
(1950) 11 CAL CK 0010
In the Calcutta High Court
Case No : Matter No. 70 of 1950

Santi Priya Mukherjee

APPELLANT

Vs

Surendra Nath Chatterjee

RESPONDENT

Date of Decision : 28-11-1950

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1952 Cal 137 : (1952) 1 ILR (Cal) 94

Hon'ble Judges : Das Gupta, J

Bench : Single Bench

Advocate : N.K. Basu, for the Appellant; S.M. Bose, General and N.K. Sen, Deputy Legal Remembrancer, for the Respondent

Final Decision : Dismissed

Judgement

Das Gupta, J.—In my opinion, the application must fail. The application is by one Santi Priya Mukherjee inter alia for an order for a writ to be issued in the nature of mandamus directing the respondent, the Commissioner of Police, to forbear from intimidating petitioner's employees and staff and/or the clients of his business and/or from interfering with them in any manner and/or interfering with the carrying on the petitioner's lawful business in any manner and to recall forthwith his "men posted near about the petitioner's said business.

2. The petitioner's case> as made out in the petition, is as follows:

The petitioner is a lessee of the ground-floor and second floor of the premises No. 3, Madan Street" Calcutta and he is the proprietor of the business called "Nature Cure Home" which provides inter alia for medical and curative aids to patients suffering from rheumatism, gout, nervous breakdown and other allied bodily and nervous infirmities by means of physio-therapy, hydropathy, electro-therapy and neuropathy. For the purpose of the said business petitioner employed at all material times two competent medical men and a sister in charge and fourteen trained nurses both male and female. The petitioner had also to

incur expenditure of about Rs. 15,000/-to convert a godown in the groundfloor of the-said premises into an air conditioned apartment, well plastered, coloured and painted and to arrange for electric and water connections and he "fitted up the said business with all necessary modern equipments, appliances and apparatus etc. In or about May, 1948 a raid was made on petitioner's said business premises by the police and the petitioner was prosecuted along with his-brother Benoy Mukherjee on various charges The petitioner and his co-accused were thereafter acquitted on or about the 6th September 1948. The petitioner contends that because of the failure of the said prosecution, the police department at Calcutta had been unreasonably and vindictively nursing a grudge against the petitioner though the petitioner's business was above board. On or about the 22nd July 1950, a police party raided several businesses of massage treatment and massage cure and made several arrests and started a number of prosecutions in Calcutta. The petitioner's business was not raided nor was any exception taken in the said business being carried on and no charge was framed and no arrest was made of any of the men employed by the petitioner. The main case of the petitioner is contained in paragraph 10-of the petition which runs as follows:

"The police however has wrongfully and mala fide "posted men in plain clothes" near about the petitioner's said business premise and such policemen are intimidating the employees of your petitioner and patients intending to visit your petitioner's business premises and threatening them with assault and; arrest. Your petitioner submits and contends that such action on the part of the said policemen are illegal and constitutes an unreasonable ultra vires and highhanded interference with your petitioner's right to carry on his aforesaid business."

In paragraph 11 of the petition, the petitioner contends that because of such illegal interference and intimidation by the police as aforesaid the attending doctors, nurses and other employees of the petitioner are finding increasingly difficult to attend the said business premises to carry on their normal duties. Many of the patients intending to come for treatment are being scared away by such intimidation, Under these circumstances the petitioner has made the present application for the reliefs mentioned therein.

3. In support of the petitioner's case three affidavits have been used before me. One of such affidavits is by one Mr. Bhattacharjee, a medical practitioner and in paragraph 8 of his affidavit he has stated that on the 23rd July 1950 when he was entering into the passage leading to the clinic of the petitioner, a gentleman in plain clothes enquired of him if he was going to the clinic, and his answer being in the affirmative he told him that he is a constable and he had instructions to arrest any one who might attempt to get into the clinic. He thereafter left the premises. Since then he had never been to the said clinic.

4. The next affidavit is by one Tara Prasanna Acharya, and in Para. 2 thereof the deponent has stated that on the 17th July 1950 he went to the said Electro-bath and Beauty-parlour where his treatment started. He got treatment until 22nd

August 1950. On the 23rd August 1950, when he was going to enter the -door leading to the clinic a gentleman who was standing by enquired of him as to where he was going and for what purpose. He told him the purpose of his visit and thereupon he told the deponent that he could not enter the place as he had authority from the Deputy Commissioner of Police to arrest any one who might try to get in.

5. The third affidavit is by one Mrs. M. McLaugh Line and in Para. 6 of her affidavit she has stated that on the 23rd July 1950 when she was getting into the passage leading to the Massage Bath and Beauty Parlour of the petitioner a man who was loitering there told her that he had orders from the Deputy Commissioner of Police to arrest any one who might attempt to get into the Massage Bath, and thereafter she did not attend the clinic on that day. In the next paragraph she stated that on the 24th July, 1950, she again went to the site but saw another gentleman in plain clothes who gave her the similar warning. The names of the persons who are alleged to have intimidated the petitioner's patient, doctor and nurse have not been mentioned in any one of the said affidavits.

6. An affidavit in opposition has been filed by Satyendra Nath Mukherjee, Deputy Com-.missioner of Police, Central District, Calcutta. In his affidavit in opposition there is no specific denial pf the fact of policemen in plain clothes being posted near about the petitioner's said business, but, he has denied that any police-men ever intimidated the petitioner's employees or any person intending to visit the petitioner's said business or that any such person has been ever threatened with assault or arrest, and in Para. 11 of his affidavit he stated that Police Sergeants and Sub-Inspectors had from time to time been going round to different localities, visiting the neighbourhood where the -said so-called baths and massage clinics are situate to enquire in the usual course of their duties whether any unlawful acts are being committed in the said premises or whether the :same are being run for immoral and illegal purposes but none of such policemen have intimidated or held out any threats to any person. In Para. 16 of his affidavit he inter alia stated that on the 23rd July 1950 the said clinic remained closed and the story about the said Mr. Bhattacharjee going to the said clinic on that day is an improbable story. No affidavit in reply has been filed by the petitioner and there is no denial of the allegations made in the affidavit in opposition of Satyendra Nath Mukherjee. Thus, there is no denial of the averment in the said affidavit in opposition namely, that on the 23rd July 1950 the clinic referred to in the said affidavits filed in support of the petition, remained closed. If that is so, then the ?statements contained in the two affidavits namely of Mr. Bhattacharjee and of Mrs. M. McLaugh Line become at once impossible for me to believe because according to them -the incident as narrated by them took place on the 23rd July 1950 when they were about to enter the clinic. If the clinic had been closed, as stated in the affidavit in opposition, then this statement must be false. That being so, \$ cannot place any reliance on the affidavits of these two persons which have been filed in support

of the petition.

7. I am left, therefore, only with the affidavit of Tara Prasanna Acharya. All that is stated there is that on the 23rd August 1950 a gentleman who was standing by enquired of him as to where he was going and the deponent told him the purpose of his visit whereupon he was told that he could not enter the place as the police was in charge. I have no materials before me from which I can ascertain whether this gentleman was a policeman at all and, if so, who he was. Apart from this, there is nothing before me to establish that this gentleman had any instructions from the Police Officers to act in the manner in which he did. I am not satisfied that there was any intimidation as alleged in the petition.

8. Mr. Basu appearing on behalf of the petitioner then contended that the posting of the policemen in plain clothes near about his business itself constitutes a breach of his client's fundamental rights. I am unable to accept his contention. Mr. Mukherjee in Para 11 of his affidavit has stated that Police Sergeants and Sub-Inspectors had from time to time been going round to different localities to visit the neighbourhood where the so-called baths and massage clinics are situate and to enquire in the usual course of their duties whether any unlawful acts are being committed in the said premises. To keep a watch over the activities of a particular clinic and baths, would not, in my opinion, amount to breach of the fundamental rights of the persons who carry on such business of baths and massage clinics.

9. Mr. Advocate General appearing on behalf of the Commissioner of Police contended before me that fundamental rights must be vis-a-vis the subject and the State. In other words, if there is any infringement by one subject Of another subject's fundamental rights, then, according to him, recourse should be had to the ordinary course of law and no direction either under Article 226 of the Indian Constitution or u/s 45 of the Specific Relief Act can be obtained in order to protect such fundamental rights. He further contended that even if a policeman has in the course of his duties interfered with the fundamental rights of a subject, then the subject has got the same remedy which he would have had against another subject if the latter had interfered with such rights. In other words, he can take recourse to ordinary course of law. Mr. Advocate General contended further that in the circumstances of the present case neither Section 45 of the Specific Relief Act nor Article 226 of the Indian Constitution can be availed of in order to get the reliefs asked for and the Court cannot act under those sections to give such reliefs.

10. Although I am not prepared to accept the extreme proposition which Mr. Advocate General wants me to accept, namely, that under Article 226 of the Indian Constitution the Ct. has power to grant relief only in cases where either the State or an officer of the State interferes with the fundamental rights of the subject, in my opinion if adequate and specific remedy has been provided in law and a subject, whose fundamental rights have been interfered with, can take recourse to the ordinary course of law, the jurisdiction under Article 226 of the

Indian Constitution should not be invoked in such circumstances.

11. Now looking at this matter also from this point of view, I do not think that the petitioner is entitled to get relief on this application because the best that can be said is that a particular policeman who was posted to keep watch over the petitioner's activities, intimidated the petitioner's customers. As I have already said, it has not been established that such alleged intimidation took place by virtue of any instructions received from any higher authorities. If that is so, then the remedy open to the petitioner in such a case is to file either civil or criminal proceedings, as he may be advised, against the particular policeman or if he can establish that the higher authorities are concerned in the matter, he may take appropriate proceedings against them as well in an appropriate Court of law. I express no opinion as to the merits of such a proceeding, if any.

12. In the circumstances I am of the opinion that the petitioner is not entitled to succeed in this application. The application is therefore dismissed with costs.