

(1919) 11 CAL CK 0009
In the Calcutta High Court

Peary Lal Mullick

APPELLANT

Vs

Surendra Kishore Mitter and Others

RESPONDENT

Date of Decision : 13-11-1919

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 133

Citation : 54 Ind. Cas. 487

Hon'ble Judges : Syed Shamsul Huda, J; Ghose, J

Bench : Division Bench

Judgement

1. In this matter a Rule has been issued sailing upon the District Magistrate and the opposite party to show cause why the order of the Sub-Divisional Magistrate of Barrackpore, dated the 19th May 1919, referred to in the petition herein should not be set aside or such other order passed in the matter as to this Court may seem fit, on the first ground mentioned in the petition which runs as follows: "For that having found your petitioner's claim to be bona fide the learned Magistrate had no jurisdiction to direct your petitioner to go to the Civil Court within three months to establish his claim."

2. It appears that on the 5th November 1918, an application was made by the opposite party before the Sub-Divisional Magistrate, alleging that the Ghat referred to in the petition together with the way leading to it was a public one and that the same had been obstructed by the petitioner and praying for an order u/s 133 of the Code of Criminal Procedure. On this application a conditional order was passed by the Magistrate on the 23rd November 1918 ordering the removal of the obstruction complained of within 20 days, or show cause against the same. Certain proceedings thereafter followed and on the 9th December 1918 the learned Magistrate found that the claim of right, as made by the petitioner, was made in good faith and he accordingly set aside the conditional order and dropped the proceedings. The petitioner was, however, directed to go to the Civil Court within a period of three months, and against this portion of the order this Court was moved and the matter finally came on before this Court on

the 14th February 1919, when it was ruled that inasmuch as the learned Magistrate had made the order of the 9th December 1918 without taking evidence that might be adduced by the parties, the order should be set aside and the case remitted to the Magistrate to be taken up from the point at which it stood before the order was made. The learned Magistrate has now taken evidence and he finds that the claim of right set up by the petitioner cannot be dismissed summarily as mala fide. He has, however, while dropping proceedings u/s 133, Criminal procedure Code, directed the petitioner to go to the Civil Court. Against this portion of the order the present Rule has been obtained.

3. We have now heard the learned Vakils for the petitioner and the opposite party at length and have considered the authorities cited before us, and in particular the cases in Luckhee Narain v. Ram Kumar 15 C. 564 and Belat Ali v. Abdur Rahim 8 C.W.N. 143 : 1 Cr.L.J. 70. As we read the judgment of the learned Magistrate, he nowhere found that the claim of the petitioner was not well founded : in fact taking the judgment as a whole the conclusion is irresistible that the Magistrate was of opinion that the claim of right set up by the petitioner was based on substantial grounds. In this view of the matter, we think the Magistrate had no jurisdiction to make the order complained of and we accordingly make the Rule absolute. We do not think it necessary to consider whether, if and when a claim is found to be bona fide and not a mere pretence to oust the jurisdiction of the Court, it is necessary to consider further, as appears to have been laid down in Luckhee Narain v. Ram Kumar 15 C. 564 whether the claim is well founded and if not well founded, whether the Magistrate has a right to direct one of the parties to go to the Civil Court within a reasonable time and on his failure to do so to resume the proceedings.