

(1967) 08 CAL CK 0033

In the Calcutta High Court

Case No : Criminal Revn. No's. 731 and 732 of 1967

Moollesh Jain

APPELLANT

Vs

Imumuddin Ansari and Others

RESPONDENT

Date of Decision : 22-08-1967

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 117(3), 144(2)

Citation : AIR 1968 Cal 364 : (1968) CriLJ 1058 : 71 CWN 851

Hon'ble Judges : A.K. Das, J

Bench : Single Bench

Advocate : N.C. Banerjee and D.K. Sen Gupta, for the Appellant; Arun Prokash Sarkar, for A.P. Chatterjee, Birendra Nath Banerjee and S.K. Majumdar, for the Respondent

Final Decision : Allowed

Judgement

A.K. Das, J.—Criminal Revision Cases Nos. 731 of 1967 and 732 of 1967 are at the instance of the same petitioner who is the Chief Administrative Officer of M/s. New Central Jute Mills Co. Ltd., having its factory at Budge Budge, 24-Parganas. The opposite parties are workmen employed in the same Mills, this judgment.

2. Both these cases are disposed of by

3. Criminal Revision Case No. 731 of 1967 arises out of an application u/s 144 of the Code of Criminal Procedure alleging that the opposite parties workers formed themselves into an unlawful assembly and wrongfully confined and restrained several management personnel of the Mills and did not allow them to move. During confinement, the officers were subjected to insult, maltreatment and cruelty in various ways. The Officer-in-charge of Budge Budge police station was contacted but no assistance was made available. An application was then filed before the Magistrate at Alipore and he issued a search warrant for recovery of the confined officers. Pursuant to the Magistrate's order, the police party came to execute the order for rescuing the officers confined but the opposite parties

became rowdy and did not allow the police party to execute the search warrant or rescue the officers confined. At about 1.30 in the morning, the police party reappeared on the scene along with the Sub Divisional Magistrate and Additional Superintendent of Police, 24 Parganas and a big police force and only thereafter these Officers were rescued in execution of the Magistrate's order. Since then, the opposite parties have been collecting at the Mill site in riotous moods and openly giving out threats of violence and mischief and the petitioner apprehends that unless they are restrained by an order u/s 144 of the Code of Criminal Procedure they are likely to commit violence to the Officers and workers willing to attend, and mischief to the properties of the company. The petitioner, therefore, prayed that a proceeding u/s 144, Criminal Procedure Code might be drawn up restraining the members of the opposite party from creating disturbance at the Mill site, wrongfully confining members of the staff and obstructing the staff and the willing workers from entering the Mills. The petitioner also prayed that in view of the emergency, action might be taken under Sub-section (2) of Section 144 Cr. P. C. Orders of restraint might be passed ex parte.

4. Criminal Revision Case No. 732 of 1967 arises out of an application u/s 107 Cr. P. C. on similar facts and the petitioner prayed that a proceeding u/s 107 against the opposite parties might be drawn up and that with a view to prevent immediate breach of the peace and disturbance of public tranquillity, interim bond u/s 117(3) of the Criminal Procedure Code might be taken.

5. Both the petitions were filed on the same date before the same Magistrate who passed an order for police report by 25-10-67 and also directed police to see that there was no breach of the peace in the meantime.

6. The applications were filed on 5-8-1967 and the learned Magistrate has called for a report to be submitted by 25-10-1967 i.e., nearly three months after. The order betrays a lamentable lack of understanding of the seriousness of the allegations made, affecting personal liberty which might provoke breach of the peace and of the provisions of the Cr. P. C. for preventive steps against apprehended breach of the peace and disturbance of public tranquillity. I wonder if the learned Magistrate meant to function which was his duty to do or was aiding and abetting commission of offences likely to lead to anarchy and lawlessness. There were enough materials before the Magistrate to decide whether proceedings should be drawn up; the sworn petitions disclosed how the officers were wrongfully confined in their offices in very trying circumstances and how police failed to rescue them in execution of the search warrant by the Magistrate, until the Sub Divisional Officer and the Addl. Superintendent of Police reached the spot with police reinforcement. The petitions also disclosed how the opposite parties reinforced by men from other labour unions" were collecting at the mill site in a threatening mood and intimidating officers and men willing to work. The materials should have been sufficient for a magistrate with judicial approach to take action not only under Sections 144 and 107 Cr. P. C. but also

under Sub-section (2) of Section 144 and Sub-section (3) of Section 117 of the Criminal Procedure Code. The order, however, was passed in a cavalier spirit, asking the same police who failed to give protection to citizens against wrongful acts of a section of the workers, to give a report and that 3 months after. Is not the Magistrate aware that provisions under Sections 107 and 144 Cr, P. C. are of a preventive nature and that an order passed u/s 144 remains in force for two months only from the making thereof? Is not the Magistrate aware that precisely for similar emergency provisions are made for ex parte and interim order? Even if the learned Magistrate refused to take note of the disclosures made in the sworn petition and wanted to have a report from police, he could do it but the very fact that he fixed three months ahead, as the date for police report, unmistakably shows that he either did not apply his judicial mind or wanted to avoid an inconvenient situation. In either case, it is equally discouraging to see the Magistracy, which has traditionally upheld justice between man and man irrespective of fear or favour or frown allow matters to drift, instead of taking decision which law requires it to do. It is true that he directed the police to see that there is no breach of the peace in the meantime but there is no provision for such an order under the Code and this Court has times without number roundly condemned such pious orders which benefit none.

7. The Magistrate did not reject tike petitions, presumably because he did not think the applications to be frivolous or that there was no apprehension of breach of the peace. He should have, therefore, acted on the materials available, to which I have already drawn attention and in any case, if police report was found necessary, called for an immediate report and consider the propriety of passing interim orders, if there was emergency. The order passed by the learned Magistrate is not, therefore, a proper order and must be modified. He is directed to treat the petitions with due expedition and decide in the light of the observations in the body of this order whether preventive steps should be taken and to what extent. It is open to him to take evidence offered by the petitioner if found necessary or to consider any police report, if available.

8. The Rules are disposed of accordingly.

9. Send down the records immediately.