FULL BENCH.

Before the Hon'ble Mr. R. F. Rampini, Acting Chief Justice, Mr. Justice Brett, Mr. Justice Stephen, Mr. Justice Woodroffe and Mr. Justice Mookerjee.

RAM NATH CHOWDHRY

v.

EMPEROR.*

1907 July 11.

Breach of the peace—Apprehended danger—Prohibitory order without express limitation of time—Legality of the order—Criminal Procedure Code (Act V of 1898) ss. 144 cl. (5), 555, Sch. V, Form XXI.

An order under s. 144 of the Criminal Procedure Code is not bad because it does not state that its operation is confined to two months, or some shorter period, from the making thereof. Unless there is something in the order which shows that it was intended that it should remain in force for more than two months, it must be presumed that the order is to be limited to two months as required by clause (5) of the section.

Golam Mahamad v. *Bhuban Mohan Moitra*(1), *Remjit Singh* v. *Luchman Prosad*(2), and *Bidhu Ranjan Mazumdar* v. *Ramesh Chandra Rai*(3) discussed.

The petitioners, Ram Nath Chowdhry and Radha Krishna Chowdhry, were zemindars and money-lenders in the district of Dacca. They desired to establish a new *hât* for cattle close to an old *hât* belonging to one Nanni Khanum. The matter was reported to the District Magistrate; and a first class Deputy Magistrate of Comilla, K. B. Chatterjee, duly empowered, passed an order under s. 144 of the Code of Criminal Procedure, on the 22nd December 1905, in the following terms:—

"Under section 144, Criminal Procedure Code, the second party will be directed to abstain from holding the new *hâts*, as I consider, from the Police report and other papers before me, that such direction is likely to prevent obstruction, annoyance, or injury or risk of such, to persons lawfully employed, and also a disturbance of the public peace. This order is passed in the presence of the pleaders of both the parties."

* Reference to a Full Bench in Criminal Revision No. 215 of 1907.

(1) (1897) 2 C. W. N. 422. (2) (1902) 7 C. W. N. 140.
(3) (1906) 11 C. W. N. 223.

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The order drawn up and served on the petitioners was as follows:—

"I order that you immediately on receiving this order shall stop the said new cattle-market."

The petitioners having disobeyed the said order were put on their trial, with some of their servants, before Raj Narain Banerjee, a Deputy Magistrate of Comilla, under s. 188 of the Penal Code in respect of the said order, and were convicted on the 14th September 1906 and sentenced, the first two to fines of Rs. 200 each, and the rest to fines of Rs. 50 each. The petitioners 1 and 2 filed an appeal, and the others a motion before the Sessions Judge of Tipperah; but he upheld the convictions and sentences on the 15th December 1906.

The petitioners then moved the High Court and obtained the present Rule which came on for hearing before STEPHEN and COXE JJ. The question of the legality of the order by reason of the omission to limit therein its force to two months or a shorter period having been raised, their Lordships referred it to a Full Bench for decision, in the following terms:—

"The petitioners in this case have been convicted under section 188 of the Indian Penal Code of disobedience to a lawful order. The order is one made under section 144 of the Criminal Procedure Code, and the order-sheet of the Magistrate who made it is in the following terms:—'Under section 144 of the Criminal Procedure Code, the second party (*i. e.*, the present petitioners) will be directed to abstain from holding the new *hât*. . . . . This order is passed in the presence of the pleaders of both the parties.' The order was subsequently served on the petitioner in the following terms:—'I order that you immediately on receiving this order shall stop the said new cattle-market.'

"On the facts that have been found we have no doubt that the order has been disobeyed, whether we consider it as contained in the first or the second of the above documents. The only question we have to consider is whether it is legal. It has been argued before us that it is not legal because it comes within the terms of the judgment in *Remjit Singh* v. *Luchman Prosad*(1), since, to quote the words of hat judgment, 'it is not limited in time, but on the face of it purports to be of the nature of a perpetual injunction.' The judgment in *Bidhu Ranjan Mazumdar* v. *Ramesh Chandra Rai*(2) is to the same effect—and reference may also be made to the case of *Golam Mahamad* v. *Bhuban Mohan Moitra*(3). The case before us seems to be indistinguishable from the cases we have mentioned. It is specially to be observed that the notice in *Remjit Singh* v. *Luchman Prosad*(1) showed that

(1) (1902) 7 C. W. N. 140. (2) (1906) 11 C. W. N. 223.
(3) (1897) 2 C. W. N. 422.

it was made under section 144 of the Criminal Procedure Code, and we do not consider that the fact of the order in this case having been made in the presence of the pleaders of both parties makes any difference to its legality. The difficulty that we feel in following these cases is that the order before us seems to be in complete conformity with Form XXI in Schedule V to the Criminal Procedure Code and, therefore, to be sufficient within the meaning of section 555 of the Code. The portion of the Form which applies to this case is that which deals with placing earth or stones on a public road.

"The point that we refer, therefore, is whether an order under section 144 of the Criminal Procedure Code is bad because it does not state that its operation is confined to two months, or some shorter period, from the making thereof. If it is, the Rule in the present case should be made absolute and the convictions set aside. If it is not, the Rule should be discharged and the convictions will stand."

Babu Upendra Lal Roy, for the petitioners. The order is bad in law. Under cl. (5) of s. 144 of the Criminal Procedure Code an order has only force for two months from its date. This order is not limited in time to two months, but purports, on the face of it, to be in the nature of a perpetual injunction. It is, therefore, without jurisdiction: *Bidhu Ranjan Mazumdar* v. *Ramesh Chandra Rai*(1), *Remjit Singh* v. *Luchman Prosad* (2), *Golam Mahamad* v. *Bhuban Mohan Moitra*(3). The order being bad, the conviction under s. 188 of the Penal Code is unsustainable.

Mr. Caspersz and *Babu Jotindra Nath Ghose*, for the opposite party, were not called upon.

RAMPINI, A.C.J. The question referred to us is, whether an order under section 144 of the Code of Criminal Procedure is bad because it does not state that its operation is confined to two months, or some shorter period, from the making thereof.

It appears to me that there can be no question as to the answer to be given to this inquiry. Under the provisions of clause (5) to section 144 of the Code of Criminal Procedure it is clear that an order under section 144 only enures for a period of two months, and, therefore, unless there is something in the order which shows that it is intended that the order should remain in force for more than two months, it must be presumed that the order is to be limited to the period of two months specified in the Code. There

(1) (1906) 11 C. W. N. 223. (2) (1902) 7 C. W. N. 140.
(3) (1897) 2 C. W. N. 422.

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is no necessity to state in the order that such an order shall remain in force for two months only.

Then, it is clear that the order in this case was passed in accordance with Form XXI of Schedule V of the Code of Criminal Procedure, and, under section 555 of that Code, this is sufficient. I would, therefore, answer the question put to us in the negative.

With this expression of opinion I would return the case to the referring Bench to be disposed of.

BRETT J. I agree.

STEPHEN J. I agree.

WOODROFFE J. I also agree.

MOOKERJEE J. The question referred to a Full Bench for decision is whether an order under section 144 of the Code of Criminal Procedure is bad because it does not state that its operation is confined to two months, or some shorter period, from the making thereof.

The learned vakil for the petitioners, who has appeared in support of the Rule, has contended that the question ought to be answered in the affirmative. In support of this position reliance has been placed upon the cases of *Golam Mahamad* v. *Bhuban Mohan Moitra*(1), *Remjit Singh* v. *Luchman Prosad*(2), and *Bidhu Ranjan Mazumdar* v. *Ramesh Chandra Rai*(3). As regards the first of these cases, it may be doubtful whether it really supports the contention of the petitioners, though in one passage in the judgment reference is made to the fact that the order was indefinite as to time; but how far this was the basis of the decision of the Court may be a matter for controversy. The other two cases, however, broadly affirm the proposition that an order under section 144 of the Code of Criminal Procedure is bad if it does not state the period of two months to which the

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operation of the order is confined; the reason assigned is that an order so framed is, in substance, one for a perpetual injunction and consequently *ultra vires*. I regret I am unable to adopt as well founded the view taken in these cases, and my reasons are two-fold. In the first place, Form XXI of Schedule V of the Code of Criminal Procedure, compliance with which is sufficient under section 555, shows that it is not necessary to define the time to which the operation of the order is to extend In other words, if the intention is that the order should operate for a shorter period than two months, the Court ought to specify the term, but if there is no specification, by virtue of section 144 sub-section (5), the order operates for two months and no longer. In the second place, even if Form XXI of Schedule V had not been prescribed by the Legislature, I think the same conclusion would follow independently of section 555 of the Criminal Procedure Code. It is an elementary principle of construction, that where a judicial order is to be interpreted, such construction must, if possible, be adopted as would make the order one in accordance with law and not an order such as the Court making it had no power to pass. This principle which was adopted by the learned Judges of the Allahabad High Court in the case of *Amolak Ram* v. *Lachmi Narain*(1), and by a Division Bench of this Court in the case of *Brojo Lal Rai Chowdhury* v. *Tara Prasanna Bhattacharji*(2), furnishes a complete answer to the contention of the petitioners. If no time is specified, the reasonable presumption is that the Court intended to pass an order which it was competent to pass and which would operate for two months, and not to pass an order which would be beyond its statutory powers and consequently void.

In my opinion, therefore, the question referred to the Full Bench should be answered in the negative, and this case returned to the referring Bench for final disposal.

E. H. M.

(1) (1896) I. L. R. 19 All. 174. (2) (1905) 3 C. L. J. 188.