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Rs. 5,000, which they had paid till then; that another merchant was willing to pay a rent of Rs. 7,000 per annum; and that the appellants were paying at the date of the suit Rs. 6,100. The lower appellate Court has believed this evidence, and the rent claimed in the plaint and awarded by that Court cannot be regarded as excessive for the appellants' use and occupation of the salt-pan.

Two other points were urged before us in support of the appeal—one that the lease of the salt-pan was illegal because it had not the sanction of the Collector of Salt Revenue, and the other that the report of the guardians of the plaintiff made to the District Judge was inadmissible. We agree with the lower Courts that the lease was not illegal, and that the report was admissible.

The decree is confirmed with costs.

BACHELOR, J.:—I agree. In my opinion the receipts issued by the plaintiff for payments made to her were rightly admitted in evidence, and, if that is so, the decree under appeal must be affirmed. It seems to me that these receipts are admissible, not as proving the terms of the contract of letting, but as proving from the conduct of the parties, what would be a fair rent for the admitted tenancy. Reference may also be made to illustration (e) of section 91, Evidence Act.

*Decree confirmed.*

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## CRIMINAL REVISION.

*Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.*

EMPEROR v. DATTATRAYA LAXMAN SARPOTDAR.\*

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January 31.

*Bombay District Police Act (Bombay Act IV of 1890); section 42—District Magistrate—Order for prevention of disorder—Promulgation of the order—Presence of the Magistrate at the place when the order is promulgated—Ultra vires order.*

A District Magistrate issued a notification, under the provisions of section 42 of the Bombay District Police Act, 1890, prohibiting circulation of certain pictures

\* Criminal application for Revision No. 342 of 1911.

throughout the whole District. The notification was promulgated in all the Taluka head-quarters. The Taluka head-quarters of the village, where the accused lived, was nearly twelve miles distant. At the time when he issued the notification, the District Magistrate was at a considerable distance from the village. The accused was convicted of having disobeyed the notification, in that he sold the prohibited pictures at his village.

*Held*, reversing the conviction and sentence, that the notification in question could not be upheld under section 42, because (1) it was not promulgated at the village where the accused lived : and (2) the District Magistrate was not present at or near the village at the time of the promulgation.

*Per Chandavarkar, J.*—The preliminary conditions essential under the provisions of section 42 of the District Police Act, for the exercise of the jurisdiction conferred by it, are these : (1) the jurisdiction is conferred on the Magistrate of the District or in his absence and subject to his own order the Magistrate of the First Class ; (2) these must have jurisdiction in the town or village where the jurisdiction is intended to operate ; (3) they must be present in such town or village or in the neighbourhood thereof at the time the jurisdiction under the section is set in motion.

THIS was an application to revise conviction and sentence passed by H. B. Clayton, District Magistrate of Ratnagiri, on appeal from conviction and sentence passed by H. B. Khanolkar, Second Class Magistrate at Ratnagiri.

The accused lived in the village of Shiposhi in the Ratnagiri District. He kept a shop where he sold among other things almanacs which had on the cover a likeness of Bal Gangadhar Tilak.

The Magistrate of the District, purporting to act under section 42 of the Bombay District Police Act, 1890, issued a notification on the 4th May 1909, prohibiting the sale of almanacs above referred to. The notification ran as follows :—

“ Whereas the District Magistrate is informed that pictures of certain convicted murderers and seditious agitators such as Khudiram Bose and Bal Gangadhar Tilak are being exhibited and sold or otherwise disseminated in this District and whereas in the District Magistrate's opinion such pictures are of such a nature as to incite to resistance to and contempt of the law and of lawful authority :

“ Now therefore the District Magistrate under section 42 of the Bombay Act IV of 1890, prohibits at all places in this District the exhibition, sale or other dissemination of such pictures and orders the Police to arrest and prosecute any person disobeying this prohibition, and to seize any such pictures being exhibited, sold or otherwise disseminated.”

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This notification was not published at the village of Shiposhi. It was only published at all the Taluka head-quarter towns in the District, the nearest of which was twelve miles distant from the village of Shiposhi. At the time when he issued the notification, the District Magistrate was at a considerable distance from the village.

The accused sold some of the prohibited pictures at Shiposhi in March 1910. He was charged in August 1911 with having disobeyed the order duly promulgated by the District Magistrate. He was convicted by the Second Class Magistrate of Ratnagiri of the offence charged and sentenced to pay a fine of Rs. 50. On appeal, the District Magistrate confirmed the conviction but reduced the fine to Rs. 25.

The accused applied to the High Court under the criminal revisional jurisdiction.

*B. V. Desai*, for the accused.—An order passed under section 42 of the Bombay District Police Act, 1890, must be (1) limited in time; (2) limited in place; and (3) publicly promulgated. The order in this case is not limited in time for no limit of time is shown; nor is it limited in place, for it was promulgated throughout the District. Further, it was not at all promulgated at the village of Shiposhi, where the accused lived.

Again, 'sale' of a book or picture is not its dissemination, for in sale the act is done without intention or knowledge.

*G. S. Rao*, Government Pleader, for the Crown.—Section 79 of the District Police Act, 1890, covers any defect of publication: the order is, therefore, legal. It is competent to the District Magistrate to promulgate the order throughout the whole of the area under his jurisdiction, *i.e.*, the entire District. The phrase "such town or village" means any town or village within the District over which he has jurisdiction.

*CHANDAVARKAR, J.* :—The petitioner asks this Court to hold as *ultra vires* the proclamation of the District Magistrate of Ratnagiri, prohibiting the dissemination in the said District of pictures or symbols of Bal Gangadhar Tilak. The main ground

of objection to the legal validity of the proclamation is that in terms it prohibits the circulation of the book in question *throughout* the District of Ratnagiri and not in any particular town or village, or neighbourhood thereof. It is urged that section 42 of the Bombay District Police Act (No. IV of 1890) gives no power to the District Magistrate to issue a proclamation so as to make it apply to the District in general.

The section is not clearly worded but I think that the preliminary conditions essential under its provisions for the exercise of the jurisdiction conferred by it are these: *first*, the jurisdiction is conferred on the Magistrate of the District, or, in his absence and subject to his order, the Magistrate of the First Class; *secondly*, these must have jurisdiction in the town or village where the jurisdiction is intended to operate; *thirdly*, they must be present in such town or village or in the neighbourhood thereof at the time the jurisdiction under the section is set in motion. There is no evidence in the present case that at the time the proclamation complained of as illegal was issued the District Magistrate was either in the place or the neighbourhood of the place where the petitioner is alleged to have disobeyed the terms of that proclamation. The proclamation was issued by the District Magistrate from Dapoli where he then was.

The section we are construing is of a penal character and must be strictly construed as it affects the liberty of the subject. The intention of the Legislature appears to have been that such a proclamation as is contemplated by the section should be issued in such a manner as to give full publicity to its terms on the responsibility of the District Magistrate or Magistrate of the First Class, who must be personally in the place to satisfy himself that there is necessity for the proclamation.

The rule must be made absolute by quashing the conviction and sentence and directing the fine, if paid, to be refunded.

BACHELOR, J.:—The only question is, under section 68 of the Bombay District Police Act, 1890, whether the District Magistrate's order, which the accused is found to have

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disobeyed, was an order lawfully issued under section 42 of the Act. That order, which was published only at the Taluka head-quarter town, prohibited the dissemination of pictures or symbols of, among other persons, Bal Gangadhar Tilak: the order specified no period of time and no geographical area over which it was to operate. The accused is found to have sold almanacs containing pictures of Tilak, not in the head-quarter town, but in his own village, distant some twelve or thirteen miles away.

Now section 42 (1) of the Act runs as follows:—

“The Magistrate of the District, or in his absence and subject to his order the Magistrate of the First Class having jurisdiction in any town or village and present therein or in the neighbourhood thereof, may, whenever and for such time as it shall appear necessary, by a notification publicly promulgated or addressed to individuals, prohibit in such town or village or the vicinity thereof the carrying of arms, cudgels or other weapons, the carrying, collection and preparation of stones or other missiles or instruments or means of casting or impelling missiles, the exhibition of persons or of corpses or figures thereof, the public utterance of cries, singing of songs, playing of music, delivery of harangues and use of gestures or mimetic representations and the preparation, exhibition or dissemination of pictures, symbols, placards or of any other object or thing, which may be of a nature to outrage morality or decency or, in the opinion of such Magistrate, may probably inflame religious animosity or hostility between different classes or incite to the commission of an offence, to a disturbance of the public peace or to resistance to or contempt of the law, or of a lawful authority.”

As to the argument that sale is not a form of dissemination within the meaning of the section, I am unable to accept it. As to the objection that the District Magistrate's order is bad because it prescribes no period of time for its operation, I refrain from expressing any opinion, since in my judgment the order is, for another reason, not a lawful order. That reason is that I cannot find in the section any warrant for the view that the District Magistrate is empowered, by an order promulgated only in the Taluka head-quarters and containing no reference to any area, to make punishable acts done in a village twelve miles away.

The learned Government Pleader has sought to defend the order on the ground that section 42 should be read as conferring on the Magistrate of the District the same powers to make

general orders in respect of the whole District as are conferred on a Magistrate of the First Class in respect of any town or village within his jurisdiction. It appears to me, however, that the words of the section are quite incapable of any such interpretation. The section is not perhaps very artistically drafted, and it is arguable that the words "having jurisdiction in any town or village" refer only to the Magistrate of the First Class and not to the Magistrate of the District; but that argument seems to me to be negatived by the following words giving power to "prohibit in *such* town or village." These last words are, I think, manifestly referable equally to the Magistrate of the First Class and to the Magistrate of the District; if so, then the earlier words "having jurisdiction in any town or village" must also refer to the Magistrate of the District. To hold that the Magistrate of the District may, by a general order, prohibit acts throughout the District would, I think, be simply to enact a new section in substitution for section 42. For section 42 plainly limits the prohibiting powers of the Magistrate, whether it be the Magistrate of the District or the Magistrate of the First Class: in either case all that he may do is to "prohibit in such town or village", that is to say, in any town or village which is within his jurisdiction, and in which, or the neighbourhood of which, he is present. It is not suggested that the District Magistrate was present in the accused's village when this order was issued, nor can a distance of twelve miles be regarded as either "neighbourhood" or "vicinity", for these words were presumably intended to include only suburbs or immediate surroundings, and; in any case, there was no prohibition in any town or village, whether the accused's village or another.

Penal sections must be construed strictly, and I think the present order was wholly outside the scope of section 42. I agree therefore that the rule must be made absolute.

*Rule made absolute.*

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