

A

SK. PIRU BUX & ORS.

v.

KALANDI PATI RAO & ORS.

October 29, 1968

B

[S. M. SIKRI AND R. S. BACHAWAT, JJ.]

Religious procession—Right to take out and restrictions thereon.

C

The respondents, who were Hindus filed a suit against the appellants who were Muslims, for a declaration that the Hindu residents of their villages had the right to take out religious and non-religious processions with appropriate music along the roads and public highways in the villages, including those by the side of two mosques in the villages. The appellants contended that in 1931, in proceedings under s. 107, Criminal Procedure Code, there was a compromise between the Hindus and the Muslims of the two villages, whereby it was agreed that Hindus would not play music between two land marks near the mosques, and that such a restriction was necessary to enable them to say their prayers in the mosques. The trial court held the respondents were bound by the compromise. The first appellate court also held that the respondents were bound by the compromise, but that the respondents could take the processions between the landmarks with 'music in a low sound except drum-beating'. Both parties appealed to the High Court. The High Court held that the respondents were not bound by the compromise, that no restriction could be imposed on the right of the respondents' community (Hindus) to take out processions with appropriate music, and that the restrictive order of the first appellate court that only low sound music could be played should be set aside.

D

E

In appeal to this Court.

HELD: (1) As the compromise was not arrived at in a suit fought in a representative capacity, it did not debar the parties from asserting their legal rights in a civil court. [567 D]

Babu Ram Singh v. Subban Mochi, A.I.R. 1929 All. 519, explained.

F

(2) The respondents have the right to take out both religious and non-religious processions with accompaniment of music on the roads and highways subject only to (a) any order of the local authorities regulating the traffic; (b) any directions of the Magistrate under any law for the time being in force; and (c) the rights of the public. [568 G]

Manzur Hasan v. Muhammad Zaman, (1924) 52 I.A.61, applied.

G

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 25 of 1966.

Appeal by special leave from the judgment and decree dated January 2, 1963 of the Orissa High Court in Second Appeal No. 365 of 1960.

H

V. D. Misra, for the appellant.

N. C. Chatterjee and *Sukumar Ghose*, for the respondents Nos. 1 to 3 and 5 to 12.

The Judgment of the Court was delivered by

Sikri, J. This appeal by special leave is directed against the judgment of the Orissa High Court in a second appeal whereby the High Court affirmed the decree and order passed by the First Additional Sub-Judge, Cuttack, with modifications. The High Court held that "the restrictive order of the lower appellate court directing the plaintiffs to take out processions with a 'low sound music except drumbeating', is not justified" and directed the deletion of this portion from the order of the lower appellate court.

In order to appreciate the points raised before us it is necessary to give a few facts and the findings of the court below. The plaintiffs, respondents before us and hereinafter referred to as the plaintiffs, brought this suit against the defendants, appellants before us and hereinafter referred to as the defendants, praying for a declaration that the Hindu villagers of the two villages had the right to take out religious and non-religious processions with appropriate music along the District Board and village roads and other public highways of the locality including those by the side of the defendants' mosques without any interruption wherever the plaintiffs' community chose to take out without restriction and that the defendants, viz., the Mohamedan villagers of villages Alkund and Nuagaon, be permanently restrained from interfering with the plaintiffs' lawful procession as aforesaid in any manner.

The case of the plaintiffs, in brief, was that the villages Nua-gaon and Alkund were contiguous villages and they had a common social, cultural and religious life, and they were entitled to take out religious and non-religious processions with appropriate music. It was alleged that the Muslim villagers of the locality had two mosques, one in each village, abutting the highway. It was further alleged that till the Kartick Purnima day of 1952 the plaintiffs had taken out their religious and social processions with appropriate music without any interruption before the mosques in question; that the plaintiffs were prevented from exercising their lawful rights by orders of the Magistracy at the instance of the defendants; that the defendants held out threats to attack the plaintiffs' peaceful processions and accordingly it was necessary to clear the cloud created by the Magistracy and the conduct of the defendants.

We may mention that the District Magistrate and the State Government were not made parties to this suit.

The defendants' main plea was that the right claimed by the plaintiffs could only be exercised as not to cause any interference with the exercise of the rights of the defendants. It was alleged that the Muslim community of the two *mauzas* also had inherent, natural and fundamental rights to offer their prayers in complete calmness without any interference whatsoever and they were entitled to oppose music being played near about the mosque in

- A** order to maintain the calmness inasmuch as the music or Sankirtan really disturbed the calmness which was absolutely necessary for concentration of mind in prayer. The defendants also relied on a compromise alleged to have been arrived at between the two communities in 1931. It was alleged that in pursuance of the compromise two pillars had been put up by the defendants on both sides of the mosques to indicate to the music players of the processionists where to stop the music, and the pillars bore the following engraved inscriptions :

"Baja bajaiba nishdha"

- C** The following issues, among others, were framed by the Trial Judge :

(5) Is the right of the plaintiff villagers to take religious and non-religious processions with appropriate music by the side of the mosques of Nuagaon and Alkund likely to infringe the rights of the defendant moslem villagers to offer their prayer in calmness ?

D (6) Are the plaintiffs entitled to enforce their right in wanton disregard of the fundamental rights of the defendants ?

(7) Are the plaintiff villagers estopped to re-agitate their lost fundamental right to play music in front of the mosques ?

E (8) Are the plaintiffs bound by the compromise entered into between the properly represented leaders of both the communities dated 2-3-31 and had the compromise been acted upon ?

F The Trial Court held that the rights of the plaintiffs to take out the processions with the accompaniment of music was not absolute and the plaintiffs could only exercise the same on all occasions except near the mosques at the time of congregational prayer of the defendant community according to Islamic religion and subject to other lawful orders or directions given by the Magistrate or Police for preventing breach of peace or regulating traffic. The Court further held that a compromise was effected in 1931 and the Hindu community had been acting according to the terms of the compromise so as not to disturb the religious sentiments of the Muslim community by playing music before their mosques while going in processions. The Court accordingly held that the plaintiffs were estopped from re-agitating the matter which they had agreed not to do. The Court accordingly decreed the suit and gave the following declaration :

"That the plaintiffs have a right to take out both religious and non-religious processions with the

accompaniment of proper music for the occasion on the highways of Alkund and Nuagaon villages subject to the undermentioned restrictions (a) that they do not play music between the space of brick pillars situated on both sides of Alkund mosque and between the space indicated by two stones on either side of the Nuagaon mosques so as not to disturb the defendants or their community in their offering their prayers and (2) that the right also subject to any lawful order or direction by the Magistrate or the Police for preventing breaches of public peace or obstructing the highway and such other orders under any other statutory provisions for regulating traffic. The parties will bear their own costs."

On appeal by the plaintiffs, the First Additional Sub-Judge also held that the compromise was binding on the plaintiffs. He further held that it was manifest from the inscription on the two pillars (*Baja bajaiba nishdha*) that the leaders of the Hindu community agreed to stop only drum-beating near the said two mosques. In view of this conclusion he gave the following modified declaration :

"That the plaintiffs both in their individual capacities and as members of the Hindu Community have a right to take out religious and social processions accompanied by music in a low sound except drum-beating along public roads while passing the two brick pillars situated on either side of Alkund mosque and the two stones fixed on either side of Nuagaon Mosque, subject to any orders or directions issued by the magistrate or police for preventing breaches of public peace or obstructions of the thoroughfares or for other matters mentioned in section 144 Criminal P.C. or under other statutory provisions or for regulation of traffic, provided that the exercise of such right does not amount to a nuisance recognised by law."

The defendants appealed to the High Court and the plaintiffs filed a cross appeal. R. K. Das, J., held that no restriction order of the lower appellate court directing the plaintiffs to take out processions with appropriate music and that the restrictive could be imposed on the right of the plaintiffs' community to take out procession with "low sound music except drum-beating" was not justified and was liable to be set aside. He, however, maintained the rest of the declaration given by the First Additional Sub-Judge. The High Court further held that the compromise did not create an estoppel against the plaintiffs. He observed that "there is nothing on record to show that the signatories to the said compromise had any authority whatsoever to bind the com-

A munity as a whole. It is well-settled that a few self-constituted leaders or even leaders chosen by the officials do not legally represent the entire community which includes minors also and without proof of valid authority such leaders cannot bind the other members of the community. The question whether any valid authority was given or not is a question of fact in each case."

B

The learned counsel for the defendants contends that (1) the High Court had no jurisdiction to set aside the finding that the compromise was effected in a representative capacity; (2) that *Babu Ram Singh v. Subhan Mochi*⁽¹⁾ lays down good law and should have been followed by the High Court; and (3) that both the Hindus and the Muslims have fundamental rights and in case of conflict reasonable restrictions on playing of music before the mosques should be imposed by this Court.

In our opinion the High Court was right in coming to the conclusion that the compromise was not binding on the Hindu community. The learned Additional Sub-Judge had misdirected himself in law in coming to the contrary conclusion. The compromise was not arrived at in a suit fought in a representative capacity but was filed in a proceeding under s. 107, Criminal Procedure Code. The signatories declared *inter alia* that "neither we, the Musalmans nor we the Hindus can at any time in future create any disturbance towards each other's religion and will deal with each other amongst ourselves. . . . There is no apprehension of breach of peace as we the Hindus and the Musalmans have amicably settled the matter nor will there occur any breach of peace in future. So we both parties having settled the matter amicably hereby submit this petition and pray that the case be disposed of in terms of this compromise petition." It is signed by a number of persons but there is no indication that they represented the two communities. It may be that these persons, who signed the compromise, were important persons in the communities and it may be that both the communities should act according to the compromise effected by the so-called important persons. But in law it does not debar the parties from asserting their legal rights in a civil court. We need not decide what the compromise means, and particularly whether the words inscribed on the pillars were part of the compromise effected by the leaders.

The facts in *Babu Ram Singh v. Subhan Mochi*⁽¹⁾, which was relied on by the learned counsel for the defendants, were different. There the Court was satisfied from a consideration of the circumstances that the agreement was binding on the parties. The Court observed :

(1) A.I.R. 1932 All. 519.

"It is manifest that the parties did summon the leaders of the various communities and that they were summoned as representatives of their various communities.... We find it quite impossible to believe in the circumstances of the case that the other Mahomedans of Rasra were not fully aware of the meeting to which their leaders had been summoned, and their subsequent conduct in the ensuing years shows that during those years, at any rate, they accepted the representative capacity of the leaders who had signed the agreement. It is manifest that for at least three years no single Mahomedan made any endeavour to repudiate the authority of those leaders.... That it is right and proper to infer the representative character of the signatories to the agreement from the surrounding circumstances is amply supported by a reference to s. 187, Contract Act."

We are not called upon to decide whether that case was rightly decided or not as the facts in that case were quite different. As we have said, this was a proceeding under s. 107 against particular parties and we are unable to appreciate how any party in a proceeding under s. 107, Criminal Procedure Code, could represent the whole community to which he belongs.

The law on the subject of rights of persons to take out religious processions was settled by the Privy Council in *Manzur Hasan v. Muhammad Zaman*⁽¹⁾. The learned counsel has not challenged that decision, but appeals to us to incorporate more reasonable restrictions so as to fully preserve the rights of the appellants-defendants to say their prayers in peace in the mosques. In our opinion there is no reason why we should not follow the decision of the Privy Council in *Manzur Hasan v. Muhammad Zaman*⁽¹⁾, and the form of declaration given therein. The declaration given by the Privy Council paid due regard to the rights of both communities. We accordingly substitute the following declaration :

"That the plaintiffs have a right to take out both religious and non-religious processions with the accompaniment of music on the highways of Alkund and Nuagaon villages (1) subject to the order of the local authorities regulating the traffic and (2) subject to the Magistrate's directions under any law for the time being in force and the rights of the public."

The appeal accordingly fails and is dismissed. There will be no order as to costs.

V.P.S.

Appeal dismissed.

(1) [1924] 52 I.A. 61.