

as would not allow water to accumulate therein, and likewise take such steps as would not leave the possibility of any accident happening." It is objected, on behalf of the applicant, that this order is illegal, and we think that the objection is a good one. Section 133 allows a Magistrate to order excavations adjacent to a way which is or may be lawfully used by the public, or to any public place to be fenced. Under that section, therefore, if it be assumed that the excavations are adjacent to such a way or public place, the Magistrate could only order them to be fenced; he could not order the applicant to fill them up. We reverse the order.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ramule.

*IN RE HUKUMPURIBAVA GOSAVI.**

Police—District Police Act (Bom. Act IV of 1890), Sec. 48, Cl. (a) (1)—

Construction—Procession—Order as to conduct of procession.

A District Superintendent of Police issued a notification to the following effect:—"No member of any sect can be permitted to proceed naked to the *tirth* to bathe, nor while there to bathe naked, nor to pass the streets naked on any account. If any one does this, he will be dealt with according to law."

Held that this notification was not illegal or *ultra vires*. It was not any order or command as to costume, but merely a warning to the people that an indecent exposure of the person was an offence under the law, and would be dealt with as such.

APPLICATION for revision under section 435 of the Code of Criminal Procedure (Act X of 1882).

Towards the close of 1895, on the occasion of the *Sinhast* festival at Trimbak, the District Superintendent of Police at Násik issued a proclamation to the following effect:—

* Criminal Revision, No. 136 of 1896.

(1) The Bombay District Police Act (Bombay Act IV of 1890), section 48:—

"(1) The District Superintendent or an Assistant Superintendent may, subject to any rule or order which may at any time be legally made by any Magistrate or other authority duly empowered in this behalf—

"(a) make rules for and direct the conduct of assemblies and processions and moving crowds or assemblages on or along the streets, and prescribe, in the case of processions, the routes by which, the order in which, and the times at which the same may pass."

1896.

IN RE
SULLEMANJI
GULAM
HUSEN.

1896.

August 10.

1896.

IN RE
HUKUMPURI-
BAYA
GOSAVI.

“No member of any sect can be permitted to proceed naked to the *tirth* to bathe, nor while there to bathe naked, nor to pass the streets naked on any account. If any one does this, he will be dealt with according to law.”

The applicants, who were *Gosavis* of Trimbak, applied to the District Magistrate of Násik to set aside the above proclamation.

The District Magistrate having declined to interfere, the applicants applied to the High Court under its revisional jurisdiction.

Daji Abaji Khare for applicants.

Ráo Bahádur Vasudev J. Kirtlikar, Government Pleader, for the Crown.

PER CURIAM:—Clause (a) of section 48 of the Bombay District Police Act (Bom. Act IV of 1890) gives a District Superintendent of Police power to “make rules for, and direct, the conduct of assemblies and processions and moving crowds or assemblages on or along the streets, and prescribe, in the case of processions, the routes by which, the order in which, and the times at which the same may pass.” We construe the word “conduct” to mean the act or method of leading, guiding or managing, the guidance or management, and not to mean the mode of action or behaviour of an assembly, and, therefore, we cannot hold that the clause gives a power to direct what costume shall be worn or not worn by the members of a procession. At the same time we do not consider that the District Superintendent has in the present case made any order as to costume. What is said in the order is this,—“No member of any sect can be permitted to proceed naked to the *tirth* to bathe, nor while there to bathe naked, nor to pass the streets naked on any account,” and in the Maráthi the words are added that “if any one does this, he will be dealt with according to law.” We look upon this not as an order or command, but as a piece of advice or warning to the people, telling them in what light the authorities will view certain acts. If the District Superintendent had said, “No nuisance or offence will be permitted,” that clearly would not have been an order not to commit those acts. So it is not an order to say that one particular form of alleged nuisance or offence, namely, walking and bathing naked, will not be permitted. Wilful and indecent exposure of the person, is itself an offence punishable under clause (o) of section 61. If,

therefore, any one in the procession should commit this act, he would be liable to arrest and punishment under that clause. The proclamation, we think, directs attention to this fact. It does not prohibit the act, so as to make the commission of it punishable as a breach of the order, but it says such an act will not be permitted, and that if it is done, the perpetrator will be proceeded against according to law; that is, that proceedings will be taken against him on the ground that he has committed an offence by reason of the commission of the act itself. In those proceedings the question whether the act is or is not an offence will have to be considered and determined. On this view of the case we decline to interfere.

1896.

IN RE
HUKUMPUR-
BAYA
GOSAVI.

CRIMINAL REFERENCE.

Before Mr. Justice Parsons and Mr. Justice Ranade.

IN RE BASTOO DUMAJI.*

Criminal Procedure Code (Act X of 1882), Sec. 545—Compensation—Award of compensation illegal where no fine is inflicted.

1896.

September 21.

Where an accused is discharged and no fine is imposed, no order for payment of compensation can be legally passed under section 545 of the Criminal Procedure Code (Act X of 1882).

THIS was a reference under section 438 of the Code of Criminal Procedure (Act X of 1882) by R. E. Candy, District Magistrate, Thána.

The material portion of the reference was as follows:—

“The accused was committed by the Bassein Police to the Court of the Third Class Magistrate for trial under section 379 of the Indian Penal Code in respect of palm leaves cut and removed by the accused from palm trees standing on Government land and farmed out to one Ramchandra Anant.

“The Magistrate found the accused not guilty of the charge on the ground of absence of dishonest intention in him in cutting and removing the leaves worth Rs. 2, and passed an order of discharge under section 253 of the Code of Criminal Procedure.

* Criminal Reference, No. 95 of 1896.