

(1950) 08 OHC CK 0004

In the Orissa High Court

Case No : Criminal Revision No. 112 of 1950

Antarjami Mohanty and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 16-08-1950

Acts Referred:

Police Act, 1861 — Section 30

Citation : AIR 1951 Ori 51

Hon'ble Judges : Ray, C.J.;Narasimham, J

Bench : Division Bench

Advocate : V. Pasayat, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Narasimham, J.—The eight petitioners were convicted under Sections 143 and 148, Penal Code, and also under Schedule 2, Police Act, and sentenced to various terms of imprisonment. Their appeal was dismissed by the Additional Sessions Judge of Berhampur.

2. The charge against them was that on 18-9-1945 they assembled at a meeting at the foot of a hill in village Roulpalli in Ganjam district with the common object of disobeying a notice issued by the District Superintendent of Police u/s 30, Police Act, requiring the obtaining of a licence as a condition precedent to the holding of meetings and assemblies on public roads and thoroughfares. While the meeting was being held a Police Officer approached the crowd and asked them to disperse. They however refused and then some of the leaders were arrested with the help of additional police force which arrived at the spot.

3. The facts are all admitted. On 17-8-1949 the District Superintendent of Police with the sanction of the District Magistrate issued a notice u/s 30, Police Act, (Ex. 6), requiring all persons intending to convene or collect an assembly in any public road or thoroughfare to take a licence from the appropriate police officer. This notice was to remain in force for a period of three months from that date

and the orders were duly promulgated in the locality. The petitioners admittedly collected at a public meeting on 18-9-1915 and none of them had a licence.

4. In the charge framed against the petitioners the common object of the unlawful assembly was specified as follows: "the common object of which was to resist the execution of the orders u/s 30, Police Act." It was therefore the duty of the prosecution to prove beyond reasonable doubt the aforesaid common object of the assembly. That is to say, the prosecution must show that the common object of the persons who collected at the meeting was to hold a meeting without a licence on any public road or thoroughfare in the thanas specified in the notice. All that the prosecution has proved is that the petitioners and other persons collected at the foot of Gupteswar hill and that there was a tank close-by. No evidence at all was led to show that the place where the meeting was held was either a road or a thoroughfare. Mr. Pasayat therefore urged that the prosecution failed to prove the essential ingredients of the offences and that on the meager evidence led by the prosecution it cannot be said that the petitioners either disobeyed the order of the Superintendent of Police issued u/s 30, Police Act, or else that they had the common object of disobeying such an order.

5. It appears that this point was taken up in the lower appellate Court and that Court has met the point as follows :

"It is however clear that the meeting was being held near the Gupteswar temple. There was also a tank nearby and only the mere fact that it was at the foot of a hill does not detract from the character of the spot from being a thoroughfare where people admittedly gather as a matter of right and the dictionary meaning of the word is "a place of unobstructed transit" which obviously imports something wider than roads and streets."

The lower appellate Court appears to have overlooked the essential distinction between a public place on the one hand and a thoroughfare on the other. If people gather as a matter of right in a particular place it may become a public place but it does not necessarily follow that the place is a "thoroughfare". The dictionary meaning of the word, as pointed out by the lower appellate Court, indicates that there must be unobstructed transit. That is to say, the place must be used as a passage for the people to pass through. The Oxford Dictionary meaning is as follows :

"A road, street, lane or path forming a communication between two other roads or streets, or between two places; a public way unobstructed and open at both ends."

This indicates clearly that every public place will not necessarily become a thoroughfare unless that place is used as a passage for people to pass through. The lower appellate Court is undoubtedly right in saying that a "thoroughfare" is a wider expression than a "road" or "street," but it is narrower than a "public place". Therefore, in the present case, the prosecution should not have remained content with merely proving that meeting was held at the foot of Gupteswar hill

close to a tank where the people may be expected to gather as a matter of right. The prosecution must further establish that the actual site of the meeting was used as a passage by the public. It may be that the meeting was held away from the path so that the traffic on the thoroughfare may not be disturbed and where the prosecution has failed to prove that it was held actually on a thoroughfare the petitioners can claim the right of acquittal.

6. If statutes enacted after the passing of the Police Act are carefully scrutinised it seems clear that the Legislature was fully aware of the difference between a "public place" on the one hand and a "way" or "thoroughfare" on the other. For instance, in para. 2 of Sub-section (1) of Schedule 33, Criminal P. c. the expressions "way which is or may be lawfully used by the public" and "public place" are used in juxtaposition so as to indicate that there is a difference in the meaning of the two expressions. Similarly, in Section 2 (24), Motor Vehicles Act, 1939, the expression "public place" was given the following wide definition.

A "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage."

This shows that though a thoroughfare may be a public place the converse may not always be correct.

7. The same question has been considered in an Allahabad case reported is Emperor Vs. R.N. Basu (for B. Parshotam Das Tandon) where it was held that the whole of a public park known as the Parshotam Das Park in Allahabad cannot be said to be a thoroughfare within the meaning of Schedule 0, Police Act. The present case is weaker for the prosecution than that Allahabad case where the public nature of the park was beyond doubt. Here the prosecution has not proved that the foot of the hill where the meeting was held was itself a public place. But even if we assume that the public have a right to collect there, we cannot further assume, in the absence of any evidence, that it was actually used as a path by the members of the public.

8. The learned Advocate-General asked for a remand so as to enable the prosecution to show that the place where the meeting was held was actually thoroughfare. We have however gone through the case diary and we find that this aspect of the question was not considered at the time of the investigation. There is absolutely no material in the diary to show what was the nature of the place where the meeting was held. A remand at this belated stage may lead to fabrication of false evidence and unnecessary harassment to the petitioners.

9. We would therefore allow this petition, set aside the convictions and sentences and acquit the petitioners.

Ray, C.J.

10. I agree