

**(1984) 02 CAL CK 0004**  
**In the Calcutta High Court**

Jagannath Mondal and Others

APPELLANT

Vs

Nandalal Sardar and Another

RESPONDENT

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**Date of Decision :** 22-02-1984

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144, 145

**Citation :** (1984) CriLJ 821

**Hon'ble Judges :** Jitendra Nath Chaudhuri, J

**Bench :** Single Bench

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**Judgement**

Jitendra Nath Chaudhuri, J.—This revisional application (Criminal Revision No. 1547 of 1982) is directed against an order dated 29-6-82, passed by the learned Sub-Divisional Magistrate, Diamond Harbour, in case No. M. F. 550 of 1982 in an application u/s 144 Cr. P. C. filed by the complainant/opposite party No. 1. The learned Magistrate on that date directed the J.L.R. O., Mathurapur (S) to cause an inquiry and report by 17-9-1982 and also directed the O/C of the relevant police station to maintain peace in the meantime. Thereafter the present petitioners have made this application for quashing of the said proceedings u/s 144, Cr. P.C.

2. It is submitted by the learned Advocate appearing on behalf of the petitioners that the opposite party No. 1 is making successive applications u/s 144 Cr. P. C. only with the intention of harassing the petitioners, although the said opposite party has no manner of any right, title or possessory interest in the disputed land as a bargadar. The previous application of the opposite party No. 1 u/s 144 Cr. P.C. in respect of the same plot of land and on the same grounds was rejected by the learned Sub-Divisional Magistrate, Diamond Harbour on 20-8-81 after he had considered an inquiry report which he had called for from the J.L.R.O. The petitioners have annexed copies of the orders dated 10-6-1981 and 20-8-1981 as Annexure "A" to the petition and the copy of the said inquiry report filed on behalf of the J.L.R.O. as Annexure A-I to the petition. The report contained in Annexure A-I clearly states that the opposite party No. 1 has no manner of right,

title and interest in the disputed land as a bargadar and there was no apprehension of breach of the peace at the time.

3. The present petition of Complaint filed by the opposite party No. 1 on the strength of which the impugned order dated 29-6-1981 was passed is completely silent about the said previous inquiry report filed on behalf of the J.L.R.O. and of the fact that any application was made previously by the opposite party No. 1, u/s 144 Cr. P. C. and that the same was rejected on 20-8-1981, There is total suppression of these facts in the present petition of complaint filed by the opposite party No. 1. It has been submitted by the learned Advocate on behalf of the petitioners that the previous application was not dismissed due to lapse of time but on merits because the opposite party No. 1 had no possessory interest whatsoever in the disputed land and that the present proceedings sought to be initiated by the opposite party No. 1 u/s 144 Cr.P.C. was frivolous, vexatious and amounted to an abuse of the process of Court. In this connexion he has relied upon a decision reported in Taturam Sahu Vs. The State of Orissa, , the relevant observation being in paragraph 8 thereof. The learned Judges comprising the Division Bench were of the view that repeated orders u/s 144, Cr. P.C. in favour of one of the several belligerent parties were improper and as such should be interfered with by the Court, but always subject to the condition that the Magistrate must have had other legally available means of preventing imminent breach of the peace. In that cast the order concerned u/s 144 Cr. P. C. was set aside although the same was no longer in force due to efflux of time. The learned Advocate on behalf of the petitioners has also relied upon a decision of the Supreme Court reported in Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another, . In paragraph 14 the Supreme Court has clearly laid down that the scheme of Section 144 Cr. P. C. does not contemplate repetitive orders and in case the situation so warrants, steps have to be taken under the other provisions of the law, such as, Section 107 or Section 145 of the Criminal P. C, when individual disputes are raised. If repetitive orders are made it would clearly amount to the abuse of the power conferred u/s 144 of the Code.

4. The learned Advocates appearing for the opposite party No. 1 as well as for the State (O. P. No. .2) have both submitted that the impugned order dated 29-6-1982 which is sought to be quashed in the present application has already spent its force by efflux of time and the Rule has become infructuous.

5. It is true that due to efflux of time the impugned order has spent its force. But I feel that on the facts of this case, in the interest of justice, I should observe that in my view it was most improper for the opposite party No. 1 to file the petition of complaint on the strength of which the impugned order dated 29-6-1982 was passed without disclosing therein the fact of the rejection of his previous petition u/s 144 Cr. P. C. on 20-8-1981. The opposite party No. 1 did not challenge in any way either the report filed on behalf of the J. L. R. O. (Annexure A-1) or the said order of rejection dated 20-8-1981 of the learned

Sub-Divisional Magistrate. Instead, he filed a repetitive petition on the same facts, after taking great care to suppress therein all previous proceedings instituted by him in respect of the same matter u/s 144 Cr.P.C.

6. On the facts of this case relying on the above decisions, I set. aside the impugned order dated 29-6-1982 of the learned Sub-Divisional Magistrate, Diamond Harbour, even though the same is no longer in force due to efflux of time.

7. The Rule is accordingly made absolute.

8. Let the records be sent down expeditiously.