
(1918) 06 CAL CK 0020
In the Calcutta High Court

Chandra Nath Mukerjee by his Guardian, Sahib Krishna Roy
Choudhury

APPELLANT

Vs

Emperor (East Indian Railway Company)

RESPONDENT

Date of Decision : 20-06-1918

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144

Citation : 47 Ind. Cas. 803

Hon'ble Judges : Syed Shamsul Huda, J; Newbould, J

Bench : Division Bench

Judgement

1. This is a Rule calling upon the District Magistrate of Burdwan and the East Indian Railway Company to show cause why the order of the District Magistrate directing the petitioner to remove an obstruction to a certain culvert should not be set aside. The order in question was passed under `Section 144,.Criminal Procedure Code, and a preliminary objection has been taken that as more than two months have expired since the order was passed, the order has spent itself and that this Court cannot now interfere.

2. Our attention, however, has been drawn On behalf of the petitioner to the decision of this Court in the case of Chandra Kanta Kunjilal v. Emperor 36 Ind. Cas. 144 : 20 C.W.N. 981 : 17 CrI.L.J. 464 case an order u/s 144, Criminal Procedure Code, which had expired was set aside. The only difference, which we can see, so far as the present point is concerned, between that case and the present one is that in that case the petitioner had been prosecuted u/s 188 before the Rule was obtained. In this case the Rule, has been obtained against the order u/s 144 only; but we are informed that a prosecution u/s 188, Criminal Procedure Code, for disobedience of that order has since been instituted. We do not think, it necessary to require the petitioner to make a fresh application to quash the prosecution which has since been instituted in order to. give him a locus standi to question the order u/s 44, Criminal Procedure Code. Sooner or later this Court will have to determine whether this order was made with or

without jurisdiction and as the parties are now before us, we think that that question should be decided in these proceedings.

3. Stated shortly, the dispute between the parties is, whether the opposite party have a right to drain a certain triangular piece of land belonging to them into the petitioner's tank or whether they have not. Into the merits of this dispute we have no intention of entering. In fact, in these proceedings we should not be justified in considering whether, the opinion expressed by the Magistrate on the civil rights of the parties is right or wrong. What we have to consider is, whether the Magistrate's order was made with jurisdiction or not. Jurisdiction u/s 144, Criminal Procedure Code, primarily depends on the urgency of the case. The Chapter is headed: Temporary orders in urgent cases of nuisance or apprehended danger." In our opinion in the present case although the Magistrate has held that the present state of the land round the railway menial quarters is a source of imminent danger to the public health in consequence of the 2nd party's act in closing the culvert which admits the drainage water into his tank, we cannot find in his statement of the facts any justification for the finding that the danger is imminent." It appears that this dispute has been going on for some time and on a previous occasion proceedings under the same section resulted in an order directing the removal., of the obstruction of the passage of water into the petitioner's tank being revoked on the 2nd October 1917. The Magistrate has held that the evil is a cumulative one. That may be so; but it is not shown that the culminating point has been reached at which there is imminent danger. The only fact which he sets out in his judgment which would indicate any imminent danger is that a rainfall of one inch in an hour would flood the menial quarters and compel their evacuation., But this is an imminent danger of quite a different kind to that on which this order is based. It is a danger to the inhabitants of this quarter who may be inconvenienced but is not a source of danger to public health. The mere statement by the learned District Magistrate that he considered the case to be imminent is not sufficient to give him jurisdiction, if the fact set out by him show that really there was no urgent necessity for action in this connection, and that we so hold in the present case. We accordingly make the Rule absolute and set aside the order of the District Magistrate, dated the 13th March 1918, u/s 144, Criminal Procedure Code, passed against the petitioner, on the ground that it was made without jurisdiction.