1904 JUNE 1, 7.

CRIMINAL REVISION.

The law does not demand a full and complete statement of reasons, but only a brief one. Following the rule which we cited at the outset we are of opinion that there is no sufficient reason for interfering with the conviction in this case. At the same time we think that as no serious harm was done and as the petitioners have suffered some imprisonment besides incurring heavy legal expenses, the ends of justice do not require that they should be sent back to jail. In lieu of the unexpired terms of imprisonment we direct that they do each pay a fine of Rs. 10, or in default be rigorously imprisoned for ten days.

31 C. 983=8 C. W. N. 839.

---

31 C. 990 (=8 C. W. N. 781=1 Cr. L. J. 778.)

[990] CRIMINAL REVISION.

Before Mr. Justice Pratt and Mr. Justice Handley.

SHYAMANAND DAS PAHARAJ *v.* EMPEROR.*

[3rd June, 1904.]

Public servant, Order promulgated by—Hats—Disobedience—Breach of the peace—Penal Code (Act XLV of 1860), s. 188—Criminal Procedure Code (Act V of 1898) s. 144.

Although a Magistrate acting under s. 144 of the Criminal Procedure Code is empowered to make an order prohibiting a person from holding a *hat* on certain specified days of the week, the terms of the law do not empower a Magistrate to make a direction that the *hat* shall be held upon certain days, leaving the party no option to hold his *hat* upon some other days than those on which his rival holds his *hat*.

Before a person can be convicted under s. 188 of the Penal Code for having disobeyed an order passed by a Magistrate under s. 144 of the Criminal Procedure Code, there must be some evidence on the record showing that the disobedience of the Magistrate's order was likely to lead to a breach of the peace.

RULE granted to the petitioner, Shyamanand Das Paharaj.

This was a rule calling upon the District Magistrate of Balasore to show cause why the conviction of the petitioner should not be set aside, on the ground that the order said to have been disobeyed, was not one which could have been lawfully passed under s. 144 of the Criminal Procedure Code; and why in any event the sentence should not be reduced or modified.

A zemindar called the Bhuyan of Mangalpara was the owner of a *hat* at Bhaguri, which used to be held on Sundays and Wednesdays. The petitioner established a rival *hat* at Baldiapara, about two miles from Bhaguri, which he also caused to be held on Sundays and Wednesdays. It being apprehended that the holding of the rival *hat* at Baldiapara would lead to a disturbance, the [991] District Magistrate of Balasore on the 17th December 1903, passed an order under s. 144 of the Criminal Procedure Code directing the petitioner to hold his *hat* at Baldiapara on Tuesdays and Saturdays. On the 15th February 1904 the petitioner was convicted under s. 188 of the Penal Code in a summary trial by the Deputy Magistrate of Balasore for having disobeyed the said order, and sentenced to undergo simple imprisonment for one month.

* Criminal Revision No. 494 of 1904, against the order of W. Teunon, Sessions Judge of Cuttack, dated April 26, 1904, affirming the order of Rash Behari Naik, Deputy Magistrate of Balasore, dated Feb. 15, 1904.

1904 JUNE 3.

CRIMINAL REVISION.

31 C. 990=8 C. W. N. 781=1 Cr. L. J. 778.

Mr. *Donogh* (Babu *Pravat Chandra Mitter* with him) for the petitioner. To support a conviction under s. 188 of the Penal Code, it is necessary to establish three things. First, it must be shown that the order promulgated by a public servant was a lawful order. Secondly, that the accused knowingly disobeyed it: and, thirdly, that certain results specified in the section were likely to follow from such disobedience: *Brojo Nath Ghose* v. *Empress* (1). None of these findings have been established. The order under s. 144 of the Criminal Procedure Code was itself unlawful for two reasons. It was initiated by one Magistrate and concluded by another. The terms of s. 144 clearly do not warrant such a procedure, and do not authorize a Magistrate to direct a person to hold a *hat* on a particular day. He might direct him to abstain from holding it on certain days. That is quite another thing: see *Abayeswari Devi* v. *Sidheswari Debi* (2); also *Ananda Chandra Bhuttacherjee* v. *Carr Stephen* (3). Then it was not proved that the accused was aware of the order. It was not served on him personally. In fact, he was absent from home at the time, and he denies all knowledge of it. It is essential that the order should be brought to the actual knowledge of the person sought to be affected by it: *Parbutty Charan Aich* v. *Queen-Empress* (4). Lastly, it is not shown that any of the consequences mentioned in s. 118 were likely to ensue. Nothing did in fact take place from the 18th December to the 21st January, which was the period of disobedience. *Brojo Nath Ghose* v. *Empress* (1). For all these reasons the Rule should be made absolute.

[992] PRATT AND HANDLEY, JJ. We think this Rule must be made absolute.

In the first place, although the Magistrate acting under section 144 of the Code of Criminal Procedure is empowered to make an order prohibiting a person from holding a *hat* on certain specified days of the week, the terms of the law do not empower a Magistrate to make a direction that the *hat* shall be held upon certain days, leaving the party no option to hold his *hat* upon some other days than those on which his rival holds his *hat*. The Magistrate explains that the days of the week were fixed to suit the convenience of the petitioner, and in accordance with the previous arrangement, in which he had acquiesced. Whether that is so or not we think the Magistrate's order is technically wrong, not being covered by section 144 of the Code. Apart from this there seems to be no evidence on the record that disobedience of the Magistrate's order is likely to lead to a breach of the peace. That some evidence on the point should be forthcoming in order to support a conviction under section 188 of the Indian Penal Code was laid down in the case of *Brojo Nath Ghose* v. *Empress* (1). On this ground also the conviction appears to be not warranted by law.

We therefore make the Rule absolute and set aside the conviction and sentence.

We have been informed that the petitioner has now voluntarily conformed with the views of the Magistrate and has altered the days of his *hat* so as to prevent any possible collision with persons frequenting the rival *hat*. He has been well advised to do so, because if he proceeded to hold his *hat* on the same days as the rival *hat*, it would still be

(1) (1900) 4 C. W. N. 226.
(2) (1888) I. L. R. 16 Cal. 80.
(3) (1891) I. L. R. 19 Cal. 127.
(4) (1888) I. L. R. 16 Cal. 9.

open to the Magistrate to make a proper and legal order under section 144 of the Code, which the petitioner would be bound to obey on pain of punishment under section 188 of the Indian Penal Code.

Rule made absolute.

1904 JUNE 8.

CRIMINAL REVISION.

31 C. 993 (=8 C. W. N. 745.)

31 C. 990=8 C. W. N. 781=1 Cr. L. J. 778.

[993] APPEAL FROM ORIGINAL CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Sale and Mr. Justice Bodilly.

KRISHNA BEHARI SEN *v.* CORPORATION OF CALCUTTA.*

[14th July, 1904.]

Malicious prosecution—Damages, Suit for—Death of plaintiff before trial—Legal representatives—Cause of action, survival of—Probate and Administration Act (V of 1881) s. 89.

It is unecessary to deal with the English authorities upon the question whether or not a cause of action survives to the representatives of a deceased plaintiff for malicious prosecution.

The law on the subject has been codified by s. 89 of the Probate and Administration Act, which says: "All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors and administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party."

A suit for malicious prosecution falls within the general words of s. 89 of the Probate and Administration Act and not within any of the exceptions.

[Dist. 20 M. L. T. 303=1916 M. W. N. 280=31 M. L. J. 772=38 I. C. 823; Ref. 2 Lah. 27=22 Cr. L. J. 166=59 I. C. 918; Not Fol. 44 Mad. 357=40 M. L. J. 173=1921 M. W. N. 121=29 M. L. T. 121=62 I. C. 260; Diss. 52 I. C. 348 =4 Pat. L. J. 676=1920 Pat. 52.]

THE plaintiffs Krishna Behari Sen and Bepin Behari Sen, the heirs and legal representatives of the deceased Kedar Nath Sen, appealed.

This was a suit originally brought by Kedar Nath Sen to recover Rs. 5,000 by way of damages for the wrongful conduct of the defendant Corporation under the following circumstances:—

Kedar Nath Sen was the owner of an undivided fourth share in certain premises, which were subsequently divided. In the month of April 1897 he applied by petition to the Corporation for sanction to make certain alterations and additions to the portion of the property allotted to him. This was refused on the 27th April 1897, and though plans were submitted from time to [994] time showing compliance with the requisitions of the Corporation, they were returned each time unsanctioned on fresh grounds. Finally, Kedar Nath Sen, not being able to obtain sanction, completed his additions and alterations without further reference to the Corporation.

Kedar Nath Sen in his plaint alleged that such refusal to sanction was made without any just and reasonable cause and was made maliciously at the instance of one Abinash Chunder Roy, an employee of the Corporation.

The Corporation on the 23rd March 1900 caused a summons to be issued against Kedar Nath Sen under s. 319 of Act II of 1888, Bengal Code, from the Court of the Presidency Magistrate at Calcutta, calling upon him to show cause why an order should not be passed prohibiting him the use of the premises on the ground that they were unfit for human

* Appeal from Original Civil No. 23 of 1904 in Suit No. 814 of 1900.