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(1944) 03 AHC CK 0017

Allahabad High Court

Case No: None

Mohd. Umar and Others		APPELLANT
	Vs	
Jugal Kishore and Others		RESPONDENT

Date of Decision: March 16, 1944

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 144
- Evidence Act, 1872 - Section 35

Citation: AIR 1944 All 264 : (1944) 14 AWR 141

Hon'ble Judges: Yorke, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Yorke, J.
This is a defendants" first appeal in a suit for declaration and damages. The plaintiffs came into Court describing, themselves as members of the Hindu community of the town of Deoband and claiming to represent the general body of Hindus resident in that town. They sue the defendants in a representative capacity as representing the Mahomedan community of Deoband. They put forward the allegations that in the town of Deoband there is a temple or thakurdwara of the deity Lord Krishna and they said that it was customary to celebrate the birthday of Lord Krishna, commonly known elsewhere as Janamashtami, in the town of Deoband. They said that the celebrations began from Bhadon Badi first and finished on the 11th and that on the 10th it was the custom to take out the idol in procession through the town on a golden chariot accompanied by music, akha-ras of athletes, elephants, horses, bullocks and so on and that this procession followed a specific route through the town from the thakurdwara to a place called Debi Kund where certain ceremonies took place, after which the idol was brought back to the thakurdwara. It was alleged that these particular celebrations including the procession

lasted from early in the morning until about 10 O"clock at night and were known by the name of the Krishna Leela, not to be confused with the Ram Leela which commonly takes place in the month of October. The plaintiffs alleged that the Hindus had a natural and legal right to take out this procession on the 10th Bhadon accompanied by music without any let or hindrance by any person of any other persuasion or following any other religion, irrespective of the fact that mosques or places of worship belonging to persons following religions other than the Hindu religion may be situate along side or near the public streets through which the procession is taken out.

2. They further alleged that never until recently (and by recently it later appeared that they meant the year 1938) had any objection ever been raised by any member of the Mahomedan community to the procession being taken out in the manner described, but that during this period a claim had been put forward by the Mahomedans that the procession should not be conducted with music at any time of the day or night along the street close to two mosques known as the mosque Sabungaran and the Dini Mosque and that when this procession passed near other mosques at the time of prayers music should be stopped even if these mosques did not abut on the streets along which the procession was to pass. They further said that the Mahomedans had started to obstruct the plaintiffs in the exercise of their lawful right of taking out this procession and to obstruct them from playing music not only in front of the doors of the two mosques but also along the whole length of two streets demarcated by points A and B and points C and D in the map filed with the plaint, those lengths being in the neighbourhood of the two mosques above mentioned. They said very vaguely that this obstruction offered by the defendants gradually became serious with the result that the plaintiffs had now altogether been prevented (how was not stated) from taking out the procession to the accompaniment of music which forms an essential part of the worship of the idol. They further said that the defendants had recently put forward the claim that the persons who would accompany the procession should not assemble before 1 P.M. and that the celebration should be concluded before a fixed hour in the evening, which it subsequently appears was 8 P.M. In this way, they said that due to some undefined action of the Mahomedans the rights of the Hindus to take out this procession without any restrictions had been interfered with. In para. 13 of the plaint some elucidation was given of the claim that the defendants had interfered and thereby prevented the plaintiff"s from exercising their rights. It was stated that in order to prevent the plaintiffs from exercising their rights the defendants had been making false representations to the executive authorities, who although bound under the law to assist the plaintiffs in the exercise of their lawful rights had of late owing to the threats offered by the defendants imposed restrictions upon the plaintiffs during the relevant period. It was alleged that

the conduct of the defendants in causing obstructions, offering threats of forcible obstruction and in making false representations to the public authorities and obtaining orders which were prejudicial to the rights of the plaintiffs is unlawful and amounts to a tort.

It was by these pleadings that the plaintiffs-set out the cause of action which they claimed to have against the defendants. In para. IT of the plaint they further stated:

The cause of action for the suit arose in 1935 when the defendants first started raising obstructions, in September 1939 when the defendants committed unlawful acts and in December 1939 on the last refusal of the defendants from desisting from preventing the plaintiffs from exercising their lawful rights at Deoband.

3. The reliefs which the plaintiffs claimed by their suit were the following : (a) It may be declared that the plaintiffs and the Hindu residents of the town of Deoband are entitled to take out the procession of Krishna Lila along the public streets and routes as indicated in red in the plan attached in Deoband to the accompaniment of music and other things as described in para. 3 of the plaint without any restriction of place and time or of the manner of conducting the procession, and that they are entitled to perform the ceremony of offering turbans as mentioned in para, 4 of the plaint (this related to a preliminary function in the way of a procession by akharas on the 1st of Bhadon) and that the defendants have no right to offer any obstruction or hindrance to the plaintiffs, (b) A perpetual injunction may be granted to the defendants restraining them from causing any obstruction or hindrance to the plaintiffs in the exercise of their right to perform the worship and to make celebrations of Krishna Lila and to conduct the procession with music and to perform the ceremony of offering turbans in the manner described in relief (a), (c) A decree for Rs. 1000 be awarded in favour of the plaintiffs against the defendants. This last prayer arose out of para. 15 of the plaint in which it was stated that

the conduct and the acts of the defendants are unlawful and the defendants are liable to pay damages to the plaintiffs. As a result of the defendants" acts, the plaintiffs have suffered great pain and mental worry and their religious feelings have been so seriously injured that they cannot be described on paper and they have also suffered pecuniary loss. The plaintiffs have suffered heavy damages but they limit their claim only to Rs. 1000.

4. The defendants filed a written statement admitting that there was a custom of taking out a procession on the anniversary of the birthday of Lord Krishna by the route given in the map but denying the allegation that such a procession could be taken out without any restriction. The defendants went on to deny that the plaintiffs had any cause of action against them or other Muslims of Deoband and they went on to state that after a serious riot in connexion with the Ram Lila celebration in the year 1911 there was some fear of trouble in the year 1917 in connexion with the Krishna Lila procession. It was stated that in consequence the members of the two communities reduced to writing the prevailing custom about the Krishna Lila procession and signed this statement and handed it over to the district authorities and that among the conditions or restrictions they agreed upon as followed by ancient custom were the very matters which have been made the subject of complaint in the pleadings of the plaintiffs. These were that the festival was to be celebrated only on one day from 1 P.M. to 8 P.M. and subject to the restrictions that the

procession should discontinue music in the Bazaar Sabungaran from point A to Bazaar Khurd (that is, the area close to the Masjid Sabungaran) and from the house of Lala Harnam Singh to the front of the house of Lala Metan Lal (that is, the area close to the Dini Mosque) and secondly that the music etc. had to be stopped before other mosques at prayer times. It was admitted that a dispute did arise in the year 1935 because at the north end of the Bazaar Sabungaran there was the shop of one Hiralal which had two doors, one opening into Bazaar Subungaran and the other into Bazaar Khurd and the Hindus claimed to restart their music before they came to the second door of this shop which was situated in Bazaar Khurd. The defendants further pleaded that for the next two years the Hindus took out no procession; in 1938 they started Satyagraha and in 1939 they brought out the chariot in defiance of the orders of the executive authorities and thereby caused trouble. The defendants claimed that the allegations that they had resisted the procession or approached the authorities in the matter were absolutely false. The defendants in para. 27 of their written statement pleaded that every community has natural and legal rights provided that in the enjoyment of those rights they do not infringe the natural and legal rights of other communities. They alleged that in several mohallas of the town they themselves were not allowed to sacrifice cows on the occasion of the Id despite the existence of a legal right to do so. They denied that they had ever resisted or obstructed the procession in any way and pleaded that the plaintiffs had no cause of action for damages and that in any case the claim was excessive. Finally they said that the Muslims had no objection to the procession being carried out according to the old custom, nor did they ever raise any objection to the old practice being followed. The learned Civil Judge framed a large number of issues which it will be convenient to set out in detail.

1. Whether the plaintiffs have got a natural right to take out the procession in manner alleged in paras. 3 and 4 of the plaint? 2. Whether the plaintiffs have a customary right to take out the procession in the manner as alleged in paras. 3 and 4 of the plaint? 3. Whether the defendants have a right to claim the stoppage of music etc. at any particular place or places or to impose limitations about the time of the procession or the performance of worship. 4. Whether there has been any agreement between the representatives of the two communities? Whether those representatives possessed power to bind their communities? Is the said agreement binding on any community? 5. Whether the plaintiffs are entitled to damages? If so to what amount?

5. Issues 6 to 8 have not been discussed before us and need not therefore be quoted.

9. Whether the plaintiffs have got any cause of action for the suit against the defendants?

6. The learned Civil Judge found against the defendants on all the above issues. He held that the plaintiffs had got a legal, natural and customary right to take out the procession without the stoppage of music at any particular place or places, and without any restriction of any kind. He rejected the defendants'' case, which appears to have been slightly changed in form during the trial with the result that the plea that the traditional

custom was only put on record in the year 1917 was crystallised in the form that in that year there was a definite and binding agreement between the authorised representatives of the two communities, by which the plaintiffs are still bound.

7. The learned Civil Judge devoted by far the greater part of a lengthy judgment to the discussion of issues 1 to 4. He began by holding upon the authority of various decisions of the Courts right up to the Privy Council that the Hindus had a legal right to take out a procession through the streets subject to the ordinary limitations of the law. He held that the customary right to take out the procession was in effect conceded by the Mahomedans, although in law there is nothing to prevent even a new procession from being taken out in view of the legal right which applies as much to new processions as old ones. He went on to examine the defendants'' case in regard to agreement and the question of the right of the defendants to claim stoppage of music etc. at certain places or to impose other limitations. To arrive at a conclusion as to the existence of any agreement he examined the history of the Krishna Lila celebration beginning from 1912 right up to 1939. In this examination of the history of the period from 1912 to 1939, the learned Civil Judge has not, we regret to say, shown the indifference and restraint which we should have expected from him. He has drawn from the evidence inferences which cannot, in our judgment, be drawn from it and he has arrogated to himself a right to criticise the executive authorities in regard to what he has the courage on insufficient materials to call the careless manner in which they issued notices, their zeal to protect the interests of the Muslims and the like. To justify himself in criticising one of the Sub-divisional Magistrates he has even treated as evidence an article in a newspaper and a report of a speech made in the local Legislature. He speaks of the District Magistrate and the Sub-divisional Magistrate in 1939 taking onesided views without caring to look to the interest of the other side. He says that the Sub-divisional Magistrate "had most probably kept the District Magistrate totally in the dark about the real situation." He speaks of the District Magistrate and the Sub-divisional Magistrate both "falling easy victims to the dictates of the Muslims," and again later on he speaks of orders u/s Hi being passed without appreciating the rights of the different communities. Such remarks were irrelevant to the questions which the learned Civil Judge had to decide and we strongly deprecate the making of them. The learned Civil Judge may remember in future to devote himself to his own task which does not require that he should arrogate to himself the right to criticise in such a manner the actions of the executive authorities. Moreover, the learned Civil Judge, in discussing the history from 1922 to 1934 has put forward the amazing proposition that orders which were issued year by year at the time of the Krishna Lila procession and subject to which the Krishna Lila procession was conducted were mere paper transactions probably never enforced during the years 1923 to 1934. We find no justification whatever for this assumption. The presumption is that the processionists did comply with those orders and we think it is also a reasonable presumption that those orders were not made without reason, whether the reason was on the one band that the restrictions imposed by the orders represent, ed the common denominator of substantial agreement between the parties or they represented the

restrictions which the executive authorities considered necessary in the interests of law and order.

8. Upon issue 9 relating to cause of action the learned Civil Judge held that the plaintiffs had a cause of action because the orders u/s Hi must have been passed in the interests of the Muslims and the time and space limits fixed by the executive must have been fixed in the interest of the Muslims and against the rights of the Hindus. He thought that the evidence showed that the Muslims had arrogated to themselves the right not to allow the Krishna Lila procession to pass except within the limits enforced and prescribed in the notices which they alleged as old custom. He thought that all the notices and the orders were passed at the instance of the Muslims or their initiative. He summed up the position in this form:

When such a community (which has come in the way of the plaintiffs in regard to the taking out of the procession freely) is impleaded as defendants and when it takes the plea or takes shelter behind the executive orders and tries to justify them, and associates itself, with the executive action, then it becomes an interested party in denying the plaintiffs" rights. As the defendants denied the plaintiffs" rights, therefore it would be deemed that the plaintiffs have got a cause of action for the suit against them.

In effect he has concluded that the plaintiffs had a cause of action for the suit because the defendants pleaded that the plaintiffs" right was not unrestricted but subject to the limitations enforced under ancient custom and crystallised in the alleged agreement of 1917. On issue S relating to damages he thought that the Hindus had lost a good deal of money over the stopping of the procession in the year 1939 on the representation of the Muslims and therefore the claim for Rs. 1000 was "really very modest" and he therefore gave a decree in the terms asked for by the plaintiffs. On behalf of the defendants Mr. Mushtaq Ahmad has contended very earnestly before us that on the evidence on the record the Court below should have held that in the year 1917 a compromise was effected between the Hindus and the Muslims in regard to the Krishna Lila procession which took the form of an agreement or contract binding on both parties as having been executed by the authorised representatives of the two communities. He has taken us in detail through the history of the years 1912 to 1939 and he has sought to establish that so far from disproving the existence of any such agreement as the learned Civil Judge thinks it does, the evidence goes strongly to support the truth of the defendants" case that there was such an agreement binding upon the Hindus even up to now. We do not propose to go into the evidence at anything like the length at which it has been examined by the Court below, but some short examination of it is necessary.

9. Prior to 1912 we have not been shown any evidence. In the year 1912 it appears that the procession which had in previous years apparently started earlier was ordered to be taken out after 1-30 P.M. in order to avoid the crowd which would be present in the Bazaar before that time owing to that day also being the last Friday of Ramzan. It seems that in the next year there was some question as to why this limitation of time was

maintained. Our attention has been drawn to the fact that the learned Civil Judge has misread the evidence and at an important point has omitted the word "time" so as to suggest that there had been a claim that before 1912 the procession had been taken out without restrictions of any kind whereas the only matter which was under discussion was the question of the time at which the procession was to be taken out. The manner in which the learned Civil Judge has dealt with this period and with the documents is typical of his handling of the case as a whole. He says that a certain verification by a leading Muslim on an application dated 15th August 1915, a verification which related only to the restrictions in regard to time, shows that there was no restriction of any kind to the playing of music and no stoppage of it in front of any mosque situated on the route of the procession. In the same connexion he referred to the report of the Tahsildar of 31st August 1915 and the order of the District Magistrate dated 2nd September 1915 as giving a complete lie to the defendants" allegations and their theory about the timings of the Krishna Lila procession and the stoppage of music at any place. This is rather a startling proposition when we find that the report while providing that the procession should start from the Thakurdwara at 11 A.M., and start back from Debi Kund at 8 P.M. also contained a note that on arrival near the mosque due regard will be had that there may be no interruption in the prayers. The evidence certainly does not establish that up to 1915 there was no question of the stopping of music in front of any mosque and that the Krishna Lila procession was taken out without any restriction of any kind. What does appear is that there were always restrictions in the sense that the processionists were bound to see that there-was no interruption in prayers at the mosques. It may be the case that the particular consideration given to the Sabungaran mosque and the Dini mosque arose from the fact that processions of this kind with music and akharas and the like move very slowly and in consequence they generally reached those mosques at the time of the midday or afternoon prayers. There was also a special order in regard to the timing of the procession in the year 1912, but in the year 1915 that restriction was withdrawn because it had arisen only out of the coincidence of the Krishna celebration with the last Friday of Ramzan.

10. The crucial year according to the argument of Mr. Mushtaq Ahmad is the year 1917. His contention is that in that year there was such an agreement between the Hindus and the Mohammadans as amounted to a binding contract. The defendants" case which is based upon an entry in the police register No. 8, of which a copy has been brought upon the record as Ex. O, is that the Hindus constructed a new Rath and expressed the desire to take out the idol on this new Rath; some Muslims objected and reports were sent to the authorities, a Deputy Magistrate made an enquiry and proposed a compromise on which the signatures of both parties, Hindus and Muslims, were obtained:

It was settled that music should be totally stopped before the Sabungaran and the Dini mosques and as regards the other mosques, it should be stopped at the time of prayers.

This entry, which is really a historical note in regard to the celebration of the festival in that year, further relates that the D.S.P. and the S.D.M. with certain police officials came

to Deoband and the procession passed "away" peacefully. The learned Civil Judge has expressed a number of doubts about this document and has observed particularly that there is no trace whatever of the compromise on which it states that signatures were obtained. He also seems to have doubts about the authenticity of the entry in register No. 8. He remarks that

an entry "in a confidential register which is not open to the public can hardly be accepted in evidence. The entry was moreover not made the basis of any agreement arrived at between the parties but was merely so got to be a record of practice.

At the end of the passage in which he is dealing with this matter he says:

Assuming that even the (cow) sacrifice was made up to 1917, then the question is what was the point of the compromise or settlement? The answer is there was no occasion for it and only the usual practice was recorded which was not in the shape of agreement.

He went on to say that the materials for a valid agreement were very vague and scanty, and the whole story seemed to be a cock and bull story having been concocted for the purpose of this ease. So far as Ex. O goes, we are inclined to think that although it is a copy of an entry in a confidential book, none the less the entries in that book, as it is an official record and entries are presumably made in accordance with the directions contained in police regulations, must presumably fall within the scope of Section 35, Evidence Act. But in so far as the entry is relied upon by Mr. Mushtaq Ahmad as proof of an agreement binding upon the two communities, it is the weakest possible kind of evidence. There is nothing to show who the persons were who came to a settlement in the presence of the Deputy Magistrate and what authority, if any, they had to give any undertaking on behalf of the communities which they purported to represent.

11. Mr. Mushtaq Ahmad has gone on to contend that this so-called agreement of 1917 has, as it were, matured into a custom by the passage of time and by reason of its being observed in all subsequent years. On this point we think that the discussion of the events of the subsequent period by the learned Civil Judge is far from satisfactory. He says that from 1918 to 1923 there was no dispute. The fact is that there is no documentary evidence in regard to the events of those years. He goes on to discuss the events of 1923 to 1934 and mentions that there was anxiety at Deoband in August 1923 about the Krishna Lila procession because there was in that month a Hindu Muslim riot at Saharanpur. He has noted that in the year 1923 the then Sub-divisional Magistrate, Mr. Jagdish Narain Singhal, issued a notice u/s 144, Criminal P.C., which contained the directions that the procession would start at 1 P.M. and stop at 8 P.M. and that no sort of musical instrument would be played upon or conch blown or noise made near the Sabungaran mosque or the Dini mosque. The notice also mentioned the times of prayers without giving any directions as to the reason for mentioning them. In a supplementary notice issued three days later on 3rd September Mr. Singhal directed" that all music should be stopped between certain points near the Sabungaran mosque and similarly

between certain points adjoining the Dini mosque and that when it passed near other mosques the procession would observe the orders passed on the spot by the Magistrate and the police. It is obvious that the supplementary order was issued because the original order was rather vague. The learned Civil Judge remarks that the notices of the years 1924 and 1925 blindly copied the notices of the year 1923 and that the notices of the years 1926 to 1934 were in the same form as the original notice of 1923. In the face of these notices, he believed the evidence of the witnesses for the plaintiffs that music was never stopped at any time or at any place in the demarcated areas during the passage of the Krishna Lila procession. He thought that no importance could be attached to the notices which were merely paper transactions and most probably were never enforced or proclaimed during the years 1923 to 1934. He speaks about the zid on the part of the Muslims and has generally displayed an attitude towards Muslim feelings which, we think, was tactless and unreasonable. We see no reason to suppose that these notices were not obeyed or that they can possibly be described as paper transactions. Had they been disregarded, we feel little doubt that action would have been taken and if no action was actually taken, it was presumably because they were complied with. At the same time, the Judge is doubtless right in saying that the defendants cannot "formulate their rights on these notices" and that the plaintiffs would not lose any of their rights simply because notices had been issued by the executive in the past restricting the "time and space" of the Krishna Lila procession. The issuing of notices and the taking of restrictive action by the executive authorities do not, we agree, affect the absolute legal and civil rights of either the Hindus or the Mahommadans.

12. Coming to the year 1934, the learned Civil Judge has discussed what he calls the flag incident which at one stage has been described by him as a concocted story. But at the same time he has relied upon a report which contains a mention of this very incident and the inference is that there really was such an incident and indeed he himself speaks of it at one point as "the minor incident of the so-called flag" while elsewhere he comes to a clear finding that "in 1934 there was some dispute about the place where a flag was fixed." The learned Judge thinks it impossible that in the year 1935 when the Hindus did not take out the procession they refused to do so because there was a dispute relating to three feet or so of land, that being his idea of the difference between the two different positions of the flag which was placed to indicate the commencement of the Bazar Khurd. In the year 1935 the procession did not take place presumably because, as appears from the report of Kr. Jasbir Singh dated 30th July 1936, the Hindus were dissatisfied with the notices issued in 1934 and 1935 which fixed more accurately the limits within which no music was permitted. That report further shows that in 1936 the Hindus were anxious to get rid of this demarcation of limits. It seems that they did not take out the procession either in that year or in 1937. Dealing with the years 1938 and 1939, and particularly 1939, the learned Civil judge has made numerous objectionable remarks about the action and the attitude of the executive authorities. Mr. Mushtaq Ahmad has laid the whole of the documentary evidence and some of the oral evidence before us but upon a careful consideration of it and of his arguments we are unable to accept his contention that the

alleged agreement of 1917 has been satisfactorily proved or that even if proved it has ever been so ratified as to acquire any binding force or has matured into a custom. In this connection we think it useful to refer to the remarks of Sulaiman C.J. in Kandhe and Others Vs. Jhanjan Lal and Others, where he remarked:

I would only like to say that I am not prepared to admit that a few individuals either posing as leaders or recognised by the executive authorities as leaders of a community can by their agreement bind the whole community of which they are members. Without definite proof that they were authorised by all the members of the community without exception to act as their representative in a compromise it would not be possible to hold that they were legally constituted agents of the entire community so as to bind them by their agreement.

13. The above was Mr. Mushtaq Ahmad''s main line of argument on the merits of the appeal generally. He has also contended that on any view of the case the decree for damages cannot be maintained. In order to justify a decree for damages, it was necessary for the plaintiffs to show that some wrongful act had been committed by the defendants and in this connection he points out that one of the plaintiffs'' own witnesses, Harbans Lal, made significant admissions when he said:

In 1939 the Muslims had not said anything before the date of the procession that they would not allow the procession to be taken out. In 1939 the Muslims had not said anything to the Hindus and they did not stop the procession.

14. He went on to make some improvements upon this statement by alleging that the Muslims made certain statements to the Deputy Magistrate and other officials including European Officials who were present on the spot as a result of which the Deputy Magistrate had ordered that the Hindus could take out the procession as the Muslims wanted. In this connection he has laid stress on the clearly false statements made by some of the plaintiffs'' witnesses who in the face of the statement of Harbans Lal alleged that in the year 1939 no European Officer was present at the time of the Krishna Lila, whereas in fact it is proved that the District Magistrate, Mr. Johnston, was present and it was he who personally forbade the procession on the spot. The learned Civil Judge himself in dealing with this issue in regard to damages has assumed that a wrongful act was committed by the Muslims because the procession was not prohibited until after the ''Rath'' had been brought out in front of the ''thakurdwara'' where it subsequently suffered damage owing to heavy rain when it stood in front of the ''thakurdwara.'' He has relied upon evidence that certain ceremonies were stopped by the Sub-Divisional Magistrate and the District Magistrate on the representation of the Muslims, but the fact does remain that whatever was done, was done not by the Muslims themselves but by the executive authorities who were certainly entitled to take such action as they thought necessary in the interests of law and order. In our judgment, the learned Civil Judge arrived at no findings against the Muslims which could justify a decree for damages against them. In the circumstances that in our judgment the defendants had failed to establish that there has been an agreement between the Hindu and Muslim, communities of Deoband which

is binding upon both communities and, on the other hand, that no case had really been made out by the plaintiffs which would justify a decree for damages, we suggested to the parties (who both accepted the suggestion) that the present suit and appeal might be most satisfactorily disposed of by our granting to the plaintiffs a declaration in the following terms:

It be declared that the Hindu residents of Deoband have a right to take out the procession of the Krishna Lila along the public streets in Deoband accompanied with music, with religious symbols, vehicles or animals and with displays and ceremonies, provided they do not interfere unduly with the convenience of others who may use the public streets or may occupy or use houses or buildings in the neighbour hood, and provided also that this right is subject to such orders of prevention and control as may be lawfully issued by any magistrate, police officer or other authority under the Code of Criminal Procedure, the General Police Act, 1861, or any other law which may be for the time being in force.

We are of opinion that this declaration goes as far as it would be proper for us to go in the light of the general law and the judicial decisions which have been given in the past on this subject. In this connection we may refer to the judgment of their Lordships of the Privy Council in the well-known case in AIR 1925 36 (Privy Council) , in which a somewhat similar declaration was given. Another case upon which reliance has been placed and in which also a somewhat similar declaration was given is Janki Prasad v. Karamat Husain ("31) 18 AIR 1931 PC 674. It was suggested on behalf of the plaintiff-respondents that if the Court was proposing to give a declaration in this form, an injunction should follow it as a consequential relief; but, in the first place, we do not think that there would be any justification for the granting of an injunction unless it were shown that the Muslims had been guilty of some wrongful act and, in the second place, we note that in both the two cases mentioned above the relief for injunction was refused.

15. A further question arises in regard to costs. In the circumstances of the case, bearing in mind the fact that no wrongful acts on the part of the Muslims have been established, ?we think that so far as the lower Court is concerned it will be proper that the parties should bear their own costs. So far as this Court is concerned, the defendants were forced to come in appeal as a result of the institution of the suit and of its having been decreed against them. The effect of the appeal is that the decree for damages has been set aside and all that is left to the plaintiffs is a bare declaration of rights which were practically conceded by the defendants in their written statements. We think that the defendants are certainly entitled to a part of the costs of this appeal and that substantial justice will be done by awarding them half their costs of this Court.

16. In the result, we allow this appeal in part, and modify the decree of the lower Court by setting aside the decree for damages, injunction and costs and granting a declaration in the form we have set out above.