
(1896) 01 CAL CK 0016
In the Calcutta High Court

Queen-Empress

APPELLANT

Vs

Ashwini Kumar Ghose

RESPONDENT

Date of Decision : 06-01-1896

Acts Referred:

Village Chaukidari Act, 1870 — Section 8

Citation : (1896) ILR (Cal) 421

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

Bench : Division Bench

Judgement

Ghose and Rampini, JJ.—This is a reference by the Sessions Judge of Hooghly who forwards for our inspection and consideration the record of a case in which one Ashwini Kumar Ghose, the collecting member of a panchayet, constituted under the provisions of Bengal Act VI of 1870, has been fined Rs. 30 by the Sub-Divisional Officer of Serampore on the 24th October 1895 u/s 8 of the Act.

2. The principal question to be decided in connection with this matter is whether the order of the Deputy Magistrate of Serampore was passed in his judicial or his executive capacity. We are of opinion that it was passed in the former. The order complained of punishes the petitioner in this case with a fine, which has been imposed on him by a Magistrate under the provisions of an Act of the Bengal Council. The accused has therefore been found guilty of an offence [see Section 4, Clause (p) of the Criminal Procedure Code], and this fine is realisable from him under the provisions of the Penal and Criminal Procedure Codes (Section 4), Bengal Act V of 1867, and he might (sic) have been sentenced to imprisonment in default of payment of the (sic) order of this nature must, we think, be a judicial order, and consequently subject to revision by this Court.

3. We observe that Section 64 of the Act confers on Commissioners of circuit a controlling power over all proceedings of, panchayets and District Magistrates under this Act. It is not clear, however, whether by this section it was intended to confer on Commissioners of circuit power to revise the judicial proceedings of District Magistrates under the Village Chowkidari Act; but in any case this will not

exclude the jurisdiction of this Court with which it is vested by Chapter XXXII of the Criminal Procedure Code.

4. That being so, it is clear that the order of the Deputy Magistrate complained of must be set aside for three reasons : (1) there has been no semblance of a trial; (2) the petitioner has not been found to have committed any act punishable with fine u/s 8, Bengal Act VI of 1870. This section empowers the District Magistrate to impose a fine on a member of a panchayet who shall (a) refuse to undertake the office, or (b) wilfully omit to perform the duties thereof, and who shall fail to show grounds to the satisfaction of the Magistrate for such refusal or omission. Now the petitioner is not found to have done either of these things. He is said to have wilfully disobeyed orders of the Sub-Divisional Officer of Serampore's predecessor, and to have realised assessment from the villagers from Baisakh, though the Act was not actually introduced from the beginning of the year. (3) The section empowers the District Magistrate to impose a fine on a member of a panchayet. But the Sub-Divisional Officer of Serampore is not the District Magistrate, and is not shown or alleged to have had delegated to him u/s 3A of the Act the powers of a District Magistrate.

5. For these reasons the order in question is clearly bad, and we accordingly set it aside.

6. The fine, if paid, must be returned.