

(1949) 06 CAL CK 0014

In the Calcutta High Court

Case No : Criminal Revision Case No. 485 of 1949

Tarun Kanti Ghosh

APPELLANT

Vs

The King

RESPONDENT

Date of Decision : 01-06-1949

Acts Referred:

Citation : (1949) 06 CAL CK 0014

Judgement

J.P. Mitter, J.—This is a petition for revision of an order of Mr. C.C. Chakrabarti, Presidency Magistrate, Calcutta dated March 24, 1949, convicting the Petitioners u/s 68 of the Calcutta Police Act and sentencing each to a fine of Rs. 10.

2. The prosecution case was that, on March 14, 1949, which was the Holi festival day in Bengal, the Petitioners, while proceeding in a motor vehicle along Chowringhee, were seen to splash or throw coloured water upon the passengers of a bus moving in the opposite direction and upon certain pedestrians in that neighbourhood. This conduct on the part of the Petitioners, the prosecution alleged, amounted to the offence of riotous or indecent behaviour in any public street or thoroughfare within the meaning of Section 68 of the Calcutta Police Act, 1866.

3. The case for the defence was that the Petitioners were on their way to celebrate the Holi festival at the residence of a relation in Kalighat when the station wagon in which they were travelling was stopped by Sergeant Tims of the Calcutta Police; that they did not spray or splash or throw any coloured water on anybody as alleged or at all, but that they were nevertheless taken to Park Street Police Station and there detained in the lock up for several hours.

4. In support of their case, the prosecution called only one-witness, namely, Sergeant Tims. The trial was summary and therefore, no record was made of the evidence of that witness.

5. Mr. Bay Chaudhuri appearing on behalf of the Petitioners has contended that the finding of the learned magistrate, namely, that "the Petitioners were guilty of

riotous and "indecent behaviour on a public street by throwing coloured "water upon the passengers in a bus and upon pedestrains" is wholly insufficient for a conviction u/s 68 of the Calcutta Police Act. He argues that the mere splashing of coloured water upon others cannot possibly amount to riotous or indecent behaviour within the meaning of that section. The judgment of the learned magistrate does not show that, apart from the mere act of splashing coloured water, the Petitioners indulged in any activity which might be described as riotous or indecent. Indeed, the judgment clearly shows that the only evidence against the Petitioners was that they had been seen to spray coloured liquid on a moving bus and on some passers-by.

6. Mr. Ray Chaudhuri has also contended that "riotous" conduct or behaviour involves the presence of the elements of a riot and has relied upon *Field v. Receiver of Metropolitan Police* (1907) 2 K.B. 853 and *Ford v. Receiver for the Metropolitan Police District* (1921) 2 K.B. 344. These were cases under the Riot (Damages) Act, 1886 and the question was whether the persons concerned "riotously and tumultuously assembled together." It was held in both cases that there should be evidence that the elements necessary to constitute a riot were present. In any event, it seems to me that conduct to be riotous must involve the presence of at least some of the elements of a riot. There must, for instance, be evidence of an intent on the part of the persons concerned to help one another by force, if necessary, against any person who might oppose them in the execution of the common purpose. There should also be evidence of force and violence being displayed in such a manner as to alarm a person of reasonable firmness and courage.

7. I must not be understood to say that in no circumstance can the splashing of coloured liquid over others constitute an offence. I can conceive of circumstances under which such conduct would amount to an offence, but not necessarily u/s 68 of the Calcutta Police Act.

8. It is further urged that the splashing of coloured liquid by a Hindu upon another Hindu on the Holi festival day cannot be considered riotous or indecent behaviour. I am inclined to agree with Mr. Ray Chaudhuri. "Playing Holi" 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. It is to be observed, however, that "Holi" must not be an occasion for hooliganism and the splashing of coloured water over others is to be confined to persons who good-humouredly join in the pastime. A category of persons such as the sick and the old and those who object to being interfered with should be spared of the annoyance and inconvenience of being stained or soaked with coloured liquid.

9. Reverting once more to the merits of the case on facts, it is curious that not one of the alleged victims was called in support of the charge. The sergeant could have, if he was minded, stopped the passing vehicle to find out if any passenger objected to the alleged conduct of the Petitioners. The sergeant, if his

story was true, should have had no difficulty in getting hold of one of the pedestrians on the spot. There was no complaint against the Petitioners, or any of them, by any one of the alleged victims. It is strange that respectable persons travelling in a vehicle of their own should have been stopped on the way for no other reason than that they had been seen splashing coloured water on an occasion such as this without any complaint of any sort having been made to the sergeant against any of the Petitioners and that they should have been marched off to a thana and there detained in the lock-up for several hours. I am told that, shortly after the arrest of the Petitioners, a very well-known solicitor of the Court personally called on the Deputy Commissioner, South and asked for the release of the Petitioners upon bail. If it be a fact that the Deputy Commissioner of Police, South, declined in these circumstances to enlarge the Petitioners upon bail until very much later in the day, I can only characterise the conduct of that police officer as highly reprehensible.

10. Mr. Ray Chaudhuri has lastly urged that the words "or is "guilty of any riotous or indecent behaviour" in Section 68 must be referable to a person who is found drunk. Section 68 of the Calcutta Police Act 1866 is in terms as follows:

Whoever is found drunk and is incapable of taking care of himself, or is guilty of any riotous or indecent behaviour, in any public street or thoroughfare, or in any place of public amusement or resort, shall be liable, on summary conviction before a magistrate, to a fine not exceeding twenty rupees, or to imprisonment, with or without hard labour, for a term not exceeding eight days.

11. It is to be observed that mere drunkenness is not an offence under the Calcutta Police Act, 1866. As far as I know, drunkenness per se was first made an offence in England under the Licensing Act of 1872. Section 68 of the Calcutta Police Act has not been materially amended since 1866.

12. It seems to me that the riotous or indecent behaviour mentioned in Section 68 must be that of a person who is found drunk. The marginal notes to Section 68 not being part of the statute may be disregarded. My attention has been invited to the case of *In Re: Kanniya Rao*, , in which Horwill J., in construing Section 75 of the Madras City Police Act (Act III of 1888), held

that being drunk and incapable of taking care of oneself is an offence in itself and that being found guilty of riotous or disorderly or indecent behaviour in any public place or in any place of public amusement. * * * * * is another and distinct offence.

13. It is to be observed, however, that the wording of Section 75 of the Madras Act is different from that of Section 68 of the Calcutta Police Act.

14. My own view is that Section 68 of the Calcutta Police Act contemplated the offence of being found drunk and being incapable of taking care of oneself or of being drunk and guilty of riotous or indecent behaviour.

15. In any event, the conduct complained of in this case cannot amount to an

offence u/s 68 of the Calcutta Police Act. This application must, therefore, succeed. The conviction and the sentences are accordingly set aside. The fines, if already realised, must be refunded.

16. In the result, this Rule is made absolute.