
(1920) 06 CAL CK 0033
In the Calcutta High Court

Kumud Nath Chakravarty and Others	APPELLANT
Vs	
Ajoo Pramanik and Others	RESPONDENT

Date of Decision : 23-06-1920

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144
Penal Code, 1860 (IPC) — Section 188

Citation : 57 Ind. Cas. 915

Hon'ble Judges : N.R. Chatterjea, J;Cuming, J

Bench : Division Bench

Judgement

1. This Rule was issued calling upon the District Magistrate to show cause why the order directing the prosecution of the petitioners u/s 188, Indian Penal Code, should not be set aside.

2. It appears that the petitioners are the Ijaradars under certain Zamindars, who had a hat at Lakhipur, and there is a rival hat at Pirgacha belonging to certain other Zamindars. On a Police report the Sub-Divisional Magistrate made an order on the 13th February 1920 forbidding the petitioners from holding any hat at Lakhipur on particular days, directing them to abstain from taking vendors and stall-keepers by force from Pirgacha hot to their own hat and not to take any other measure to the detriment of the old hat at Pirgacha. This order was made u/s 144, Criminal Procedure Code. Subsequently on the 9th April 1920 the Sub-Divisional Magistrate went to the locality and advised the officers of both parties to amicably settle the matter, but there was no amicable settlement, On the 15th April the Sub-Divisional Magistrate made the order which had been passed on the 13th February absolute.

3. We do not understand what the Magistrate meant by making the order absolute because an order u/s 144 ceased to have any effect on the expiry of two months. There was no order on the 15th April which could be made absolute, nor is there any provision in that section for making the order absolute.

4. It appears that the petitioner moved the District Magistrate against the order

of the Sub Divisional Magistrate dated the 15th April, but the learned District Magistrate destined to interfere on the ground that two months had already expired and observed as follows: "I find that the Sub-Divisional Officer has asked for further report from the Police. If any order is pasted again, the aggrieved party may then come to me."

5. On the 5th May 1820 the Sub-Inspector of Bogra submitted a report to the following effect: "On local inquiry I did not get any evidence that the Achlai Babus are making any oppression or forcibly taking any people to their hat against their own will and the Pakrashi Babus" men (the other party) could not give me any evidence and could not show me any particular instance about this. I learn that people are coming to Achlai Babus" hat according to their own free will. The result is that Achlai Babus" hat is day by day thriving and the Pakrashi Babus" hat is suffering for this and so their (Pakrashi Babus") men are rather excited and this is quite natural. Now if both the hats of the rival Zamindars are allowed to be held on the same Tuesday and Saturday, then there is a great likelihood of the breach of the peace. Under this circumstance, I humbly pray that order u/s 144 or 107, Criminal Procedure Code, may be issued against the following men of both the parties so that no breach of the peace may take place." The names of the petitioners" party as well as those of Pakrashi Babus" party were given in that report.

6. On the 6th May the Sub-Divisional Officer was of opinion that the report of the Sub-Inspector did not clearly furnish materials for action u/s 107 or 144 Criminal Procedure Code, against both parties and that the Police should make a further inquiry and report by the 20th May. On the very same day, however, i.e., the 6th May the Sub-Divisional Officer passed the following order: "Police report dated 6th April 1920 seen. I had also been to the locality and heard the parties in connection with Case No. 15 M of 1920. I am satisfied that the injunction order u/s 144, Criminal Procedure Code, was disobeyed by the first nine accused persons. Draw up a proceeding and prosecute them u/s 188, Indian Penal Code." The Police report dated 6th April is not on the record and is said to have been lost, and it is said that some slip was sent to the Sub-Divisional Magistrate.

7. However that may be, we think the order directing the prosecution of the petitioners u/s 476, Criminal Procedure Code should be set aside. In the first place the Magistrate has not come to any finding that the disobedience of the order made on the 13th February caused or tended to cause a riot or an affray or a breach of the peace. It is true that the Magistrate was not trying the case u/s 188, Indian Penal Code, but was merely directing a prosecution and it was not necessary for him to make an elaborate inquiry. But it was held in the case of *Projapat Jha v. Emperor* 5 Ind. Cas. 154 : 14 C.W.N. 234 : 11 Cr. L.J. 49 that a Magistrate should not sanction a prosecution u/s 188, Indian Penal Code unless he thinks that all the elements necessary for a conviction are present and as the order in that case sanctioning the prosecution u/s 188 for an alleged disobedience of an order u/s 144 Criminal Procedure Code, did not show that the

disobedience caused or tended to cause obstruction, annoyance, injury or a riot the High Court set it aside in revision.

8. The Sub-Divisional Magistrate has no doubt stated in his explanation to this Court that all the elements necessary for a conviction are present, but nowhere is it stated in his order, and there is nothing to show, that he applied his mind at all to the question whether the disobedience of the order caused or tended to cause a riot or a breach of the peace. It may be observed that there are no materials at all to show that there was any breach of the peace or that the holding of the hat tended to cause any such breach or riot. The only materials on the record subsequent to the promulgation of the order on the 13th February are contained in the Police report submitted on the 5th May, and that goes to show, that the petitioners had not committed any oppression nor forcibly taken any person to their hat against their will, and that even the opposite party could not give any evidence nor show any particular instance of this.

9. In the next place, as stated, above, the Sub Divisional Magistrate had visited the locality on the 9th April. In his order directing the prosecution, he refers to that visit and says that he became aware at the time that the hat was being held in disobedience of his order. That was on the 9th April. If there was any disobedience of the order which would bring the case u/s 188, there does not appear to be any reason why the prosecution was not ordered at that time, and not until the 6th May when the Police had reported that although the petitioners had done nothing wrong, both the parties should be bound down only because the petitioners' hat was thriving and the opposite party got excited.

10. We think that having regard to all the circumstances of the case, the order u/s 476 ought not to have been made. The order of the Court below is accordingly set aside.

11. If the Magistrate is satisfied upon Police report that either party is going to commit a breach of the peace, it is open to the Magistrate to take such proceedings as he thinks proper to prevent it.