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After this order was communicated to the Sessions Judge he solicited the High Court's decision on one of the points submitted by him; namely, whether it is competent to a Court of Sessions to call for a report from the Magistrate of the District, or a Magistrate F. P., on proceedings, the legality of which is under consideration by the Sessions Court, under Sec. 434 of the Code of Criminal Procedure; and the following resolution on the point was passed in Chambers on the 6th of April 1869:—

In the opinion of the Judges, the Sessions Judge ought not to call for a report from the Magistrate of the District in any case in which it is not competent to him to call for and examine the record and proceedings. But in trials held by the Magistrate of the District, or a Magistrate F. P., in which the Sessions Judge can call for the record and proceedings, he has also authority to call for a report.

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April 21.

Reg. v. Ramchandra Eknath, *et al.*

*Written order issued by Magistrate—Criminal Procedure Code, Secs. 62 and 318.*

The temple of Pandharpur, a public temple, is visited at certain periods of the year by a large concourse of pilgrims. With a view to prevent the dangers arising from overcrowding, and to improve the ventilation, the Magistrate F. P., by a written order, under Sec. 62 of the Criminal Procedure Code, directed the heredіary priests of the temple to widen and heighten the doorway.

Held, that such order was legal under the above Section.

Semble, that the case would have been the same had the temple been private property; and also that the power of Magistrates to issue orders under the Section in question is entirely discretionery.

This was an application for the exercise of the High Court's jurisdiction under Sec. 404 of the Code of Criminal Procedure.

There is a temple dedicated to the god Vithoba at Pandharpur, in the district of Puna; and Hindus in large crowds visit it for religious purposes on several occasions during the year. In consequence of there being no proper ventilation,

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or means of ingress and egress, A. Jervoise, Magistrate F. P. under Sec. 62 of the Code of Criminal Procedure, issued the following order to the accused, who were in possession and had the management of the temple :—

"Many pilgrims are drawn together on the occasion of the *jatra* (or pilgrimage) of Pandharpur; and in consequence of there not being as much ventilation in the temple of Vithoba as is required, and in consequence of the means of ingress and egress not being proper, there is a probability of much injury being caused to the lives and health of the people.

" In the Resolution of Government No. 177, dated the 25th of January 1868, it has been directed that the front doorway, *i. e.*, the doorway of the inmost division of the temple, should be widened as much as possible; and I am given to understand that it will be practicable, without injuring the temple, to widen the said doorway to the extent of five feet in width and seven feet and six inches in height. You are, therefore, ordered to make the said doorway five feet in width and seven feet and six inches in height within one month from the receipt of this order. If you fail to do so, you shall each be liable to the punishment mentioned in Sec. 188 of the Indian Penal Code. (Dated) The 28th of February 1868."

The accused did not carry out this order. They were, therefore, under Sec. 188 of the Indian Penal Code, tried for disobedience of it by Krishnarav Trimbak, the Subordinate Magistrate of the first class at Pandharpur, and were sentenced each to pay a fine of Rs. 200 (two hundred); or, in default of payment, to suffer imprisonment for a month and a-half. On appeal, the conviction and sentence were confirmed by A. C. Jervoise, Magistrate F. P. at Solapur.

His finding was as follows :—

" The appellant's *vakil* advances the following objections to the convictions :—(1) That the temple, being the private property of the appellants and there fellow managers, the order of the Magistrate for alternations to be made in the

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building was illegal; (2) That the order, as enjoying on the managers of the temple a proceeding which would offend their religious prejudices, was illegally issued; (3) That Government possesses no right of interference within the temple walls; (4) That the carying out of the order would cause injury to the temple building; and that the order is, therefore, not justifiable: (5) That the Magistrate of the district had already, in a letter, No. 2059 of 1866, pronounced that orders affecting the building in question could not be issued by him as Magistrate.

"After due consideration of the above objections, this Court records the following decision:—

"With reference to the first objection, this Court rejects the groundwork of it; namely, that the temple is the private property of the managers, *i. e.*, the appellants and their co-managers. The temple itself is a building for the resort of the religious public and is supported by the contributions of the public. Its affairs are managed by an hereditary priesthood, of which appellants from a portion; and this priesthood is supported by the income of the temple, derived from the casual and voluntary contributions of the visitors to the temple. So far from its being the private property of the appellants, it is, legally, property belonging to the public whose servants the appellants are, as mangers of its ceremoneys, and trustees of its income, and of the property, jewels &c., presented to it by the public. The Court further overrules this objection on the wording of Sec. 62 of the Criminal Procedure Code, which allows a Magistrate 'to direct any person to take certain order with certain property *in his possession*.' The circumstance of the order in question being directed against private property, cannot, therefore, render it illegal.

"With reference to the appellants' second objection, namely, that the order is illegal as affecting the religious prejudices of the managers and others, the Court considers first the question, does it affect such prejudices; *i. e.*, would the widening and heighting of the doorway be contrary to the Shastras of the appellants. Without any direct evidence on

this point before it, the Court decides it on the inference to be derived from an order issued in 1783-84 by the Peshav Madhavrav Narayan to the Kamavisdar of Pandharpur. The said order was issued partly on the same grounds as the one issued by the Magistrate, against which objection is taken in this appeal, namely, that action was necessary on the part of the Government to prevent danger to human life and health calculated to ensue when the temple was crowded with pilgrims. A portion of this order runs as follows :—

'In the 3rd square (*chauk*) there is a gate to the south, but in the days of the *jatra* the place becomes quite dark, owing to the crowds. There was a gate opposite on the north side; this gate has now been walled up, and a Maroti's idol placed there. The idol should now be removed, and placed in the temple. The door should be opened and a stone bored with large holes, so as to admit light and air freely, &c. * * * Orders have been issued to carry out the seven points above noticed, and some of the Huzur men are sent from here. The above arrangement should be made in concert with them.'

"The above order issued by the Peshva is good evidence that the Government possessed the knowledge that religious prejudices would not be affected by certain alterations being made in the temple buildings; and it may be fairly presumed, in the absence of evidence to the contrary, that if the Government, in the interests of the visitors to the temple, could direct a walled-up door in the building to be opened, and the wall of the temple to be bored with large air holes, it had also the power, without affecting religious prejudices, to order a doorway of the same building to be widened or enlarged in any way. The present Government have not, in the opinion of this Court, lost or resigned such a right; and the exercise of it cannot, at the present time, be said to wound the religious feelings of the community more than it formerly did.

"The third objection advanced by the appellants is sufficiently met by the Court's decision on the 1st and 2nd

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objections. On the fourth objection the Court cannot properly decide, it being impossible to arrive at a correct decision without a personal examination of the interior of the temple, which the appellants will not permit on religious grounds. But a reference to the records of the Magistrate's office being made, the following statement appears in a letter from a Full Power Magistrate, Mr. Vishnu Parsharam, who has had numerous opportunities of inspecting the interior of the temple.

'There is ample room to make a door 4 feet by 7 feet clear space, and the door can be made *without the least injury to the main building.*'

"The fifth objection of the appellants is not one to which it is necessary to reply, as an expression of opinion given vent to by one Magistrate does not affect the legal position of another."

The case was heard this day before COUCH, C. J., and NEWTON, J.

*Marriot* (with him *Shantaram Narayan*) for the accused. The Magistrate had, it is submitted, no power to issue this order. The building itself is not injurious to human life, health, or safety, but it is the manner in which the property may be used that may render it dangerous. I may be that the Magistrate, by posting policemen, or making other arrangements can prevent people from going into the temple in such numbers as to render the overcrowding dangerous, but the temple itself cannot be interfered with. Besides Sec. 62 applies only to cases where an *immediate* remedy is required and the danger is imminent, which was not the case here Sec. 62 should be read in connection with Sec. 308, and its operation so confined to dangers affecting the general public; if not, the occupiers or tenants of a house could go to the Magistrate and complain that the owner of the house has not made proper arrangements for their convenience and comfort, and for preventing annoyance to them, which cannot have been contemplated by the Legislature. There must therefore be certain limits to the application of the

section. That limit, I submit, is to be found in its application only to acts or omissions which directly endanger the health, &c. of the public, and not those which endanger the health, &c., of private persons. Here certain Hindus alone are allowed excess to the temple, and not the public in general.

*White* (with him *Dhirajlal Mathuradas*) in support of the order:—Of the propriety of the order in this case there can be no question. The doorway is, in its present state, only 5¼ feet high and 2¾ feet wide. It opens into an ante-chamber in area 8¼ by 5¼ feet, and in height 11¼ feet, which has a ventilating opening in the roof about 5 inches square. The ante chamber leads to the idol chamber, which is a space 8 feet by 8, covered with a domed roof about 30 feet high. The temple is held in high veneration amongst the Hindus, and is visited by numerous pilgrims of all castes. In the months of July and October of each year there is an immense concourse of pilgrims, varying from 50,000 to 10,0000 souls, and the religious observances in these months are continued for a fortnight, night and day.

Any measure therefore to increase the ventilation would tend to prevent danger to the health of the worshippers. Sec. 62 is for the benefit of persons lawfully employed, which the pilgrims here are. Proprietors of mills, machineries, &c., are required to take order with their property, with a view to prevent danger to the security of the workmen and visitors.

Couch C. J.:—We are of opinion that the Magistrate had power to make the order under Sec. 62 of the Code of Criminal Procedure. The words of the section are very wide, and are: "It shall be lawful for any Magistrate, by a written order, to direct any person * * to take certain order with certain property in his possession or under his management, whenever such Magistrate shall consider that such direction is likely to prevent, or tend to prevent, * * injury or risk of * * injury to any persons lawfully employed, or is likely to prevent, or tend to prevent, danger to human life, health, or safety." In this case the accused were in

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possession and management of the temple, and the Magistrate considered, and we think he reasonably considered, that the direction given for widening and heightening the door would prevent danger to human life or safety; and therefore the order is within the terms of the section. The Magistrate F. P. who heard the appeal in this case has found the property to be public, and in dealing with the case as brought before us we must take the fact to be as found by him. The contention that Sec. 62 does not apply to private property does not arise here; since the present case cannot be considered as one of private property, and the injury as one to private persons. Even if the property was private we think that the section would apply under the circumstances of this case; as the building is a place open to all the Hindu public, who are invited to it, and who have a right to go there on paying the customary offerings to the idol. It is contended that there should be some limit to the application of the section, but it is not necessary for us to fix that limit, since it is always to be remembered that this power is discretionary, and I am not at all certain that the discretion of the Magistrate is not intended to be the limit. In point of law no ground is shown in this case for our interference. We must therefore reject the petition.

NEWTON, J., concurred.

*Petition rejected.*