
(1950) 03 GAU CK 0003
In the Gauhati High Court

Dhanaram Namasudra and Others

APPELLANT

Vs

Kalicharan Namasudra

RESPONDENT

Date of Decision : 17-03-1950

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 133, 137(3), 138

Citation : AIR 1950 Guw 138 : (1950) CriLJ 1177

Hon'ble Judges : Ram Labhaya, J

Bench : Single Bench

Judgement

Ram Labhaya, J.—An order u/s 137 (3), Criminal P.C. directing removal of an obstruction from a water chancel within 14 days of the order was passed against 8 persons on 30th June 1949, On a petition of revision against this order, the learned Sessions Judge, L. A. D., after Considering the evidence in the case came to the conclusion that question involved was one of fact and that there was no sufficient ground for a reference of the matter to this Court. He rejected the petition therefore.

2. Three out of the 8 persons against whom the order was made have come up on revision to this Court.

3. The case for the C. P. Kalicharan Nama. Budra, on whose complaint the order in question was passed, was that the petitioners along with others had constructed a bund over a channel which opened up during the rains, in order to catch fish there. It was also stated that this act was likely to lead to a breach of the peace, The petition was sent to the O/C, Hajo Police Station for enquiry and report. From the report it appeared that the petitioners with others had constructed a bund in the channel which connected Pitkati Beel to Lakhaitari river. The enquiry further revealed that there was apprehension of the breach of the peace also. The police report formed the basis of the proceedings u/s 133, Criminal P.C.

4. The case of the 2nd party was that the channel in question was not a public

one and Section 138, Criminal P.C., had no application to the facts of the case.

5. Besides the complainant, Kalicharan Namasudra, two other witnesses were examined on his behalf. The petitioners examined only one witness, the Mandal of the lot in which the channel is situate. The complainant's witnesses stated that the obstruction in question prevented people from plying boats in the channel. The witness on behalf of the and party admitted that a bund had been constructed by the petitioners for purposes of catching fish. He stated that it did not cause any obstruction to boats as whenever boats came near the bund it was opened.

6. On this evidence the learned Magistrate passed the order, the correctness of which has been assailed by this revision petition. The learned Judge was evidently of the view that the members of the public had access to the channel for 6 months when there was water in the channel and that they could lawfully ply boats therein. This finding receives support from the statement made by the Mandal of the lot who appeared as a witness on behalf of the petitioners.

7. The learned Counsel for the petitioners contends that the channel was private property and the dispute between the parties relates to private rights. Section 133, therefore, he argued, could not be applied to the facts of this case. In support of his contention he relied on *In re Jaswantsangji Fatesangji*, 22 Bom. 983 and *Jagannutti Habit v. Parmeskar Narayan* 36 ALL. 209 : A. I. R. 1914 213 : 1915 Cri.L.J. 229.

8. In the Bombay case it was decided that where a dispute arose between the proprietors of two talitkdari villages situate on the banks of a river about the diversion of the course of the river by means of a dam and a trench made by one of them in the current of the river, and each talukdar claimed the river as his own private property, Section 183, Criminal P.C. had no application.

9. In the Allahabad case, it was held "that a field, which is on a lower level than the adjoining fields and over which the surplus water of those adjoining fields used to flow into a tank, even if it could be described as a channel, is not such a channel as could lawfully be used by the public, and action cannot be taken u/s 133, Criminal P, C, for the removal of any obstruction from it."

The learned Counsel for the opposite party has no quarrel with the interpretation placed on Section 133 in these cases- He points out that in this case the channel could lawfully be used by the public for months when there was water in it, If this finding is correct, the application of Section 133 is clearly attracted.

10. I have no reason to differ from the finding arrived at in the Courts below. In these circumstances, the authorities relied on by the learned Counsel for the petitioners would not apply and the order of the learned Magistrate would not be without jurisdiction.

11. The learned Magistrate has pointed out in his report dated 3rd January 1950 that the obstruction in the channel has already been removed. This makes the

dispute somewhat academic. There is no reason for interference. The petition of revision, therefore, is dismissed, Revision dismissed,