

1917.

Present: Ennis J. and Shaw J.

## ROGERSON v. BODIYA.

130—P. C. Panwila, 1,366.

*Criminal trespass—Order that complainant be restored to possession of land—Criminal Procedure Code, s. 418—Accused re-entering land soon after restoration of possession—Disobeying lawful orders of public servant—Penal Code, s. 185.*

The accused was convicted of criminal trespass, and at the same time the Magistrate made an order, under section 418 of the Criminal Procedure Code, directing that the complainant be restored to the possession of the land. The order was duly carried out by a headman, but soon after the accused re-entered the land.

*Held*, that accused was guilty of disobeying a lawful order of a public servant (under section 185 of the Penal Code).

The order of the Magistrate was not one directing generally that the complainant be placed in possession, or an order addressed to some official of the Court to place him in possession, but was an order upon the accused personally.

**T**HE facts appear from the judgment.

*G. Koch*, for appellant.—The order in question is *ultra vires*; section 418 of the Criminal Procedure Code, under which the order was made, justifies such order only where the offence of which the accused is convicted is “attended by criminal force.” Criminal trespass is not an offence necessarily attended by criminal force, and there is nothing to show the nature of the offence in this case. Section 185 of the Penal Code, under which the charge is laid, contemplates an order directed to the accused. The order which is the subject of the charge was not directed to the accused. There is no proof that disobedience of the order “caused or tended to cause obstruction, annoyance, or injury, or risk of obstruction, &c., to any person lawfully employed.” The korala carried out the order without any obstruction, &c., on the part of the accused. At the time of the execution of the order the same was under suspension, an appeal having been filed, and the Police Magistrate had therefore no jurisdiction to enforce such order till the appeal was decided. *Ratnalal 236; Starling 246; 12 N. L. R. 155.*

*V. M. Fernando, C.C.*, for respondent, cited *I. L. R. 6 Calcutta 88 and I. L. R. 13 Calcutta 175.*

*Cur. adv. vult.*

March 5, 1917. ENNIS J.—

In this case the accused has been convicted, under section 185 of the Penal Code, of disobeying a lawful order of a public servant which had been duly promulgated. The terms of the order alleged to have been disobeyed differ in the plaint, the summons, and the formal conviction sheet. The evidence of the order is the document

A, which recites that in an action for criminal trespass against the accused "it was ordered that the complainant be restored to the possession of the said land." This order was presumably made under section 418 of the Criminal Procedure Code. The evidence shows that it was duly carried out, but half an hour later the accused re-entered the land, and the conviction is based on an implied order to the accused not to do anything to disturb the possession given by the Court.

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There can be no doubt that the only object of an order under section 418 of the Criminal Procedure Code is to prevent a breach of the peace by the occupation being disturbed, as such an order confers no title on the person ordered to be restored to possession. It is usual, however, in such orders, to specifically forbid the accused and all others to disturb the possession, until such disturbance be effected by due course of law.<sup>1</sup> This does not appear to have been done in the present case. The point as to how far, if at all, an order can be implied in connection with a prosecution under section 185 is of some importance, and I accordingly refer the case to a Bench of two Judges.

ENNIS J.—

I have come to the conclusion, on a further consideration of this case, that the Magistrate's order directing the complainant to be restored to the possession of the land was the only order he could make under section 418 of the Criminal Procedure Code. In the Indian cases to which I previously referred, the order prohibiting any one from disturbing the possession was made under the section of the Indian Code which corresponds with the Ceylon section 418. The Magistrate's order as it stood was directed to the accused, who was the person to "restore" the possession. To give possession and take it back shortly after is not a compliance with the spirit of the order, and the accused must have been well aware of it.

The order having been made in a case of criminal trespass, and having been *primâ facie* in order and lawful, cannot be challenged without proof that the circumstances of the case were such as to render such an order unlawful. I would dismiss the appeal.

SHAW J.—

The appellant has been convicted, under section 185 of the Penal Code, for disobedience to an order duly promulgated by a public servant, and has been sentenced to one month's simple imprisonment and to a fine of Rs. 20.

On November 17, 1916, the appellant was convicted before the Police Magistrate of Panwila on a charge of criminal trespass upon land in the occupation of one Hemapala, and was convicted and fined Rs. 50.

The Magistrate at the time of the conviction further made an order, under section 418 of the Criminal Procedure Code, directing that the complainant be restored to the possession of the land.

<sup>1</sup> *In re Surjanarain*, 6 Cal. 88; *Golud Chandra Pal*, 13 Cal. 175.

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The order was made in the presence of the accused, and was interpreted to him by the interpreter of the Court.

On November 22 the Korala of Wagampaha, Pata Dumbara, acting under a written order issued to him by the Magistrate, went to the land and ejected the accused, and placed Hemapala in possession. No sooner, however, was the headman's back turned than the accused forcibly re-entered the land and ejected Hemapala and resumed possession.

The question has been reserved for a Court of two Judges whether the accused can be convicted under section 185 of the Penal Code, the accused not having been directed personally to abstain from doing an act, and the order being merely that Hemapala should be "restored to the possession." In my opinion he can.

The order was in the form authorized by section 418 of the Criminal Procedure Code, and was the only order that could have been properly made under the section. It was made in the presence of the accused and interpreted to him, and it directed him to put Hemapala in possession. It was not, in my view, an order directing generally that the complainant be placed in possession, or an order addressed to some official of the Court to place him in possession, but was an order upon the accused personally. It is true that an order was issued subsequently by the Magistrate to the Korala to see that the order made in Court was carried out, but that order to the Korala is not the order that the accused is charged with having disobeyed.

The order directing the accused to restore the possession to Hemapala necessarily includes an order to leave him in possession, for it does not seem to me that it can reasonably be called restoring possession of property to a person to put him in and immediately turn him out again.

The Indian authorities cited, reported in *I. L. R. 6 Calcutta 88* and *I. L. R. 13 Calcutta 175*, where persons have been convicted under the section of the Indian Penal Code corresponding to our section 185, for disobeying the order of a Magistrate that a person should be placed and left in possession of property, do not seem to me to have much bearing on this case, as the form of the orders made was quite different to that in the present case, and was made under section 145 of the Indian Criminal Procedure Code, which is quite different from, and authorizes a different order to, section 418 of our Procedure Code.

I would answer the question reserved for a Bench of two Judges in the affirmative. The other points arising in the case are dealt within the judgment of my brother Ennis.

*Appeal dismissed.*