

Before Mr. Justice Pratt and Mr. Justice Handley.

SHYAMANAND DAS PAHARAJ

v.

EMPEROR.*

1904
June 3.

Public servants, Order promulgated by—Hâts—Disobedience—Breach of the peace—Penal Code (Act XLV of 1860) s. 188—Criminal Procedure Code (Act V of 1898) s. 144.

Although a Magistrate acting under s. 144 of the Criminal Procedure Code is empowered to make an order prohibiting a person from holding a *hât* on certain specified days of the week, the terms of the law do not empower a Magistrate to make a direction that the *hât* shall be held upon certain days, leaving the party no option to hold his *hât* upon some other days than those on which his rival holds his *hât*.

Before a person can be convicted under s. 188 of the Penal Code for having disobeyed an order passed by a Magistrate under s. 144 of the Criminal Procedure Code, there must be some evidence on the record showing that the disobedience of the Magistrate's order was likely to lead to a breach of the peace.

RULE granted to the petitioner, Shyamanand Das Paharaj.

This was a rule calling upon the District Magistrate of Balasore to show cause why the conviction of the petitioner should not be set aside, on the ground that the order said to have been disobeyed, was not one which could have been lawfully passed under s. 144 of the Criminal Procedure Code; and why in any event the sentence should not be reduced or modified.

A zemindar called the Bhuyan of Mangalpara was the owner of a *hât* at Bhaguri, which used to be held on Sundays and Wednesdays. The petitioner established a rival *hât* at Baldiagara, about two miles from Bhaguri, which he also caused to be held on Sundays and Wednesdays. It being apprehended that the holding of the rival *hât* at Baldiagara would lead to a disturbance, the

*Criminal Revision No. 494 of 1904, against the order of W. Tennon, Sessions Judge of Cuttack, dated April 26, 1904, affirming the order of Rash Behari Naik, Deputy Magistrate of Balasore, dated Feb. 15, 1904.

District Magistrate of Balasore, on the 17th December 1903, passed an order under s. 144 of the Criminal Procedure Code directing the petitioner to hold his *hât* at Baldiagara on Tuesdays and Saturdays. On the 15th February 1904 the petitioner was convicted under s. 188 of the Penal Code in a summary trial by the Deputy Magistrate of Balasore for having disobeyed the said order, and sentenced to undergo simple imprisonment for one month.

1904
 SHYAMANAND
 DAS
 PAHARAJ
 F.
 EMPEROR.

Mr. Donogh (Babu Provat Chandra Mitter with him) for the petitioner. To support a conviction under s. 188 of the Penal Code, it is necessary to establish three things. First, it must be shown that the order promulgated by a public servant was a lawful order. Secondly, that the accused knowingly disobeyed it: and, thirdly, that certain results specified in the section were likely to follow from such disobedience: *Brojo Nath Ghose v. Empress*(1). None of these findings have been established. The order under s. 144 of the Criminal Procedure Code was itself unlawful for two reasons. It was initiated by one Magistrate and concluded by another. The terms of s. 144 clearly do not warrant such a procedure, and do not authorize a Magistrate to direct a person to hold a *hât* on a particular day. He might direct him to abstain from holding it on certain days. That is quite another thing: see *Abayewari Debi v. Sidheswari Debi*(2); also *Ananda Chandra Bhuttacherjee v. Carr Stephen*(3). Then it was not proved that the accused was aware of the order. It was not served on him personally. In fact, he was absent from home at the time, and he denies all knowledge of it. It is essential that the order should be brought to the actual knowledge of the person sought to be affected by it: *Parbutty Charan Aich v. Queen-Empress*(4). Lastly, it is not shown that any of the consequences mentioned in s. 188 were likely to ensue. Nothing did in fact take place from the 18th December to the 21st January, which was the period of disobedience: *Brojo Nath Ghose v. Empress*(1). For all these reasons the Rule should be made absolute.

(1) (1900) 4 C. W. N. 226.

(3) (1891) I. L. R. 19 Calc. 127.

(2) (1888) I. L. R. 16 Calc. 80.

(4) (1888) I. L. R. 16 Calc. 9.

1904
 SHYAMANAND
 DAS
 PAHARAJ
 v.
 EMPRESS.

PRATT AND HANDLEY JJ. We think this Rule must be made absolute.

In the first place, although the Magistrate acting under section 144 of the Code of Criminal Procedure is empowered to make an order prohibiting a person from holding a *hât* on certain specified days of the week, the terms of the law do not empower a Magistrate to make a direction that the *hât* shall be held upon certain days, leaving the party no option to hold his *hât* upon some other days than those on which his rival holds his *hât*. The Magistrate explains that the days of the week were fixed to suit the convenience of the petitioner, and in accordance with the previous arrangement, in which he had acquiesced. Whether that is so or not we think the Magistrate's order is technically wrong, not being covered by section 144 of the Code. Apart from this there seems to be no evidence on the record that disobedience of the Magistrate's order is likely to lead to a breach of the peace. That some evidence on the point should be forthcoming in order to support a conviction under section 188 of the Indian Penal Code was laid down in the case of *Brajo Nath Ghose v. Empress*(1). On this ground also the conviction appears to be not warranted by law.

We therefore make the Rule absolute and set aside the conviction and sentence.

We have been informed that the petitioner has now voluntarily conformed with the views of the Magistrate and has altered the days of his *hât* so as to prevent any possible collision with persons frequenting the rival *hât*. He has been well advised to do so, because if he proceeded to hold his *hât* on the same days as the rival *hât*, it would still be open to the Magistrate to make a proper and legal order under section 144 of the Code, which the petitioner would be bound to obey on pain of punishment under section 188 of the Indian Penal Code.

Rule made absolute.

D. S.

(1) (1900) 4 C. W. N. 226.