

Bara Hindu Rao
v.
The Kapra
Mazdoor Ekta
Union and others

Shamsher
Bahadur, J.

to add any person or establishment whose presence is necessary or proper for the due and just adjudication of the dispute. In a recent decision of the Supreme Court in *The Manager, Hotel Imperial, New Delhi v. The Chief Commissioner, Delhi and others* (3), Mr. Justice Wanchoo observed at page 1216 that the workmen were not precluded, "if they wanted to be represented by any other union, to apply to the Tribunal for such representation or even to apply for being made parties individually." It seems to have been taken for granted by their Lordships that the Tribunal was vested with the powers to implead parties on the representation of the workmen. In this view of the matter the Tribunal cannot be said to have acted outside the scope of its jurisdiction and there is no reason for interference. This petition, therefore, fails and is dismissed with costs.

B.R.T.

REVISIONAL CRIMINAL

Before Tek Chand, J.

DHANJEE RAM SHARMA,—Petitioner

versus

NARANDER PAUL AND OTHERS,—Respondents

Criminal Revision No. 230-D of 1961.

1961
December, 19th

Code of Criminal Procedure (V of 1898)—Section 107—Proceedings under—Accused—Whether can be discharged on the ground that police did not produce witnesses despite several adjournments.

Held, that when a magistrate takes cognizance of a case under section 107 of the Code of Criminal Procedure and passes an order under section 112 of the Code, and the names and addresses of the witnesses are mentioned in the calendar forming part of the police report, it is the duty of the magistrate to compel the appearance of the

(3) A.I.R. 1959 S.C. 1214.

witnesses by issuing summons and he cannot discharge the accused on the ground that the police did not produce the witnesses despite several adjournments though the witnesses were never summoned.

Petition for revision under section 439, Code of Criminal Procedure, against the order of Shri Jasmer Singh, Additional Sessions Judge, Delhi, dated 4th September, 1961, affirming that of Shri H. L. Guliani, S.D.M., Delhi, dated 10th November, 1960, discharging the respondents.

Petitioner : In person.

DEV RAJ, ADVOCATE, for the Respondent.

ORDER

TEK CHAND, J.—This criminal revision arises out of proceedings taken under section 107 of the Code of Criminal Procedure against the respondents, who are four in numbers. On 10th November, 1960, Shri H. L. Guliani, Sub-Divisional Magistrate, passed an order that there was no evidence and the police had been granted a number of opportunities. In the absence of any evidence, the respondents were ordered to be discharged. Tek Chand, J.

The matter was taken up in revision by the petitioner before the Additional Sessions Judge. It transpires that the Magistrate had taken cognizance of the case and had passed an order under section 112 of the Criminal Procedure Code. Under section 117, sub-section (3) of the Code of Criminal Procedure, the respondents were directed to execute a bond for keeping the peace until the conclusion of the enquiry. The learned Additional Sessions Judge has observed that when the names and addresses of the witnesses had been furnished and were mentioned in the calendar forming part of the police report, it was the duty of the Magistrate to compel the appearance of the witnesses by issuing summonses but this was not done. The

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learned Additional Sessions Judge expressed the view that the order of discharge was bad in law, and he thought that the order was not legally sustainable, but he had no jurisdiction to quash the order of discharge and to direct further enquiry. He referred to *Partap Singh v. Emperor* (1). The facts of that case were entirely different. There an application under section 107 was dismissed by a Magistrate on the ground that there was no apprehension of breach of peace and it was held that in such a case the District Magistrate had no power to order further enquiry. There is no such finding of the trial Court in this case. The order of discharge was passed not because there was no longer apprehension of breach of peace, but because the witnesses did not appear in his Court despite several adjournments. The fact is that the witnesses were never summoned though several adjournments had been granted.

In the circumstances, I allow this petition of revision and set aside the order of the Magistrate, dated 10th November, 1960, and direct him to proceed with the case after issuing summonses to the witnesses.

B.R.T.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and A. N. Grover, J.

HARKE,—Petitioner.

versus

GIANI RAM AND OTHERS,—Respondents.

Civil Writ No. 1263 of 1961.

*Punjab Gram Panchayat Act, 1952 (Act IV of 1953)—
 Section 8(2)(a)—Whether void and unconstitutional.*

1961

December, 22nd.

(1) (1931) 32 Cr. L.J. 21