

It could not be advanced before the Collector in view of the fact that Maghar Singh was alive at that time and only on his death the provisions of sections 10-A (b) and 10-B of the Act came into operation and thus the land in question could not be declared surplus.

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others

Mahajan, J.

Mr. Sikri, learned Advocate-General, has brought to my notice the fact that in the petition it is alleged that they formed a Joint Hindu Family and, therefore, if that contention is accepted that they form a Joint Hindu Family, then section 10-A (b) will not come into play, because by the recent amendment, the Joint Hindu Family has to be treated as a unit. It may be mentioned that this plea has been taken in the alternative and a petitioner cannot be deprived of his legal rights by pleading an alternative case, as well. Moreover, it is well settled that in Jats the institution of a Joint Hindu Family does not exist.

For the reasons given above, this petition is allowed, the orders of the Collector, the Commissioner and the Financial Commissioner declaring 45 Standard Acres 7 $\frac{1}{2}$ Units of the area surplus is quashed. In view of the fact that the matter was not agitated before the Financial Commissioner, there will be no order as to costs.

..

R.S.

CRIMINAL MISCELLANEOUS

Before Shamsheer Bahadur, J.

JAWAHAR SINGH AND OTHERS,—*Petitioners.*

versus

THE STATE,—*Respondent.*

Criminal Miscellaneous No: 996 of 1963:

Code of Criminal Procedure (V of 1898)—Ss. 107 and 151—Proceedings under—Whether can be quashed where the occasion which gave rise to the apprehension of breach of peace no longer exists.

1963

Oct., 25th

Held, that where occasion which had created tension between the two parties and had given rise to the apprehension of the breach of peace, had passed off peacefully, there is no justification to take action under sections 107/151 of the Code of Criminal Procedure, even if the allegations of the prosecution are accepted as true.

Petition under Sections 498 and 561-A Criminal Procedure Code, praying that the proceedings under Sections 107/151 Criminal Procedure Code, against the petitioner pending in the Court of Magistrate 1st Class, Ambala, be quashed or the amounts of bail bonds both for appearance and u/s 117(3) Cr. P.C. demanded from the petitioner be suitably reduced.

H. S. GUJRAL, ADVOCATE; for the Petitioners

A. C. HOSHIARPURI, ADVOCATE, for the ADVOCATE-GENERAL,
for the Respondent.

ORDER

Shamsher
Bahadur, J.

SHAMSHER BAHADUR, J.—This is a petition of Lambardar Jawahar Singh and four other persons who are being proceeded against under sections 107/151 of the Code of Criminal Procedure. On arrest that petitioners were called upon to furnish bail-bonds in the sum of Rs. 50,000 each, though these came to be reduced subsequently to Rs. 20,000 in the case of the petitioners other than Jaswant Singh petitioner No. 5 who was required to furnish bond in the amount of Rs. 35,000. The occasion for the proceedings arose on 31st of August, 1963 when Bawan Dwardshi fair was to be held in the town of Ambala. There seems to have been some tension between the Akali Jatha, Ambala and the Sanatan Dharam Sabha, Ambala and the consequently it was considered essential to take proceedings as a breach of peace was apprehended.

In this petition, two prayers have been made. Firstly, it is submitted that the bail-bonds are excessive and should be reduced and secondly, that the proceedings under section 107/151 of the Code of Criminal

Procedure should be quashed as the occasion which gave rise to breach of peace no longer exists. In my opinion, the contentions of the learned counsel are correct and the petition should succeed. There is an authority of the Patna High Court in *Mirza Zulfakar Beg and others v. King-Emperor* (1), in which it was held by Das J. that:—

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“Where the persons, against whom proceedings under section 107 are started, were likely to commit a breach of the peace on a particular occasion and that occasion passed off without any disturbance it cannot be inferred from their intention in the past that they are likely to do the same thing in future. Binding over such persons becomes in such a case unnecessary.”

On a parity of reasoning, it has been urged by Mr. Gujral that the strained feelings which, according to the prosecution, were generated between the two rival groups on the occasion of the Bawan Dwadshi cannot be regarded as a permanent and perpetual feature especially when the police complaint itself says that on Bawan Dwadshi fair the two rival groups had threatened to take out religious *diwans* which might have disturbed their peace.

On behalf of the State, it is contended by Mr. Hoshiarpuri that it is for the Magistrate to determine whether there are still strained feelings between the two communities to draw a conclusion that there still exists a likelihood of breach of peace. A similar argument was raised before Das, J. in *Mirza Zulfakar Beg and others, v. King Emperor* (1), where it was pointed out to the Court that although the particular occasion had passed the feelings were still strained

(1) A.I.R. 1927 Patna 231.

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between the two communities and there was a likelihood of breach of peace. Such an argument did not prevail in the High Court though the Magistrate had thought that he had no power to drop the proceedings. The proceedings could be quashed if on the evidence itself no *prima facie* case is shown to exist. I am of the view that in the context and background of this case there can be no reasonable apprehension of a breach of peace now even if the allegations of the prosecution are accepted and consequently there hardly remains any justification to take action under section 107/151, Code of Criminal Procedure.

In this view of the matter, I direct that no further action should be taken in the matter and the proceedings would be accordingly quashed. Even if I was inclined to take the view that the proceedings could still continue before the Magistrate, I would in any event have reduced the bail-bonds to Rs. 1,000 in each case, but it is no longer necessary to make that direction as the petitioners also succeed under section 561-A of the Code of Criminal Procedure Code.

R. S.

LETTERS PATENT APPEAL

Before S. S. Dulat and Prem Chand Pandit, JJ.

KISHAN DEVI,—Appellant.

versus

DELHI DEVELOPMENT AUTHORITY,—Respondent.

Letters Patent Appeal No. 42-D of 1959.

1963

November, 6th. U.P. Town Improvement Act (VIII of 1919) as applied to Delhi—S. 64-A—Whether ultra vires the constitution—S. 64-B—Principles laid down for the betterment fee—Whether can be applied in the case of abandonment fee under S. 64-A.