

(1909) 06 CAL CK 0051
In the Calcutta High Court
Case No : Rev. No. 407 of 1909

Mohunt Dalmir Puri, 2nd Party

APPELLANT

Vs

Khodadad Khan and Another, 1st Party

RESPONDENT

Date of Decision : 10-06-1909

Acts Referred:

Citation : (1909) 06 CAL CK 0051

Judgement

1. This is a rule calling upon the District Magistrate, and on the Opposite Party, to shew cause why the order of the Deputy Magistrate, dated the 19th March 1909, directing the Police to see that the bundh is removed, should not be set aside on the ground that the Deputy Magistrate had no jurisdiction to make an order, directing the bundh to be removed by the Police, within the purview of sec. 147, Cr. P. C. We have heard the learned vakil showing cause against the rule and the learned Counsel in support of it. It appears that, on the 23rd December 1908, the Deputy Magistrate passed an order in the following terms:--"I therefore order that the bundh which is an obstruction should be removed and order that the second party (the Petitioner) should not erect any obstruction until they obtain the decision of a competent Court adjudging them entitled to do such a thing. The first party (the Opposite Party in this rule) should de-posit Rs. 25 for the cost of removing the obstruction which will be done under the supervision of the Police." On the 11th January 1909, the Petitioner obtained a temporary injunction, from the officiating Subordinate Judge of Monghyr, restraining the Defendants (the first party) from demolishing the embankment in question, and, on the 1st March 1909, that injunction was continued until further orders. The Subordinate Judge observed--"the Defendant might move again when danger to their property would be imminent and the Court might then pass necessary orders after local investigation if necessary." A copy of this order was forwarded to the Deputy Magistrate for his information. The Deputy Magistrate, thinking that the injunction could act against the first party only and not against the Criminal Court, and being of opinion that it was imperatively necessary that the bundh should be removed, before the rains set in, proceeded to direct the Police

to see the bundh removed.

2. There is, therefore, unfortunately a conflict between the Civil and Criminal Courts in this respect. We, however, do not propose to travel beyond the scope of our rule. We confine ourselves to decide whether the order of the Deputy Magistrate, dated the 19th March 1909, directing the Police to see that the bundh is removed, was, or was not, passed without jurisdiction.

3. The learned vakil for the Opposite Party relies on the case of Pasupati Nath Bose v. Nando Lal Bose 5 C.W.N. 67 (1900), where the learned Judges held that under sec. 147, Cr. P. C. the Magistrate is competent to direct that the obstruction be removed. This case was followed in Lalit Chandra v. Tarini Persad 5 C.W.N. 335 (1901). These cases, however, deal with directions made by a Magistrate against parties to the proceedings, and they are not authorities for the order passed on the 19th March, in the present case, some 7 weeks after the original order of the 23rd December 1908, disposing of the case. We do not find, in sec. 147, Cr. P. C. any indication that the Legislature intended the Magistrate to carry out an order under the section through the agency of the Police. The section clearly contemplates orders directed to the persons who are parties to the dispute. In this view of the matter, we must discharge the order of the Deputy Magistrate, dated the 15th March 1909, and make this rule absolute. We may add that if the Magistrate is of opinion that the public peace will be disturbed in connection with this embankment it will be open to him to bind down one or both of the parties under sec. 107, Cr. P. C.