

Present : Bertram C.J.

LANGRAM v. NILAME.

686—P. C. Avissawella, 32,497.

*Criminal Procedure Code, s. 81 — Order to give security to keep the peace—“ Wrongful act.”*

In section 81 of the Criminal Procedure Code, 1898, the word “wrongful” means “wrongful in law” and not “open to criticism” or “deserving of reprehension.”

THE facts appear from the judgment.

*Ameresekera*, for the appellant.

September 17, 1920. BERTRAM C.J.—

This is an appeal against an order of the Magistrate under section 81 of the Criminal Procedure Code directing the appellant to execute a bond for keeping the peace under that section. In the circumstances of the case, the question I have to consider is of an academical nature, as the particular emergency, for the purposes of which a bond was ordered, has now passed. It appears that there was a *perahera* proceeding or about to proceed at the village of Medagoda, and the Police Magistrate, in the discharge of his general responsibility for maintaining order in his division, had made certain arrangements for the conduct of the *perahera*. There appear to have been disputes as to the title of certain persons interested in lands in the village, and as to the obligations to carry out certain temple services in connection with these lands. The Magistrate, after holding an informal inquiry, had issued certain orders on the subject, and in pursuance of these orders certain *kapuralas* were to perform certain ceremonies for the purpose of the *perahera*.

The information which was given to the Police Magistrate, and under which he purports to act in pursuance of section 81, was given to him by the *Ratemahatmaya* of the district and a Sub-Inspector of Police, and was to the effect that John Nilame, the appellant, had been heard telling the *kapuralas* not to carry out the ceremonies on the next day.

The note on the subject is somewhat informal, and in ordinary circumstances no doubt the Magistrate would have seen that a mere formal entry of this information was made stating what it was precisely that was complained of.

It appears from the subsequent proceedings that the basis of the complaint was that the appellant was likely to do a wrongful act, and that what was conceived as a wrongful act was the instigating of the *kapuralas* not to perform the ceremonies

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in pursuance of the arrangements which the Magistrate had made. The Magistrate held an inquiry, and he appears to have been satisfied that the appellant did, in fact, attempt to dissuade the kapuralas from carrying out the ceremonies, and upon that he ordered the appellant to execute a bond. His note is as follows: "His instigation of the kapuralas constitutes a wrongful act, which may have induced other people on either side to break the peace." This note is not precisely expressed; and apparently contains clerical errors. The order of conviction is also somewhat inexact.

It recites that "John Nilame Modagoda is convicted of the following offence, that he did on August 14 a wrongful act that might probably occasion a breach of the peace by telling the kapuralas of the Medagoda Dewale not to carry out the ceremonies in the temple in presence of the large congregation, the chief headman, and the chief police officers."

The order made by the Magistrate is clearly irregular. He appears to have misapprehended the meaning of the words "wrongful act." The word "wrongful" must mean "wrongful in law," and not "open to criticism" or "deserving of reprehension." It was not necessarily wrongful in law for the appellant to dissuade some one not to carry out the Magistrate's arrangements, though these arrangements may have been of an appropriate and desirable character. It must be shown that the act apprehended was either in breach of the criminal law or in breach of some person's civil rights. If it were shown that the kapuralas were under a definite legal obligation to perform certain services, then it might no doubt be possible to justify the attempt to dissuade the kapuralas from performing these services being made the basis of the proceedings. But this is not established. Further, it must be shown that the wrongful act would probably occasion a breach of the peace. The Magistrate may upon his own knowledge of the district have formed the conclusion that if the kapuralas did not carry out the arrangements some disturbance was likely to take place. But I think in such a case he ought to have formally recorded evidence of the fact. The real infirmity is that it is not shown that the attempt to dissuade the kapuralas was a wrongful act.

The mere fact that the man has committed a wrongful act does not necessarily justify the apprehension that it will be repeated. In the present case I think the circumstances were such that if the act was wrongful, the Magistrate might very well have treated it as one which was likely to be repeated. As, however, it is not wrongful within the meaning of the section, I need not further discuss that aspect of the case. It is sufficient to say that the order is based upon a misapprehension of the law, and that the bond, if it has already been executed, must be cancelled.

*Set aside.*