
(1986) 02 GAU CK 0016
In the Gauhati High Court
Case No : Criminal Revision No. 84 of 1985

Abdul Sattar and Others

APPELLANT

Vs

Shri Juran Chandra Sarkar and Another

RESPONDENT

Date of Decision : 25-02-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 114, 144, 144(2), 145

Citation : (1986) 2 GLR 115

Hon'ble Judges : K.M. Lahiri, J

Bench : Single Bench

Advocate : M.A. Laskar, Sk.N. Mahammad and N. Ahmed, for the Appellant;
A.K. Phukan and A. Roy, for the Respondent

Final Decision : Allowed

Judgement

K. Lahiri, J.—This is a revision against an order dated 5.12.84 passed by Shri M.N. Sarma, Additional District Magistrate, Mangaldoi in exercise of power u/s 144 of the Code of Criminal Procedure, 1973, and order dated 25.1.85 passed by the Sessions Judge, Darrang in Criminal Motion No. 27 (DM-4) of 1984.

2. The relevant facts are that the Additional District Magistrate, Mangaldoi in exercise of his power u/s 144 Code of Criminal Procedure restrained the Petitioner-2nd parties from fishing in the fishery in question. However, the second party was granted the opportunity to show cause why the order should not remain in force for two months from the date of making of the order. The order prohibiting the second party-Petitioners was rendered "ex-parte" on the score that it was considered to be urgent and necessary to render the ex-parte order. It is necessary to state that an order u/s 114 of "the Code" necessarily restricts the right of a party. Such order can be passed only in urgent cases of nuisance or apprehended danger. The condition precedent for making an order is urgency to avoid commission of nuisance or to prevent apprehended danger. As such, only in urgent cases falling under the section the Magistrate has the jurisdiction to render an order u/s 144 Code of Criminal Procedure. However,

while making on "ex-parte" order apart from the said urgency, the existence of emergency must be clearly set forth in the order. In my opinion no ex-parte order u/s 144 can be rendered merely on the ground that it was considered "urgently necessary to reader an order u/s 144". The meaning of the two different expressions (1) urgency and (2) emergency have been used in Section 144 itself. The expressions convey two different concepts. When an urgency exists an authority may render an order u/s 144 of the Code. However, he cannot restrain the right of either of the parties without giving the party an opportunity to be heard. Ordinarily a show cause notice is given. However, where there exists "emergency" the authority has been empowered to render an ex-parte restraint order. It is thus seen that an order restraining a party to forebear to do certain aots cannot be rendered "ex-parte" but may be made only in case of emergency. The term "emergency" means and includes perplexing contingency and unforeseen combination of circumstances that call for immediate action. If a nuisance or apprehended danger is such that an ex-parte restraint order is absolutely necessary the Magistrate must render an order stating the facts constituting the emergent circumstances and thereafter may pass a prohibitory order u/s 144(2) of "the Code". However, the Petitioners instead of approaching the learned Magistrate preferred a revision before the learned Sessions Judge. Learned Sessions Judge determined the validity or invalidity of order of the Additional District Magistrate, who was not a party to the revision. The order was rendered behind his back and without giving the Additional District Magistrate any opportunity to show cause. As such, the judgment and order of the learned Sessions Judge is in total breach of the principles of natural justice. The Petitioners were aggrieved by the order of the Additional District Magistrate, whose order was impugned in the revision and no order netting aside the impugned order u/s 145 could be rendered without making the author of the order a party to the proceeding. Strangely enough in the revision the Petitioners also questioned the validity of an order dated 18.9.78 passed by the Sub Divisional Officer, Mangaldoi in respect of the fishery in question. I fail to see how an order of a Revenue Officer rendered in 1978 could be called in question in 1985. As a matter of that the order of the Sub Divisional Officer, Mangaldoi could not have been the subject matter of the revision under "the Code". Learned Judge had no jurisdiction to interfere with the order. Interestingly, learned Sessions Judge by his order dated 25.1.85 set aside the order dated 18.9.78 passed by the Sub-Divisional Officer, Mangaldoi in purported exercise of power under the Assam Land and Revenue Regulation. Learned Judge has had no jurisdiction to decide the validity of the order rendered by the Revenue Officer. Further, learned Judge in para 4 of the judgment has made certain direction which Mr. Laskar, learned Counsel for the Petitioner has very right by contended were beyond the jurisdiction of the learned Judge. In my opinion, the order rendered in paragraph 4 of the impugned order passed by the learned Sessions Judge are absolutely illegal and without jurisdiction. In short, the entire proceedings before the learned Sessions Judge was heard and disposed of without granting opportunity to the State, to defend the order of the Addl.

District Magistrate and as such the impugned order is without Jurisdiction. In any view of the matter, Mr. Laskar submits that the impugned order has spent its force and accordingly the proceedings should be quashed. Learned Counsel submits that observations made by the Additional District Magistrate as well as the learned Sessions Judge should be quashed. I am of the firm opinion that the impugned order has spent its force in the first week of February last year and it cannot be enforced against either of the parties.

3. For the foregoing reasons, I hold that the impugned ex-parte order rendered by learned Additional Deputy Commissioner made without observing that it was a case of emergency was bad. As such, the impugned prohibitory order is set aside. I further hold that the impugned order u/s 144 of the Code has spent its force by lapse of time. The impugned order of learned Sessions Judge in Criminal Revision is illegal, bad and without jurisdiction as it was rendered without affording any opportunity to the Addl. Deputy Commissioner and/or the State and accordingly it is quashed. The impugned order of learned Sessions Judge in respect of the order of the Revenue Officer naturally falls through. All observations made by the learned Sessions Judge against the parties fall through.

4. In the result, the petition is accepted to the extent indicated above.

5. Before parting with the records I would like to observe that if in future any situation arises which calls for drawing up proceedings u/s 144 of the Code in respect of the subject matter between the parties and/or any other parties, learned District Magistrate and/or any other competent Magistrate shall have the power to take recourse to Section 144 of "the Code".