231.

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be, in clear terms in order to safeguard against a repetition of the same illegality in future. If the authorities find themselves in an embarrassed situation, they can approach the Legislature for the amendment of the law but so long as it stands in its present form they cannot be allowed to twist or torture it to serve their own purpose.

A. N. K.

Petition accepted.
