

(1912) 05 CAL CK 0005
In the Calcutta High Court

Anath Nath Dey

APPELLANT

Vs

Mohendra Nath Srimani

RESPONDENT

Date of Decision : 07-05-1912

Acts Referred:

Citation : 15 Ind. Cas. 489

Hon'ble Judges : Imam, J;Holmwood, J

Bench : Division Bench

Judgement

1. This was a Rule calling on the Chief Presidency Magistrate, Calcutta to show cause why the hearing of this case on remand should not be transferred to some other Presidency Magistrate, on the ground that the learned Second Presidency Magistrate has misconceived our orders and is not prepared to try the case from the beginning in accordance with the directions we have given.

2. Now, had this matter been before us as an ordinary case in this simple form, we should have felt disposed to make the Rule absolute and to ask the Chief Presidency Magistrate to take the case back to his own file and either dispose of it himself or make it over to some other Presidency Magistrate. But an objection has been raised, and very properly raised, by the learned Standing Counsel, who appears for the Receiver who is the accused in this case, that the bringing of this case without the leave of the Court which appointed the Receiver is an act of contempt and that the case is incompetent without such sanction.

3. We have carefully considered the authorities and we have come to the conclusion that the matter is one at least of great doubt, and if there is any doubt, then it is clear that we cannot decide the jurisdiction of the original side of the Court. It was laid down in A. M. Dunne v. Kumar Chandra Kisore 30 C. 593 : 7 C.W.N. 390 that a Receiver cannot be made a party to Section 145 proceedings which are criminal proceedings. It is, therefore, not a general rule of law that in all criminal proceedings, the leave of the Court is not necessary to prosecute. It was thrown out as a query in that case that a Receiver can neither sue nor be sued without the leave of the Court; and in a subsequent case in the same

volume W. R. Fink v. The Corporation of Calcutta 30 C. 721 at p. 724 : 7 C.W.N. 706, a Court of Criminal revision held that the case of A. M. Dunne v. Kumar Chandra Kishore 30 C. 593 : 7 C.W.N. 390, which we have just, referred to is an authority for the point that a Receiver cannot be made a party to any suit or proceeding without the leave of the Court appointing him. The word proceeding obviously has been added because it has been held that he could not be made a party to Section 145 proceedings. But the word equally applies to a prosecution for defamation. An application to the Court of the Chief Presidency Magistrate for process is a proceeding and it is at that stage that the sanction became necessary, if it was necessary at all. Now, it so happens in this case that the accused is a defendant in the action and a part owner in the property as well as a Receiver under the Code; and it is argued that it was in his capacity as owner that he was brought up before the Municipal Magistrate for neglecting to execute certain repairs out of which this action has arisen. But it was held in the case of A. B. Miller v. Ram Ranjan Chakravarti 10 C. 1014, that the receiver of the High Court does not represent the owner, of the estate for which he is the Receiver, but is merely an officer of the Court and as such cannot sue or be sued except with the permission of the Court, so that where he even happens to be part owner he cannot be brought up before the Municipal Bench for neglect to repair a building within the Corporation of Calcutta except with the leave of the High Court; and this was what was decided in the case of W. R. Fink v. The Corporation of Calcutta 30 C. 721 at p. 724 : 7 C.W.N. 706, to which we have just referred. That being so, it appears to us that the alleged act of defamation, arising out of this very matter of the repairs and based upon a letter which claims for the accused that he is acting on behalf of the estate, would not lie without the leave of the Court. The whole matter seems to be of a very slight and unimportant character, that the words are in themselves defamatory and require justification. But the portion of the letter which seems to bring the case within the rule that sanction is required when the act of the Receiver is done for the protection of the estate in his hands, is contained in the last paragraph and is as follows: " However, from your conduct it appears that your intention was not only to interfere with my proper management of the estate but to involve the same in unnecessary expenses, a thing most reprehensible for a tenant."

4. It is not for us to decide whether sanction is necessary but there being doubt on the point, it is our duty to stay the proceedings until the question has been decided by this Court sitting on the original side. The petitioner is at liberty to move the Court on the original side and obtain an order either giving him leave to prosecute or stating that leave is not necessary. In the event of his obtaining either of these orders, the Chief Presidency Magistrate will proceed to deal with the case himself or to make it over to some other Magistrate as we have suggested above.

5. The Rule will be thus partially made absolute and partially discharged in terms of the judgment we have delivered. In the meantime, further proceedings will be stayed and the record will remain with the Chief Presidency Magistrate.