

(1869) 01 CAL CK 0008
In the Calcutta High Court
Case No : Rule Nisi No. 75 of 1869

In Re: Mani Chandra Das and Others

Date of Decision : 26-01-1869

Acts Referred:

Citation : (1869) 01 CAL CK 0008

Judgement

Bayley, J.—I am of opinion that this rule must be made absolute. The question is, whether a Small Cause Court in the Mofussil, has authority by any law, or by any power inherent in itself, to punish for the resistance of a process of attachment issued by it. In the Mofussil Small Cause Court Act (XI of 1865), no such power is expressly given, whereas in the Presidency Small Cause Court Act, an express provision is made for the exercise of that power by the Court.

2. The Judge of the Small Cause Court of Backergunge, in his present letter to this Court, argues that such power is given to his Court by Section 25, Regulation IV of 1793, because that Court is a Civil Court, modified only as to forms of procedure and rules of appeal. But in my opinion this is not legally a sound argument. Section 25, Regulation IV of 1793, expressly refers to Zilla Courts constituted under that law, and not to Mofussil Courts of Small Causes. Certain cases have been cited by the Judge of the Small Cause Court, especially that of Chunder Kant Chuckerbutty (9 W.R., Cr., 63) decided on the 22nd April 1868 (Loch and Glover, JJ.), in which it was held that the resistance of a process of a Civil Court can be punished by that Court without referring the offender to the Magistrate, and reference is made in that judgment to the fact, that Section 25, Regulation IV of 1793, is not repealed by the Repealing Act VIII of 1868. Not only has that decision been expressly overruled by the Full Bench Ruling in *The Queen v. Bhagai Dafadar* (2 B.L.R. (F.B.), 21); but further, as before observed, the Small Cause Court is not a Civil Court within the meaning of Section 25, Regulation IV of 1793.

3. Then as to the power inherent in any Civil Court, including a Small Cause Court in the Mofussil, to punish for contempt of Court by resistance of its process. There is a case cited before us of *Abdulla and Matab Chaprasees* (8

W.R., Cr., 32), in which it was held that the High Court had power to punish parties for contempt of Court without sending them for trial to the ordinary Courts of Criminal Jurisdiction; but that was in consequence of the High Court being by the Letters Patent made a Court of Record, and having all the powers of the late Supreme Court.

4. Upon the whole, I consider that the Judge of the Small Cause Court acted without jurisdiction in imposing the fine, but at the same time referring to Section 1711 of Act XXV of 1861, I find that that section gives power to any Court, Civil or Criminal, when the offence is one coming under Chapter X, or one (as this is) u/s 1862 of the Indian Penal Code, to send the accused person before the Magistrate, and the Magistrate shall thereupon proceed to deal with the accused according to the law.

5. The order of the Judge of the Small Cause Court is accordingly set aside as passed without jurisdiction.

Hobhouse, J.

6. The point before us is one of considerable importance; and I, therefore, think it advisable to add a few words to the judgment of Mr. Justice Bayley.

7. The fact is, that the Judge of the Small Cause Court of Backergunge fined certain persons for resistance of a process of his own Court, and the question is whether that fine could be legally imposed by the Judge, that is to say whether the Judge of the Small Cause Court had jurisdiction to impose the fine, or whether we should not rather set aside the order imposing it, as passed without jurisdiction, and direct the fine to be refunded.

8. The Judge of the Small Cause Court supposes that he had jurisdiction under the provisions of Section 25, Regulation IV of 1793, and he relies on a judgment of a Division Bench of this Court in Chunder Kant Chuckerbutty (9 W.R., Cr. 63). This decision was to the effect that the Magistrate had not jurisdiction to fine for resistance of a process of a Civil Court, but that the Civil Court alone had such jurisdiction. This decision has been overruled by *The Queen v. Bhagai Dafadar* (2 B.L.R. (F.B.) 21), and it is there held that a Magistrate has jurisdiction to punish for resistance of a process of a Civil Court. It is clear, therefore, that the decision of the Division Bench was overruled by the Full Bench; but the Full Bench did not decide whether a Civil Court had or had not jurisdiction to punish for the resistance of its own process, and that question, therefore, is still open for our decision.

9. I quite agree with Mr. Justice Bayley that the provisions of Section 25, Regulation IV of 1793, do not in terms apply to Courts of Small Causes, but apply simply to Zilla Courts, not Courts of Small Causes. The only decision which is then at all in point is the case of *Abdool and Matab Chaprasees* (8 W.R. Cr., 32), referred to by Mr. Justice Bayley, and it is quite clear that, in that case, this Court held, that it had jurisdiction to punish for contempt of Court, on the ground

that it was a Court of Record expressly so declared to be by the Letters Patent. Now the Courts of Small Causes in the Mofussil are not Courts established by Letters Patent, but are only Civil Courts established under the legislative enactments of the council of this country. They are, therefore, it seems to me, Civil Courts within the meaning of the Codes of Civil and Criminal Procedure and of the Penal Code.

10. Then in regard to such Courts, we have express provisions in the Code of Criminal Procedure. The first provision is to be found in Section 163 of that Code, and that section lays down this, that when an offence, such as is described in Sections 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the view or in the presence of any Civil Court, it shall be competent to such Court to cause the offender to be detained in custody, and to adjudge the offender to punishment by fine or imprisonment in a civil jail. If then any offence such as is described in those sections of the Penal Code, is committed before any Civil Court, such Court has clearly jurisdiction to punish for that offence. But the offence committed in this instance is not an offence under any of those sections; it is an offence u/s 186 of the India Penal Code, and in regard to such offence there is a special procedure, in order to punishment, provided by Sections 168 and 171 of the Code of Criminal Procedure. Section 171 lays down that when any Civil Court is of opinion that there is sufficient ground for investigating any charge mentioned in the has three preceding sections, that is to say the sections under Chapter X of the Indian Penal Code (not being Sections 175, &c, above mentioned), the Court after making such preliminary enquiry as may be necessary, may send the case for investigation before any Magistrate, in order that such Magistrate may try or commit for trial according to law.

11. It seems to me quite clear, therefore, that when the law lays down certain provisions giving the Civil Courts jurisdiction to try and punish certain offences, being contempt's of those Courts, and directing the same Civil Courts not to try and punish certain other cognate offences but send them to the Magistrate for such trial, then it is only in case of the first kind of offence that the Civil Courts have any jurisdiction to try and punish, and this particular offence being, as I said before, an offence not provided for by Section 163, but in Sections 168 and 171 of the Code of Criminal Procedure, the Judge of the Court of Small Causes had no jurisdiction over such offence. The order of the Judge of the Small Cause Court is, therefore, set aside, and the fines, if collected, must be refunded.

1

Mode of proceeding in cases mentioned in the last three preceding sections.

Sec. 171:--When any Court, Civil or Criminal, is of opinion that there is sufficient ground for investigating any charge mentioned in the last three preceding sections, the Court, after making such preliminary enquiry as may be necessary, may send the case for investigation to any Magistrate having power to try or commit for trial the accused person for the offence charged, and such Magistrate

shall thereupon proceed according to law, and the Court shall have power to send the accused person in custody or to take sufficient bail for his appearance before such Magistrate and may bind over any person to appear and give evidence on such investigation.

2

Obstructing public servant in discharge of his public functions.

Sec. 186:--Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or both.

3

Procedure in certain cases of contempt.

Sec. 163:--When any such offence as is described in Sections 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, it shall be competent to such Court to cause the offender, whether he be a European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day to take cognizance of the offence; and to adjudge the offender to punishment by fine not exceeding two hundred rupees, or by imprisonment in the Civil goal for a period not exceeding one month, unless such fine be sooner paid. In every such case the Court shall record the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. If the Court, in any case, shall consider that a person accused of any offence above referred to should be imprisoned, or that a fine exceeding two hundred rupees should be imposed upon him, such Court, after recording the facts constituting the contempt and the statement of the accused person as before provided, shall forward the case to a Magistrate, or, if the accused person be a European British subject, to a Justice of the Peace, and shall cause bail to be taken for the appearance of such accused person before such Magistrate or Justice of the Peace, or if sufficient bail be not tendered shall cause the accused person to be forwarded under custody to such Magistrate or Justice of the Peace. If the case be forwarded to a Magistrate, such Magistrate shall proceed to try the accused person in the manner provided by this Act for trials before a Magistrate, and it shall be competent to such Magistrate to adjudge such offender to punishment, as provided in the section of the Indian Penal Code under which he is charged. If the case be forwarded to a Justice of the Peace, such Justice of the Peace shall enquire into the circumstances, and shall have the same powers of punishing the offenders as are vested by the Statute 53, George III, c. 155, s. 105, in a Justice of the Peace for the punishment of an assault, and may deal with the offender in the same manner as is provided in that behalf in the said Statute. If such Justice of the Peace shall consider the offence to require a more severe punishment than a Justice of the Peace is competent to award under the

said Statute, he may commit the offender to a Supreme Court of Judicature. In no case tried under this section shall any Magistrate adjudge imprisonment or a fine exceeding two hundred rupees for any contempt committed in his own presence against his own Court.

4

Prosecution for certain offences under Chapter X of the Penal Code not to be instituted, but with the sanction of the public servants concerned.

Sec. 168:--A charge of the contempt of the lawful authority of any Court or public servant, or of any other offence against a public servant as such, described in Chapter 10 of the Indian Penal Code, not falling within Section 163 of this Act, shall not be entertained in any Criminal Court, except with the sanction or on the complaint of the Court or public servant concerned, or, if such servant is an inferior ministerial servant, with the sanction or on the complaint of his official superior. The prohibition contained in this section shall not apply to the offences described in Sections 189 and 190 of the Indian Penal Code.