

CRIMINAL REVISION.

Before Mr. Justice Rampini and Mr. Justice Sharfuddin.

1908
Jan. 3.

NANDA KISHORE SINGH

v.

EMPEROR.*

*Special Constables—Grounds of appointment Police Act (V of 1861)
ss. 17, 19.*

The circumstances, which justify an order under s. 17 of the Police Act (V of 1861), are that a disturbance of the peace is apprehended, and that the police force available is insufficient to preserve the peace and protect the inhabitants of the place, where the disturbances are apprehended.

Where upon the report of a Sub-Inspector of Police that there was a dispute about certain land, in which the petitioners were concerned, which was likely to lead to a breach of the peace, the Magistrate appointed them special constables under s. 17 of Act V of 1861, and they refused to receive their letters of appointment, but were afterwards told that their services would not be necessary:—

Held, that the order of appointment of the petitioners under s. 17, and their convictions under s. 19, were illegal.

THE petitioners were convicted under s. 19 of the Police Act (V of 1861) for refusal to serve as special constables and sentenced to fines of Rs. 40 each.

It appeared that there was a dispute between them and one Lachmi Singh regarding certain land, in which they were concerned, which was likely to lead to a breach of the peace. On the 15th May 1907 the Sub-Inspector of Police of Gob submitted a report to the Sub-divisional Officer of Aurangabad praying for the appointment of the petitioners as special constables on account of the dispute, and the Magistrate, by his order of the next day, granted the application. They then filed a petition before the Magistrate in August stating that they refused to accept the letters of appointment and to act as special constables.

The Magistrate thereupon passed the following order: "If they refuse to work (and I do not think their services will

* Criminal Revision Nos. 1342 to 1349 of 1907, against the orders of B. N. Roy, Sub-divisional Officer of Aurangabad, dated Sept. 28, 1907.

be required any longer, as the quartering of the additional police has been sanctioned by Government and will soon be quartered), I do not want them. They can do just as they please." The Sub-Inspector then tried to serve the order on the petitioners on the same day, but they refused to accept it, and were prosecuted accordingly and convicted as stated.

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Mr. Hill (Babu Gonesh Dutt Singh with him), for the petitioners. The order passed by the Magistrate is bad, *first*, because he acted on the report of a Sub-Inspector, whereas s. 17 of the Police Act requires the Magistrate to take action on the application of a police officer not below the rank of Inspector: *secondly*, because the letters of appointment were not given to the petitioners, and, *thirdly*, because the order of their appointment as special constables was not justified by the terms of the section. The Magistrate himself found that their services were not required.

RAMPINI AND SHARFUDDIN, JJ. There are four Rules to show cause why the convictions of, and fines imposed on, the petitioners under section 19 of Act V of 1861 should not be set aside.

The petitioners were appointed special constables under section 17 of Act V of 1861, neglected to serve as such, and have been prosecuted and fined under section 19 of the Police Act.

The facts are that a Sub-Inspector of Police reported to the Sub-divisional Magistrate of Aurangabad that there was a dispute about certain land, in which the petitioners were concerned, which was likely to lead to a breach of the peace.

He, therefore, recommended that the petitioners should be appointed special constables and this was done. The petitioners refused to receive their letters of appointment, and on appearing before the Magistrate in the month of August last he said he did not require their services, as additional police had now been quartered in the villages where breaches of the peace were apprehended. Notwithstanding this, the petitioners were subsequently prosecuted under section 19 of Act V of 1861 and fined Rs. 40 each.

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The grounds on which these Rules have been supported are (i) that the Police officer, who reported to the Magistrate, was a Sub-Inspector and not an Inspector, as required by section 17 of Act V of 1861, (ii) that the letters of appointment were never delivered to the petitioners, and (iii) that their appointment as special constables was inexpedient.

The first two pleas are of a technical nature. But we consider that these Rules must be made absolute on the ground that the order under section 17 was an improper one, and that the conviction of the petitioners under section 19 of the Act is bad. The circumstances, which justify an order under section 17, are, that a disturbance of the peace is apprehended, and that the police force available is insufficient to preserve the peace and protect the inhabitants of the village, where disturbances are apprehended.

It is idle to say that in this case any such circumstances existed. We are satisfied they did not. Then the Magistrate, after telling the petitioners that he did not want their services, should not have prosecuted them under section 19. The Magistrate now says the petitioners were prosecuted for neglect to serve as special constables during the period antecedent to his order dispensing with their services. But, if the petitioners' services were not required, and we are satisfied they were never required, it was quite unnecessary and improper to prosecute them for disobeying an order, which should never have been passed.

We set aside the convictions and sentences. The fines, if paid, must be refunded.

Rule absolute.

E. H. M.