
(1981) 09 CAL CK 0021
In the Calcutta High Court
In Re Hriday Biswas

Date of Decision : 25-09-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107(1), 111, 112, 113, 129
Penal Code, 1860 (IPC) — Section 141, 149, 151, 154, 188
Police Act, 1861 — Section 20, 23, 44

Citation : 86 CWN 1005

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : Mukti Prasmna Mukherjee and Manjula Dhar Chowdhury, for the Appellant; Sadhan Chandra Gupta, Addl Advocate Genl and Bhabesh Ranjan Biswas for the State, for the Respondent

Final Decision : Allowed

Judgement

M.N.Roy, J.—The petitioner has claimed to be a Bargadar of about 144 acres of lands, recorded in Plot Nos. 793 and 794, appertaining to Khatain No. 173 of Mouza Deulbari Debipur, J L. No 158, under Police Statlsn Kultali, District 24 Parganas (hereinafter referred to as the said lands) Ha has stated that the total area of lands covered by the plots as nentioned above was 2 88 acres, of which he was a Bargadar In respect of the said lands It was his case that the lands in question belonged to Parichu Mondal since deceased and he has been cultivating as Bargadar, the said lands, for about 24/25 years. He has also stated that Panchu Mondal, during his life time, used to realise the owner's share for the said lands from him and on his death, his widow, Smt. Mithu Mondal, Respondent No. 5, who has inherited the said lands, is also possessing the same It has further been stated by the petitioner that on the death of the erstwhile owner, the said Respondent No. 5, has been paying rent for the entire lands and she has also been receiving owner's share of produce for the said lands from the petitioner. It was the case of the petitioner" that such Barga cultivation of the said lands by him, was and is known to all concerned, including Respondent No.4, Smt. Promila Mondal, and she never objected to such cultivation of the said lands by the petitioner and also to the realisation of owner's share as

mentioned above, by Smt. Mithu Mondal, Respondent No. 5. It has been categorically stated that the petitioner has been cultivating the said lands as Bargadar, openly and on due assertion of his rights and that too without any objection or obstruction from anybody.

2. Even inspite of the above the petitioner has claimed, that to his utter surprise, he was served with a notice dated 9th July 1981, as in Annexure "C" whereby the Officer-in-Charge, Kultali Police Station, Respondent No. 2, has required him, along with Sarba-sree Uday Biswas and Sundar Biswas and so also Smt. Kali Biswas, not to cultivate the said lands until and unless an enquiry initiated on the basis of a complaint of illegal cultivation, filed by the Respondent No. 4, Smt. Promila Mondal, by the Junior Land Re-forms Officer, Respondent No. 3, was completed and over. The petitioner has stated that he was not aware of any such enquiry as mentioned in the notice and to be made by the officer concerned and that apart, he was not also aware of any allegation, said to have been made by the said Smt. Promila Mondal. It was his case that no copy of the concerned allegations was served upon him and he was also not been served with any notice from the Junior Land Reforms officer concerned. These apart, the petitioner has stated that he was not and still he is not aware of any Civil or Criminal Proceedings, initiated or taken in respect of the said lands and his Barga right over those lands, has not been terminated by any appropriate authority under the provisions of the West Bengal Land Reforms Act, 1955. It was also stated by him that no restraint order has been issued, in terms of the provisions of that Act.

3. It was the further case of the petitioner that on receipt of the notice as mentioned above, on or about 14th July 1981, he met the Officer-in-Charge, Kultali Police Station, Respondent No 2 and apprised him of his Barga right, over the said lands and the other defence as mentioned hereinbefore. It was the further case of the petitioner that he duly pointed out to the officer concerned, that he was cultivating the said lands as Bargadar, being appropriately recognised by the owner, who, as mentioned hereinbefore, had accepted the Bhag share. It has been alleged that even on such due and appropriate facts being made available to the officer concerned, he paid no heed to the claims of the petitioner and declined to withdraw the impugned notice, which he also made it clear, was issued in terms of the directions received from the Junior Land Reforms Officer concerned, being Respondent No.3. It was the further case of the petitioner that thereafter, on 17th July 1981, he met the said Respondent No. 3, for the purpose of ascertaining the reasons from him for the notice, which was issued by the Respondent No. 2, under his orders or directions. The petitioner has also stated that he also made the facts as mentioned above, known to the said Respondent No. 3 and further, wanted to know the allegations, if any, said to have been made by the said Smt. Promila Mondal Respondent No 4, against him and also to supply him a copy of such allegations. It was further alleged that compliance to such request was not met. It has also been stated by the petitioner that the junior Land Reforms officer. Respondent No. 3, on the enquiry

as mentioned. above, gave a different version and to the effect that the Officer-in-Charge, Kultali Police Station, Respondent No. 2, who had asked the Respondent No. 3, J.L.R.O. to hold an enquiry, into the cultivation of the said lands and to report. In view of the circumstances as disclosed hereinbefore, it was the claim of the petitioner that he was at a fix and was not in a position to know the correct state of affairs and he has been seriously prejudiced, apart from the fact that he has suffered irreparable loss and injury, as the notice in Annexure-- "C" as mentioned above, which was neither legal nor valid or authorised. was sought to be given effect, to or acted upon. It was the further case of the petitioner that the Respondents and each of them, had acted illegally and mala fide in issuing the said notice and thus depriving the petitioner of his lawful rights and avocation, without any sanction of law. That apart, it was claimed that the Officer-in-Charge, Kultali Police Station and the J.L.R.O. concerned, was acting in collusion with the Respondent, Promila Mondal, with the purpose and intention of depriving him, of the fruits of the said lands and to disposses him therefrom without due process of law, apart from, contending that the Respondents were acting of have acted illegally and without jurisdiction, in the matter of issuing the impugned notice and thereby to restrain the addressees therein, to go upon the lands. It was also claimed that such action, was unilateral and was bad and void, as the same was sought to be taken without due opportunities to the petitioner.

4. Mr. Mukherjee, appearing in support of the application, claimed that the issue of the notice to restrain the Annexure -"C", by the Officer-in-Charge concerned, was illegal, irregular and without jurisdiction under Chapter -XII of the Criminal Procedure Code, 1973 and he had not the authority to issue such order. Whether such order of restraint by the Police authorities, at the requests and directions of the Junior Land Reforms officer, is possible and permissible, came up for consideration initially in the case of Arjun Ranjit vs. State of West Bengal, 1977 (2) C.L.J. 367 and then, in the case of Md. Mohalla Vs. State of West Bengal, 1980 (2) C.H.N. 32. In the first case, while dealing with the powers of Police officer to take steps for prevention of breach of peace and in the matter of commission of cognizable offence, it has been held that the J.L.R.O. and the Officer-in-Charge of Police Station, have no authority to make an interim restraint-order in the matter as was done in that case. That being so, the impugned interim restraint order was found to be patently without jurisdiction. The learned Judge has further observed that certainly the police has a power to take steps for prevention of a breach of peace and also in the matter of commission of cognizable offence. But such powers do not include the power to make interim restraint order. The view as above, was in fact, followed in the subsequent case as mentioned hereinbefore, where it has been observed that the Junior Land Reforms officer was not clothed with any such power under the provisions of Land Reforms Act. He clearly over stepped his limit by sending the request to the Police officer on the basis of complaint made by the Respondent concerned. In the subsequent case, on the complaint, that the petitioner was

causing disturbances to the possession of some lands belonging to the Respondent No. 5 and after making enquiry, the Junior Land Reforms officer requested the Officer-in-Charge of the Police Station, to give necessary police protection to the said Respondent for his peaceful cultivation of the disputed lands. On the basis as above and In view of the facts of the case as mentioned hereinbefore, Mr. Mukherjee contended that the acts or actions taken in the matter of Issuing temporary order of restraint by the Officer-In-Charge concerned was unauthorised and as mentioned above. he had no such authority under Chapter XII of the Code Initially, Mr. B.R. Biswas appeared for the State Respondent on 3rd September 1981 and he contested the submission of Mr. Mukherjee. It- was pleaded by him that even if under Chapter XII the officer concerned was not authorised, but In view of the provisions of section 149 of the Code as In Chapter XI, dealing with preventive action of the police and to the following effect:

149--Police to prevent cognizable offence -- Every police officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognizable offence.

It was claimed that under the said section 149, the officer concerned in the Instant case, was appropriately authorised and since in the two cases as mentioned above, the effect of section 149 was not taken into consideration, the determinations in those cases, will have to be evaluated again. Since such point was taken, I thought the assistance and help of the learned Additional Advocate General, who was present in Court on 3rd September 1981, would perhaps help me to decide the issue and as such, I requested him to extend such help and assistance to the Court. It should be noted that to such request, the learned Additional Advocate General, in his usual fairness, readily agreed.

5. Mr. Gupta produced the copies of G.D. entries made by or at the instance of Respondent No. 4, Smt. Promila Mondal and wanted to establish that the dispute between the parties, were pending for a long time and their relationship was also strained, for the facts as mentioned hereinafter.

6. He has stated that the Respondent Nos. 4 and 5 are the two wives of Panchu Mondal. They were fighting and quarrelling over the lands of the said Sri Panchu Mondal, who died one month after his marriage with Respondent No. 5, Mithu Mondal. Mr. Gupta stated that the petitioner, Hriday Biswas, was a cousin brother of Mithu Mondal and he claimed to be a Bargadar during the life time of Panchu Mondal and as mentioned hereinbefore, he produced Bhag receipt from Smt. Mithu Mondal. The basis of the quarrel between the two ladies, according to Mr. Gupta, was the subsequent marriage between Panchu Mondal and Respondent No 5. He claimed that since the parties were fighting and quarrelling over the lands of Panchu Mondal, the question would be, whether In such circumstances and In view of the General Diary Entries, if the Police Officer had the power or authority to order the parties not to go on the lands. Mr. Gupta wanted to contend that by the notice in question as in Annexure C both the parties were

restrained from going upon the lands. Such fact was of course, denied and disputed by Mr. Mukherjee, on a construction of the notice and more particularly because of the addressees therein.

7. As mentioned above, the question which was posed by Mr. Gupta in support of his contentions as above was that whether there was reasonable apprehension of a cognizable offence in the mind of the Police officer concerned and he claimed that If such was the case, then, u/s 149 as quoted hereinbefore and which is in Chapter XI of the Criminal Procedure Code the action as taken, would be justified. He also made a reference to section 23 of the Police Act, 1861, which is to the following effect :--

23. Duties of police officers. -- It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate Intelligence affecting the public peace; to prevent the commission of offences and public nuisance; to detect and bring offenders to justice, and to apprehend all persons who he is legally authorised to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every police officer, for any of the purpose mentioned in this section, without a warrant to enter and inspect any drinking shop, gaminghouse or other place of resort of loose and disorderly characters

and deals with the duties of police officers so also on section 10A of the Calcutta Police Act, 1886, which to the following effect :-

10A. (1) It shall be the duty of every Police-officer (a) promptly to serve every summons and obey and execute every warrant or other order lawfully issued to him by competent authority, and to endeavour by all lawful means to give effect to the lawful commands of superiors;

(b) to the best of his ability, to obtain intelligence concerning the commission of cognizable offences or designs to commit such offences and to lay such information and to take such other steps, consistent with law and with the orders of his superiors as are best calculated to bring offenders to justice or to prevent the commission of non cognizable within his view;

(c) to the best of his ability to prevent the commission of public nuisances;

(d) to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension there is sufficient reason;

(e) to aid any other Police officer when called on by him or in case of need In the discharge of his duty, In such ways as would be lawful and reasonable on the part of the officer aided;

(f) to discharge such duties as are imposed upon him by any law for the time being in force;

(g) to afford every assistance within his power to disabled or helpless persons in the streets, and to take charge of intoxicated persons and of lunatics at large

who appear to be dangerous or to be incapable of taking care of themselves;

(h) to take prompt measures to procure necessary help for any person under arrest or in custody who is wounded or sick, and while guarding or conducting any such person, to have due regard to his condition;

(i) to arrange for the proper sustenance and shelter of every person who is under arrest or in custody;

(j) in conducting searches, to refrain from needless rudeness and the causing of unnecessary annoyance;

(k) in dealing with women and children to act with strict regard to decency and with reasonable gentleness :

(1) to use his best endeavours-

I) to prevent any loss or damage by fire, and II) to avert any accident or danger to the public;

(m) to regulate and control the traffic in the streets to prevent obstruction therein and to the best of his ability to prevent the infraction of any rule or order made under this Act under any other law for the time being in force for observance by the public in or near the streets;

(n) to keep order in the streets, and at and within public bathing washing and landing places, fairs and all other places of public resort, and in the neighbourhood of places of public worship during the time of public worship;

(o) to regulate resort to public bathing, washing and landing places to prevent overcrowding and In public ferries, to the best of his ability, to prevent the infraction of any rule or order lawfully made for observance by the public of any such place or on any such boat and

(p) to perform all duties imposed on him by rules for the time (sic) in force under this Act in the manner and subject to the conditions therein prescribed.

(2) All persons shall be bound to conform to the reasonable directions of a Police officer given in fulfilment of any of the said duties.

(3) A Police-officer may restrain or remove any person resisting or refusing or omitting to conform to, any such direction as aforesaid

and on section 4A(20) of the Calcutta Suburban Police Act, 1866, which is to the following effect:

4A(b) to the best of ability, to obtain intelligence concerning the commission of cognizable offences, or designs to commit such offences, and to lay such information and take such other steps, consistent with law and with the orders of his superiors, as are best calculated to bring offenders to justice or to prevent the commission of cognizable offences or the commission of non-cognizable

offences within his view.

And claimed that the duties of the Police officer, being sutherised to prevent commission of offeneecs as mentioned in those sections and such also being the well recognised functions of the officer concerned, the Police officer in the instant case had the duly to prevent cognizable offence and as such, action as taken, was appropriately justified u/s 140 of the Code as queted hereinbefore It was also claimed by Mr. Gupta that the Police-officer In the instant case, had the right to do things usually necessary and as such, steps as taken by him tor prevention el the commission to cognlzeble (sic), could not be claimed or said to be unauthorised or or without juri diction. On a refererce to section 151 of the Code of Criminal Procedure which lays down.

(1) A Police-officer knowing of e design to renmitary cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officers that the commission of the offence cannot be otherwise prevented (2) no person arrested under sub section (1) shall be detained in custody for a period exceeding 24 hours from the time of his arrest unless his further detention as required or authorised under any other provisions of this Code or of any other law for the time being in force.

Mr. Gupta also claimed and contended that the action as taken to be just, fair and proper apart from being authorised. Mr. Gupta, on a reference to section 141 of the Indian Penal Code, stated that it the Police officer could form the opinion that Immediate interference was needed, then, certainly he could, of his own, take appropriate action, in exercise of his powers u/s 149 of the Code.

8. Section 149 of the Code, according to to Mr. Gupta clothed the Police officer firstly, to interfere for the purpose of preventing the cognizable offence and secondly such officer, shall to the best of his ability, prevent the commission of such offence and he stated that the only case on the interpretation of the word "interpose", as used in the section or the powers under the section viz when and how the same to be used, was the case of Emperor Vs. Raghunath Venaik Dhulekar and Another, , where Sulaiman J. ras interpreted the word "interpose" as in section 149. to connote the idea of actively intervening and not merely a prohibition by word of mouth. The learned judga has further observed, that to hold that u/s 149 a police officer can pass any oral order he thinks desirable, would be to held that his word is law, If his powers were to be to wide, It would be" unnecessary for the Maglstrate or the police to take any precautionary measures in advance it would be quite sufficient to send down a Sub Inspector to the scene end let him pass all sorts of sweeping orders, disobedience of which will entail conviction. Such a method. If sanctioned, would deprive the persons concerned of all opportunity to appeal to higher authorities, and they would have "o submit to such orders at the peril of a prorerution. Such wide powers vested In a police officer would interfere unreescrably with the ordinary liberty of private citizens end could net have been contemplated "o be within the scope of section 149, Criminal Procedure Code Mr. Gupta of course claimed and contended that

such determination, which was made under a different context, would be distinguishable and not applicable in the facts and circumstances of the case. Such determination, according to Mr. Gupta was made In the context of section 188 of the Indian Penal Code, which deals with the effect of disobedience to order, duly promulgated by a public servant and he made such arguments en the basis of specific reference to the illustration under the said section. It was claimed that the said determination was u/s 188 IPC read with section 148 of the Code and Sulaiman J's view was passed only en the basis of the word "interpose" as in section 149, which was not the view of Walsh ACJ. In fact. Mr. Gupta claimed and contended that the word interpese", was not considered In its true perspective and sense and in any event there was no argument advanced or considered on the word "and shall till the beat of his ability, prevent the commission of any cognizable offence", as in the said section 149 Mr. Gupta wanted to argue that whatever decision was made or arrived at, and if at all, was made only on the question and argument on the word "interpose," as in the section and not the other portion of the section, as mentioned above He, thus contended that on due end proper interpretation of the second part or portion of the section, even on the basis of the decision as referred to hereinbefore there could not be any bar in making or passing the restraint order as in this case, and that too on reasonable interpretation of the said second part of the section. On a reading of sections 188 IPC and 149 of Criminal Procedure Code, Mr. Gupta submitted that the former section or by the same, action would be possible and permissible after promulgation of the order, but by the powers under the latter part where there was no promulgation of any such order, such power would be available to the Police officer, on the happening of certain exigencies things or events and he would have such power to check sudden and violent happenings or such happenings, which would be cognizable offence, it was claimed and contended by Mr. Gupta, that there would be no opportunity to appeal to move higher up. would not be the determining factor in a proceeding initiated or order made u/s 149. He chimed that there is want of such opportunities u/s 149, would not also be enough to hold that the action as taken thereunder, would be void or could not be the reason for holding such action, as taken to be void and without jurisdiction. He also wanted to supplement his arguments on the construction of section 149, with reference to sections 37 of the Code of Criminal Procedure and claimed that since refusal or non compliance as mentioned therein, would be perishable under the provisions of the Indian Penal Code, so emergent powers must be there with the Police officer to stop and prevent the occurence of cognizable offence, as u/s 149,. He also advanced some arguments, on placing the provisions in cub section (1) and (2) of section 129 of the Criminal Procedure Code and Section 160 of the Code In view of the submissions as mentioned hereinbefore, Mr. Gupta submitted that Sulaiman J's views as expressed in the Allahabad case as mentioned above, were not justified and such view was expressed on a narrow basis or only on the Interpretation of the word "interpose". In fact, it was claimed that the effect of the words" "to the best of his ability", have not at ail been considered and construed. He claimed that while

on question of section 188 I.P.C. the learned Judge was not justified and authorised amongst others to hold that u/s 140 Criminal Procedure Code, a police officer can pass any oral order he thinks desirable would be to hold that his word is law. If his powers were to be wide, it would be unnecessary for the Magistrate or the police to take any precautionary measures In advance, it would be quite sufficient to send down a Sub Inspector to the scene and let him pass a I sorts of sweeping orders, disobedience of which will entail conviction. Such a method. If sanctioned, would deprive the persons concerned of all opportunity to appeal to higher authorities and they would have to submit to such orders at the peril of a prosecution. I am of opinion that such wide powers vested in a police officer would interfere unreasonably with the ordinary liberty or private citizens and could not have been contemplated to be within the scope of section 149, Criminal Procedure Code it was claimed by Mr. Gupta, on reasonable Interpretation, it should have been held that there would not have been any conflict, If a Police officer is allowed to take precautionary measures in terms of or u/s 149 of the Code On a further reference to the judgement as mentioned above, Mr. Gupta contended that the same would establish or was given on the basis of the power to prevent the commission of the offence, but not to prevent the happening of the offence and to achieve such object, power u/s 149 of the Code of Criminal Procedure, would be required and with that and in view, it cannot be said that in the instant case, the exercise of power or the step as taken, was unauthorised, improper and illegal. Mr. Gupta contended that the Allahabad Case was not applicable in this case as the same related only on the construction of the word "interpose", apart from the fact that section 149, was considered in the light and context of section 188 I.P.C. viz if the Police officer could promulgate the order. It was also claimed that the reasonings and such construction of section 149. would make the Police officer denuded of his powers and such, would not certainly be the proper way of looking at the section and it would not further be safe to say and hold, that such power should relieve the Police officer, to take any precautionary or preventive measure. But it was argued that sweeping orders by a Police officer cannot be passed. Mr. Gupta also claimed that since (sic) J's determination, was on the footing that the order would be made against would be victims, they would not be applicable in this case and specially when, orders are made or required to be made u/s 149.

9. The arguments and submissions of Mr. Gupta have been mentioned before those of the petitioners, as Mr. Gupta had argued at the request of the Court.

10. Mr. Mukherjee, appealing in support of the application, referred to section 20 of the Police Act, 1861 which (sic) says that police officers, enrolled under this Act shall not exercise any authority, except the authority provided for a police-officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure and claimed that in view of the restrictions as imposed a Police officer cannot act in whatever manner he wants In fact, on reference to the Police Act, Indian Penal Code, Criminal Procedure Code and the Regulations in Bengal amongst others, Mr Mukherjee wanted to establish his submissions as

mentioned above and also his submissions that u/s 149 or under the provisions of Chapter XII, a Police officer would not be entitled and authorised to issue restraint order or such order, as was made in this case.

11. Before referring to the relevant submissions of Mr. Mukherjee we must note that section 149 of the Code, as quoted hereinbefore is incorporated in Chapter XI which deals with provisions for preventive action of the Police and Chapter XII contains provisions empowering Police officers, to act on informations. As observed in the case of Mani Mohan Ghose Vs. The King Emperor. 35 CWN 623 Chapter XI and XII are (sic) and outside Chapter XII of the Code a Police officer may do many things, e.g. arrest for preventive action, dispersion of unlawful assembly and so forth and such things the Police officer concerned can do while investigating or even without investigating. Section 149, no doubt applies to cognizable offences and wider powers are given to the officers concerned u/s 23 of the Police Act 1861 which lays down that It shall be the duty of every police-officer prompt to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances, to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient ground exists : and it shall be lawful for every police officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking shop, gaming house or other place of resort of loose and disorderly characters, i.e., for prevention of offences in general. Mr. Mukherjee also referred to the said section 23, to establish the extent of powers and duties of a Police officer. He also made a reference to section 24 of that Act. which makes it lawful for any Police-officer to lay any information before a Magistrate, and to apply for a summons, warrant, search warrant or such other legal process as may by law issue against any person committing an offence. Such are also duties and obligations, according to Mr. Mukherjee, of a Police officer, u/s 155 of the Code which requires that: -

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate

(2) No police officer shall investigate a non cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding

that the other offences are non-cognizable.

Mr. Mukherjee then referred to the Kultali P.S.G D E No 221 dated 9th July 1981, the attested copy whereof was produced by Mr. Biswas along with the ether attested records. I direct these attested records to be kept In the record On a reference to the said G D E No. 221, it appeared that after noting the contents of the General Diary, the matter has been referred to Court. As such, Mr. Mukherjee claimed that action was taken under action 155 (1) as quoted above and so the provisions of section 155(2) would be a bar in the matter of issuing the impugned restraint order. It was claimed by him that when the matter was referred to Court, that would disentitle the officer concerned, to take such action as impeached and thus, section 149 had no application.

12. Therefore Mr Mokhejee referred to the provisions in sub-section (2) of section 41 of the Cade, which laws down that when any person who, in the presence of a police officer, has committed or has been accused of committing a non cognizable offence refuses on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer In order that his name or residence may be ascertained and claimed that since there has been no such reference, the action as taken cannot be said to be a proper one under or in exercise of powers u/s 149 The word interpose as in section 149 according to him, would be meddling into The general meaning of the word Interpose" would be to insert, exercise, advance Interfere and intervenal It was claimed by Mr. Mukherjee further that even though section 49 had or has no application in this case, the provisions of section 151(1) of the Code which Iays down that a police officer knowing of a design to commit any cognizable offences may arrest, without orders from a Magistrate end without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise Prevented, would otherwise be available to prevent the occurence or happening, as such also, the exercise of power u/s 149, was not fair, proper and could be justified

13. Thereafter, Mr. Mukherjee also referred to the provisions in section 145(1), 145(3) and 145(6) of the Code, which are quoted hereunder : --

Section 145(1) - Where an Executive Magistrate is satisfied from a report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists. concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statement of their respective claims as respects, the fact of actual possession of the subject of dispute.

(2)----

(3) A copy of the order shall be served in the manner provided by this Code for

the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4)----

(5)----

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso, to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to subsection (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

And contended that in a matter of land (sic), which was the case in this proceeding, complete remedy would be available under the provisions of the Code and as such, there would be no justification in issuing an order u/s 149. He also on a reference to the provisions in sub sections (1) and (2) of section 146, contended that since in case of emergency, appropriate provisions are there in the Code, so the use of power u/s 149 was neither required nor permissible. In fact, it was claimed by Mr. Mukherjee, that no such grave emergency or emergent situation, could possibly be spelt out from the records of this proceeding.

14. Mr Mukherjee also referred to the provisions of sections 144(1) and (2), 107(1) and (2), 111, 112 and 113 and submitted, that those provisions having appropriately authorised the authorities concerned to prevent breach of offence or commission of the same the use and exercise of power u/s 149, was also not due, proper, authorised and justified. Mr. Mukherjee also wanted to submit that since necessary and relevant forms for the use and exercise of emergent powers, have been prescribed in respect of all the sections other than section 149, it must also be held that there is no such authority, to use and exercise emergent power u/s 149 and as such, the impugned order, could not have been made or passed under such power. On a reference to sections 154 and 155 of the Code, which deal with cognizable and non cognizable offence respectively, it was claimed by Mr, Mukherjee and that too on a reference to the information as filed, that such information as given do not correspond to section 154 and as such also, the making of the impugned order, in purported exercise of powers u/s 149, cannot be justified.

15. Section 157 (1), which deals with Procedure for Investigation requires that if, from information received for otherwise, an officer in charge of police station has reason to suspect the commission of an offence which he is empowered u/s 156

to investigate, he shall forthwith sent a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and if necessary, to take measures for the discovery and arrest of the offender :

Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) If it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation he shall not investigate the case.

And on a reference to the same Mr. Mukherjee contended, that the Police officer could not or in this case had no power to refer the matter to the J.L.R.O., who was not an officer mentioned in the section or was not enrolled as a Sub-Inspector of Police. Mr. Mukherjee also claimed that the provisions of sections 158 to 161, 164, 165, 168 to 170 and 172, were not complied with in this case and claimed, so it would not be possible to contend that the offence was or treated to be a cognizable one and as such also, the order as impeached could not be passed off by saying that the same was made u/s 149.

16. It would be a matter of satisfaction of the Police officer himself u/s 15 of the Code, to see that the two conditions as mentioned therein, are present or not in a case, so that the action as taken, may be justified. On reference to those provisions, so also on section 44 of the Police Act, 1861, which lays down that

it shall be the duty of every officer in charge of a police-station to keep a general diary in such form as shall, from time to time, be prescribed by the State Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the name of the witnesses who shall have been examined.

The Magistrate of the district shall be at liberty to call for and inspect such diary, apart from Regulations 243 and 377 (j) of the Police Regulations Bengal, which are quoted hereunder :-

243 :-- (a) The first information of cognizable crime mentioned in section 154, Code of Criminal Procedure, shall be drawn up by the officer in charge of the Police station in Form No. 27 in accordance with the Instructions printed with it.

(b) The first information report shall be written by the officer taking the Information in his own handwriting and shall be signed and sealed by him.

(c) The information of the commission of a cognizable crime that shall first reach the police, whether oral or written, shall be treated as the first information. It may be given by a person acquainted with the facts directly or on hearsay, but in either case it constitutes the first information required by law, upon which the enquiry u/s 157, Code of Criminal Procedure, shall be taken up. When hearsay information of a crime is given, the station officer shall not wait to record, as the first information, the statement of the actual complainant or an eyewitness.

(d) A vague rumour shall be distinguished from a hearsay report. It shall not be reduced to writing or signed by the informant, but entered in the general diary, and should it, on subsequent information prove well founded, such subsequent information shall constitute the first information.

(e) A telegram is not a writing given to the police signed by the person making the statement and, therefore, does not comply with section 154, Code of Criminal Procedure. If, however, in the opinion of an officer receiving a telegram reporting the occurrence of a cognizable offence, the circumstances justify action being taken, he should himself lodge a first information on the basis of the telegram. If he does not take such action, he should make an entry in the general diary.

In the case of a telephone message reporting such an occurrence, the Informant should be asked to come to the police station to lodge the Information, and an entry of the message should be made in the general diary. If it is considered necessary to start investigation on the basis of the message and the informant remains anonymous or cannot be found the officer receiving the message must himself lodge the information on the basis thereof.

(f) Police officers shall not defer drawing up the information report until they have tested the truth of the complaint. They shall not await the result of medical examination before recording a first information, when complaint is made of grievous hurt or other cognizable crime.

(g) A constable left in charge of a station may accept a written report of a cognizable offence. He shall get the report signed by the person giving it, enter an abstract of it in the general diary and report the fact to the officer in charge of the station. If the report of a cognizable offence is given to such constable orally, he shall similarly enter the substance of it in the general diary and send the complaint or Informant to the officer in charge of the station with a note of the case. If the report relates to the occurrence of heinous crime, he shall send immediate information to the Circle Inspector; and if the facts of the case as may occur in dacoity, murder, etc., require the immediate apprehension of the accused, he shall take all possible steps to effect arrest.

(h) First Information reports, once recorded, shall on no account be cancelled by

station officers.

377:- (a).

(b).

(c).

(d)

(e).

(f).

(g).

(h).

(I).

(i) The diary shall be completed and a copy of it despatched in a cover to the address of the Circle Inspector one hour before the departure of the post, whatever time that may be and shall be a complete record of all occurrences during the previous 24 hours. It is not necessary that the diary should commence and end with day, but a note shall be made in the last entry stating that the diary has been closed for the previous 24 hours. At district and Sub divisional headquarters, the diary shall be closed and despatched at 08 00, so that extracts from it may appear in the daily report of the same day and Form 27 dealing with and relevant for cognizable offences and so also Form 66, relevant for non cognizable offence. Mr. Mukharjee contended that since steps, in forms of these provisions have not been taken, not the diary was written and maintained in terms of the necessary requirements, it should be held and observed that the Police officer, concerned, thought or took the offence to be not a cognizable offence and the recording as made, would show and establish the offence to be non cognizable and as such there was no ground or any application of section 149 as claimed now Regulation 152 of the Police Regulation Bengal, which incorporates (a) when a dispute in respect of land which is likely to lead to a breach of the peace is reported the officer in charge of the police-station or outpost or any officer not below the rank of Assistant Sub Inspector deputed by him shall, if immediate preventive action on his own part is not required issue a warning in B. P. Form No. 32 to the owner, occupier or other person having or claiming an interest in such land. Such warning brings the owner, occupier or person claiming an interest in the land within the scope of section 154 Indian Penal Code, should he not endeavour to prevent the dispute culminated in a riot.

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(b) The warning shall be issued in duplicate, and the signature or left thumb impression of the person to whom it is issued shall be obtained on the duplicate copy in the presence of reliable witnesses whose names and addresses should be noted. The exact date and hour of service shall be noted on the duplicate copy.

which should then be pasted on to the office copy and deals with warning to owners and occupiers of lands, when breach of the peace is apprehended according to Mr. Mukherjee, are the only powers of a Police officer in case like this and such submissions were made by him, with reference to other Regulations and the relevant Forms and that too, In support of his submissions that the case under consideration was not one, which warranted or required the use and exercise of powers u/s 149. Section 154 of the IPC deals with and prescribes the punishments in case of an unlawful assembly is held and on a reference to those provisions, Mr. Mukherjee claimed that in terms of the section, there could not be any power to restrain a person by the Police officer, more particularly when the specific powers are mentioned therein.

17. It was claimed by Mr. Mukherjee that the determinations in the case of *King Emperor vs. Reghunath Vendra Dhuleker* (Supra), would go to support his contentions that even u/s 149 of the Code, the Police officer concerned, was not authorised to pass the order under challenge in this case and in any event, the said order is not an order u/s 149. It was claimed that since other appropriate and relevant provisions are there and available in the Code, the action as claimed to be taken u/s 149 was neither proper nor legal.

18. Apart from relying on the determinations in the Allahabad case, Mr. Mukherjee, referred to the determinations in the case of *Emperor vs. Bilhai Naif*, AIR 1914 Oudh 230. That was a case u/s 550 of the Criminal Procedure Code 1898 and in that a Police Sub Inspector suspected that certain logs, which were lying on trucks at a Railway station, were stolen properly and. Instead of seizing them u/s 550, Criminal Procedure Code, issued an order to the station master directing him to detain the same. On such facts it has been held that the order was irregular and objectionable. On such determinations, Mr. Mukherjee wanted to contend and supplement his arguments that the restraint order, as issued in this case, was also unauthorised and not permissible. Apart from the determinations as above, Mr. Mukherjee also referred to the observations in the case of *Arjun Ranjit vs. State of West Bengal* (supra), In support of his submissions, as indicated above.

19. Mr. Mukherjee not only claimed the submission of Mr. Gupta, to be unsound, but, also claimed that since four persons were notified by the impugned notice, there could not be unlawful assembly constituted by them, more particularly when the number required for constitution of such offence in terms of section 141 IPC was not satisfied. He also, on a reference to the determinations in the case of *Mohammad Ali vs. Sri Han Swarup* AIR 1961 All 161, contended that the order as made, was not also justified and authorised u/s 151 of the Code, apart from claiming, that the police officer concerned, by the issue of the impugned notice, not only exceeded his jurisdiction and power, but has committed an offence. It was, in short and effect, claimed by Mr. Mukherjee that the notice as issued, was unauthorised, mala fide and of criminal nature. Such submissions on mala fide exercise of power or such nature of the notice, was sought to be

supplemented, on a reference to the provisions of section 339 and 341 of the Indian Penal Code, dealing with wrongful restraint and punishment for such restraint, respectively. It was further contended by Mr. Mukherjee, on a reference to the Impugned notice, that no offence was disclosed. It was contended further that if the notice disclosed any offence, then the laws of the land, as mentioned hereinbefore, should prevail and be applicable, and the order of restraint could not be effected or passed in the manner, as was done or sought to be given effect to. It was also and specifically claimed, that since the dispute was of a civil nature, then, under the provisions of the Code and the Police Regulations in Bengal as mentioned above and more particularly these of Regulations 257(i) and (ii), the action as taken, could be justified. It was contended by Mr. Mukherjee since the effect of the order as impeached, would be a sufferance to the person as restrained indefinitely, which under the restrictive provisions of the statute were neither possible nor permissible, the restrictions as sought to be imposed, was bad such arguments were advanced as even in case of any offence and arrest, the Police officer would be bound to produce the person charged or apprehended, within 24 hours, before the appropriate authority.

20. It was the contention of Mr. Mukherjee that when a restraint order would mean, loss to the person so restrained, so the Police officer, passing such order of restraint and that too without authority must be deemed to be acting mala fide. The short submissions of Mr. Mukherjee was that wrongful restraint is made or affected and more particularly when notice was issued (i) dishonestly, (2) voluntarily and (3) illegally by such officer, he would be acting in violation of the provisions of the Indian Penal Code, and as such also, would be acting in the manner as indicated above. Mr. Mukherjee also submitted that in case, a restraint order is passed in the manner as mentioned above there would be remedy for the person who would suffer the same, and in that case the proposed or intended and effective punishment, would not be lesser but the same would be very stringent. Those submissions were sought to be supported by Mr. Mukherjee, with reference to the determinations in the case of *Bishan Das and Others Vs. The State of Punjab and Others*, where it has been laid down that interference with fundamental rights to property, by executive action and without any authority of specific rule of law is not permissible.

21. It was then submitted by Mr. Mukherjee that under the provisions of the Code of Criminal Procedure, necessary power is vested with the authorities as mentioned in Chapter II and more particularly on (i) Court of Session (ii) Judicial Magistrate of the First Class and, in any Metropolitan areas. Metropolitan Magistrates, (111) Judicial Magistrates of the Second Class and (iv) Executive Magistrates as mentioned in section 6. with the exceptions as in section 20(5) which lays down that nothing in section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relating to a metropolitan area and therefore the Sub Inspector of Police in this case. had no authority to pass the order of restraint, as he was not. the authorities as

mentioned in section 6 of such authority as empowered u/s 20(5). In fact, Mr. Mukherjee specifically claimed that the order as made, would not be legal and proper, when no case has also been made out that the Assistant Sub-Inspector of Police, as in this case, was appointed as Special Executive Magistrate, even u/s 21 of the Code.

22. It was also the contention of Mr. Mukherjee that in the facts of the case, reference to the J.L.R.O if at all made, was also bad and unauthorised and he stated further, that if no inquiry was held by him which appeared from the submissions as made by the Respondents or from the statement of facts. as produced then the impugned restraint order, could not have been issued. The above submissions, was really advanced by Mr. Mukherjee on the learned Junior of Mr. Gupta, which again, he produced in Court. Let the said instructions from the J.L.R.O. as produced be kept in the records

23. Mr. Gupta, in reply contended that when even according to the submissions of Mr Mukherjee, soma power is there for the Police officers, to arrest a person, then, why should they not have the power to impose lesser restrictions in the shape of orders for restraint, as in the case and that too for the purposes of preventing the happening of an occurrence or commission of en offence It was submitted by Mr. Gupta that even if the Court has power in this case, the notice as issued, has not decided the dispute and the same was issued, in aid of maintaining law and order or obviating the commission of an offence According to him, the order as impeached should not be considered as an order for restraint for an indefinite period or can be treated or construed as an informal act to prevent the commission of a cognizable offence. It was stated by Mr Gupta that even Inspite of such order of restraint as impeached, the person, so restrained may go upon the lands and no steps would be taken against them, so long no offence is committed or any Interference in made with the right, if any, of others It was contended by Mr. Gupta that the arguments of Mr. Mukherjee, on dishonestly and voluntatrily issuing the impugned order were without any basis only but they cannot go side by side. The dishonestly according to him would mean certain state of intention, or an act, done with the intention of causing wrongful restraint In this or in a given case and acting voluntarily would mean, another state of mind. On a reference to section 239 I.P.C. which lays down that whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongful to restraint that person. Mr. Gupta claimed that the elements as mentioned therein, have not been satisfied. Mr. Gupta categorically contended that the elements of wrongful restraint under the section would be voluntarily obstruction and such element was absent in this case. On a further reference to the provisions of Chapter XII, Mr. Gupta contended that as in this case time for investigation has not yet arrived, yet it appeared that an offence, unless restrained, would perhaps be committed, particularly on a reference to the Diary as made, there was no illegality or any irregularity in taking the precautionary measure or action. He further claimed that the provisions of Chapter XII would

be operative, when the offence is committed but those In Chapter XI would be to prevent the happening or occurrence of all offence and as such also, the officer concerned. In this case had acted duly apart from being bonafide, to prevent the commission of the offence. Mr. Gupta claimed that the determinations In the case of Mohammad Ali Vs Ram Swarup (Supra), will have no application In the facts of this case. He stated that the underlying Idea behind the incorporation of Section 149 being to prevent occurrence or happening of offences at mentioned In a situation of emergency, when the officer concerned has resorted to such emergent power, no interference should be made. Mr. Gupta further contended that under the provisions of section 149, power has been given in the shape of duty and such power cannot and should not be narrowed down. Mr. Gupta also contended that since admittedly no forms have been prescribed for or u/s 140, that would prove and establish that such power or the exercise of the same, would be informal, and as such also, no Interference should be made. in any event, he also claimed that non prescription of any form, would not also be fatal. Mr. Gupta contended that the determinations in the case of Emperor Vs. Bilhai Nath (Supra) and Arjun Ranjit Vs. State of Wast Bengal (Supra), are distinguishable and not appropriately applicable in the facts of this case and more particularly when, in those cases, the Impact and effect of section 149, was not considered. Lastly and finally, Mr. Gupta submitted, even if the offence was not cognizable, u/s 23 of the Police Act 1861, steps could be taken and this Court should not Interfere as the order as made or the action as taken, should be interpreted and considered according to the exigencies of circumstances and in this case, such circumstances required and necessitated the issue or passing of the impugned order of restraint.

24. The dictionary meaning of the word "Interpose" as used in section 149, according to Oxford, is interruption, to interfere and intervene. According to Chambers, the meaning of the said word would be to place between, to thrust in, to offer and aid or services, to put In by way of Interruption and to place in an intervening position, to put in between, to introduce or throw in between the parts of a conversation or argument, to be or come between and to stop in between the parties at variance; according to Webster's. Thus, u/s 149, a Police officer, in terms of the words "interpose", would have the above powers in such type of cases as mentioned above, subject to other restrictions under the Code. The interpretation of that word "interpose", as made in the case of King Emperor Vs. Raghunath Vendik & Anr (Supra), in my view, would appropriately apply in the facts of this case and the difference or distinction, which Mr. Gupta wanted to point out or establish, whereof no substance or application in the facts of this case. if existence of such power, as was sought to be argued by Mr. Gupta, is available with a Police officer or vested in him, then there is every possibility, that a Police officer would be clothed with the possibility of holding that whether oral order he would pass, would be held by him to be law. In that case, there would be no necessity for the Magistrate or the Police to take any precautionary measure in advance. The method as visualised in the Allahabad case and as was

urged by Mr. Gupta in case is allowed, would deprive me persons is concerned of all opportunities to appeal and to take recourse to other provisions is and such persons as ordered, will have no other alternative, to submit to the risk of prosecution. If such wide powers, as suggested by Mr. Gupta, as vested in a Police officer, that would also interfere unreasonably with the ordinary liberty of citizens. The provisions of section 149 do not contemplate such wide power. I cannot also agree with Mr. Gupta's contentions that the word "interpose", was not considered and interpreted in the proper perspective and sense. The words "shall to the best of his ability, prevent, the commission of any cognizable offence", as used in section 149, in my view, must have relation to the word "interpose" and cannot be read and construed disjunctively. Thus, u/s 149, a Police officer, has in my view power to "interpose" and by such interposition, he is authorised to take steps to the best of his ability, to prevent, the commission of cognizable offence. Section 149 applies only to cognizable offence, which means an offence for which, a Police officer, may, in accordance with the First schedule or under any law for the time being in force arrest without warrant. In this case, no such arrest has been made and by the impugned order, a restraint, without any restriction as to the duration, has been imposed apart from the fact, that the G.D. entry No. 221 dated 9th July 1981, would establish that the A.S.I. concerned, has referred the matter to Court. In fact, action in the instant case, appeared to have been taken under sections 155(1) and so the provisions of section 155(2), would be a bar in the matter of issuing the order of restraint. I am also of the view that section 149 would not be available in this case, as the matter has admittedly been referred to Court. A cognizable case is one, in which, a Police officer, will also have the powers as indicated hereinbefore and may use the same in the manner as indicated. On the other hand, a non cognizable offence would mean an offence, for which a Police officer, has no authority to arrest without warrant and a cognizable case would mean, a case, in which the Police officer will have the above mentioned restricted power. Section 149 is incorporated in chapter XI, which has incorporated preventive actions to be taken by a Police officer and chapter XII contains provisions empowering such officers, to act on informations. Those chapters are no doubt interrelated and outside chapter XII of the Code, a Police officer, may take many steps or do many things viz (1) to arrest, (2) take preventive action, have an unlawful assembly dispersed, in the course of investigation or even without investigation.

25. If the meaning of the restraint order as mentioned therein, was that the case was referred to the J. L. R. O. concerned or till the disposal was made by him, the same was neither proper nor legal and justified, as the J.L.R.O. concerned could not be any authority as mentioned in chapter II of the Criminal Procedure Code. These apart, reference to the enquiry by the J.L.R.O. as mentioned in the impugned order, was also bad, as on the basis of the submissions as mentioned hereinbefore, it would appear that no enquiry as held by that authority. The submissions of Mr. Gupta that bereft of everything, it must be held that in the facts of this case, the Police officer concerned, had the right

and authority to take precautionary steps in the shape of passing the restraint order and that too for advance prevention of cognizable offence appeared to me to be not of much substance.

26. The above being my views and that too on construction of the respective provisions of the different status as indicated above, I allow this application and instead of keeping the matter pending for a long time, by issuing a Rule, by consent of parties, dispose of the same with the directions that the restraint order is issued, must not be given effect to or acted upon. There will be no order as to costs. This order will not of course create or treated to be a bar in taking appropriate steps or actions by the authorities concerned, in accordance with law, in case of necessity or happening of such or necessary occurrence and emergency. While making the order as above, I further keep it on record, that the allegations about taking steps, dishonestly, maliciously or in a mala fide manner, have not been established and those allegations were made only to be rejected.