CRIMINAL REVISION.*

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1911. March 6.

EMPEROR *v.* NOOR MAHOMED SULEMAN AND ANOTHER.

Indian Penal Code (Act XLV of 1860), sections 283, 114—Obstruction in public way—Toy shop on a street—Exhibition of toys in the shop-window—Collection of crowd of persons in street—Obstruction.

The accused who had a toy shop in a public street, exhibited in the window of the shop overlooking the street, certain clockwork toys during a Diwali festival. The result of the exhibition was that thousands of people collected on the road to witness the toys: there were dangerous rushes in consequence, people were knocked down and great obstruction and danger were caused to those using the road. On these facts the accused were convicted of offences punishable under sections 283 and 114 of the Indian Penal Code:—

Held, upholding the conviction, that there were obstruction, danger and injury to the persons using the public way, which amounted to a public nuisance, and that the efficient cause of the nuisance was the act of the accused.

Ordinarily, every shop-keeper has a right to exhibit his wares in any way he likes in his shop, but he must exercise the right so as not to cause annoyance or nuisance to the public.

Attorney General v. *Brighton and Hove Co-operative Supply Association*(1), followed.

THIS was an application to revise convictions and sentences passed by A. H. S. Aston, Chief Presidency Magistrate of Bombay.

The accused, two in number, were the manager and servant respectively, of a toy shop in Shekh Memon Street in the City of Bombay. During the Diwali festival, the accused exhibited in their shop moving toys, which were effigies of a lion, a tiger and a cock. There was also an electric bell which rang causing a spark of electricity. In consequence of the exhibition, thousands of people collected in front of the shop: there were dangerous rushes and people were knocked down. The accused were asked by the police to stop the effigies, but they did not obey.

The accused were, upon these facts, convicted by the Chief Presidency Magistrate of Bombay of offences under sections 283

* Criminal Application for Revision No. 419 of 1910.

(1) [1900] 1 Ch. 276.

and 114 of the Indian Penal Code, and were sentenced each to pay a fine of Rs. 25. The accused applied to the High Court under its criminal revisional jurisdiction.

Lowndes, with *V. F. Vicaji*, for the accused:—Section 283 of the Indian Penal Code does not apply. It deals only with physical obstructions in a street. This is clear from the position the section occupies in the chapter in which it is placed. Further as long as a trader does a thing in the legitimate exercise of his trade he cannot be penalised under the section, if a crowd of people collects in front of his shop. Refers to *Rex* v. *Carlile*(1).

G. S. Rao, Government Pleader, for the Crown:—The terms of section 283 of the Indian Penal Code are wide enough to include the present case. A trader undoubtedly has a right to exhibit his wares for sale in his shop-window: but he must not do so in a manner to draw a large crowd of people in the street thereby. Refers to *Rex* v. *Moore*(2) and *Walker* v. *Brewster*(3).

CHANDAVARKAR, J.:—The facts of this case are shortly these. The two petitioners, manager and servant respectively of a toy shop in Shekh Memon Street, exhibited in the windows of the shop, overlooking the public road, certain clockwork toys during the last Diwali festival. The result of the exhibition was that thousands of people collected on the road to witness the toys. The Magistrate finds on the evidence that there were dangerous rushes in consequence; people were knocked down; and great obstruction and danger were caused to those using the road. The petitioners were asked by the police to stop the exhibition but they did not obey.

There can be no doubt upon these findings on the evidence that there were obstruction, danger and injury, to the persons using the public way, which amounted to a public nuisance.

The only question is whether that nuisance was caused by the petitioners.

The efficient cause of the nuisance was the act of the petitioners. It consisted in the manner in which they worked the

(1) (1834) 6 C. & P. 636. (2) (1832) 3 B. & Ad. 184.
(3) (1867) L. R. 5 Eq. 25 at p. 33.

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toys in their shop; their object was to attract a crowd; they knew that a crowd would be, and as a matter of fact was, attracted by what they did, and they must be regarded as having intended that consequence. It follows that the nuisance was caused by them.

But it is urged that what they did was in the course of reasonable user of their business on their own premises. The question of reasonable user is one of time, place and circumstance. It must be decided with reference to all the facts of the case in which it arises. Ordinarily, every shop-keeper has a right to exhibit his wares in any way he likes in his shop, but he must exercise the right so as not to cause annoyance or nuisance to the public. As was said by Romer, L. J., in *Attorney General* v. *Brighton and Hove Co-operative Supply Association*[1], "it does not follow that, because the user is necessary or useful for the purpose of carrying on the business, it must of necessity be held to be a reasonable user". And the law, as explained by Lindley, M. R., in the same case, is that "in a case of doubt or difficulty, the private reasonable right of a householder to carry on his business must yield to the public right of user of the street."

In the present case the petitioners were aware that their act was causing danger and obstruction to the public way. They were warned and yet did not desist. And it can hardly be said that the manner of the exhibition complained of as a nuisance was necessary for the purposes of their business in the sense that without it they could not have carried it on reasonably.

The rule must, therefore, be discharged, and the convictions and sentences confirmed.

Rule discharged.

R. R.

(1) [1900] 1 Ch. 276.