

1872
March 2.

Before Mr. Justice Bayley and Mr. Justice Markby.

THE QUEEN *v.* RADHU SING (PETITIONER.)*

Police Officer, Offence by—Act V of 1861, s. 29.

RADHU SING, a head constable, was one morning investigating a police case in the garden of one Mr. Foley in Sylhet. The evidence for the prosecution established that, while Radhu Sing was in the garden, one Jadab came and informed him of an impending disturbance at another place, at which he declined to do any thing upon the information; that Radhu Sing subsequently went into the house of Mr. Foley, who repeated to him the news conveyed by Jadab, to whom he said that on finishing the enquiry in the case in hand he would attend to the matter; that after finishing his enquiry he went to eat; that in the meantime the disturbance spoken of had taken place; that on his way home he met the Sub-Inspector proceeding to the scene of the riot, who told him to finish his breakfast soon and join the police party; that, after some of the principal rioters had been captured, Radhu Sing joined in and succeeded in making prisoners of a few of the rioters.

Radhu Sing was charged by the District Magistrate with having committed an offence punishable under section 29 of Act V of 1861, in that he did not take personally any prompt action on first receiving information of a breach of the peace likely to take place. The defence was that, when the accused got information of the disturbance, he was at the time *bond fide* engaged as a police officer, in enquiring into the case of another party suspected of having committed an offence, and that he could not attend to anything else until he had finished the enquiry. The Magistrate, considering the defence to be no justification of the conduct of the accused in not at once repairing to the scene of the impending riot, convicted him under section 29 of Act V of 1861. and sentenced him to rigorous imprisonment for three months.

Mr. Sandel, for the accused, moved the High Court (BAYLEY and MARKBY, JJ.) to send for the record of the case, and to quash the sentence on the ground that there was no evidence of any offence having been committed punishable under section 29 of Act V of 1861; and that, it being an admitted fact that the accused was actually investigating another case, his refusal to neglect the work he had in hand, and attend to another case, amounting to no offence under section 29 of Act V of 1861.

*Criminal Motion, No. 25 of 1872, from an order of the Sessions Judge of Sylhet, dated the 5th January 1872, affirming an order of the Magistrate of that district, dated the 27th December 1871.

The Court sent for the papers.

Baboo Jagadanand Mookerjee, Junior Government Pleader, for the Crown.—
Section 23 of Act V of 1861 lays down the duties of police officers, one of which is “to collect and communicate intelligence affecting the public peace.”
The accused in this case neglected to do his duty in refusing to take any notice of information received by him regarding the likelihood of a breach of the peace taking place.

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Mr. Sandel in reply.

MARKBY, J.—The charge against the prisoner in this case is made under section 29, Act V of 1861, and the question to be considered here is whether the prisoner has been properly convicted of the offence under that section. That section Provides:—“Every police officer who shall be guilty of any violation of duty, or wilful breach, or neglect of any rule or regulation, or lawful order made by competent authority, &c., shall be liable to a penalty not exceeding three months’ pay or to imprisonment.”

Now, I must say that I see no reason whatever to doubt the conclusion which has been arrived at by the Magistrate and the Sessions Judge that the police officer behaved in a manner which was altogether improper, but the error which I think has been committed is where the Judge of the first Court says:—“The defendant all but admits the charge.” I think that the defence set up by the prisoner was, if true, an answer to the charge, and one which, if true, ought to have prevailed. His defence was that he was engaged in investigating another case, that is to say, he was engaged upon one of the duties of a police officer. He is charged with violating another of the duties of a police officer, *viz.*, his duty to prevent the commission of offences, and it is one thing to question the conduct of a police officer, as a police officer, in not leaving one case to interfere in another, and another thing to say that he is guilty of an offence under section 29. Before he can be convicted of an offence under section 29, it must be found that he is guilty of more than mere neglect; he must be guilty of a violation of his duty, which must mean an intentional violation, and therefore it was necessary to enquire in this case whether or not the violation of duty was deliberate and intentional, or whether (as the defence is), however mistaken and erroneous it may have been, it was the result of his opinion that he ought not to quit the performance of one duty to perform another. Therefore I think that the defence set up by the defendant that he was acting to the best of his discretion, has not been disposed of. In regard to the prisoner having gone to his dinner, we think that it cannot be relied upon in evidence, because it appears to have been done under the direction of his superior officer.

I think, therefore, that we are bound in this case to quash the conviction and order the prisoner’s release.

BAYLEY, J.—I am of the same opinion. The particular facts of the case put it out of the purview of the offences mentioned in section 29.