

(1949) 01 CAL CK 0034
In the Calcutta High Court

Quinn	Vs	APPELLANT
Keshab Chandra Mukherjee and Others		RESPONDENT

Date of Decision : 12-01-1949

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 188, 448

Citation : AIR 1949 Cal 349 : (1949) CriLJ 632

Hon'ble Judges : Sen, J

Bench : Single Bench

Judgement

Sen, J.—In my opinion, this rule should be discharged. The facts giving rise to this rule briefly are as follows: One Hedayet Ali instituted a suit for ejectment in this Hon''bla Court and obtained an ex parie decree. The suit was instituted against the lessee. When the decree was being executed by the Sheriff, the subtenants'' of the lessee refused to vacate and protested against the Sheriff''s attempt to remove them

Thereupon the party seeking to execute the decree went away. On the next date, some of the sub-tenants o the lessee filed an application before Majumdar J. praying that Hedayet Ali and his servants or agents should be restrained by an injunction from executing the said decree. The learned Judge passed an order granting an interim injunction in terms of this prayer and there was a further observation that the Sheriff was to act on counsel''s endorsement. The application was made returnable on the next Monday. The complainant''s case is that this interim injunction was showed to Hedayet Ali and to the Sheriff''s officer but that in spite of this the Sheriff''s officer Quinn proceeded to eject the tenants from the premises and to remove their furniture therefrom. Upon this, the police were informed but before the return of the police Quinn and his party had left after doing a certain amount of damage to the properties belonging to the tenants. Upon these allegations, a petition was filed before the Presidency Magistrate for the prosecution of Quinn and others who had been party in this alleged high-handed action. Process was prayed for under various, sections of

the Penal Code including Section 188, but process was issued only with respect to the offences punishable under Sections 448 and 147, Penal Code, that is to say with respect to the offences of trespass and rioting, When the case came up for hearing, an objection was taken that the whole case against the accused was based on S. 188, Penal Code, that is to say, the whole case against the accused was based on the fact that the accused had disobeyed the order duly promulgated by a public servant, namely, a Judge of this Court and that consequently no Court should take cognisance of this case except upon the complaint in writing of the public officer concerned that is to say, except upon the complaint in writing of the learned Judge of this Court who passed the order of interim injunction. The learned Magistrate negated this contention relying upon the case, In the matter of the petition of Chandra Rants De, 6 Cal. 445 : (7 O. L. Rule 360), which was a decision of Sir Richard Garth O. J. and MacLean J. Against this order the present rule was obtained.

2. After hearing learned Advocate on behalf of the petitioner and perusing the records of the case, I am of opinion that this case fall within the principle laid down in the aforesaid case, In the matter of the petition of Chandrakanta De 6 Cal. 445 : (7 C. L. B. 360). The facts are almost identical. The opinion of the Chief Justice is expressed as follows:

In our opinion, Section 188 applies to orders made by public functionaries and for public purposes, and not to an order made in a civil suit between party and party; so we think the Magistrate was right in refusing to Act. under the section.

The order in the present case was an order passed by a civil Court in a suit between party and party. It was not an order for public purposes according to the decision above-mentioned. Section 188, Penal Code, does not apply to this case. The Court was, therefore, right in taking cognisance of the offence. The rule is discharged.