

**(1922) 03 CAL CK 0041**  
**In the Calcutta High Court**

Benowari Lal Ram and Others

APPELLANT

Vs

Pronab Krishna Majumdar and Others

RESPONDENT

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**Date of Decision :** 01-03-1922

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 107, 144

**Citation :** AIR 1922 Cal 569 : 71 Ind. Cas. 516

**Hon'ble Judges :** Walmsley, J;Suhrawardy, J

**Bench :** Division Bench

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**Judgement**

Suhrawardy, J.—This Rule was issued against the orders, dated the 30th December 1921 and 4th January 1922, passed by the Sub-Divisional Magistrate of Berhampur u/s 144, Criminal Procedure Code, on the grounds mentioned in the petition, viz., that the orders are ultra vires, illegal and beyond the scope of Section 144, Criminal Procedure Code.

2. The facts of the case are that there is an old hat at a village Islampur, belonging to the opposite party, which is held on every Monday, and attended by, among others, the people of Chak Harharia. Some difference arose between the opposite party and the people of the Chak, and these petitioners started a hat in the Chak which was held on Sunday, the 25th December 1921, at a place near the Local Board road. It appears from the Police report that on hearing that the new hat was being held, the opposite party sent their men to the place, and there was a serious fighting between the parties which resulted in the starting of criminal cases u/s 147, Indian Penal Code. On the 29th December 1921 the Police reported the above facts to the Sub-Divisional Magistrate and invited proper orders, whereupon the Sub-Divisional Magistrate issued an order u/s 144, Criminal Procedure Code, in these terms:

Whereas I have been informed that there is an apprehension of a serious breach of the peace between the above mentioned parties within the boundaries given below, I do hereby, u/s 144, Criminal Procedure Code, pass this order of injunction prohibiting any person from going to buy or sell in the said place,

otherwise he should be dealt with according to law.

3. The petitioners then shifted the hat to a different plot of land but in the same village. The Police again reported that the petitioners, the second party, were holding the hat at another place and that "the first party is trying to prevent the sitting (holding) at the hat in the village Chak Harharia." Thereupon the Magistrate passed another order on the 5th January 1922, in the following terms:

Whereas I have been informed that there is an apprehension of a breach of the peace between the above-mentioned parties regarding holding of a hat by the opposite party in Chak Harharia as per boundary given below,--it is hereby prohibited, u/s 144, Criminal Procedure Code, that no person should go to sell or buy any articles in the Chak Harharia, otherwise they will be dealt with according to law, dated this the 5th January 1922.

4. In my opinion the orders complained of are such as could not have been passed u/s 144, Criminal Procedure Code. As has been observed in the case of *Rakhal Das Singh v. Emperor* 15 Ind. Cas. 655 : 19 C.W.N. 248 : 13 Cr.L.J. 511 there is a "clear distinction between interfering with the rights of private proprietors with whatever ulterior motive they may do acts which they have a right to do and the perpetration of wrongful acts by such proprietors. The law as regards preservation of public peace is based upon an apprehension that either certain person or persons are likely to commit breach of the peace by their own acts or that they are likely to do wrongful acts which may occasion other people to commit breach of the peace". These observations apply with particular force to the facts of the present case. Every person is ordinarily entitled to exercise all rights of ownership on his property, and the holding of a hat on one's own property is not in itself a wrongful act. The Criminal Court assumes jurisdiction to interfere with this lawful exercise of a person's right of ownership, when such exercise in its ulterior consequences, and being directed primarily against the lawful exercise of another person's right of owner; hip, is likely to cause a breach of the peace.

5. In the present case no evidence has been gone into and we have to proceed on the materials disclosed by the record. The, petitioners claim exclusive possession of the land on which they want to hold the hat. They further intend to hold it on a day other than the day on which the hat of the opposite party assembles. Such being the case, my opinion is that, the Magistrate has no jurisdiction to pass an order in the present form prohibiting the petitioners from holding their hat on any day of the week and on any place within a large area.

6. Numerous cases have been cited on both sides: most of which are based on the peculiar facts of each case. The opposite party relies on the Full Bench ruling--*Bykuniram Shaha Roy v. Meajan* 18 W.R. Cr. 47 : 10 B.L.R. (F.B.) 434. In that case it was argued that a Magistrate acting u/s 144, Criminal Procedure Code, has no jurisdiction to restrain a person from doing a lawful act on his property. The Full Bench held that a Magistrate has such a power where doing of

a lawful act may in his opinion occasion a breach of the peace. In that case the order passed was restraining a party from holding a hat on a particular day of the week. The same view has been adopted in all the cases that have since been decided out of which special reference may be made to the case of Nagendro Nath Biswas v. Rakhal Das Sinha 49 Ind. Cas. 97 : 23 C.W.N. 141 : 20 Cr.L.J. 113. In all the cases, in which the order of a Magistrate u/s 144 has been upheld, it was for restraining a party from holding a hat on a particular day. No authority has been placed before us in support of the contention that an order like those passed in the present case prohibiting a party from ever holding a hat at any place on his own property is competent u/s 144, Criminal Procedure Code. But there are authorities to the contrary condemning such an order. In the case of Rakhal Das Singh v. Emperor 15 Ind. Cas. 655 : 19 C.W.N. 248 : 13 Cr.L.J. 511 noticed above, a Rule was issued on the ground that "it is not within the jurisdiction of the Magistrate to prohibit the holding of the hat altogether; he can only give some directions as to dates, etc., as will prevent obstruction, annoyance or disturbance to public tranquillity temporarily." The learned Judges further directed that pending the disposal of the Rule, the petitioners in that case would be allowed to open their hat on dates other than those on which the hat of the opposite party was held. In the course of their judgment in making the Rule absolute on the grounds on which it was issued, they observed, "Now, directing a man not to use his property in a lawful manner (for the establishment of a hat is a perfectly lawful act) cannot, in our opinion, come within the purview of this section. What the Magistrate ought to have ordered these people to do is not to obstruct or allow their servants in any way to obstruct the public or any other person from attending the rival market if he wished to do so. The learned Judges further remarked: "an injunction cannot be issued not to do a lawful act upon a man's own property". Though the last proposition is so broadly put, what the learned Judges meant to say was that a Magistrate is not competent to prohibit the holding of a hat by a person on his own property unless he or his men by force or persuasion prevent people from attending the other hat. In the present case there is no allegation that the petitioners or their men obstructed or attempted to obstruct any one from attending the hat of the opposite party. According to the Police report the breach of the peace was occasioned by the opposite party coming to the petitioner's hat and interfering with the holding of it and that the further likelihood of a breach of the peace lies on the opposite party taking umbrage at the opening of a new hat close to theirs and interfering with it. For this state of things if any one was to blame it was the opposite party and I fail to see that there was any power in the Magistrate or any justification for issuing an injunction on the petitioners against holding the hat. Further, the orders complained of virtually prohibit any buying or selling in the village because some one may object to it.

7. To the above effect is the case of Bidhu Ranjan Mazumdar v. Ramesh Chandra Roy 11 C.W.N. 223 : 5 Cr.L.J. 43 where the injunction issued" u/s 144, Criminal Procedure Code, prescribed establishing a new hat within a quarter of a mile of

an old hat, as "there "was a probability of a breach of the peace over this matter.", The learned Judges in discharging the order of the Magistrate observe: "we are of opinion that the object of Section 144 is not that orders should be made proscribing the holding of hats indefinitely within a certain area for two months". They suggest that in such cases the proper way of preventing a breach of the peace is to proceed according to Section 107, Criminal Procedure Code. I think that in the present case also that suggestion should be adopted, as I find that the Magistrate is already considering the question of proceeding under that section.

8. I cannot leave this case without observing that it is not proper for a Magistrate to pass an ex parte order u/s 144, Criminal Procedure Code, and, when its propriety or legality is challenged, to postpone the hearing of the matter from time to time until about the termination of tile force of the order. Such matters ought to be disposed of quickly in order to avoid unnecessarily encroaching on the civil rights and liberties of the subject.

9. The Rule is accordingly made absolute and the orders of the 30th December 1921 and 4th January 1922 passed by the Sub-Divisional Magistrate will stand discharged.

Walmsley. J.

10. I agree.