
Emperor Vs Sayed Yacoob Sayed Lallamian

None

Court: Bombay High Court

Date of Decision: Nov. 13, 1918

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Section 106#Penal Code, 1860 (IPC) " Section 143, 448

Citation: (1919) ILR (Bom) 554

Hon'ble Judges: Pratt, J; Heaton, J

Bench: Division Bench

Judgement

Pratt, J.

The applicants in this case have been convicted of offences under Sections 341 and 504 of the Indian Penal Code and further the applicant No. 1 has been ordered u/s 106 of the Criminal Procedure Code to furnish security for keeping the peace.

2. The application for revision in regard to the convictions and sentences has not been pressed, and in regard to applicant No. 1 it is contended

that the order for security is illegal as the offence which he has committed u/s 504 is not one which involves a breach of the peace.

3. In my opinion the phrase ""other offences involving a breach of the peace"" includes offences which are offences because a breach of the peace

has" occurred or because a breach of the peace is likely to occur. This is consistent with the cases of Jib Lal Gir v. Jogmohan Gir (1899) 26 Cal.

576; Baidya Nath Majumdar v. Nibaran Chunder Gope (1902) 30 Cal. 93; Kannookaran Kunhamad v. Emperor (1902) 26 Mad. 469; Raj

Narain Roy v. Bhagabat Chunder Nandi (1908) 35 Cal. 315 and Abdul Ali Chowdhury v. Emperor (1915) 43 Cal. 671, where it was held that

the offence u/s 143, Indian Penal Code, of unlawful assembly does not necessarily involve a breach of the peace. This is so for the common object

of the unlawful assembly may not be to commit a breach of the peace. I do not agree with the decisions in Arun Samanta v. Emperor (1902) 30

Cal. 366 and Kannookaran Kunhamad v. Emperor (1902) 26 Mad. 469 that offences which are likely to lead to a breach of the peace are

excluded. This is contrary to the decision in Jib Lal Gir v. Jogmohan Gir (1899) 26 Cal. 576 that the Court "should be satisfied that the acts do

involve a breach of the peace or an evident intention of committing the same

4. Of course a breach of the peace or a probability of the breach of the peace must be an ingredient of the offence. A breach of the peace must be

the common object of the unlawful assembly in a conviction u/s 143, Indian Penal Code, or the intention of the accused in a conviction u/s 448,

Indian Penal Code: Subal Chunder Dey v. Ram Kanai Sanyasi (1897) 25 Cal. 628. Section 106 could not be applied after a conviction for

defamation although the person defamed was provoked to commit a breach of the peace for that is something beyond the scope of the offence

charged.

5. But in regard to Section 504, Indian Penal Code, it is clear that a breach of the peace or a probability of a breach of the peace is an ingredient

of the offence. For insult is not an offence unless it is given with the intention or knowledge that it would be likely to provoke the breach of the

peace.

6. I am fortified to this construction by the fact that Section 106 also includes the offence of criminal intimidation. It would be remarkable if the

section justified security in the case of language used with the intention of causing alarm and not language with the intention of provoking a breach

of the peace.

7. I would accordingly discharge the Rule.

Heaton, J.

8. I agree that the Rule should be discharged. We have from time to time had a good deal of argument as to the meaning of the words "other

offences involving a breach of the peace" which occur in Section 106 of the Criminal Procedure Code, and at last we have determined to record

what we have to say in relation to these words as they apply to the particular case before us. It seems to me that they are difficult words to

construe and there is no doubt that their meaning has been differently interpreted by different Judges at different times. I have a pretty clear view of

my own as to what the words mean and why they are used. But I do not profess to suppose that my particular view will be accepted at any rate

by the majority of other Judges, because the words are so elusive that they must of necessity attract different interpretations from different minds.

To my thinking the words cover at any rate two classes of cases. They may cover more, but I am quite satisfied in my own mind that they cover

two classes of cases. The first class of cases is where there actually has been a breach of the peace; not where it has been intended merely or been

likely to occur, but where in fact it has occurred. That is one class. The other class is where the definition of the offence involves a breach of the

peace as it does in one of the two classes of cases which occur u/s 504. There insult as a criminal offence is defined. One class of cases is where

the insult is perpetrated with the intention or knowledge that it is likely to give provocation which will cause another person to break the public

peace; the other class is where it is perpetrated with the, intention or knowledge that it is likely to provoke another person to commit some other

offence.

9. Now in the kind of case we are dealing with the insult was an offence. It was perpetrated with the intention or knowledge that it would be likely

to cause a breach of the peace. So the determination of what is an insult in this case involves a determination of what is a breach of the peace. You

cannot do the first without the second. You cannot decide that the insult is punishable u/s 504 unless you know what you mean by the words

breach of the peace"". And where that is so, I think that the words in Section 106 have operation. The case we are dealing with is a case of that

type.

10. Therefore, I think, the Rule should be discharged. I only wish to mention one other point. I have said nothing about what actually constitutes a

breach of the peace, and that is a matter that also is very frequently argued. It is questioned whether in order to reach what is known as a breach

of the peace you have to go so far as to inflict blows. One view is that you must go that length. The other view is that you may have a breach of the

peace long before you come to the infliction of blows. This view contemplates that the mere assembling of men for a criminal purpose is a breach

of the peace and that the mere use of language, if it is violent enough, is a breach of the peace. But on this topic I do not wish to express any

opinion, because to do so is not necessary for the purposes in hand.