

1981

Present : Dias S.P.J.

KUMARASIRI *et al.*, Appellants, and WILSOORIYA
(Superintendent of Police), Respondent

S. C. 510-516—M. C. Matara, 22,587

Police Ordinance (Cap. 43)—Section 75A as amended by section 2 of Ordinance No. 22 of 1947—Procession in public place in urban area—Contravention of conditions imposed by police officer.

Where certain persons who took part in a procession in an urban area were prosecuted for shouting slogans in contravention of one of the conditions imposed in terms of section 75A of the Police Ordinance—

Held, that specific evidence should have been led by the prosecutor as to the actual words used by the accused.

Held further, that under section 75A of the Police Ordinance conditions can be imposed on two classes of persons, namely, the organisers of a procession and those taking part in the procession.

APPEAL from a judgment of the Magistrate's Court, Matara.

S. Nadesan, with *M. Sivasithamparam*, for the accused appellant.

J. A. P. Cherubim, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

¹ (1918) 20 N. L. R. 225 at 233.

August 31, 1951. DIAS S.P.J.—

The seven appellants appeal from their convictions under s. 75A of the Police Ordinance (Chap. 43) as amended by s. 2 of Ordinance No. 22 of 1947. They were sentenced as follows:—1st accused to pay a fine of Rs. 200 as being the party mainly responsible, and each of the other accused to pay a fine of Rs. 100.

Section 75A deals with processions "taken out or held in any public place in any urban area". An "Urban area" means any area within the administrative limits of any Municipal Council, Urban Council or Town Council. By sub-section (1) of s. 75A the law provides that no procession is to be taken out or held in any public place in an urban area unless notice of such procession has been given at least six hours before the time of the commencement of such procession to the officer in charge of the police station nearest to the place at which the procession is to commence. The penalty for a contravention of this provision is to be found in s. 75A (2).

When an application is made to the police, s. 75A (3) gives power to an officer of police of a rank not below the grade of Assistant Superintendent, if he considers it expedient so to do in the interests of the preservation of public order, to give directions (whether orally or in writing) either (a) prohibiting the taking out of the procession altogether or (b) to allow the procession to take place subject to such conditions as he may impose on the person or persons organising or taking part in the procession as appear to him to be necessary, including conditions prohibiting or restricting the display of flags, banners or emblems. It will be seen that under sub-section 75A (3) conditions can be imposed on two classes of persons, namely, the organisers of the procession and those taking part in the procession. The penalty for a breach of s. 75A (3) is contained in s. 75A (4).

In this case the 1st accused was charged as being the organiser and the other six appellants as being persons taking part in the procession. They have all been charged for acting in contravention of one of the conditions imposed. In regard to an organiser, in order to secure a conviction under s. 75A (5) the prosecution must prove beyond reasonable doubt the following ingredients:—

- (a) That the accused organised the procession.
- (b) That such procession was one subject to conditions imposed under s. 75A (3).
- (c) That the accused acted in contravention of such conditions.

In regard to those taking part in the procession the prosecution must establish that the accused (a) took part in a procession, (b) that such procession was one subject to conditions under s. 75A (3), and (c) that he acted in contravention of such conditions.

The general principle underlying our law is that a man or woman may act as they please so long as they do not break some positive law by so doing—*Abraham v. Hume*¹. Therefore, A, B, C, D and E may go along a public road in an urban area with perfect propriety. They may go singly or they may go together. They may proceed silently

¹ (1951) 52 N. L. R. 462.

or they may go talking, singing or shouting, provided their object is a lawful one and their conduct does not amount to an unlawful assembly or a nuisance or constitutes some other offence.

Having regard to local conditions, however, our Legislature has thought fit by s. 75A to impose a fetter on this right of the public to take out or hold processions in an urban area. The Courts are not concerned with the policy of the law. They are not concerned with the question whether this is a good law or a bad law. The Courts will presume an accused person to be innocent and call upon the prosecution to establish the charge it makes against each accused beyond all reasonable doubt. Nevertheless, in construing s. 75A the Court is entitled to have regard to the object underlying it and to ascertain why that law was passed. It seems that the object of this section is not to prohibit or penalise the lawful exercise of the rights of citizens in urban areas to meet and proceed peacefully along the public roads. This law was enacted, having regard to local conditions, and the liability of a local mob to get out of hand, to regulate and control processions to ensure the preservation of the public peace and the convenience of other citizens who do not desire to take part in street processions and have their comfort disturbed by rowdy processionists. Therefore, the duty of regulating such processions is entrusted to a senior police officer not below the rank of an assistant superintendent of police. That officer is empowered in his discretion either to prohibit the procession altogether or to impose conditions before he allows it to take place in a public place in an urban area. Obviously such conditions must be lawful, reasonable, and also have regard to the scope and purpose of the section. A Court has power to decide for itself whether any conditions laid down in any given case are lawful, reasonable and have regard to the scope and purpose of the enactment.

With the aims and objects of the processionists, provided they are lawful, neither the police nor the Courts have any concern. Section 75A applies to all processions held in a public place within an urban area. The section would apply to religious processions whether Buddhist, Christian, Muslim or Hindhū. It would apply to political processions and processions of students and others. Of course the conditions which would be imposed on a procession of Mahanayakas of a Buddhist Chapter or of Bishops of the Church would be different from the conditions which would be imposed on say a procession of manual labourers. It is to be observed that the conditions which can be imposed may deal with a variety of matters such as the route to be taken by the procession, the side of the road on which the processionists are to proceed. The use of music and drums can be regulated and the display of flags, banners and emblems, and I take it shouting, singing, &c., can also be regulated. It seems to me that the only restriction which governs the exercise of the discretion of the authorising officer is that such restriction should be lawful, reasonable and have some bearing on the preservation of the public peace.

In this case, on December 21, 1950, the 1st accused gave a written notice, P 1, in the following terms: "I am giving notice that I shall be taking the Peace Demonstration organised in connection with the 2nd

All Ceylon Peace Congress on December 24, 1950, starting at 2 p.m. from 'Sama Mandiraya', Main Street, Matara, along the following route." It would appear from the leaflet D 1 that the 2nd All Ceylon Peace Congress was to meet at Matara on December 23rd and 24th and invited all peace loving citizens to attend and support the following aims:—The banning of the atom bomb; the general reduction of armaments; the peaceful solution of the Korean conflict and the seating of People's China in the Security Council; the banning of all war propaganda; condemnation of the use of force and violence to keep colonial peoples in subjection; the banning of all forms of aggression and the interference in the internal affairs of other people; and the opposition to use of Ceylonese bases in wars of aggression against Asiatic peoples. The assistant superintendent of police, Matara, sanctioned the application but imposed certain conditions in the following terms: "Applicant is informed that he will be permitted to move a procession from the dispensary on Main Street, towards the police station, turn left by the police station gate, in front of Mudaliyar Perera's, past Dr. Conderlag's dispensary, Dr. Karunaratne's dispensary and so into the esplanade at the gate closest to Dr. Karunaratne's dispensary. No slogans of any kind will be shouted, and any signs that it is decided to carry will be shown to me for approval." It will be seen therefore that the assistant superintendent of police imposed three conditions—(1) the route; (2) "No slogans of any kind will be shouted"; and (3) "Any signs that it is decided to carry will be shown to me for approval." We are only concerned with the second condition, namely, the shouting of slogans. What is a slogan? According to the assistant superintendent of police, the police view of a slogan is "a specific number of words having some meaning". The dictionary meaning of the word "slogan" is "a highland war cry; a rallying cry; a distinctive cry or phrase". In bygone days each clan apparently had its distinctive battle cry or slogan by which the clansmen rallied to their leaders. From being a battle cry the word "slogan" has come to mean a party cry in politics, or a distinctive cry used by college students or other bodies of people. The word can also apply to catch phrases used by advertisers, e.g., "Bovril prevents that sinking feeling"; ඊට දකුමට නමුදු කපට (To save the country, shoulder the plough), &c.

The evidence shows that the procession was preceded by a band. The crowd in the procession was estimated as being about 2,000 or 3,000 people. Naturally a crowd of these dimensions would be noisy, and the band which probably had a big drum would increase the volume of sound. The evidence shows that the persons in the procession were "shouting slogans". A. S. P. de Saram says he warned a large number of persons in the procession to stop shouting slogans and he added "they stopped when warned but continued after they passed me". He says that all the seven accused took part in the procession. The evidence is that the 2nd accused was in the leading file shouting slogans, but the actual words used do not appear in the evidence. The assistant superintendent of police warned him to desist; he did so, but when he moved further up the road he continued to shout slogans. The 7th accused, Ponsinahamy of Hulftsdorp, Colombo, was seen in

the crowd and she was shouting "Aluvihare *alugosa policiya*" which the witnesses have explained means "Aluvihare's murderous police force". When she shouted these words the crowd responded "Bangawewa!" which translated to English is said to mean "Down with them!", or "Let them be destroyed!". There is no specific evidence against any of the other accused as to what words they used. In fact, there is no evidence that they were in the procession at all except the general evidence of the police that all the accused were in the procession and shouting slogans.

Crown Counsel has candidly admitted that he cannot support the conviction of the 3rd, 4th, 5th and 6th accused. I agree with learned Crown Counsel, and their convictions are accordingly quashed and they are acquitted.

I now turn to the case against the 1st accused. He is charged as being the organiser. Mr. Nadesan has strenuously argued that there is no evidence that the 1st accused is the organiser, but I think the evidence which the Magistrate has believed does establish that fact. His own document P 1 states that the procession was one "I shall be taking". What those words mean is that he would be in charge of the procession. The 1st accused could not be in charge of a mob and turn it into a procession, such as was sanctioned by the police, unless he organised it into an orderly procession. It was therefore his duty, whether he was present in the procession or not, to have taken such measures as to see that the conditions imposed were carried out. This duty he failed to fulfil. He did not choose to give evidence and I therefore cannot say that the Magistrate came to a wrong conclusion. I am satisfied that he was present in the procession, and there is no evidence that he took any steps, when the police were trying to stop the shouting, to assist the police. I therefore think his conviction is right and it must be affirmed.

The evidence against the 7th accused proves clearly that she was a member of this procession. Was she aware of the conditions imposed by the police? The evidence is that the police officers went into the crowd and repeatedly warned the people not to shout. The 7th accused has not given evidence on her own behalf. The Magistrate was therefore entitled to draw the inference that she must have seen the police officers warning the crowd and also been aware of what the police were saying. Furthermore, if she started out with the procession she must have heard from the organiser of the procession what the conditions imposed were. She is a woman from Colombo, and there is clear evidence that she shouted out "*Aluvihare alugosa policiya*" (Aluvihare's murderous police force) to which the processionists replied "Bangawewa!". In my opinion this is a slogan, and it was a slogan of a provocative nature which might have led to a breach of the peace. I therefore think she has been rightly convicted and her conviction is affirmed.

I, therefore, affirm the convictions of the 1st and 7th appellants and set aside the convictions of the 2nd, 3rd, 4th, 5th and 6th appellants.

Convictions of the 1st and 7th appellants affirmed.

Convictions of 2nd-6th appellants set aside.