

(1908) 04 CAL CK 0009
In the Calcutta High Court
Case No : Rev. Mis. No. 8 of 1908

Karban Ullah and Others

APPELLANT

Vs

Azmat Mahi

RESPONDENT

Date of Decision : 01-04-1908

Acts Referred:

Citation : (1908) 04 CAL CK 0009

Judgement

Geidt, J.—From the explanation submitted by the Sub-divisional Magistrate of Moulvi Bazar, it appears that on 18th November last one Shaha Mahammed petitioned that an order might issue prohibiting Airman Mahi and others from erecting an earth bund across the outlet of a bil, on the ground that the earthen bund, if constructed, would cause damage to the lands of the petitioners and others. Thereupon the Magistrate issued an order prohibiting the Mahimals from erecting the bund, or directing them to appear and show cause against the order. At the date, however, of this petition the earthen bund had already been constructed. Eleven days afterwards, on 29th November, Information was given to the Police that, on the previous day, 400 or 500 armed villagers had cut away the bund and committed other mischief. The case was investigated by the Sub-Inspector of Kalanra, and eventually on 18th December, the six petitioners before us were sent up for trial. While the case was under investigation by the police viz, on 9th December the Sub-Divisional Magistrate went to the spot and held a local enquiry. The petitioners pray that the trial of the case may be transferred from the Sub-Divisional Magistrate. The grounds for this prayer are that the Magistrate on his journey to the local enquiry was accompanied by Lydiard, the manager of the estate on which the bund alleged to have been cut was situated; that the complainants are tenants on the estate; and that Lydiard takes a keen interest in the case, is a great friend of the Magistrate and rode to the enquiry on the same elephant as the Magistrate, The petitioners are informed and believe, that during the local enquiry, the Magistrate examined the complainant and several other persons who are tenants and dependents of the estate, that he conversed with Lydiard, and that Lydiard made various allegations against the

petitioners, in consequence of which they apprehend that they have been seriously prejudiced in the mind of the Sub-Divisional Magistrate and may not have an impartial trial at his hands.

2. The petition filed before us undoubtedly implies that the enquiry held by the S. D. O. was an enquiry into the cutting of the bund by the petitioners. The S. D. O., however, informs that his enquiry was in no way directed to this matter which, at the time, was under investigation by the Sub-Inspectors of Kalanra; that the object of his enquiry was to see the place for himself "and by personal observation ascertain whether an earthen bund, would, as alleged, damage the villagers grazing land." He sent notice to all the villagers concerned that he was going there and would want them to point out the lands which would be damaged by the bund. The villagers assembled to the number of 300 or 400 and accompanied the Magistrate throughout. I fully accept these statements of the Magistrate as well as his further statement that he put no questions regarding the cutting of the bund, that the manager made no allegations against the petitioners, nor were they mentioned and that the manager and himself are not great friends.

3. Nevertheless it is a fact that Lydiard accompanied the Sub-divisional Magistrate from his camp to the scene of occurrence. They each rode on their own elephants, but occasionally Lydiard rode on the Magistrate's elephant to point out places. Lydiard is manager of the estate on which the complainants, who erected the bund, are tenants, and though the Magistrate does not distinctly say so, I take it that Lydiard was on the side of those who maintained that the bund did no damage to the villagers' grazing grounds. This public association of the Magistrate with a partisan of one side was indiscreet, and when we find that the Magistrate was also accompanied to the scene of the enquiry by the police officer who was at the time investigating the complaint about the cutting of the bund, it is not surprising that the petitioners should imagine that the Magistrate was also concerning himself about that complaint too.

4. Though I see no reason to suppose, on the materials before us, that the S. D. O. would not bring to the trial of the case fair and impartial mind, I think nevertheless that under the circumstances before mentioned, it is desirable that the trial should be held by some other Magistrate, especially as it does not appear that it will be necessary to hold the trial elsewhere than at Moulvi Bazar. We accordingly direct that the trial be held by some other Magistrate.

Woodroffe, J.

I agree.