

CRIMINAL REVISION.

Before Mr. Justice Rampini and Mr. Justice Sharfuddin.

RAJ NARAIN ROY

v.

BHAGABAT CHUNDER NANDI.*

1908

Jan. 21.

Security to keep the peace--Unlawful assembly--Criminal Procedure Code (Act V of 1898), s. 106--Penal Code (Act XLV of 1860), s. 143.

An order under s. 106 of the Criminal Procedure Code upon a conviction under s. 143 of the Penal Code is illegal.

THE petitioners were put upon their trial before the Fourth Presidency Magistrate who convicted them under s. 143 of the Penal Code on the 7th September 1907, and sentenced them to fines of Rs. 200 each, and further directed them under s. 106 of the Criminal Procedure Code to execute recognizance bonds in the amount of Rs. 100, with one surety each in the like sum, to keep the peace for six months.

Mr. P. L. Roy (Babu Manmatha Nath Mukerjee with him), for the petitioners. Section 143 of the Penal Code does not necessarily involve the use of force, and hence an order under s. 106 of the Criminal Procedure Code cannot be founded on a conviction of "unlawful assembly."

RAMPINI AND SHARFUDDIN, JJ. This is a Rule calling upon the Chief Presidency Magistrate of Calcutta to shew cause why the order of the Fourth Presidency Magistrate, dated the 7th September 1907, directing the petitioners, under section 106 of the Criminal Procedure Code, to execute a recognizance bond for Rs. 100, with one surety each for Rs. 100, for keeping the peace for six months, or in default to suffer simple imprisonment for the same period, should not be set aside. The petitioners have in this

* Criminal Revision No. 1407 of 1907, against the order of A. Salam, Orig. 4th Presidency Magistrate of Calcutta, dated Sept. 7, 1907.

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case been convicted of being members of an unlawful assembly, and the above order, under section 106 of the Criminal Procedure Code, has also been passed against them.

It appears to us that the order under section 106 of the Criminal Procedure Code is not legal, seeing that the petitioners have been convicted only under section 143 of the Indian Penal Code, that is, of unlawful assembly which does not necessarily involve the use of force.

We, therefore, make the Rule absolute by setting aside the order passed under section 106 of the Criminal Procedure Code.

Rule absolute.

E. H. M.