
(1924) 01 CAL CK 0038
In the Calcutta High Court

Anath Bandhu Nundy and Others

APPELLANT

Vs

Wahid Ali Pramanik and Others

RESPONDENT

Date of Decision : 17-01-1924

Acts Referred:

Citation : AIR 1925 Cal 1022 : 85 Ind. Cas. 654

Judgement

1. This Rule was granted on the 11th of January last against an order passed by the Deputy Magistrate of Shahazampur ordering that the second party should not take possession of certain water to the exclusion of the enjoyment of the right of use of the first party during the period Aswin to Chait. In the month of January 1923 a report was made by the police to the Magistrate with regard to the likelihood of a breach of the peace as to the fishery which was in dispute in these proceedings. The Magistrate considered on the report that the matter was urgent and that the breach of the peace was imminent and accordingly he issued an order u/s 144 of the Cr. P.C., on the second party to prevent them interfering with the fishery. He made the order ex parte and gave the second party leave to come in to discharge the order. This they did on the next day which was the 20th January 1923. The Magistrate thereupon discharged the order which he had made u/s 144. and on the same day, that is, on the 23rd January he drew up proceedings u/s 145 of the Cr. P.C. These proceedings went on for some time and the first party examined a considerable number of witnesses, we think, some 11 in all, and one witness was examined on behalf of the Second party. On the 16th April 1923 the Magistrate is said to have converted these proceedings u/s 145 into proceedings u/s 147 of the Cr. P.C., because it was then realized that the question at issue was not one of possession u/s 145 but one as to rights falling u/s 147 as the first party were claiming an exclusive right of fishery to the fishery in dispute between the months of Aswan and Chait each year. The second party proceeded to deluge the file of the Magistrate with a series of petitions. They objected to the change of proceedings, from proceedings u/s 145 to proceedings u/s 147 and said that the Magistrate had no jurisdiction to deal with the matter in this way. Having failed to convince the Magistrate on this point they then

proceeded to ask that the exhibits should be re-numbered. They then apparently filed a petition asking that the first party's witnesses should be re-called for cross-examination. The Magistrate in the order which he has passed, seems to have either forgotten or misapprehended this petition because he says that the second party did not want to cross-examine again and they really acquiesced in what has been done with regard to these proceedings. Proceedings then continued, petitions being filed at intervals reiterating the same points, and ultimately the Magistrate made the order to which we have referred.

2. Three main points have been urged before us on behalf of the second party. First, it is said that at the time the 145 proceedings were changed into proceedings u/s 147 on the 3rd Baisakh there was no likelihood of any breach of the peace inasmuch as the months of Aswin and Chait had passed and the first party did not claim to exercise any right of fishery until these months recurred in the next year. Secondly, it is said that the second party have been prejudiced by the fact that when the Magistrate changed the 145 proceedings to proceedings u/s 147 no fresh proceedings were drawn up, and it is suggested on behalf of the second party that they did not in consequence realize or know what exactly the Magistrate was going to try and what exactly the dispute was about. Thirdly, it is said that the second party have been prejudiced because they were not allowed to have the witnesses of the first re-called for cross-examination when the change in the procedure took place. Now having had the facts very fully laid before us by the learned vakil for the second party and very fairly placed before us if I may say so, it does not seem to me that there is really any substance in any of these three points. Whether you treat the proceedings as really in fact proceedings all along u/s 147, although they were originally drawn up u/s 145, or whether you treat the change on the 3rd Baisakh as new proceedings, it seems to us that the Magistrate had jurisdiction, having regard to the fact that at the time the proceedings were instituted there was an imminent risk of a breach of the peace and the fact that he had before him the police report be stating. So far as the second point is concerned we are not satisfied that the second party have really been prejudiced. We think it is quite evident that they really knew what the real issue was and upon what question the evidence had to be called.

3. Thirdly, on the question of cross-examination I am not satisfied myself that the question of cross-examination was really pressed on behalf of the second party. If it had been pressed and if they had satisfied the Magistrate that they really had some questions to ask we think that there is no doubt that the Magistrate would have acceded to the request. But after all they are really themselves to blame for not concentrating on this point instead of putting in a lot of frivolous petitions which the Magistrate quite rightly took no notice of. Therefore, so far as the third point is concerned we do not think that this point was really pressed on behalf of the second party and we think that we should not interfere on this ground.

4. It is said that under the provisions of Section 439 of the Code our powers are

wider than they were under the Government of India Act before the change in Section 439 came in. This is perfectly true but having considered the whole of the facts and circumstances placed before us we do not think that there is really any substance in the complaint of the second party or that they have really been injured by the course that the proceedings took.

5. In the circumstances we discharge the Rule.