
(1954) 02 CAL CK 0017
In the Calcutta High Court
Case No : Criminal Misc. Case No. 171 of 1953

Arun Kumar Mukherjee

APPELLANT

Vs

Ashutosh Guha

RESPONDENT

Date of Decision : 26-02-1954

Acts Referred:

Contempt of Courts Act, 1971 — Section 3
Criminal Procedure Code, 1898 (CrPC) — Section 144

Citation : AIR 1955 Cal 368 : (1955) CriLJ 943 : 58 CWN 558

Hon'ble Judges : K.C. Das Gupta, J;Debabrata Mookerjee, J

Bench : Division Bench

Advocate : Nirmal Chandra Sen, for the Appellant; S.S. Mukherjee and Sukumar Sen, for the Respondent

Judgement

K.C. Das Gupta, J.—On 6-11-1953 Sri Arun Kumar Mukherjee, Sub-Divisional Magistrate, Raiganj addressed a letter to the Registrar of this Court in which he alleged that Ashutosh Guha, a pleader of Raiganj who had appeared on behalf of one Uma Charan Chakrabarty against whom an order u/s 144, Criminal P. C., had been passed by the Sub-Divisional Magistrate had while arguing a case in the court of the local Munsif put forward a copy of the Magistrate's order u/s 144, Criminal P. C., and called it an act of "executive goondaism" of the Sub-Divisional Magistrate.

After a report was obtained from the learned Munsif, Guha and Guha Ray JJ. issued a Rule on the lawyer to show cause why he should not be dealt with for contempt of the Sub-Divisional Magistrate's Court. The lawyer has appeared before us and has sworn an affidavit in which he states that after the pleader for the defendant had placed the order of the Sub-Divisional Magistrate u/s 144, Criminal P. C., before the Court he in course of his argument did not refer to the order, but said

"the conduct of the Sub-Divisional Officer in visiting the locality and asking behind the back of and without notice to the second party, the 1st party in the

Section 144 case to reap the paddy and to take it away without any consideration for the landlord's share, so to say, almost amounted to executive high-handedness and zubberdastism.""

As some months have elapsed after the remarks, whatever they were made by the learned lawyer in the Munsiff's Court we are not surprised that there is some difference between the Munsif's report and the lawyer's affidavit as regards the actual language that was used. Substantially, however, the Munsif's report and the lawyer's affidavit agree as to what was said. The question remains whether, in saying that the conduct of the Sub-Divisional Officer amounted to "executive goondaism" or highhandedness or zubberdastism", whatever be the exact words used, it amounted to contempt of the court.

2. When a Magistrate acts u/s 144 of the Code of Criminal Procedure he clearly acts as a Judicial Officer. It is to be remembered, however, that in this province the same Magistrate also exercises executive functions. As the maintenance of public peace is essentially a duty of the executive authorities one can well understand the act of the Sub-Divisional Magistrate u/s 144, Criminal P. C., being considered to have been performed from the executive standpoint though in essence a judicial act.

In deciding whether characterisation of action of this kind as "executive goondaism" or "executive zubberdastism" impaired the dignity of the Court, we have to remember that the remark was made in course of arguments. High flown language has often to be used in trying to persuade a court to a particular view. Some amount of latitude must be allowed to lawyers when addressing arguments in Courts of law. We think, that the use of the word "executive goondaism" would be very improper; the use of the word "executive zubberdastism" would be less objectionable. But whether one or the other word was used, it was a trivial matter. . If we take action for contempt of Court for use of such words it will amount to such serious interference with the activities of Counsel in Court that the effect on the administration of justice may well nigh be disastrous.

3. In consideration of these circumstances we do not think it necessary to take any action in the matter.

4. The Rule is discharged.

Debabrata Mookerjee, J.

5. I agree.