
(1956) 04 CAL CK 0009
In the Calcutta High Court
Case No : Criminal Ref. No. 9 of 1956

Divisional Superintendent, Eastern Rly., Asansole	APPELLANT
Vs	
Suresh Chandra Chakravarty	RESPONDENT

Date of Decision : 16-04-1956

Acts Referred:

Railways Act, 1890 — Section 138

Citation : AIR 1957 Cal 97 : (1957) CriLJ 175 : 60 CWN 588

Hon'ble Judges : Guha Ray, J

Bench : Single Bench

Advocate : B.N. Bose, for the Appellant; Bibhor Kumar Lahiri, for the Respondent

Judgement

Guha Ray, J.—This is a reference u/s 438, Criminal P.C., made by the Additional Sessions Judge of Asansole recommending that an order of the Sub-divisional Magistrate, Asansole refusing to take action u/s 138, Railways Act on the petition of the Divisional Superintendent, East India Railway, Asansole, against Suresh Chandra Chakravarty, a railway employee who had retired from the service of the railway, be set aside and that necessary directions u/s 133, Railways Act be given.

2. Admittedly, Suresh Chandra Chakravarty retired from the service of the railway with effect from 16-11-1954, so that from that date he ceased to have any claim to live in the quarters occupied by him as a railway servant. The application u/s 138, Railways Act, was filed before the Subdivisional Magistrate on 24-4-1956. On that the learned Magistrate directed the officer-in-charge, Asansole P. S. to cause vacation of the railway quarters Unit No. ABC in Block No. 136 which was occupied by Suresh Chandra Chakravarty and deliver possession of the same to the Assistant Engineer, Eastern Railway, Asansole. There was no report from the police for about three months. On 8-9-1955 Suresh Chandra Chakravarty showed cause and the learned Magistrate passed the following order;

"The 2nd party has neither been discharged nor suspended from office. In this

case he has retired from service. Hence action u/s 138 Railways Act cannot be taken. Inform the authorities to proceed against the 2nd party by taking proper legal action."

Then the learned Additional Sessions Judge was moved and he has made the reference on the ground that the learned Magistrate was not justified in putting on the word "discharge" a limited meaning so as not to include discharge on retirement. One of the dictionary meanings of the word "discharge" according to the Shorter Oxford English Dictionary is "to relieve of a charge or office; (more usually) to dismiss from office etc." Section 138, Railways Act, is as follows:

"If a railway servant is discharged or suspended from his office, or dies, absconds or absents himself, and he or his wife or widow, or any of his family or representatives, refuses or neglects after notice in writing for that purpose, to deliver up to the railway administration, or to a person appointed by the railway administration in this behalf, any station, dwelling-house, office or other building with its appurtenance, or any books, papers or other matters, belonging to the railway administration and in the possession or custody of such railway servant at the occurrence of any such event as aforesaid, any Presidency Magistrate or Magistrate of the first class may, on application made by or on behalf of the railway administration, order any police officer, with proper assistance, to enter upon, the building and remove any person found therein and take possession thereof or to take possession of the books, papers or other matters, and to deliver the same to the railway administration or a person appointed by the railway administration in that behalf."

It is obvious, therefore, that there are two things to be satisfied before an order u/s 138 can be made by a Magistrate: the first is that the railway servant in question must be discharged or suspended from his office or that he should die, abscond or absent himself; and the second is that he or his wife or widow or any of his family or representatives refuses or neglects, after notice in writing for that purpose, to deliver up the property in question in his possession. The question is what is the meaning of the word "discharge" used in this connection. The first part of the sentence uses two expressions--"discharged" or "suspended from his office", and if, as I have said, one of the dictionary meanings of the word "discharge" is "to relieve one of one's charge or office", one can be so relieved of charge or office either on retirement or on being dismissed by way of a punishment on a charge being established against him; whereas he is suspended from his office only as a temporary measure by way of an interim measure of punishment. There is thus a distinction between the words "discharged" and "suspended". The learned referring Judge, of course, states in one portion of his letter of reference that one may be freed from charge by termination of service by death or by absence or by absconding. This is clearly not correct. The first part of the section where the expression "discharged or suspended from his office" occurs and the part where the expression "dies, absconds or absents himself" occurs are quite different, and "discharged or suspended" from one's

office has nothing to do with one's death, absconsion or absenting oneself. Although the learned Judge was to that extent wrong in the construction he puts upon that section, he is quite right in saying that the word "discharging" is generally enough to include in it "discharge on retirement", so that even if a railway servant has been relieved of his office on retirement, he will come within the mischief of the section; and it will be legally open to a Magistrate, provided the second condition also has been fulfilled, namely, that the railway officer in question, his wife or widow or any of his family or representatives refuses or neglects, after notice in writing for that purpose, to deliver up the quarters to the railway administration. In this case the only ground taken by the opposite party, viz., Suresh Chandra Chakraverty is that the application is not maintainable, because he was neither discharged nor suspended from his office but retired and that the railway not having paid his provident fund money on his retirement, he was not in a position to leave his quarters. The first ground, namely, that discharge does not include discharge on retirement is obviously untenable and the second is really no ground at all for resisting a claim for action u/s 138, Railways Act, for the non-payment of the provident fund money of the Railway servant in question after his retirement is no ground to justify him in sticking to his quarters. The learned Magistrate, therefore, was clearly, wrong in refusing to take action u/s 138, Railways Act.

3. The reference must accordingly be accepted and a direction must be made u/s 138, Railways Act, that the officer-in-charge, Asansole P. S. with proper assistance is to enter upon the quarters in question and remove Suresh Chandra Chakraverty or any one else whom he may find in possession thereof and to deliver the same to the Assistant Engineer, Eastern Railway, Asansole.

4. The reference is accordingly accepted.

5. Let the order be sent down as early as possible.