

(1901) 11 CAL CK 0009
In the Calcutta High Court

Ebrahim Sircar

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 15-11-1901

Acts Referred:

Penal Code, 1860 (IPC) — Section 174, 175, 185, 186

Citation : (1902) ILR (Cal) 236

Hon'ble Judges : Harington, J;Gupta, J

Bench : Division Bench

Judgement

Harington and Gupta, JJ.—In case No. 407, a rule was granted calling upon the District Magistrate to show cause why the proceedings taken against the petitioners u/s 186, Penal Code, should not be quashed. The rule was granted on several grounds, but there is one ground which is, in our opinion, conclusive. The proceeding u/s 186 was for obstructing the Receiver of an estate in collecting rents. The only acts that are alleged against the petitioners are that they persuaded and urged the tenants not to pay rent to the Receiver. Assuming that they did so persuade the tenants, in our opinion such persuasion addressed to the tenants in the absence of the Receiver does not constitute an obstruction of the Receiver within the meaning of Section 186 of the Penal Code.

2. In case No. 480, a rule, similar to the one in the last case, was granted for the purpose of setting aside a proceeding u/s 188 of the Penal Code. In that case it was alleged that the petitioners had disobeyed an order made by the Receiver forbidding them to pay rent to any person other than the Receiver. The proceeding does not allege under what section, or by virtue of what authority, the Receiver purported to make this order. In our opinion, an order made by the Receiver to the effect I have stated cannot be described as an order promulgated by a public servant lawfully empowered to promulgate such order. The order, therefore, does not come within the terms of Section 188 of the Penal Code. Moreover, it is not alleged that the disobedience caused obstruction, annoyance, or injury or risk of obstruction, annoyance or injury to any persons lawfully

employed. On two grounds, therefore, it fails to come within the terms of that section. The rule, therefore, for setting it aside will be made absolute.

3. In the remaining two cases which arise out of the same transaction, namely, Nos. 546 and 547, similar rules were granted for getting aside the proceedings taken against the petitioners under Sections 174 and 175 of the Penal Code; the allegations in these proceedings being that the petitioners had been ordered to attend before the Collectors with their collection papers and with their rent receipts, and that they had disobeyed these orders. It is not alleged how the petitioners in either of these two cases, are legally bound either to attend with their collection papers in the one case, or to attend with their rent receipts in the other, nor can it be successfully contended that a Receiver is a public servant legally competent to issue such an order. On those grounds, the proceedings in the two cases which I have last mentioned must be set aside.

4. The result, therefore, will be that in all these four cases which arise out of the same transaction and have been heard together, the rules for setting aside the proceedings will be made absolute.