
(1947) 02 CAL CK 0014
In the Calcutta High Court

Santi Lal Mehta and Others

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 24-02-1947

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 195(1)(a)
Penal Code, 1860 (IPC) — Section 188

Citation : AIR 1948 Cal 103

Judgement

1. (21st Feb. 1947.)?This is a Rule against an order of conviction u/s 188, Penal Code. Four petitioners were convicted on their plea of guilty and sentenced to simple imprisonment for six weeks on 13-9.1946. On the same day, just after the order was passed they filed a petition alleging that they had not in fact pleaded guilty and had not understood the proceedings. The learned Additional Chief Presidency Magistrate noted that the facts stated in the petition were not correct, that everything was done in the open Court and he was satisfied with the plea of guilty before he convicted the accused and in his opinion the petition had been filed because the sentence of imprisonment had been passed.

2. The proceedings started on a challan submitted by Sub-Inspector, M.K. Mukherjee of section F alleging that the accused had violated "the provisions of Section 144, Criminal P.C. by carrying one bhujali and one dagger" in a certain car on 21-8-1946. We are to understand from our knowledge of what has happened in Calcutta that the accused were being prosecuted for violation of an order which we understand was passed by the Commissioner of Police u/s 144, Criminal P.C. prohibiting the carrying of daggers and other weapons. A prosecution for disobedience of an order passed by a public servant namely for an offence u/s 188, Penal Code can only be started in view of the provisions of Section 195 (1)(a), Criminal P.C. on a complaint in writing made by the public servant concerned, that is to say in this case if the order was passed by the Commissioner of Police, then by the Commissioner of Police himself or some other public servant to whom he is subordinate. In the absence of such a complaint, the provisions are explicit that "No Court shall take cognizance" of the

offence. In the absence of such a complaint, apart from the question that no proof was offered of the order alleged to have been made, and contravened, or of its publication the whole proceedings are bad in our opinion for want of jurisdiction. The conviction must therefore be quashed. The sentences of imprisonment are set aside.

3. 24th Feb. 1947.?The accused petitioners are directed to be discharged from their bail bonds.