

CALCUTTA HIGH COURT

Ramendra Chandra Ray

Vs

Emperor

(Lort-Williams ,J.)

11.02.1931

JUDGMENT

Lort-Williams, J.

1. This case has come before us in a somewhat unusual way. The petitioner applied to the Court as a resident and tax-payer of the city of Calcutta, and such interested in the liberty of one Subhas Chandra Bose, who is described as the Mayor of Calcutta, and a friend of the petitioner.
2. The petitioner stated facts which showed prima facie that the conviction, and sentence of imprisonment passed upon the said Subhas Chandra Bose were technically invalid. Upon this a rule was issued.
3. Thereupon the prisoner wrote a letter to the Court saying that the application had been made without his knowledge or consent, that he did not intend to take any part in the proceedings, that any one who moved the High Court on his behalf was not his friend, and that such action was likely to do him harm. We have been informed that the prisoner has pursued this course on principle, because he refuses to recognize the jurisdiction of the Courts in India.
4. Ordinarily, in such circumstances, the Court will not interfere, where it appears that the prisoner, as in the present case is of age, educated and sane, unless the Court is satisfied that there has been a miscarriage of justice. Otherwise the Court would not be justified in spending time upon the consideration of such a case, in preference to the large number of cases of prisoners and other accused persons which are much earlier in date and which await the decision of the Court. Even where there has been a miscarriage of justice the Court, in the interest of the prisoner himself where he himself prefers to abide by the decision already given, must be careful to avoid taking any action which may place him in other and perhaps greater jeopardy, while seeking to remove the stigma of illegality from the administration of the law. On the other hand the Court cannot allow any such alleged miscarriage to be used to gratify a desire for self-advertisement or pretended martyrdom, at the expense of the Court's reputation for impartiality and justice.
5. Turning to the facts of the present, case: on 24th January the Commissioner of Police made an order under Section 62-A, Sub-section 4, Calcutta, Police Act, 1866, and.. Section 93-A, Calcutta Suburban Police Act;.. 1866, prohibiting within the town and? suburbs of Calcutta any procession or public assembly in any way connected with what is termed Independence Day,,

namely on 26th January 1931. This order was duly published by means of" newspaper advertisements and leaflets, and a copy was served personally upon the prisoner.

6. The Commissioner is responsible immediately for law and order, and for the regulation of traffic in Calcutta, and we must assume that he considered that his order forbidding processions on that day was necessary for the fulfilment of his duties. The decision in such matters, obviously, must be left to him, so long as he is held responsible, ' and has to answer for the consequences 'of any breach of public order or dislocation of traffic.

7. Calcutta is a commercial city, and those who have work to do and business to transact ought not to be hindered unnecessarily in pursuing their various callings, or endangered in their lives or property, by the actions of those more fortunately placed who enjoy the leisure and the means necessary to enable them to take part in processions, which may, and often do lead to serious breaches of the peace and dislocation of traffic.

8. With full knowledge of this order, and in deliberate and intentional defiance of it, the prisoner set out with a procession of some 400 to 500 people, which increased in numbers as it approached the Maidan. At the crossing of Corporation Street with Chowringhee it came into contact with police forces placed there for the purpose of enforcing the order, and the officer in charge spoke to the prisoner, and again drew his attention, and those of his supporters who gathered round, to the terms of the order and asked them to desist. The prisoner refused to obey and led the procession forward, whereupon the police took steps necessary to enforce the order. Brick-bats were thrown at them by persons in the crowd which had assembled, and the prisoner was arrested.

9. Subsequently he was charged with and convicted of offences under Section 143, 147, 149 and 336, I. P.C. He was sentenced under Section 147 to undergo rigorous imprisonment for six months. No separate sentences were passed under the other sections.

10. The charge under Sections 143 and 147 wore as follows:

(1) That you, Subhas Chandra Bose, on or about 26th day of January 1931, in the town of Calcutta, along with others numbering more than five, names unknown, were members of an unlawful assembly, the common object of which was to commit an offence, viz. to commit a breach of the lawful order issued by the Commissioner of Police, Calcutta, dated 24th January 1931, under Section 62-A, Clause (1), Calcutta Police Act, an offence under Section 62-A (6) (ii), and thereby you, the said Subhas Chandra Bose, committed an offence punishable under Section 143, I. P. C, and within my cognizance.

(2) That you the said Subhas Chandra Bose, at the time and place aforesaid, along with others numbering more than five, names unknown, were members of an unlawful assembly, and in prosecution of the common object of such assembly, namely committing the said offence, to wit, the breach of the lawful order issued by the Commissioner of Police, Calcutta, dated 24th January 1931, under Section 62-A, Clause (1), Calcutta Police Act, force and violence was used by members thereof and the offence of rioting was committed, and thereby you the said Subhas Chandra Bose committed an offence punishable under Section 147, I. P. C, and within my cognizance.

11. It has been argued on behalf of the petitioner that inasmuch as the common object charged was the commission of an offence under Section 62-A (6) (ii), Calcutta Police Act, which is a

local law within the definition given in Section 42, I.P.C. and as that offence is not punishable with imprisonment for a term of six months and upwards as provided in Section 40, I.P.C. therefore it is not an offence within the meaning of Section 141 (third) I. P.C. Consequently the prisoner cannot be convicted of rioting in prosecution of the common object of an unlawful assembly under Section 147, I. P.C.

12. The answer to this argument is that the" common object charged was substantially that of committing a breach of the lawful order issued by the Commissioner of Police. This is an offence under Section 188, I. P. C, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of such, to any persons lawfully employed or causes or tends to cause danger to human life, health or safety or causes or tends to cause a riot or affray.

13. There can be no doubt, and the contrary has not been argued, that the prisoner's acts come within the provisions of this section.

14. It is true that the offence of disobeying the lawful order of the Commissioner of Police is described in the charge sheet as being an offence under Section 62-A (6) (ii), Calcutta Police Act. But it is also an offence under Section 188, I. P.C. The description given is not a complete description, alternatively it is supererogatory.

15. This being the position the provisions of Sections 225, 232 and 537, Criminal P. C, apply, because it is clear that the prisoner was not misled by any error or omission in the charge, nor has any such error or omission occasioned a failure of justice as provided in Section 225. Nor has he been misled in his defence as provided in Section 232 because he refused to defend himself or to recognize the jurisdiction of the Court.

16. There is no doubt, and the contrary has not been seriously argued, that the order was lawful. It was not a general order prohibiting all processions for an indefinite period, but an order prohibiting processions within a particular place namely the town and suburbs of Calcutta, on a particular occasion-namely on what is termed Independence Day, 26th day of January 1931.

17. This being the view which we take it becomes unnecessary to consider whether the prisoner's conduct amounted to resistance to the execution of any law within the meaning of Section 141 (second) I. P.C. But in our opinion, when an order is lawfully made under the provisions of a statute that order is law, and when the police were trying to execute that law by preventing the procession from proceeding, the resistance of the prisoner and his supporters brought him and them within the provisions of this part of the section also.

18. There remain two minor points to be decided. No complaint under Section 195, Criminal P.C. was necessary, because the prisoner was not charged with an offence under Section 188, I.P.C. but with an offence under Section 147, I.P.C.

19. We accept the contention that it is necessary to prove that at least five persons had knowledge of the order which it is alleged it was their common object to disobey. This fact however may be inferred from the facts and circumstances of the case. Bearing in mind that the order had been published in several newspapers and by distribution of leaflets, and that the prisoner had been personally served with a copy of it, and that the police officer again drew his attention to it in the

presence and hearing of his supporters and of those members of the procession who crowded round him when he reached the maidan the inference cannot be said to be drawn unreasonably.

20. There has been no failure of justice.. The objections raised by the petitioner-are technical and do not touch the merits-It is obvious that there are no merits, in the prisoner's case and that doubtless is one reason why he does not dispute-the legality of his conviction. He is fully aware that he has been guilty of lawlessness, though he may disapprove-strongly of the law. If such disapproval were to be accepted as an excuse for breaking the law every criminal would be able to avail himself of such a plea. All lawlessness is of the same quality though its , evil consequences may differ widely in degree.

21. And it is incumbent upon all reasonable men to remember that the intentional lawlessness of otherwise well balanced people, the direct consequences of which are of minor importance, may encourage indirectly such a disrespect for law and order as to induce others less educated and less well balanced to commit those generally detested crimes of violence, which continue to disfigure the history of India.

22. If we were to send this case back to be retried we should be placing the prisoner in jeopardy of being punished more severely, and this, in view of the wish. which he has expressed, would in our opinion be unfair. The rule therefore is discharged.

S.K. Ghose, J.

23. I agree.