

(1949) 07 CAL CK 0032

In the Calcutta High Court

Case No : Criminal Revision Case No. 419 of 1949

Suresh Chandra Chanda

APPELLANT

Vs

The King

RESPONDENT

Date of Decision : 29-07-1949

Acts Referred:

Citation : (1949) 07 CAL CK 0032

Judgement

Sen, J.—The two accused have been convicted by Sri C.C. Chakrabarti, Presidency Magistrate, Calcutta, of having committed an offence punishable u/s 68 of the Calcutta Police Act. The evidence against them is that they, together with a gang of several other persons, seized upon one Jatin Biswas as he was returning from the house of his friend and besmeared his face with abir and thereby caused considerable pain in his nose, from which he was suffering even at the date of the trial. In cross-examination, the complainant says that there were ten or twelve persons, including the accused. There were no defence witnesses examined; the record shows that arguments were heard and I conclude from this that arguments by both sides were heard. As I have stated above, the learned Magistrate found the accused guilty of having committed an offence punishable u/s 68 of the Calcutta Police Act and sentenced them to pay a fine of Rs. 5, in default to undergo simple imprisonment for one day. Against this order of conviction and sentence the Petitioners have moved this Court and obtained this Rule.

2. The grounds upon which this Rule is sought to be made absolute are twofold. It is said that this was a petty case and that the practice of the Magistrate was not to take up petty-cases till 12-30 in the afternoon. This case was taken up at 10-30 a.m. and the pleader for the accused, thinking that it would be taken up at 12-30 p.m., was absent. The tadbirkar ran to the pleader, who was in the Court of Small Causes, but he could not get the pleader back as he was otherwise engaged. Thereupon, an adjournment was asked for and refused and the case was heard without the accused being given an opportunity of being defended.

3. The second argument on behalf of the Petitioners is that the behaviour of the accused did not constitute riotous behaviour within the meaning of Section 68 of the Calcutta Police Act and in support of this argument, a judgment of my learned brother, J.P. Mitter J; in *Tarun Kanti Ghosh v. The King* Since reported in ILR (1950) 1 Cal. 301, was placed before me.

4. The learned Magistrate has given his explanation. He has categorically denied the statement made on behalf of the accused that petty cases are taken at 12-30 p.m. He says that, as a matter of fact, petty cases are usually taken up first at 10-30 a.m. because he does not like to be interrupted once he had taken up serious cases. He is very emphatic about this and says that action should be taken against the persons making this false statement. I am bound to accept the statement of the learned Magistrate on this point and I hold that, the practice of the Court was to take up petty cases at 10-30 a.m. That being so, the basis of the allegations made in the petition before me are greatly shaken.

5. As regards the statement that an adjournment was prayed for on the ground that the pleader was otherwise engaged, the learned Magistrate says that, as far as his recollection goes, the allegations are wholly untrue. Learned advocate for the Petitioner says that the Magistrate has used the words, "as far as his recollection goes". I do not think that that matters, much. It shows that the Magistrate is scrupulous in making his statements. The record shows that the only witness produced in this case was cross-examined and the record also shows that arguments were heard. The word used is in the plural and in my opinion, this denotes that there were arguments on both sides. I am of opinion that if the facts alleged by the Petitioner were true, there would be some petition on the record of the Presidency Magistrate's court to establish them. There is, however, nothing on the record to establish these facts. Petitions are often filed in the lower courts not so much in the expectation that they will be granted, but, for the purpose of keeping on record, some slip of the learned Magistrate or some error committed by the learned Magistrate in the conduct of proceedings. It seems to me that in this case, if the allegations were true there would be some petition filed by the pleader when he came back stating all these facts. Nothing of the kind was done. I, therefore, hold that the Petitioners have not made out the first ground.

6. As regards the second ground, learned Counsel appearing for the Petitioners says that even if the statement sworn to by the witness for the prosecution (complainant) be true, it does not constitute riotous behaviour. He drew my attention to a remark by my learned brother, J.P. Mitter J., to this effect that the practice of indulging in throwing coloured water amongst the Hindus is an ancient practice and no person of ordinary make-up belonging to the same community is expected to take any offence or to be annoyed at so harmless a custom. From this he concludes that what was done was a perfectly harmless act and did not constitute riotous behaviour. In all humility and with great respect to my learned brother, I am unable to agree with this view. Many ancient customs

are utterly repugnant to modern views. The mere fact that a custom is ancient does not show that it is acceptable in modern times. What would constitute a harmless act in a small village where everyone is engaged in revelry on the Holi day, would not be considered harmless in a city like Calcutta where persons have to go about their business. There is no evidence that the person seized and besmeared was a Hindu. He may have been a Christian or he may have belonged to one of the sects of Hinduism, e.g., Brahmoism, by which this custom may not be approved of. Further, in a town like Calcutta, people are all not known to one another and for a person to be suddenly seized by a gang of ten boisterous persons whom he does not know and to be besmeared with abir is by no means a pleasant experience. It would, in my opinion, constitute riotous behaviour within the meaning of Section 68 of the Calcutta Police Act. In this case the complainant says that his nose was injured. I do not think that there is any ancient Hindu custom which sanctions the practice of injuring a person's nose. If I may be permitted to express my opinion I think the sooner this practice of indiscriminate sprinkling of abir upon persons in a town like Calcutta is stopped, the better.

7. In the circumstances, the order of conviction and sentence is upheld and this rule is discharged.