
(1934) 01 CAL CK 0021
In the Calcutta High Court

Ganesh Chandra Khan

APPELLANT

Vs

Lalit Mohan Nayak

RESPONDENT

Date of Decision : 12-01-1934

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144

Citation : AIR 1934 Cal 513

Judgement

1. This Rule is directed against an order which was originally made on 7th December 1933, and thereafter affirmed on 20th December 1933, by the Additional Chief Presidency Magistrate, Calcutta. The order purports to have been made u/s 144, Criminal P.C.

2. The facts necessary to be stated are very few. The petitioner is erecting a building on plot No. 73-A, Bagbazar Street. His own house stands at a distance of about 10 feet from the place where the foundation is being constructed. The opposite party appears to have got a house which stands at a distance of about 20 feet from this place. The petitioner is driving piles into the soil apparently for the purpose of strengthening the foundation of his building. The opposite party thereupon applied to the Magistrate stating that the petitioner had started, to sink big wooden pins for laying the foundation without having taken proper precautions and that the result had been that on account of the jerk and impact due to the driving of the pins two arches on the ground floor of the opposite party's house have been cracked. On these allegations he asked for an order u/s 144, Criminal P.C., as against the petitioner. Such an order, as already stated, was thereupon made by the learned Magistrate on 7th December 1933; and thereafter on hearing both parties the learned Magistrate on 20th December 1933 affirmed that order in these words:

Engineers and eye-witnesses prove that the cracks in the arches of the house of Lalit Mohan, that is to say, the opposite party, are due to driving of pins in the land of the other party and other construction work, and it is not safe either for the house of the petitioner or for the occupants. Injunction made absolute.

3. Now, the circumstances which would justify the Magistrate in making an order u/s 144 of the Code are set out in Sub-section 1, Section 144. The first thing which he has got to be satisfied about is that there is sufficient ground for proceeding u/s 144 and an immediate prevention or speedy remedy is desirable; and the second element which has got to be established is that the Magistrate should consider that the direction which he is about to give is one which is likely to prevent or tends to prevent, obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or safety or a disturbance of the public tranquillity or a riot or an affray. If one takes into consideration the facts of the present case, what the learned Magistrate had got to be satisfied about in making an order u/s 144 of the Code, in so far as the second of the aforesaid elements is concerned, was that the direction was likely to prevent injury or risk of injury to human life or safety. The question of injury to property, as distinguished from danger to or safety of human life occupying the property, has got very little relevancy.

4. The findings of the learned Magistrate in so far as they may be gathered from the order which he has made on 20th December 1933, and also the explanation which he has submitted in answer to the Rule suggest that he is apprehensive that unless an order u/s 144 is made the safety of the occupants of the house would be jeopardised. We are leaving for the moment out of consideration, for the reason given above, his finding that the property itself would be damaged. Now, it may be conceded that under exceptional circumstances the criminal Court would be justified in cases of emergency, on being satisfied as to the urgency of the situation, to make an order u/s 144 of the Code, which may have the effect of interfering with the private rights of individuals, even though such rights are being lawfully exercised. If we turn to the facts of the present case they appear to be as follows: The engineer who is doing the work of the foundation submitted a report in which he distinctly stated that the vibrations resulting from the mere driving of the pins cannot cause any damage to the opposite party's building near by, because of the distance intervening and also because the intensity of the vibrations was insignificant-compared to the massiveness of the structure as a masonry building. He has asserted that there can be no damage to the surrounding buildings due to the pins being driven into the soil. He has been examined as a witness in these proceedings and he has also given evidence to the above effect. He has said that from his own inspection of the premises at the time when a couple of the pins were driven into the soil. Another witness examined on behalf of the petitioner, although he did not enter the said house or go upstairs, has said that no cracks were visible on the outside of the house. He has further said that the soil was practically a loose soil and the vibration caused by the driving of pins cannot extend to more than 3 or 4 feet. He has further deposed that the walls of the opposite party's house have bent beyond the plumb line and the cracks that are in the house may be due to that fact. On behalf of the opposite party a number of witnesses including an engineer, Mr. J. Ganguly, have been examined and he has given evidence to the

effect that there are cracks in the house of the opposite party and they are due to the driving of the pins in the land of the petitioner. The other four witnesses examined on behalf of the opposite party have also given similar evidence. In this state of the evidence, it is far from clear that circumstances have been made out which would justify a Court in granting an injunction, if such an injunction was asked for, for the purpose of restraining the petitioner from driving pins in the soil. In any event it is not so very clear that unless an order u/s 144 of the Code is made, there is risk to human life or safety. It is only in exceptional circumstances where emergency of the gravest character is made out that a Court would be justified in the exercise of its powers u/s 144 of the Code to make an order which would have the effect of interfering with the exercise of the private rights of individuals.

5. In our opinion, the order which the learned Magistrate has made purporting to be an order u/s 144 of the Code is not justified by the circumstances which have been proved in the evidence of the case. It goes without saying that if the opposite party feels that there is any real risk of human life or safety so far as the occupants of his building are concerned, it is open to him to seek for his remedies in a proper Court and one of those remedies would undoubtedly be to apply for and obtain, if he can, an injunction from the original side of this Court. It is also clear that if on account of the negligence or want of proper precaution on the part of the petitioner any damage is caused to the building the opposite party will have a right to be compensated in respect of such damage.

6. We are informed that the foundation is being laid in respect of a building for which no sanction has been obtained and that proceedings in connection with this matter are also pending before the Corporation of Calcutta. Nothing that we have said in this judgment will affect any proceedings that are being or may legitimately be taken by that body. All that we are concerned with is the question of the propriety of the order which the learned Magistrate has made and on that point we are clearly of opinion that this is not a case in which the order which is complained of should have been at all made. The Rule is made absolute, and the orders complained of are set aside.