
(1921) 03 CAL CK 0013
In the Calcutta High Court

Lakshan Bor and Others

APPELLANT

Vs

Naranarain Hazrah and Others

RESPONDENT

Date of Decision : 10-03-1921

Acts Referred:

Bengal Tenancy Act, 1885 — Section 69(3)
Criminal Procedure Code, 1898 (CrPC) — Section 195, 476
Penal Code, 1860 (IPC) — Section 188

Citation : AIR 1921 Cal 260 : 66 Ind. Cas. 71

Hon'ble Judges : Teunon, J; Ghose, J

Bench : Division Bench

Judgement

1. In this case it appears that the Sub-Divisional Officer of Contai, as a Collector, acting under the provisions of Section 69 of the Bengal Tenancy Act, sub Section (3), made an order prohibiting the removal of certain crops. The case against the petitioners is that they disobeyed the said order and their prosecution under the provisions of Section 188 of the Indian Penal Code has accordingly been directed.

2. The contention of the petitioners is that Section 188 of the Indian Penal Code is not applicable to the facts alleged and that they should be dealt with, if at all, under the Code of Civil Procedure, Order XXXIX, Rule 2.

3. In the case reported in Chandi Charan Giri v. Gadadhar Prodhan 44 Ind. Cas. 177 : 45 C. 336 : 22 C. W. N. 165 : 27 C. L. J. 316 : 19 Cr. L. J. 273, it has been held that the proceedings of a Collector acting under the provisions of Sections 69 and 70 of the Bengal Tenancy Act are of a Civil nature. His Court is, therefore, one of civil jurisdiction and, in the absence of any special bar, by virtue of Section 141 of the Code of Civil Procedure, the procedure provided in that Code would appear to become applicable. In support of the contention advanced on behalf of the petitioners stress is then laid on the decision of this Court reported in Chandrakanta De, In the matter of 6 C. 446 : 7 C. L. J. 50 : 5 Ind. Jur. 412 : 3 Ind. Dec (n. s.) 289.

4. But, as is apparent from Sub-section (2) of Section 69 of the Bengal Tenancy

Act, the primary purpose of orders made under that section is to prevent benches of the peace and we cannot suppose that for the sanction to such orders the Legislature intended to rely or solely to rely on the provisions of the Code of Civil Procedure. Without, therefore, seeking to lay down that the provisions of the Code of Civil Procedure, Order XXXIX, are inapplicable, we must hold that it is competent to the Collector in such cases to act under the provisions of Section 195 or Section 476 of the Code of Criminal Procedure and to direct a prosecution u/s 188 of the Indian Penal Code in respect of alleged disobedience to his order. The rule is accordingly discharged.