

*Before Mr. Justice Bayley, and Mr. Justice Miller.*

1872

May 11.

IN THE MATTER OF THE PETITION OF BABOO RAMESHAR PRASAD NARAYAN SING.\*

*Act XXXI of 1860, ss. 25, 26, and 32—Carrying or possessing Arms without a License—Issue of Summons or Warrant without specifying the Charge.*

BABOO Rameshar Prasad Narayan Sing applied to the Magistrate of Gya, on the 13th April 1872, for a license to carry arms. He had held one previously entitling him to carry ten swords, but had mislaid it, and it was not until he found it again that he came forward for a new license. Between the date of the expiry of the old license and the application for a new one a period of one year and nine months had passed, during which the applicant had carried and possessed arms without any license, a fact which was known to the Magistrate. When the application for a fresh license was made, the Magistrate ordered the mooktear, who presented it, to tell his client to appear in person. At the same time a written order to the same effect was issued to the Court Inspector, who caused it to be served on the Baboo in the usual way, taking receipt of the service from his *karpardaz* (manager). This written order was issued without the knowledge or authority of the Magistrate. On being served with this written order, the Baboo, through his pleader, applied to the Magistrate to be excused from personal attendance, at the same time objecting to the indefinite nature of the order which cited no reason for the personal appearance, nor fixed any date for so doing. The Magistrate on this issued a summons to the Baboo to appear in person at 6 A.M. the following morning to answer to an alleged offence (the particulars of which were not stated in the writ) against the provisions of Act XXXI of 1860. At 6 A.M. the ensuing morning, the Baboo repeated his request to be heard through a pleader, which was rejected, and a warrant issued for his arrest.

The Sessions Judge of Gya was then moved to send up the proceedings of the Magistrate to the High Court, under s. 434 of the Code of Criminal Procedure, to have the same quashed as being illegal. The Sessions Judge submitted the proceedings to the High Court. In his order of reference the Judge observed:—

“In my opinion these proceedings, *i. c.*, the issue of the summons and warrant are illegal; for so far as I can see, the Baboo, at the time of presenting his petition, was guilty of no offence whatever under the Arms Act.

“Section 25 and 26 of Act XXXI of 1860 clearly contemplate those cases only where persons are caught in the act of carrying arms; and action under them is warranted only when the offender is caught *in flagrante*

\* Reference, under s. 434 of the Code of Criminal Procedure, by the Officiating Sessions Judge of Gya.

*dilicto*. Section 31 again refers to search and seizure of arms under certain other circumstances, none of which are applicable to the present case.

"The most then that can be said against the petitioner is that he has in his possession certain arms without a license, but this would be an offence only if the provisions of s. 32 of the Act had been extended to, and were still in operation in this district. The petitioner states that no order was ever issued for the disarming of the district. To ascertain this, I wrote to the Magistrate, requesting him at the same time to let me know under what section of the Arms Act he had taken proceedings against the petitioner; but on the first point he states that he can give no answer 'at present,' and on the other he has practically refused to give any answer at all. In the meantime, however, I have caused a search to be made through all the Government notifications in my office since 1857, and I am unable to find any order for the disarming of Gya, while from the Government notification of 1st October 1860 it is clear that, since that year at all events, s. 32 of Act XXXI of 1860 has not been in operation in the Lower Provinces of Bengal.

"If the view I have taken of the law be correct, it seems clear that the petitioner has committed no offence that would warrant the issue of a summons or warrant for his personal appearance before the Magistrate. For the foregoing reasons I am of opinion that the proceedings of the Magistrate are illegal, and should be quashed.

"I am, therefore, under the circumstances compelled to transmit the record for the consideration and orders of the High Court."

Mr. Allen for the petitioner.

The following was the judgment of the Court :—

Taking the facts, as disclosed by the record we are of opinion that the Sessions Judge is quite right, and we accordingly set aside the proceedings of the Magistrate as contrary to law (1).

*Before Mr. Justice Bayley and Mr. Justice Mitter.*

IN THE MATTER OF THE PETITION OF W. N. LOVE.\*

*Infringement of Municipal Bye-laws—Daily Fine illegal.*

1872

August 29.

THE following reference was made by the Officiating Sessions Judge of Hooghly :—

"The petitioner, W. N. Love, has been convicted, under s. 18 of the Howrah

\* Reference to the High Court, under s. 434 of the Code of Criminal Procedure, by the Officiating Sessions Judge of Hooghly.

(1) In *in re Madnarain Pari*, decided on 5th July 1872, Kemp and Glover, JJ. following the ruling in this case, held that mere possession of arms was no offence under Act XXXI of 1860 in districts where s. 32 of the Act is not in force.